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 Appropriations

BILL: CS/SB 836

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Florida Insurance Guaranty Association

DATE: April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Favorable**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 836 revises provisions governing the Florida Insurance Guaranty Association (FIGA), which provides a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. After an insolvency occurs, the FIGA determines if an assessment is needed to pay claims, administrative costs, or bonds issued by the 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 to pay their assessment to the FIGA. Generally, 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 policy issuance or renewal.

The bill creates a uniform assessment percentage to be collected from policyholders. The bill authorizes the FIGA to use a monthly installment method for the collection of emergency or regular assessments from insurers in addition to the current pay and recoup method or a combination of both. An insurer that did not write insurance in the prior year is required to pay an assessment based on an estimate of premiums it will write in the assessment year. The bill streamlines the reconciliation of collections and eliminates a regulatory filing with the OIR. The bill codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of the FIGA assessments.

The bill exempts regular assessments from the insurance premium tax, which is expected to have a negative indeterminate fiscal impact. Currently, emergency assessments are exempt from the insurance premium tax.

The bill will have an indeterminate negative impact on state revenues due to the exemption from insurance premium taxes on FIGA assessments.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Florida Insurance Guaranty Association

Part II of ch. 631, F.S., 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 doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance. 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 the 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 the structure and contents on homeowners' claims, the FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, the 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, the FIGA has several potential funding sources. For example, the FIGA receives funds that are available from distributions of the estate of the insolvent insurance company.[2] The FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After an insolvency occurs, the FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Section 631.57(3)(a), F.S., authorizes the FIGA to levy a regular assessment as necessary for up to two percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. 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

[1] 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.

[2] The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.

rendered insolvent by the effects of a hurricane. At the discretion of the FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at two percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

The procedure used by the 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 is provided in s. 631.57(3), F.S. The procedures listed below are generally the same for regular and emergency assessments:

- The FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by the FIGA.
- The FIGA certifies the need for an assessment levy to the 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 the assessment to the FIGA.
- Insurers must pay regular assessments within 30 days of the levy. Emergency assessments can be either paid in one payment at the end of that month, or spread out over 12 months, at the option of the FIGA.
- For both types of assessments, once an insurance company pays the assessment to the FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal.

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 one 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 one 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 one 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 policyholder by refunds or premium credits.

Accounting for Assessments

Most insurers authorized to do business in the United States are required by their state regulators to prepare financial statements in accordance with statutory accounting principles (SAP). These principles are tools that assist state insurance departments in the regulation of solvency. The SAP are characterized as a conservative approach since it evaluates liquidity and the ability to pay claims in the future. In contrast, other users of financial information, 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), which attempt to match revenues to expenses. The OIR requires insurers to file annual SAP statements and independently audited financial reports.[3]

[3] Section 624.424, F.S.

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.[4] For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset, 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. The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must be recognized as an admissible asset[5] under SAP, to the extent the receivable is likely to be realized.[6]

Insurance Premium Tax

The premium tax is applied to insurance premiums written in Florida. For purposes of property and casualty insurance premiums, the tax is 1.75 percent on gross premiums less reinsurance and returned premiums.[7] An insurance company may offset their premium tax liability with various credits, deductions, and exemptions. Amounts recouped from policyholders because of a regular assessment by the FIGA relating to an insolvency that occurs on or after July 1, 2010, are considered taxable premium under s. 624.509, F.S.[8] Emergency assessments recouped by insurers are not considered taxable premiums.[9]

III. Effect of Proposed Changes:

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

Section 1 amends s. 631.54, F.S., to define "assessment year," as a 12-month period, which may begin on the first day of any calendar quarter, as specified in an order issued by the OIR directing insurers to pay an assessment to the FIGA.

Section 2 amends s. 631.57, F.S. In the OIR order levying the regular or emergency 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 may not begin before 90 days after the FIGA certifies such an assessment.

