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 Fiscal Policy

BILL:	CS/CS/SB 828
INTRODUCER:	Finance and Tax Committee; Banking and Insurance Committee; and Senator Bean
SUBJECT:	Insurance Guaranty Association Assessments
DATE:	February 3, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Fournier	Diez-Arguelles	FT	**Fav/CS**
3.	Hrdlicka	Hrdlicka	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 828 substantially revises the assessment process of the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) by:

- Increasing the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers' compensation insurance, which is consistent with the cap for insurers;
- Revising the assessment recoupment method from recouping the assessment as part of the premium in a rate filing to adding a policy surcharge that is collected by the insurer. The surcharge will not be subject to the insurance premium tax;
- Authorizing two assessment options for the FWCIGA: an immediate single assessment payment by insurers with recoupment through policy surcharges, and an installment payment, which requires insurers to collect and remit policy surcharges quarterly to the FWCIGA;
- Revising the insurer's premium subject to an assessment from being based on the prior year's net direct written premium to the net direct written premium of the calendar year of the assessment; and
- Transferring order authority for assessments and other FWCIGA reporting related to insurer financial condition from the Department of Financial Services to the Office of Insurance Regulation.

The bill has no impact on state or local funds.

II. Present Situation:

Florida Workers' Compensation Insurance Guaranty Association

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and self-insurance funds are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).[1] The FWCIGA is a not-for-profit corporation established pursuant to Part V of ch. 631, F.S., adjunct to the Department of Financial Services (DFS).

The FWCIGA assists in the detection and prevention of insurer insolvencies and provides for the payment of workers' compensation covered claims.[2] The FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA. The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers.[3]

Assessments

The FWCIGA determines whether an assessment against member insurers is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied by the Department of Financial Services on each insurer based upon the proportion of the insurer's net direct written premium in Florida to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is 2 percent for insurers and 1.5 percent for self-insurance funds. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.[4] The most recent assessment was levied in 2005.[5]

The current FWCIGA assessment mechanism requires companies to pay the assessment up front.

Recoupment of Assessments

Insurers are able to recoup the assessment through premiums. Assessments are included in the rate charged for workers' compensation coverage as part of the premium. The Office of Insurance Regulation (OIR) orders the rates and under s. 631.914(1)(b), F.S., can consider assessments "as an appropriate factor in the making of rates." The National Council on Compensation Insurance or NCCI is the insurer or rating organization approved by the OIR that files rates on behalf of all workers' compensation insurers in the state, and it may include the assessment in its rate filing.

[1] Section 631.911, F.S. Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.

[2] Section 631.902, F.S. The term "covered claim" is defined in s. 631.904(2), F.S.

[3] *See* FWCIGA, *Frequently Asked Questions*, available at http://fwciga.org/faq (last visited Jan. 28, 2016).

[4] Section 631.914, F.S.

[5] A 2 percent assessment and a 1.5 percent assessment were levied against insurance companies and self-insurance funds, respectively, for inclusion in the 2005 premium rates. FWCIGA, *Assessments*, available at http://fwciga.org/assessments (last visited Jan. 28, 2016).

Usually, the rate following the year that the assessments are made is increased to allow insurers to recoup the assessments through premiums charged. This generally begins in January each year when the NCCI rate filing becomes effective. However, the NCCI can make a rate filing at any time if insurers want to recoup the assessment when levied, rather than at the beginning of the calendar year.[6]

According to the FWCIGA, the timing of the NCCI rate filing with the OIR requires the FWCIGA to determine the need for an assessment in June of each year. Because the FWCIGA cannot predict when insolvencies will occur, it must estimate the future cash needs over the next 18 months if the assessment is to be recouped in the upcoming year's rates.[7]

Assessments and Insurance Premium Tax

Because the assessment is included in the rate filing as part of the premium, the assessment is subject to the state's insurance premium tax.[8] Section 624.509, F.S., imposes a premium tax of 1.75 percent of the gross amount of property and casualty premiums (which includes workers' compensation premiums[9]) received during the preceding calendar year. For group self-insurance funds, the tax is 1.6 percent of the gross amount of premiums.[10, 11] Section 624.509, F.S., provides various tax credits and deductions that reduce the premium tax liability.

III. Effect of Proposed Changes:

The bill substantially revises the FWCIGA assessment process. The bill:

- Increases the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers' compensation insurance, which is consistent with the assessment cap for insurers.
- Revises the insurer's premium subject to an assessment from being based on the prior year's net direct written premium to the net direct written premium of the calendar year of the assessment.
- Transfers the authority to order assessments and other FWCIGA reporting related to insurer financial condition from the DFS to the OIR.
- Provides that only insurers are subject to assessments by the FWCIGA and the provisions do not give a policyholder a cause of action regarding the FWCIGA assessments.
- Provides that the failure of an insured to pay the surcharge or the recoupment of an assessment is considered nonpayment of premium, which could result in the cancellation of a policy.
- Provides that an insurer is not liable for any uncollectible assessments.

