HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 143 Florida Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Raburn
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Finance & Tax Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA), which is the guaranty association for property and casualty insurance. FIGA is composed of most insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. If FIGA does not have sufficient funds to pay claims of an insolvent insurer, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds – regular and emergency assessments.

The bill provides a new process for insurers to remit regular and emergency assessments to FIGA. Insurers must make an initial payment of the assessment to FIGA by the date in the Order from the Office of Insurance Regulation (OIR) levying the assessment. Insurers begin collecting the assessment from their policyholders no sooner than 90 days from the OIR Order and collect the assessment for 12 months. Insurers reconcile the difference between their initial assessment payment total and the total amount collected at the end of the 12 month assessment period and report the reconciliation to FIGA. If an insurer collects more from policyholders than it initially paid to FIGA, the insurer pays the excess to FIGA. If an insurer collects less from policyholders than it initially paid, FIGA credits the insurer on future assessments. This remittance method is similar to the method under current law where insurers prepay assessments and later recoup them from policyholders over time, but the reconciliation process outlined in the bill is different than under current law. The reconciliation process in the bill removes the need for insurers to do a rate filing to recoup assessments from policyholders.

Alternatively, FIGA can use a monthly installment method for insurers to remit regular and emergency assessments. The monthly installment method can only be used if FIGA projects it has cash to pay six months of claims. Under the monthly installment method, insurers remit assessments to FIGA each month in the amount they collect from their policyholders. The monthly installment method of remittance can also be used in conjunction with the initial payment method described above.

The bill also revises the assessment methodology to provide a uniform percentage assessment on all policyholders subject to a FIGA assessment.

The bill has no fiscal impact on state or local government, but does impact the private sector. Some insurers contend that the current assessment mechanism requiring insurers to prepay assessments and later recoup them from policyholders threatens the solvency of property insurers. A monthly assessment remittance process could reduce the risk of insolvency. The bill provides a more equitable assessment by creating a uniform percentage assessment of policyholders. The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring a reconciliation report with FIGA, rather than a filing with the OIR in order to recoup assessments from policyholders.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[1] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

By law, FIGA is divided into two accounts:

- the auto liability and auto physical damage account; and
- the account for all other included insurance lines (the all-other account).[5]

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. Claims for property insurance are paid out of the all-other account in FIGA.

[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

[5] s. 631.55(2), F.S.

For many claims, the maximum claim amount FIGA will cover is $300,000. However, for homeowners' claims, FIGA covers an additional $200,000 for damages to the structure or contents, for a total of $500,000. And, for condominium and homeowners' association claims FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible, in addition to any other deductible in the insurance policy.

FIGA Funding

In order to pay claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida.[6] FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment for either of its two accounts of up to two percent of an insurer's net written premium for the kind of insurance for which the assessment is levies. The maximum assessment amount for this assessment is two percent per year per FIGA account, for a maximum of four percent per year. This assessment is commonly referred to as the "regular" assessment, although it is not identified as such in the statute.

The second assessment FIGA can levy is an emergency assessment. This assessment is authorized under s. 631.57(3)(e), F.S., and can only be issued to pay claims of insurers rendered insolvent due to a hurricane. Like the regular assessment, the emergency assessment is capped at two percent of an insurer's net direct written premium in Florida for the calendar year preceding the assessment.

FIGA Assessment Procedure and Recoupment

The specific procedure used by FIGA to levy both types of assessments against member insurance companies and the procedure used by member insurance companies to recoup the assessment paid from their policyholders are found in s. 631.57(3), F.S. The procedure is generally the same for both regular and emergency assessments and is as follows:

1. FIGA's board determines an assessment is needed to pay claims, pay claim administration costs, or to pay bonds issued by FIGA.
2. The board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR).
3. The OIR reviews the certification submitted by FIGA to support the assessment levy need and amount. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the assessment instructing the companies to pay their share of the assessment to FIGA.
4. Regular assessments must be paid by the insurance company within 30 days of the levy. Emergency assessments can be paid either in one payment at the end of the month after the assessment is levied or in 12 monthly installments, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.[7] In other words, insurance companies pay their assessments to FIGA and wait as long as 12 months to recoup the assessments from their policyholders as policies renew or new policies are issued.[8] Because insurers pay the assessments upfront, FIGA is able to quickly obtain funds to pay claims of insolvent insurers. Insurers make a rate filing with the OIR to recoup the FIGA assessments from policyholders.

FIGA has not levied an emergency assessment since 2006. FIGA last levied a regular assessment in November 2012 which was paid by insurers by December 31, 2012. This assessment amount was

[6] The liquidation of insolvent Florida insurers is done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. Typically, insurers are put into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. *See* s. 631.061, F.A., for the grounds for liquidation.

[7] If a company's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

[8] Insurer recoupment from policyholders may occur over a period longer than 12 months if the insurer's book of business subject to the assessment decreases during the recoupment period. This makes the insurer's collection of the assessment over 12 months insufficient to recoup the full amount of the assessment paid to FIGA, so the insurer continues to recoup the assessment from policyholders until the assessment is recouped in full.

0.9% of an insurer's net direct written premiums for 2011. The assessment was levied only on the all other account. It was paid upfront by insurers and passed through to policyholders who repaid the insurer for the assessment when their policy was issued or renewed after November 2012.

Changes Proposed by the Bill
The bill retains the current caps on assessments of two percent per FIGA account per year for the regular assessment (four percent total) and two percent for the emergency assessment per year, but significantly revises the process for insurers to remit regular and emergency assessments to FIGA as described below.

