

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 467 Insurance Guaranty Association Assessments  
**SPONSOR(S):** Regulatory Affairs Committee; Finance & Tax Committee; Insurance & Banking Subcommittee; Broxson  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Finance & Tax Committee	14 Y, 0 N, As CS	Pewitt	Langston
3) Regulatory Affairs Committee	18 Y, 0 N, As CS	Lloyd	Hamon

### SUMMARY ANALYSIS

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) services workers' compensation claims by injured workers in this state against insolvent workers' compensation insurers and self-insurance funds. The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits. The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.

The FWCIGA is funded through the liquidation of insolvent insurers and assessments on workers' compensation insurance companies and self-insurance funds. The Department of Financial Services (DFS), upon certification by the FWCIGA, may order an assessment to collect necessary funds. The assessment is payable 30 days following written notice to the insurers. Insurers are required to pay the assessment in advance of recovering it from their insureds. The assessment is capped for insurers at 2 percent of the net direct written premium for the previous calendar year and at 1.5 percent for self-insurance funds. There has not been an assessment since 2005.

If levied, the assessment is built into rates approved by the Office of Insurance Regulation (OIR) and collected as part of the premiums paid by the insured. Being part of premiums paid, they are subject to a 1.75 percent premium tax. This is unique among the various guaranty association assessments authorized by statute.

Revisions to the FWCIGA assessment process proposed by the bill include:

- Shifting order authority and recommendations related to insurer financial conditions from DFS to OIR.
- Increasing the assessment cap for self-insurance funds from 1.5 percent of direct written premium to 2 percent.
- Changing the assessment cap from 2 percent of the prior year's net direct written premium to that of the calendar year of the assessment.
- Establishing two assessment payment methods, as follows:
  - Single assessment payment – in this method, the insurer pays the assessment and then recovers it through policy surcharges. It is subject to an end of period reconciliation and a possible corrective payment or refund.
  - Installment method – in this method, the insurer collects the surcharges and then remits them to the FWCIGA quarterly to fund the assessment in an ongoing manner.
- Changing the assessment recovery process from a component of premium to a policy surcharge. Surcharges begin 90 days after the FWCIGA certifies the need for an assessment and are collected at a uniform rate on new and renewed policies issued and in force during the 12 months beginning the calendar quarter after the order is issued. Insurers would not be liable for uncollectible surcharges.
- Exempting assessments from the insurance premium tax.

The bill does not impact local or state government revenue. It has positive and negative impacts on the private sector.

The bill is effective July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Florida Workers' Compensation Insurance Guaranty Association

In 1997, the Legislature passed the Florida Workers' Compensation Insurance Guaranty Association Act.<sup>1</sup> It combined the Florida Self-Insurance Fund Guaranty Association<sup>2</sup> and the workers' compensation account<sup>3</sup> of the Florida Insurance Guaranty Association. The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)<sup>4</sup> services workers' compensation claims against insolvent<sup>5</sup> workers' compensation insurers<sup>6</sup> and self-insurance funds.<sup>7</sup> The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits, however, employer claims for return of unearned premium are limited to \$50,000.<sup>8</sup> The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.<sup>9</sup>

#### FWCIGA Assessments

The FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers coming from insolvencies that occur in other states. If these funds are insufficient to service claims, the Department of Financial Services (DFS),<sup>10</sup> upon certification by the FWCIGA, may order an assessment to collect necessary funds from insurers and self-insurance funds writing workers' compensation coverage in the state.<sup>11</sup> Following its creation, the FWCIGA sought and received assessment orders from the DFS each year from 1998 through 2005. There has not been an assessment since 2005.<sup>12</sup>

Assessments are based on the full policy premium value of the direct written premiums for workers' compensation issued in the state by the subject insurer or self-insurance fund, without consideration of discounts or credits. This puts each insurer and self-insurer on par for assessment purposes, since some insurers issue large deductible policies and use various discounts to adjust the amount of premiums charged to employers and self-insurance fund coverage is not priced in the same way as insurers. The assessment is distributed based on the share of direct written premium issued in the previous calendar year. The assessment is capped in relation to net direct written premium for the previous calendar year; it cannot exceed 2 percent for insurers or 1.5 percent for self-insurance funds. However, if the assessment is insufficient to meet the funding need of the FWCIGA, an additional

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<sup>1</sup> ch. 631, Part V, F.S. (1997).

<sup>2</sup> ch. 631, Part V, F.S. (1996).

<sup>3</sup> s. 631.55(2)(a), F.S. (1996).