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[6] Office of Insurance Regulation, *2016 Agency Legislative Bill Analysis – SB 828* (Nov. 17, 2015) (on file with the Senate Committee on Banking and Insurance).

[7] FWCIGA Proposed Change to the FWCIGA Assessment Summary (Aug. 28, 2015) (on file with the Senate Committee on Banking and Insurance).

[8] Section 631.914(1)(b) and (c), F.S.

[9] Section 624.605(1)(c), F.S.

[10] Section 624.475, F.S.

[11] For purposes of the FWCIGA assessments, under s. 631.904(6), F.S., "self-insurance fund" includes a group self-insurance fund authorized under 624.4621, F.S., a commercial self-insurance fund writing worker's compensation insurance authorized under 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S.

- Provides that FWCIGA assessments (policy surcharges) are not premium and are not subject to any premium tax, fees, or commissions.

Assessment Methods

The bill eliminates the recoupment of assessments through the rate filing process and institutes a recoupment through policy surcharges. The bill allows the FWCIGA two options of assessment methods: an immediate single assessment method (advance payment by the insurer before the collection of the surcharge from policyholders) or an installment method (allows the insurer to collect and remit assessments as premium is written).

Under the bill, the FWCIGA certifies the need for an assessment and the OIR orders the assessment on member insurers. Under both methods, the member insurers would collect policy surcharges at a uniform percentage rate over a specific four-quarter assessment year specified in an order by the OIR. The four-quarter assessment year may begin on January 1, April 1, July 1, or October 1. The collection of such surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR.

Immediate Single Assessment Method

The assessment is due and payable by insurers no earlier than 30 days following the written notice of the assessment order to the insurers. Thus, insurers pay the assessment before surcharging the policyholders. Insurers are required to collect surcharges at a uniform percentage over the specific four-quarter assessment year in order to recoup the assessment through policy surcharges.

For purposes of statutory accounting, the bill provides that billed policy surcharges are recognized as a receivable and an admissible asset under the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4, to the extent the receivable is likely to be realized. However, if the insurer is unable to recoup the amount of the assessment, the amount recognized as an asset must be reduced to the amount reasonably expected to be recouped.

Installment Method

Insurers are required to collect surcharges at a uniform percentage rate over the specified four-quarter assessment year and remit the surcharges to the FWCIGA quarterly. Insurers pay the assessment after surcharging the policyholders.

The bill provides that the recognition of assets is based on actual premium written offset by the obligation to the FWCIGA.

Assessment Reporting

Under both assessment methods, insurers are required to submit a reconciliation report to the FWCIGA within 120 days after the end of the 12-month assessment period, and annually for two additional years. If the insurer's reconciled assessment obligation was more than the amount paid to the FWCIGA, the insurer is required to pay the difference to the FWCIGA. If the insurer's reconciled assessment obligation was less than the amount paid to the FWCIGA, the overpayment is returned to the insurer.

The bill is effective July 1, 2016.

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:

The Revenue Estimating Conference determined that CS/HB 467 (House companion to CS/CS/SB 828) has no impact on state or local revenues.[12]

B. Private Sector Impact:

The FWCIGA is given the discretion to use an immediate single assessment method or installment method. The installment method does not require insurers to advance funds to the FWCIGA. The clarification of the statutory accounting treatment of a "receivable for policy surcharges to be billed" as an admissible asset should mitigate the impact on an insurer's financial statements of assessments under the immediate single assessment method.

The OIR has indicated that workers' compensation insurers will be required to file new forms with the OIR to incorporate the changes in the assessment process. For example, the forms should disclose the surcharge as a separate line item on the declaration page of the policy and include a provision that coverage is subject to cancellation if the insured fails to pay the policy surcharge. Additionally, the OIR stated that it will require the filing and review of all large deductible programs.[13]

C. Government Sector Impact:

None.

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[12] Office of Economic and Demographic Research, Revenue Estimating Conference, *Workers Comp Insurance Guarantee Association, CS/HB 467* (Dec. 4, 2015).
[13] *Supra* note 6.

VI. Technical Deficiencies:

The bill does not include the FWCIGA assessments in the definition of an admissible asset in s. 625.012, F.S. According to the OIR, this omission is not consistent with s. 625.012(15), F.S., which allow for the assessments levied pursuant to s. 631.57(3)(a) and (e), F.S., for the Florida Insurance Guaranty Association to be included in the definition of "assets."[14]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 631.914 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Finance and Tax on January 25, 2016:
The CS/CS provides that if an insurer's reconciled assessment is less than the amount paid to FWCIGA, the association must return the overpayment to the insurer.

CS by Banking and Insurance on January 11, 2016:
The CS provides technical, clarifying amendments relating to the assessment process.

B. Amendments:

None.

[14] *Id.*