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 324

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Florida Insurance Guaranty Association

DATE: March 15, 2013 REVISED: 3/27/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oh	Burgess	BI	**Fav/CS**
2.			CM	
3.			AFT	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 324 revises provisions of the Florida Insurance Guaranty Association (FIGA) Act relating to the funding and .assessment process. FIGA is the guaranty association for property and casualty insurance that provides a mechanism for the payment of covered claims of insolvent insurance companies.

The bill adds options for FIGA to levy and collect assessments. The bill provides that in addition to its current authority to levy regular assessments on insurance companies, FIGA can choose instead to levy all or part of the regular assessment directly on policyholders, to be collected by the insurers.

The bill also changes the primary method for levying and collecting emergency assessments. When an insurer is rendered insolvent by the effects of a hurricane, current law allows FIGA to levy emergency assessments on insurance companies. The bill provides that emergency assessments, when necessary, shall be levied directly upon policyholders and collected by member insurers. The bill provides that if FIGA determines that it must immediately begin paying covered claims and that financing is not reasonably available, FIGA can levy the emergency assessments on insurance companies, rather than directly on policyholders.

The effective date of the bill is July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 631.52 and 631.57.

II. Present Situation:

Florida Insurance Guaranty Association, Incorporated

FIGA is a nonprofit corporation created by s. 631.55, F.S., to provide a mechanism for payment of covered claims of insolvent property and casualty insurance companies. All property and casualty insurance companies[1] doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

For administrative and assessment purposes, FIGA is divided into two accounts:[2]

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

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 remaining claims of the company's policyholders. 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' association 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. 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 the remaining claims and maintain the operations of an insolvent insurer, FIGA has several potential sources from which to obtain the necessary funds. 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.[3] FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

Additionally, after insolvency occurs, FIGA is authorized to levy assessments against Florida property and casualty 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 either account

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[1] Workers' compensation insurance is excluded from FIGA. The Florida Workers' Compensation Guaranty Association was created pursuant to s. 631.902, F.S., and provides a mechanism for the payment of covered claims of insolvent insurance workers' compensation carriers and self-insurance funds.

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

[3] 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.S., for the grounds for liquidation.

identified in s. 631.55(2)(b), F.S., of 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 commonly referred to as the "regular assessment," although it is not identified as such in the statute.
The second statutory provision under which FIGA is authorized to levy an assessment is s. 631.57(3)(e), F.S. The assessment under this section is identified as an emergency assessment, and may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. Like the regular assessment, 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.

Assessment and Recoupment of Assessments

The specific 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 as follows:

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.[4]

According to data from FIGA, since 2006, FIGA had a 2 percent regular and emergency assessment in 2006, a 0.8 percent regular assessment in 2009, and a 0.9 percent regular assessment in 2012. The assessments were paid upfront by the insurers and recouped from policyholders upon issuance or renewal of the policies.

Accounting for Assessments

Most insurers produce financial statements using both Generally Accepted Accounting Principles (GAAP) and statutory accounting. Insurer financial information prepared in accordance with GAAP is typically used by investors, whereas insurer financial information prepared in accordance with statutory accounting is used by the OIR. FIGA's levy of assessments against insurers reduces an insurer's net worth under both GAAP and statutory accounting. Under both GAAP and statutory accounting, insurers incur a liability that is charged against surplus (i.e., a

[4] 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.

reduction to surplus) in the amount of the assessment when the company is billed. However, GAAP and statutory accounting have different treatments for an asset to offset that liability. Under GAAP accounting, there is no offsetting asset allowed, so the insurer's net worth is immediately reduced in the full amount of the assessment and is only restored as the recoupment is collected from policyholders over the course of the year. Under statutory accounting, however, there is an offsetting asset (receivable) that is included on the insurer's financial statement when the assessment is paid to FIGA, so the reduction to surplus remains from the time the assessment is billed until the time it is paid.

III. Effect of Proposed Changes:

Section 1 amends s. 631.57, F.S. The bill explicitly identifies the assessments described in s. 631.57(3)(a), F.S., to be "regular assessments." The bill retains current law which allows FIGA to collect the regular assessments from insurers within 30 days of the assessment levy, but the bill adds a second option for the collection of regular assessments. The bill provides that in lieu of collecting a regular assessment from insurers, FIGA can opt to levy all or part of the regular assessment directly on policyholders.

If FIGA selects the option of direct collection from policyholders, FIGA must first determine the need for and amount of a regular assessment and notify the OIR of its determination. The OIR then will issue an order to every participating insurer specifying the assessment percentage to be collected by the insurer from its policyholders over the next 12 months at policy issuance or renewal. The OIR order will specify when the insurers must begin collecting the assessments, but it must be at least 90 days after the OIR levies the assessment. The maximum assessment cannot exceed 2 percent per year per account.

