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 Commerce and Tourism

BILL: CS/CS/SB 600

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Insurance Guaranty Associations

DATE: March 16, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Harmsen	McKay	CM	**Fav/CS**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 600 clarifies the statutory accounting treatment of assessments levied by the Florida Insurance Guaranty Association (FIGA) and codifies the Office of Insurance Regulation's interpretation. FIGA provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, the FIGA may levy regular assessments and emergency assessments. The bill provides that such assessments are generally admissible assets for purposes of determining the financial condition of an insurer.

The bill also clarifies that Florida Life and Health Insurance Guaranty Association (FLAHIGA) must review policies, contracts, and claims of both *foreign and* domestic insurer-members.

II. Present Situation:

Insurance Guaranty Associations—Background

Chapter 631, F.S., "Insurer Insolvency and Guaranty Payments," governs receivership for Florida insurance companies.[1] Federal law specifies that insurance companies may not file for

[1] The Bankruptcy Cody expressly forbids a domestic insurance company from filing for or becoming the subject of a federal bankruptcy proceeding. 11 U.S.C. §109(b)(2). The exclusion of insurers from federal bankruptcy practices is consistent with

bankruptcy. Instead, Florida insurance companies are "rehabilitated" or "liquidated" by the Florida Department of Financial Services' (DFS) Division of Rehabilitation and Liquidation.[2]

Florida has five insurance guaranty associations, which protect policyholders of liquidated insurers from financial losses and delays in claim payment and settlement.[3] A guaranty association steps into the shoes of an insolvent insurer to settle claims and refund unearned premiums[4] for policyholders. Active insurers are legally required to participate in guaranty associations.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, a nonprofit corporation. Property and casualty insurance companies doing business in Florida are required to be members of FIGA. FIGA assumes the claims of insolvent property and casualty insurers and pays the claims of the companies' policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance.

FIGA will cover claims up to $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 claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding is from the asset liquidation of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from asset liquidation of insolvent insurers domiciled in other states, but having claims in Florida.

If an insolvent insurer's assets are insufficient to pay all of its claims, FIGA may levy two types of assessments against Florida member property and casualty insurance companies. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy a regular assessment for up to 2 percent of an insurer's net written premium. The second assessment is an additional 2 percent emergency assessment authorized under s. 631.57(3)(e), F.S., levied only to pay the claims covered by an

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federal policy, generally allowing states to regulate the business of insurance. See 15 U.S.C. §§1011-1012 (McCarran-Ferguson Act).

[2] Insolvent insurers are generally liquidated, whereas insurers with unsound financial conditions or other characteristics are rehabilitated. The goal of liquidation is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for insolvent health and life insurers. The Florida Insurance Guaranty Association pays claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, auto insurance, and liability insurance, among others. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association is directed to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims.

[4] An "unearned premium" is the portion of a paid-in-advance premium that is owed back to the policyholder because she did not receive the benefit of the full term of the policy for which she paid.

insurer rendered insolvent by the effects of a hurricane. At FIGA's discretion, emergency assessments are payable in 12 monthly installments or in a single payment. FIGA has not levied an emergency assessment since 2006, and last levied a regular assessment in November, 2012.

Insurers pay the assessments upfront and recoup the assessment from policyholders upon policy issuance or renewal. 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 recoup the assessment from policyholders are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines an assessment is necessary to pay claims or administration costs, or to pay costs related to bonds issued by FIGA.
2. FIGA certifies the need for an assessment to the Office of Insurance Regulation (OIR).
3. The OIR reviews the certification, and if sufficient, issues an order to all FIGA-member insurance to pay their FIGA assessment.
4. Insurance companies must pay regular assessments within 30 days of the levy. Insurers may pay emergency assessments either in one payment at the end of that month, or spread over 12 months, at FIGA's option.
5. For both assessments, an insurance company may begin to recoup the assessment from its policyholders at the policy issuance or renewal only once it pays the assessment in full.[5]

If an insurer recuperates more than it paid in its FIGA assessment, the excess must be remitted to either FIGA or the insurer's policyholders. If the excess amount does not exceed 15 percent of the total assessment paid, it is remitted to FIGA to reduce future assessments. If the excess amount exceeds 15 percent of the total FIGA assessment, the excess must be returned to policyholders.

