The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 346

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Florida Insurance Guaranty Association

DATE: February 19, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			CM	
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 346 revises provisions governing the Florida Insurance Guaranty Association (FIGA), which was created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. After an insolvency occurs, FIGA determines if an assessment is needed to pay claims or administration costs, or to pay bonds issued by FIGA and certifies the need for an assessment levy to the Office of Insurance Regulation (OIR). The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to FIGA. The insurers must pay regular assessments within 30 days of the levy, and emergency assessments can be paid in a single payment, or over 12 months, at the option of FIGA. 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. The bill provides the following changes:

- Creates a uniform assessment percentage to be collected from policyholders. The collection must begin at least 90 days after the certification of the assessment.
- Authorizes FIGA to use a monthly installment method for the collection of assessments from insurers in addition to the current pay and recoup method. Streamlines the reconciliation of collections and eliminates a regulatory filing with the OIR.
  Codifies the OIR’s interpretation of an admissible asset for purposes of statutory accounting treatment of FIGA assessments.

II. Present Situation:

Florida Insurance Guaranty Association

Part II of chapter 631, Florida Statutes., governs the operations of the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, which was created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.[1] Property and casualty insurance companies[2] doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance.[3] When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. 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.

FIGA Funding and Assessments

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. For example, FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.[4] In addition, FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After insolvency occurs, FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment as necessary for up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. This assessment is known as the "regular assessment." The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., which may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. At the discretion of FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

---

[1] Section 631.51, F.S.
[2] Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under chapter 440, F.S., Florida's Workers' Compensation Law.
[3] Section 631.55(1), F.S.
[4] Typically, insurers are placed into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. *See* s. 631.061, F.S., for the grounds for liquidation.

The procedure used by FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by FIGA.
2. FIGA certifies the need for an assessment levy to the OIR.
3. The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to FIGA.
4. Regular assessments must be paid by the insurance companies within 30 days of the levy, and emergency assessments can be paid either in one payment at the end of that month, or spread out over 12 months, 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.[5]

An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for 1 year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a 1-year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the 1-year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholders by refunds or premium credits.
.
There have been two instances (1993 and 2006) in the 43-year history of FIGA the assessment has been 4 percent.[6] Insurers pay the assessments upfront and recoup the assessment from policyholders upon issuance or renewal of the policies.

Part II of ch. 631, F.S., provides a limited exception to the assessment. Subject to regulatory approval, an insurer may be exempted from any regular or emergency assessment if an 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.[7]

[5] If an insurer'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.

[6] This occurred in 1993 following Hurricane Andrew and in 2006 following Hurricane Wilma and the other storms of the 2004/2005 hurricane seasons.

[7] Section 631.57(4), F.S.

Accounting for Assessments

Statutory accounting principles (SAP) govern the preparation of an insurer's annual statement, which is filed with the state regulator, the OIR. The SAP is characterized as a more conservative approach; it measures the ability to pay claims in the future. In contrast, other users, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP). The GAAP financial statements attempt to match revenues to expenses.[8] The OIR requires insurers to file annual SAP statements and independently audited financial reports.[9]

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as the FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows the recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus. [10] For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset,[11] resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue; retained earnings are reduced in the year the assessment is paid; however, it is increased the following year as the assessment is recouped from policyholders.

III. Effect of Proposed Changes:

The bill significantly revises the assessment process for regular and emergency assessments.

In the OIR order levying the assessment, the bill requires the office 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.

Insurers are required to make an initial payment 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

[8] The Financial Accounting Standards Board (FASB) Accounting Standards Codification is the single source of authoritative nongovernmental U.S. Generally Accepted Accounting Principles (GAAP), http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526495 (last visited February 16, 2014).

[9] Section 624.424, F.S.

[10] *See* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments,* memorandum to Sandy Robinson at FIGA, December 3. 2013, (on file with Senate Committee on Banking and Insurance).

[11] Asset recognition is measured based on projected future premium collections or policy surcharges from in-force policies, excluding expected renewals of short-duration contracts, which would disqualify the assessment future recoverable as an asset.

total assessment. The insurer calculates the recoupment factor to provide for the probable recoupment in 1 year.

The bill authorizes FIGA to use a monthly installment method for the collection of assessments from policyholders by the insurers. 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 6 months, FIGA may recommend a monthly assessment instead of a single payment.

Once the OIR issues an 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. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy; however, the emergency assessment currently may be payable as a single payment or in 12 monthly installments, at FIGA's option.

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, the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S. Insurers are required to complete and submit a payment reconciliation to FIGA within 90 days after the end of the assessment year. If an insurer's collections exceed the initial payment to FIGA, the insurer would remit the excess amount to FIGA. If an insurer's collections were less than the initial payment to FIGA, FIGA would credit the insurer that amount against future assessments. This will streamline the current reconciliation process. The bill also eliminates the required informational filing with OIR regarding the amount of the recoupment factor and recoupment factor methodology.
The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and this subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholders duty to pay, such assessments. The bill retains the current caps on assessments of 2 percent for the regular assessment and 2 percent for the emergency assessment per year.

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset[12] under statutory accounting principles, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR.[13] 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 payment option created by the bill, the recognition of assets is based on actual premium written offset by the obligation to FIGA.

The effective date is January 1, 2014.

[12] As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.
[13] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (Last accessed by Banking and Insurance Committee Staff on February 20, 2014).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill establishes an alternative assessment method, which would allow FIGA to use a monthly installment plan or a combination of methods for the collection of regular and emergency assessments. This would include the current method of collecting assessments upfront from insurers who would recoup from policyholders. However, for purposes of the emergency assessment used to defease bonds, the bill provides that the assessment is payable as a lump sum payment or in installments at the option of FIGA. Current law provides FIGA with the option of collecting the emergency assessment from insurers upfront or paying over 12 months.

Advocates of the bill contend that the current assessment mechanism poses a threat to the solvency of property insurers doing business in Florida after a storm. Advocates of the bill state that a monthly payment reduces 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 and a payment 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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 631.57.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 18, 2014:
The CS provides the following changes:
- Creates definition of the term, "assessment year."
- Authorizes an alternative assessment method that would provide FIGA with the option to use a monthly installment method for the collection of regular assessments. This method would be in addition to the current method of requiring a payment upfront from insurers and allowing the insurers to recoup the assessment over 12 months. The bill required the use of the installment method only.
- Revises assessment methodology to provide a uniform percentage assessment on policyholders.
- Eliminates provision authorizing FIGA to borrow funds necessary to ensure that its cash flow are met to pay covered claims when assessments are paid by insurers using the required monthly installment plan.
- Streamlines the assessment reconciliation, reporting, and payment process by requiring insurers to report and reconcile with FIGA.
- Eliminates repeal of requirement for an insurer to file an accounting report statement for informational purposes with the Office of Insurance Regulation 90 days after the insurer completes the recoupment process.
- Eliminates insurance premium tax exemption for the regular assessment.
- Provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay such assessment.

B. Amendments:

None.