Under the initial or single payment method, insurers are required to make an initial payment to the FIGA before the beginning of the assessment year, on or before the date specified in the

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

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

[6] 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 10, 2015).

[7] Section 624.509, F.S.

[8] Section 631.57(3)(g). F.S.

[9] Section 631.57(3)(e)3., F.S.

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 net direct written premium that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer’s market share for the prior year is used as a basis for determining an insurer’s total assessment, and insurers that did not write in the prior year are not subject to the assessment.

Subsequently, insurers are required to file a reconciliation report with the FIGA within 45 days after the end of the assessment year. Insurers must indicate the amount of the initial payment to the FIGA, whether the payment was based on premiums for the prior year or a good faith projection, and the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S., which specifies that knowing, false statements and entries are an unfair insurance trade practice. Insurers are required to complete and submit a payment reconciliation report. If an insurer’s collections exceed the initial payment to the FIGA, the insurer would remit the excess amount to the FIGA within 90 days after the end of the assessment year. If an insurer’s collections were less than the initial payment to the FIGA, credit would be given to the insurer against future assessments. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy.

As an alternative to the advance payment method described above, the bill authorizes the FIGA to use a monthly installment method for the collection of regular or emergency 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 the FIGA and subsequently recoup that payment from policyholders. Currently, the FIGA is authorized to use a single payment method or payments over 12 months for emergency assessments. The bill provides the FIGA with the discretion to use the installment plan based on the FIGA’s projected cash flow. If the FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for six months, they may recommend a monthly assessment instead of a single payment. In the order levying the assessment, the OIR may specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year. If the assessment is due and payable monthly, the assessment must be a uniform percentage of premium collected from all policyholders with policies in the classes protected by the account. All insurers are required to collect the assessment without regard to whether the insurer reported premium for the prior year.

The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and that 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 two percent for the regular assessment and two percent for the emergency assessment.

The bill authorizes the OIR to defer temporarily any insurer from any regular or temporary assessment if the OIR finds that the insurer is impaired or insolvent. Currently, s. 631.57(4), 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.

The bill provides that assessments levied and paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future, which is recognized as an admissible asset under statutory accounting principles,[10] to the extent the receivable is likely to be realized. This codifies the current practice of the OIR. The bill provides that an asset must be established and recorded separately from the liability, regardless of whether it is based on a retrospective or prospective premium-based assessment. 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 method, the recognition of assets would be based on the actual premium written offset by the obligation to the FIGA.

The bill provides that assessments are exempt from the premium tax. Currently, emergency assessments are not subject to premium tax, commissions, or fees. The bill also exempts regular assessments from any fees or commissions.

Section 3 amends s. 631.64, F.S., to require the separate disclosures of charges or recoupments on premium statements.

Sections 4 and 5 provide technical, conforming changes.

Section 6 provides an effective date of July 1, 2015.

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:

CS/SB 836 exempts the regular assessment from insurance premium tax. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact. The assessments occur on an irregular basis,

[10] National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

occurring only eight times between 1994 and 2014. The fiscal year with the largest amount of taxes collected on regular assessments in that period was $6.0 million, with an average fiscal year tax collection amount of $2.1 million (excluding years with zero collections). Out of the last 20 years, there were no assessments in 13 years.

B. Private Sector Impact:

The bill would allow the FIGA to use a single payment, monthly installment plan, or a combination of methods for the collection of regular and emergency assessments. Currently, the FIGA may collect regular or emergency assessments upfront from insurers and the FIGA has the option to collect the emergency assessment over 12 months.

The bill creates 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 the FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of insurers for the prior year and 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 the 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.

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 exempts the regular assessment from the insurance premium tax.

C. Government Sector Impact:

The bill has an indeterminate negative fiscal impact on state revenues resulting from the insurance premium tax exemption for regular FIGA assessments. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.54, 631.57, 631.64, 627.727, and 631.55.

IX. Additional Information:

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

CS by Banking and Insurance on March 10, 2015:
The CS provides technical, conforming changes.

B. Amendments:

None.