Accounting for Assessments

Most insurers authorized to do business in the U.S. are required by state regulators to prepare financial statements in accordance with statutory accounting principles (SAP), which differs from generally acceptable accounting principles (GAAP). GAAP attempts to match revenues to expenses, and is therefore useful to investors and other users of financial reporting (such as banks, credit rating agencies, and the U.S. Securities & Exchange Commission). SAP evaluates liquidity and the ability to pay claims in the future in accordance with the concepts of consistency and conservatism. The OIR requires insurers to file annual SAP statements and independently audited financial reports.[6]

Under both GAAP and SAP, an insurer recognizes a liability when a FIGA assessment is imposed (which reduces the insurer's surplus and net worth). However, the accounting methods calculate the timing of the asset accrual (based on payment of the recoupment) differently:

- GAAP does not qualify the assessment recoverable from future premium writings as an asset. This reduces an insurance company's retained earnings and equity in the period of an

[5] *See* Frequently Asked Questions at FLAHIGA's website: http://www.flahiga.org/faqprint.cfm (last viewed on March 11, 2015).
[6] Section 624.424, F.S.

assessment levy. However, the equity reduction is eliminated the following year as the assessments are recouped.

- SAP recognizes as an asset the assessment amount likely to be recovered from future premium surcharges. This offsets or eliminates the negative effect on statutory surplus, subject to certain conditions.[7] However, SAP does not permit an asset to be recognized if the assessment is to be recovered from future rate structures, and limits asset reduction for accrued assessment liabilities to the extent that the amount to be recovered is from in-force premiums only.

The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must be recognized as an admissible asset[8] under SAP, to the extent the receivable is likely to be realized.[9]

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Part III of ch. 631, F.S., governs the powers and duties of FLAHIGA. All insurance companies[10] authorized to write life and health insurance or annuities in Florida are required to be a FLAHIGA member. In the event a member insurer is insolvent and ordered to be liquidated by a court, FLAHIGA protects Florida residents who have life and health insurance policies and certain annuities with the insolvent insurer.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts[11] issued by FLAHIGA's member insurers are covered.[12] A policy must meet coverage requirements, and FLAHIGA's payments are capped for any one person as follows:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.[13]

When a FLAHIGA-member insurer is found insolvent and ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays claims under the policies. FLAHIGA's rights under the policies are those that

[7] Statements of Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R); *see also* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments Memorandum*, December 3. 2013.

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

[9] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (last accessed March 11, 2015).

[10] Section 631.713(3), F.S.

[11] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

[12] FLAHIGA covers only policyholders and certificate holders that were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions.

[13] *See* Frequently Asked Questions at FLAHIGA's website: http://www.flahiga.org/faqprint.cfm (last accessed March 11, 2015).

applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to another insurer with approval by the OIR.

In 2011, legislation[14] specified that FLAHIGA's immunity from bad faith lawsuits did not affect the FLAHIGA's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign. However, current law only specifies that FLAHIGA's obligation applies after a domestic (in-state) rehabilitation or liquidation, but is silent as to FLAHIGA's obligations after a *foreign* rehabilitation or liquidation.

III. Effect of Proposed Changes:

The bill provides that the definition of "asset" for the purpose of determining an insurer's financial condition includes FIGA assessments that are levied (before policy surcharges are collected) result in a receivable, which is recognized as an admissible asset under SAP, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR, and eliminates the negative effect on statutory surplus of guaranty fund assessments. The bill further provides that an 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 emergency assessments paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets is based on the actual premium written offset by the obligation to FIGA. The bill does not appear to address assessments that are recouped through future premium rate structures, and therefore those assessments are still be subject to SSAP 35R[15] and likely are non-admitted assets.[16]

The bill transfers the 2011 exception from immunity from FLAHIGA's powers and duties statute, s. 631.717, F.S., to s. 631.737, F.S., which pertains to FLAHIGA's duty to review claims involving covered policies, and clarifies that this duty is not limited solely to policies, contracts, and claims following domestic rehabilitations and liquidations, but also includes foreign rehabilitations and liquidations.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[14] Ch. 2011-226, Laws of Fla.

[15] National Association of Insurance Commissioners, *Statements on Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R).*

[16] Office of Insurance Regulation, *Senate Bill 600 Fiscal Analysis (*January 27, 2015) (on file with the Senate Committee on Commerce and Tourism).

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 will clarify statutory accounting treatment for the recognition of FIGA assessments as admissible assets by codifying the OIR's interpretation.

The bill also clarifies FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.012, 631.717, and 631.737.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Commerce and Tourism on March 16, 2015:
The CS provides technical changes, removing an unnecessary reenactment clause.

CS by Banking and Insurance on February 17, 2015:
The CS provides technical, clarifying changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.