<sup>4</sup> The FWCIGA is administered by a board of directors. The board is made up of the following 11 members: the Insurance Consumer Advocate (or their designee), one designee of the Chief Financial Officer, six persons selected by private carriers from among the top 20 workers' compensation insurers (two of whom represent foreign insurers authorized to write in the state), two persons selected by the self-insurance funds, and one person with commercial insurance experience appointed by the Governor. The board elects its chair and members may be removed by the Governor for cause. Members serve four year terms and may be reappointed. If a member is associated with an insurer that becomes insolvent, they are terminated from the board as of the date of the related insolvency. s. 631.912, F.S.

<sup>5</sup> "Insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. s. 631.904(4), F.S.

<sup>6</sup> "Insurer" means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385. s. 631.904(5), F.S.

<sup>7</sup> "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385. s. 631.904(6), F.S.

<sup>8</sup> s. 631.913(1), F.S.

<sup>9</sup> FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Reports*, <http://fwciga.org/reports> (last visited Nov. 15, 2015).

<sup>10</sup> The DFS is responsible for regulating certain insurance activities under the Insurance Code, such as eligibility and conduct of insurance agents and agencies, regulation of workers' compensation benefits and compliance, and policing fraud.

<sup>11</sup> s. 631.914, F.S.

<sup>12</sup> FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Assessments*, <http://fwciga.org/assessments> (last visited Nov. 15, 2015).

assessment of up to 1.5 percent of the net direct written premium for the previous calendar year can be ordered by the DFS, upon certification of the FWCIGA. Insurers are entitled to receive 30 days written notice prior to an assessment becoming due and payable;<sup>13</sup> however, the FWCIGA may allow an insurer to pay the assessment quarterly.<sup>14</sup>

If levied, FWCIGA assessments are a component of the workers' compensation rate approved by the Office of Insurance Regulation (OIR).<sup>15, 16</sup> This is unique among the various guaranty association assessments authorized by statute.<sup>17</sup> To maintain workers' compensation rates that are neither inadequate nor excessive, the assessment is a factor that the OIR must take into account when ordering rates and a mid-year rate filing may be made within 90 days after insurers are notified of the assessment.<sup>18</sup> Since, the assessment is built into the rate, and therefore the premium collected by the insurer, the value of the assessment is subject to the state's insurance premium tax.<sup>19</sup>

The FWCIGA may exempt an insurer from an assessment if, in the opinion of the DFS, the assessment would compromise the solvency of the insurer. Similarly, the FWCIGA may defer all or part of an assessment applicable to a particular insurer if, in the opinion of the DFS, the assessment would endanger an insurer's ability to meet its contractual obligations.<sup>20</sup>

## Insurance Premium Tax

Florida requires insurance companies to pay tax on:<sup>21</sup>

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees, policy fees, and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

Florida applies the premium tax to premiums written in Florida at the following rates:<sup>22</sup>

- 1.75 percent of premiums for:
  - Gross property and casualty,<sup>23</sup> less reinsurance and returned premiums;
  - Life;
  - Accident and health; and
  - Prepaid limited health.
- 1.6 percent of premiums for:
  - Commercial self-insurance;
  - Group self-insurance;
  - Medical malpractice self-insurance; and
  - Assessable mutual insurance.

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<sup>13</sup> s. 631.914(1)(a), F.S.

<sup>14</sup> s. 631.914(2)(c), F.S.

<sup>15</sup> s. 631.914(1)(b), F.S.

<sup>16</sup> The OIR, which is overseen by the Financial Services Commission, has responsibilities concerning insurance regulation related to licensing insurance companies, solvency, ratemaking, and market conduct, among other things.

<sup>17</sup> There are three other similar guaranty assessments authorized by statute. They benefit the Florida Insurance Guaranty Association (s. 631.57, F.S.), the Florida Life and Health Insurance Guaranty Association (s. 631.718, F.S.), and the Florida Health Maintenance Organization Consumer Assistance Plan (s. 631.819, F.S.).

<sup>18</sup> If a mid-year filing is made and the entirety of the rate change requested is equal to the difference between the previous assessment and the new one, the rate filing is deemed approved. s. 631.914(1)(c), F.S.

<sup>19</sup> s. 624.509, F.S.

<sup>20</sup> s. 631.914(2), F.S. If an assessment is deferred in relation to a particular self-insurance fund, the fund must immediately levy an assessment against its members in an amount sufficient to fund the FWCIGA assessment.

<sup>21</sup> s. 624.509(1), F.S.

<sup>22</sup> ss. 624.46226, 624.4625, 624.475, 624.509(1), and 627.357, F.S.; *see also* FLORIDA REVENUE ESTIMATING CONFERENCE, *2015 Florida Tax Handbook*, <http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm> (last visited Nov. 16, 2015).

<sup>23</sup> Workers' compensation insurance is casualty insurance. s. 624.605(1)(c), F.S.

- 1 percent of premiums for annuities.

