

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 509 Financial Guaranty Insurance Corporations

**SPONSOR(S):** Van Zant

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Financial guaranty insurance is regulated by the Office of Insurance Regulation and involves surety bonds, insurance policies, indemnity contracts, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;
4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.

In order to qualify for a certificate of authority to transact financial guaranty insurance in Florida, the insurer must meet capital, surplus, and contingency reserve requirements, in addition to other provisions in the Insurance Code relating to property and casualty insurance. Currently, only stock property and casualty insurers are permitted to become financial guaranty insurance corporations, but not mutual insurers. Stock insurers divide their capital into shares and pay dividends to investors, and mutual insurers are cooperatives without permanent capital and pay dividends to policyholders (members).

HB 509 amends provisions of Part XX, Chapter 627, Florida Statutes, to permit mutual property and casualty insurers to become licensed financial guaranty insurance corporations

The bill has no fiscal impact on state and local government.

The bill provides that the act shall take effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation: Background**

In order to transact insurance in this state, the Florida Insurance Code (“Code”) states that a certificate of authority is required.<sup>1</sup> To qualify for and hold authority to transact insurance in this state, an insurer must be in compliance with the Code and its charter powers, and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.<sup>2</sup> In addition to applying for a certificate of authority to transact a particular kind of insurance, domestic insurers must apply to the Office of Insurance Regulation (“OIR”) for a permit to form as either a stock or mutual insurer, and have its articles of incorporation approved by the Department of State.<sup>3</sup>

The distinction between stock and mutual insurers is governed by Part I, Chapter 628, F.S.:

- *Stock insurers* are defined as “incorporated insurers with its capital divided into shares and owned by its stockholders,” and pay dividends to their stockholders.<sup>4</sup>
- *Mutual insurers*, on the other hand, are “incorporated insurers without permanent capital stock, the governing body of which is elected in accordance with this part,” and pay dividends to their policyholders, who are members of the insurer.<sup>5</sup>

In other words, stock insurers are investor-owned, while mutual insurers are owned by their policyholders.

Mutual insurers may apply to demutualize to become a stock insurer (and vice versa), subject to the OIR’s approval.<sup>6</sup> In order to obtain regulatory approval of a mutual insurer’s plan to demutualize, the plan must be equitable to the members and be approved by at least three-fourths of the insurer’s members. In addition, the members must be given the opportunity to receive stock or cash for their ownership rights in the mutual organization.<sup>7</sup> According to the National Association of Mutual Insurance Companies, demutualization is a complex, expensive, and lengthy process. While demutualization can provide additional capital, cash distributions to policyholders can deplete surplus.<sup>8</sup>

#### **Financial Guaranty Insurance**

Part XX of Chapter 627, Florida Statutes, was enacted in 1988<sup>9</sup> to set forth requirements for transacting financial guaranty insurance. *Financial guaranty insurance* means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;
2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;
3. Changes in the rate of exchange of currency;

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<sup>1</sup> Section 624.401, F.S. The Florida Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.

<sup>2</sup> Section 624.404, F.S.

<sup>3</sup> Section 628.051, F.S. Domestic insurers are formed under Florida law. Insurers formed under other states’ laws (foreign insurers) are entitled to become domestic insurers by complying with the same legal requirements for licensing and organization and by designating a principal place of business inside Florida upon the OIR’s approval. See ss. 624.06 and 628.520, F.S.

<sup>4</sup> Sections 628.021 and 628.371, F.S.

<sup>5</sup> Sections 628.031, 628.381 and 628.301, F.S.

<sup>6</sup> Sections 628.431 and 628.441, F.S.

<sup>7</sup> Section 628.441(2), F.S.

<sup>8</sup> NAMIC, Focus on the Future Options for the Mutual Insurance Company: <https://www.namic.org/policy/futureMutualAlts.asp> (last accessed February 25, 2013).

<sup>9</sup> Chapter 88-87, Laws of Florida.

4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
5. Other events which the office determines are substantially similar to any of the foregoing.<sup>10</sup>

Part XX of Chapter 627, F.S. requires an insurer to obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact financial guaranty insurance in Florida. The insurer must meet an initial \$50 million surplus requirement at the date of initial licensing, and must maintain minimum capital, surplus, contingency reserve requirements and be within loss exposure limitations. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S.<sup>11</sup> According to OIR's company search website, there are currently 50 insurers with financial guaranty insurance as an authorized line of business.<sup>12</sup>

By definition and by express requirement under current law, only stock property and casualty insurers are eligible to become financial guaranty insurance corporations, but not mutual insurers.<sup>13</sup>

The Financial Guaranty Insurance Guidelines, adopted by the National Association of Insurance Commissioners in 2008, does not make a distinction between stock and mutual insurers for purposes of transacting financial guaranty insurance.<sup>14</sup>

### **Effect of House Bill 509**

The bill amends ss. 627.971 and 627.972, F.S. to allow mutual property and casualty insurers to become financial guaranty insurance corporations, subject to meeting the requirements of the Code. The bill does not change any existing requirements to become a stock or mutual insurer.

The bill also makes technical changes for purposes of clarity, and provides that the act shall take effect upon becoming a law.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 627.971, F.S. relating to definitions, to include mutual insurers in the definition of financial guaranty insurance corporation.

Section 2. Amends s. 627.972, F.S., providing that financial guaranty insurance corporations include mutual property and casualty insurers as well as stock property and casualty insurers.

Section 3. Provides that the act shall take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>10</sup> Section 627.971(1)(a), F.S. See subsection (1)(b) for exclusions from the definition of "financial guaranty insurance."

<sup>11</sup> Section 627.972(1)(c), F.S.

<sup>12</sup> OIR Company Directory, <http://www.floir.com/CompanySearch>, last accessed February 20, 2013.

<sup>13</sup> Sections 627.971(6) and 627.972(1), F.S.

<sup>14</sup> GDL-1626, at NAIC Model Laws, Regulations, and Guidelines: [http://www.naic.org/store\\_model\\_laws.htm](http://www.naic.org/store_model_laws.htm) (last accessed February 20, 2013).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow mutual insurers to become licensed as financial guaranty insurance corporations.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR has indicated its support for the bill in the interest of bringing new insuring entities into Florida.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A