SENATE COMMITTEE ON INSURANCE
Senator Susan Rubio, Chair
2021 - 2022 Regular

Bill No:	AB 1541	**Hearing Date:**	June 24, 2021
Author:	Committee on Insurance		
Version:	February 19, 2021		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Brian Flemmer		

SUBJECT: Insurance: Guarantee Association

DIGEST: Extends for three years the California Insurance Guarantee Association's (CIGA) authority to issue bonds not to exceed $1.5 Billion in order to cover workers compensation claims obligations.

ANALYSIS:

Existing law:

1) Establishes CIGA to pay "covered claims" of insolvent member insurers, as specified (CIC §1063 et. seq.).

2) Requires each insurer admitted to transact workers' compensation, auto and homeowners, and all other property casualty insurance, to participate in CIGA as a condition of doing business (CIC § 1063).

3) Authorizes CIGA to pay eligible claims of insolvent insurers through the collection of premiums from its members (CIC § 1063.5).

4) Authorizes CIGA to issue up to $1.5 billion in bonds by January 1, 2023 to pay workers' compensation claims and efficiently manage its cash flow needs, as specified. Any bonds issued shall not mature more than 20 years from the date of issuance. (CIC § 1063.75).

5) Allows CIGA to levy an assessment on workers' compensation insurers, based upon direct premium collected, for the purpose of paying off the bonds (CIC § 1063.16).

6) Authorizes CIGA to request the issuance of bonds by the California Infrastructure and Economic Development Bank to more effectively provide for the payment of covered claims that arise from insolvencies of insurers providing workers' compensation insurance (CIC § 1063.70).

This bill:

1) Extends from January 1, 2023 to January 1, 2026, the existing ability of CIGA to request the issuance of bonds to pay claims of insolvent workers compensation insurers. The bonds may be issued when CIGA requests the bond issuance by the California Infrastructure and Economic Development Bank.

Background

CIGA was created by legislation in 1969 as an association of insurers that makes payments to policyholders of property/casualty, workers' compensation and "miscellaneous" insurers when the member insurance company becomes insolvent and is unable to do so. It is a statutory entity that depends on the establishing legislation for its existence and for a definition of the scope of its powers, duties and protections. CIGA is funded by premium surcharges upon applicable lines of insurance, and those surcharges are limited by statute to a maximum of 2%.

The purpose of CIGA is to pay "covered claims" of member insurance companies that have become insolvent. CIGA's total liability for any single claim is $500,000, other than claims for workers' compensation, which are not limited.

CIGA does not have to pay a claim "to the extent that it is covered by any other insurance of a class covered by this article and available to the claimant or insured" (Insurance Code §1063.1(c)(9)(A)). This requires a factual determination on a number of issues. If another insurer is jointly and severally liable for a claim, for example if a worker suffers a cumulative injury and the employer has switched workers' compensation insurers, or there are different employers, the non-insolvent insurer must bear the entire claim. This provision has caused quite a bit of unhappiness among insurers and those who are self-insured, and frequently leads to litigation over coverage and CIGA's liability for claims payments. Self-insurers, whether public or private, have been determined many times to constitute "other insurance" for purposes of §1063.1.

There are several catastrophic risks that contribute CIGA's need to be able to access large amounts of cash including pandemic risks, the risk of a devastating earthquake occurring during work time in a major city, and potential losses due to wildfires and other natural disasters.

The Insurance Code had long provided for the ability to issue bonds to meet the needs of multiple insolvencies due to natural disasters. In 2003, Assembly Bill 227 (Vargas) provided express authority for CIGA to issue up to $1.5 billion in bonds to fund workers' compensation claims payments for injured workers of insolvent insurers. At the time and beginning in the late 1990s, CIGA had assumed responsibility for paying covered claims of 27 insolvent workers' compensation insurance companies. The Legislature placed a sunset provision on the original bonding authority and has extended the date on four separate occasions.

AB 1541 would be a fifth extension of this bonding authority. The last date upon which CIGA is authorized to issue bonds would change from January 1, 2023 to January 1, 2026. Specifically, the bill would extend the existing ability of CIGA to request the issuance of bonds by the California Infrastructure and Economic Development Bank to more expeditiously and effectively provide for the payment of covered claims arising from insolvencies of insurance companies providing workers' compensation insurance.

Questions

CIGA statutes contain two separate articles authorizing CIGA to issue bonds. One of these articles relates to natural catastrophes, and has never been used. The other one, the subject of this bill, is specific to workers' compensation. The bonding authority for bonds that relate to natural catastrophes is structured differently than the workers compensation bonding authority. It is not subject to a sunset clause, is not limited by dollar amount, and places more control over the issuance and use of bond funds in the Insurance Commissioner. Given the long-term acceptance of using bonding as a tool for accessing capital to pay covered claims, a question could be raised as to whether it is necessary to regularly extend the bonding authority. The Committee, author, or sponsor may wish to study the feasibility of eliminating the sunset provision altogether and/or combining the two bonding authorities.

Related/Prior Legislation

AB 227 (Vargas) Chapter 635, Statutes of 2003, contained a number of substantive changes to the workers' compensation system, including authorization for the California Infrastructure and Economic Development Bank to issue up to $1.5 billion worth of bonds for use by CIGA until January 1, 2007.

AB 3072 (Committee on Insurance) Chapter 112, Statutes of 2006, extended the bonding authorization until January 1, 2009.

AB 3055 (Committee on Insurance) Chapter 80, Statutes of 2008, extended the bonding authorization until January 1, 2011.

AB 2781 (Committee on Insurance) Chapter 140, Statutes of 2010, extended the bonding authority until January 1, 2013.

SB 712 (Committee on Insurance) Chapter 426, Statutes of 2011, extended the bonding authority until January 1, 2023.

ARGUMENTS IN SUPPORT:

The California Insurance Guarantee Association writes in support, "AB 1541 is needed to maintain the long-standing option to issue bonds to provide cash flow to CIGA in the event of insolvencies which would prevent CIGA from meeting its essential obligations of providing a seamless network of workers' compensation benefits to injured workers."

SUPPORT:

California Insurance Guarantee Association

OPPOSITION:

None Received (June 16, 2021)

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