The law authorizes numerous insurance premium tax credits and deductions that allow insurance companies to reduce their premium tax liability.<sup>24</sup> The state distributes revenue from the insurance premium tax to the General Revenue Fund.<sup>25</sup>

FWCIGA assessments are a component of the approved workers' compensation rate<sup>26</sup> and are collected by insurers as part of taxable premium. They are taxed at 1.75 percent.

### **Effect of the bill**

The bill shifts the authority to order assessments and opine on the financial condition of the subject insurers from the DFS to the OIR.

The assessment would be limited to 2 percent of the insurer's net direct written premium in any given calendar year, rather than the previous year's net direct written premium. Also, the bill increases the cap for self-insurance funds from 1.5 percent of net direct written premium to 2 percent. The change in the base from the previous year to current calendar year accommodates changing levels of premium volume insurers write from year to year and includes insurers in assessment participation if they are writing premiums during the assessment period, but did not the previous year.

The bill creates two methods for the FWCIGA to use for collecting assessments. FWCIGA is given sole discretion to choose which method will be used to fund the assessment. The two methods are as follows:

- Single payment, subject to true-up (pay and recover) – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected. This results in a “true-up” of the actual assessment amount due to the FWCIGA and an additional payment by the insurer, if the initial calculation and payment was too low, or a refund from the FWCIGA, if the initial calculation and payment was too high. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4<sup>27</sup> and would be recorded separately from liabilities for OIR reports.
- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly. The insurer is not required to advance funds to the FWCIGA.

Under both methods, collection of surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR. Insurers are required to collect the surcharge quarterly at a uniform rate for policies issued and in force during the 12 month period beginning the first day of the calendar quarter following the issuance of the order. The insurer is not liable for uncollectible surcharges.

The bill changes the FWCIGA assessment recovery from a component of the workers' compensation rates approved by the OIR to a surcharge per policy. It specifically provides that the surcharges

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<sup>24</sup> Credit for payments to the Municipal Firefighters' Pension Fund (s. 175.141, F.S.) and Municipal Police Officers' Retirement Fund (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.); Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for Workers' Compensation Assessments (440.51, F.S.); and Credit for Florida Life and Health Insurance Guaranty Association Assessments (s. 631.72, F.S.).

<sup>25</sup> s. 624.509(3), F.S.

<sup>26</sup> s. 631.914(1)(b) and (c), F.S.

<sup>27</sup> NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS & THE CENTER FOR INSURANCE POLICY AND RESEARCH, *Statutory Accounting Principles*, [http://www.naic.org/cipr\\_topics/topic\\_statutory\\_accounting\\_principles.htm](http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm) (last visited Nov. 15, 2015).

collected to recover insurer paid FWCIGA assessments are not premium and not subject to the premium tax. However, failure of an insured to pay the surcharge is treated as the non-payment of premium, which could result in policy cancellation.

The bill provides that only insurers may be assessed by the FWCIGA. It also provides that a policyholder is not given a cause of action regarding FWCIGA assessments or related surcharges.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 631.914, F.S., relating to assessments.

**Section 2:** Provides an effective date of July 1, 2016.

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

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

**1. Revenues:**

On December 4, 2015, the Revenue Estimating Conference adopted an estimate that this bill would not impact state or local revenue.

**2. Expenditures:**

None.

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

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to the OIR,<sup>28</sup> certain changes to workers' compensation forms would be required in response to the bill causing workers' compensation insurers to revise and refile all of their forms for approval by the OIR. Large deductible programs would also have to be revised and refiled for OIR for approval.

In regard to the payment of assessment and collection of surcharges, the bill has a positive impact on insurers by allowing them to avoid the loss of investment opportunities whenever the installment method is chosen by the FWCIGA.

**D. FISCAL COMMENTS:**

While the OIR predicts that workers' compensation insurers will have to refile all of their forms and large deductible plans for OIR approval, the OIR has not provided an estimate of the fiscal impact this could have on the state.

## **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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<sup>28</sup> Office of Insurance Regulation, Agency Analysis of 2016 House Bill 467 (Nov. 13, 2015).  
**STORAGE NAME:** h0467e.RAC  
**DATE:** 2/8/2016

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill establishes billed surcharges as an asset for statutory accounting purposes, but it does not revise the definition of “assets” that is generally applicable to insurers under s. 625.012, F.S. Revising s. 625.012(15), F.S., would improve consistency between the statutes.

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

On November 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment and reported the bill favorably with a committee substitute. The amendment revised certain terms and restructures two sentences to accurately achieve the purpose of the bill and improve clarity. It also made a provision of the bill regarding uncollectible assessment related surcharges under the installment method applicable to both proposed assessment methods.

On January 14, 2016, the Finance & Tax Committee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment clarified the policies to which a surcharge may be applied and made some structural changes to the language.

On February 4, 2016, the Regulatory Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires the FWCIGA to return assessment overpayments to insurers, rather than crediting them against future assessments.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.