In the OIR order levying the assessment, the bill requires the OIR to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which is a 12-month period that may start on the first day of each quarter, beginning January 1. The assessment year is the 12 month period during which FIGA assessments are recouped or collected from assessable policyholders. Once OIR issues the order requiring insurers to pay an assessment, insurers may begin collecting assessments from policyholders for the assessment year. The initial collection start date must be at least 90 days after the FIGA board certifies the need for an assessment.

Insurers are required to make an initial payment for regular and emergency assessments to FIGA before the beginning of the assessment year, on or before the date specified in the order. The initial payment made by insurers that wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated premiums that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's prior year market share is used as a basis for determining an insurer's total assessment and the insurer calculates the recoupment factor to provide for the probable assessment recoupment in one year.

The bill authorizes FIGA to use a monthly installment method for the remittance of regular and emergency assessments from insurers to FIGA. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to FIGA and subsequently recoup that payment from policyholders. The bill provides FIGA with the discretion to use the installment plan based on FIGA's projected cash flow. If FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for six months, FIGA may recommend a monthly remittance instead of a single initial assessment payment.

The bill eliminates the required informational filing with OIR made by insurers in order to recoup FIGA assessments from policyholders. Instead, insurers are required to file a reconciliation report with FIGA within 45 days after the end of the assessment year, indicating the amount of the initial payment to FIGA, whether the payment was based on prior year premiums or a good faith projection, and the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S., the unfair methods of competition and unfair or deceptive acts or practices law. Insurers are required to complete and submit a payment reconciliation to FIGA within 90 days after the end of the assessment year.

The bill changes the procedure in current law used when insurers collect too much in FIGA assessments from policyholders. Current law requires insurers to remit excess assessment amounts collected from policyholders to FIGA if the excess amount is 15 percent or less than the total assessment paid by the insurer. Excess amounts over 15 percent of the total assessment paid are refunded by the insurer to the policyholders who paid the assessment. Under the bill, if an insurer collects more than its initial payment to FIGA, the insurer remits the excess amount to FIGA. If an insurer collects less than its initial payment to FIGA, FIGA credits the insurer against future assessments.

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset[9] under statutory accounting principles, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR.[10] The asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected pursuant to the monthly installment option created by the bill, the recognition of assets is based on actual premium written offset by the obligation to FIGA.

Current law provides a limited exception to FIGA assessments. Subject to regulatory approval, an insurer may be exempt from a regular or emergency assessment if the assessment would result in the insurer's financial statement reflecting an amount of capital or surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.[11] The bill adds to this exception by giving the OIR authority to temporarily defer FIGA assessments for an insurer if the OIR finds the insurer is impaired or insolvent.

The bill requires FIGA assessments to be delineated separately from premium in the insurance bill and does not allow insurers to include FIGA assessments in rates.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.54, F.S., relating to definitions.

Section 2: Amends s. 631.57, F.S., relating to powers and duties of FIGA.

Section 3: Amends s. 631.64, F.S., relating to recognition of assessments in rates.

Section 4: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection, to change a cross reference.

Section 5: Amends s. 631.55, F.S., relating to creation of the association, to change a cross reference.

Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[9] As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

[10] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (last viewed by Insurance & Banking Subcommittee Staff on March 8, 2014).

[11] s. 631.57(4), F.S.

Some insurers contend that the current assessment mechanism requiring insurers to prepay assessments and then recoup them from policyholders poses a threat to the solvency of property insurers doing business in Florida after a storm. A monthly assessment remittance process could reduce the risk of insolvency.

The bill provides a more equitable assessment by creating a uniform percentage assessment of policyholders. The assessment would apply to insurers writing in the preceding year and new insurers writing insurance as of, or after the date of FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of an insurer for the prior year. Insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report with FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Insurance & Banking Subcommittee, considered the bill, adopted a strike all amendment and an amendment to the strike all amendment, and reported the bill favorably with a committee substitute. The amendments adopted:

- Provided a new process for insurers to remit regular and emergency assessments to FIGA. Insurers must make an initial payment of the assessment to FIGA by the date in the Order from the Office of Insurance Regulation (OIR) levying the assessment. Insurers begin collecting the assessment from their policyholders no sooner than 90 days from the OIR Order and collect the assessment for 12 months. Insurers reconcile the difference between their initial assessment payment total and the total amount collected at the end of the 12 month assessment period and report the reconciliation to FIGA. If an insurer collects more from policyholders than it initially paid to FIGA, the insurer pays the excess to FIGA. If an insurer collects less from policyholders than it initially paid, FIGA credits the insurer on future assessments. This remittance method is similar to the method under current law where insurers prepay assessments and later recoup them from policyholders over time, but the reconciliation process outlined in the amendment is different than under current law. The reconciliation process in the

amendment removes the need for insurers to do a rate filing to recoup assessments from policyholders to streamline the process.

Alternatively, FIGA can use a monthly installment method for insurers to remit regular and emergency assessments. The monthly installment method can only be used if FIGA projects it has cash to pay six months of claims. Under the monthly installment method, insurers remit assessments to FIGA each month in the amount they collect from their policyholders. The monthly installment method of remittance can also be used in conjunction with the initial payment method described above. Current law allows for emergency assessments to be paid to FIGA over a 12 month period, but requires regular assessments to be paid within 30 days of the OIR Order.

- Revised the assessment methodology to provide a uniform percentage assessment on all policyholders subject to a FIGA assessment.

- Made conforming changes to the FIGA law so that the revised assessment remittance procedure can be implemented.