The bill changes the primary method for levying and collecting emergency assessments. The bill provides that emergency assessments, when necessary to pay claims of an insurer rendered insolvent by a hurricane, shall be levied directly upon policyholders and shall be collected by member insurers. Pursuant to this method of collection, the OIR must issue an order specifying when insurers must begin collecting the assessments, which must be at least 90 days after the OIR levies the assessment and cannot exceed 2 percent. The assessments collected by the insurers will be transferred to FIGA as set forth in the OIR's order. If, however, FIGA determines that it must immediately begin paying covered claims and that financing is not reasonably available, FIGA can certify its emergency assessment on insurance companies. The process for levying emergency assessments on insurance companies would be the same as levying regular assessments, except that it can be paid either as a single payment or, at the option of FIGA, in 12-monthly installments.

Section 2 establishes an effective date of July 1, 2013, and specifies that bill applies to any assessment certified and levied after the effective date, regardless of when the solvency occurs.

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:

Insurance companies contend that the current process under which they pay the full assessments upfront and recoup them over the course of a year or more can have a negative impact on the solvency of an insurance company, particularly when the assessment follows an event that has required the insurer to pay out a significant amount for its own claims.

The bill authorizes FIGA to levy regular and emergency assessments directly on policyholders. In those cases in which FIGA levies assessments on policyholders, insurance companies would not be forced to pay these assessments upfront. Accordingly, the negative impact on insurer surplus is avoided, allowing an insurer a greater ability to pay its own claims and to write additional policies.

FIGA will be foregoing its quick availability of funds in those cases in which FIGA decides to levy regular assessments directly on policyholders, or in those circumstances in which FIGA levies an emergency on policyholders. For the regular assessments, however, FIGA can choose the method, so it should be able to prevent any potential cash flow problems. For emergency assessments, the bill allows FIGA to levy the assessment on insurers if it determines that it must immediately begin paying covered claims and that financing is not reasonably available. If FIGA needs to immediately begin payments using available financing, the costs of the financing will be added to the assessment.

Parties differ on the impact that this bill will have on the process for payment of covered claims of insolvent property and casualty insurance companies. The National Conference of Insurance Guaranty Funds (NCIGF) believes the bill poses several potential problems for guaranty funds. In a February 7, 2013, letter, Barbara Cox, Vice President, Legal & Regulatory Affairs of NCIGF, stated:[5]

> This procedure creates two sources of delay before the fund actually has the money in its coffers to pay claims – one is the delay between the time the assessment is

[5] On file with the Banking and Insurance Committee.

> levied and the collection begins; the other is the delay in receiving the collections from the insurer.
> ….
>
> We are concerned that this bill would force guaranty fund boards to retain higher balances in the guaranty fund coffers in order to assure their continued ability to promptly pay covered claims. This would increase cost of the system to insurance consumers.

Ms. Cox then cites two examples of "sudden" insolvencies wherein insurance guaranty funds had short notice to begin the process of paying covered claims of insolvent insurers.

In response to Ms. Cox, Jay Neal, Executive Director of the Florida Association of Insurance Reform (FAIR), and Don Brown, of Donald Brown Consulting, stated in a memorandum to Chairman Bryan Nelson, House Insurance and Banking Committee:[6]

> [The bill] would give the Board of Directors of the Florida Insurance Guaranty Association, (FIGA) who, by the way are all insurance company representatives, the authority to tailor the levy and collection of assessments to the particular needs of the insolvency at hand.
> ….
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> The current FIGA assessment mechanism subjects the smaller insurers to potentially large assessments which must be paid up front and then recouped from policyholders, which reduces their surplus and their capacity to pay their own claims, and discourages the entry of new insurers in the marketplace…. Because the assessment is based on a snapshot of market share, policyholders with companies who have declining market share pay more than policyholders with companies who have increasing market share.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OIR does not believe the OIR or FIGA has the legal authority to enforce the order of levy imposed on policyholders because policyholders are neither the subject of regulation nor in contractual relationships with the OIR or FIGA. The current law only provides a provision

[6] On file with the House Insurance and Banking Committee.

relative to enforceability against member insurance companies which are in default on assessments.[7]

VIII. 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 April 2, 2013:
The CS:

- Removes language in the original bill that specifies that risk apportionment policies issued by plans under s. 627.351, F.S., are included in the exemption that currently applies for insurance provided or guaranteed by government.
- Restores current law legislative finding that regular assessments constitute advances paid by insurers.
- Clarifies that insureds and claimants are included in the equation for prorating, in the event that funds are not available in 1 year to make all required payments.
- Clarifies that the 2 percent regular assessment limit applies to the assessment certified by FIGA in any one calendar year.
- Conforms conflicting language to clarify that FIGA certifies assessments to the OIR, and that the OIR levies assessments. The CS provides that for both regular and emergency assessments, the date by which the insurers begin collecting the assessment must be at least 90 days after the date the OIR levies the assessment.
- Specifies that bill applies to any assessment certified and levied after the effective date of July 1, 2013, regardless of when the solvency occurs.

B. Amendments:

None.

[7] Bill analysis from the OIR, on file with the Banking & Insurance Committee.