

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 405 Regulation of Not-for-profit Self-insurance Funds

**SPONSOR(S):** La Rosa

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

In general, self-insurance is the assumption of some or all financial risk oneself, rather than paying an insurance company to assume it. Florida law recognizes many different types of self-insurance funds. Two or more corporations not for profit wanting to pool together their property or casualty risks can form a self-insurance fund under s. 624.4625, F.S. This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement is that a fund member must receive at least 75 percent of its revenue from local, state, or federal government sources.

There is one corporation not for profit self-insurance fund (fund) in the state, though others may be formed at any time, if done so in compliance with the law. This fund has approximately 150 members. It relies on the member's federal tax returns to determine whether the members meet the governmental revenue threshold. The fund offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers' Compensation; Commercial Automobile; and, Employee Health Benefits.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the Internal Revenue Service (IRS) to be a tax-exempt organization following the filing of an IRS application form prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to Form 990 or 990EZ requires organizations to indicate the reason the organization is a "public charity" for the tax year, which may be dependent upon public support. Whether an organization is a publically supported organization is determined using Schedule A to IRS Form 990 or 990EZ. The available reasons on Schedule A include organizations that normally receive a substantial part of its support from a governmental unit *or* from the general public. Presently, only governmental support is considered in regard to revenue for qualification to form a not for profit self-insurance fund.

The bill expands the types of corporations not for profit qualifying for membership in a not for profit self-insurance fund (fund). Specifically, the bill allows a corporation not for profit that is a publically supported organization for IRS purposes due to receipt of a substantial part of support from a governmental unit *or* from the general public to be a member of a fund. This federal tax return based test is presented as an alternative to qualifying under the standard requirement that 75 percent of the corporation's revenue come from governmental sources (which is retained in the law).

The bill establishes a requirement that publically supported organizations qualifying for a fund must maintain surplus in a positive amount with the loss and loss adjustment expense reserve at the 70 percent confidence level as of the end of the fiscal year, as determined by a qualified actuary already specified in s. 624.4625(1)(d), F.S. In addition, the bill sets parameters for these types of funds if they do not maintain the 70 percent confidence level, requiring the fund to file with the Office of Insurance Regulation (OIR) a remedial plan addressing the financial condition of the fund. The remedial plan is subject to determination by the OIR that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency. The bill also specifies that funds operating under s. 624.4625, F.S., prior to July 1, 2015, shall have until July 1, 2020 to comply with the new requirements set forth in the bill. Finally the bill requires that funds operating under s. 624.4625, F.S., maintain excess insurance with a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner of the OIR.

The Revenue Estimating Impact Conference determined that the bill has an insignificant negative fiscal impact to insurance premium tax revenues.

The bill is effective July 1, 2015.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0405c.GOAS

**DATE:** 3/19/2015

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

In general, self-insurance is the assumption of some or all financial risk oneself, rather than paying an insurance company to assume it.<sup>1</sup> Florida law recognizes many different types of self-insurance funds.<sup>2</sup> Two or more corporations not for profit<sup>3</sup> wanting to pool their property or casualty risks together can form a self-insurance fund under s. 624.4625, F.S.<sup>4</sup> This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement set out is that each fund member receives at least 75 percent of its revenue from local, state, or federal government sources.

There is at least one corporation not for profit self-insurance fund in Florida, the Florida Insurance Trust (FIT), with approximately 150 members.<sup>5</sup> The FIT currently offers multiple lines of coverage in their self-insurance fund.<sup>6</sup> According to the FIT, Form 990<sup>7</sup> from the Internal Revenue Service (IRS) is what the fund uses to determine if potential members receive 75 percent of funding from governmental sources. In addition, most current members of the FIT indicate on Schedule A for Form 990 that they are an organization that normally receives a substantial part of its support from a governmental unit or from the general public and qualify as a publically supported organization for IRS purposes.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the IRS to be a tax-exempt organization following the filing of an IRS application form<sup>8</sup> prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to Form 990 or 990EZ requires organizations to indicate the reason the organization is a “public charity” for the tax year, which may hinge upon public support. The determination whether a public charity is also a publically supported organization for IRS purposes is determined by the results of a computation of public support percentage set out on Schedule A.<sup>9</sup> The computation takes into account certain receipts of the public charity for the past five years. Specifically, Schedule A requires organizations to disclose their aggregate receipts from the past five years from gifts; grants; contributions; membership fees; tax revenue; services or facilities furnished to the organization from a governmental unit; gross income from interest, dividends, payments received on securities loans, rents, royalties and income from other sources; net income from unrelated business activities; and other income. The amount of these receipts for certain tax years is used in the computation of a public support percentage, the result of which determines whether the organization qualifies as a publically supported organization for IRS purposes.<sup>10</sup>

---

<sup>1</sup> Glossary, <http://www.iii.org/services/glossary> (last viewed March 10, 2015).

<sup>2</sup> See s. 624.462, F.S., relating to commercial self-insurance funds; s. 624.4621, F.S., relating to group self-insurance funds; s. 624.4622, F.S., relating to local government self-insurance funds; s. 624.46226, F.S., relating to public housing authorities self-insurance funds; s. 624.4623, F.S., relating to independent nonprofit colleges or universities self-insurance fund; and s. 624.4626, relating to electric cooperative self-insurance fund.

<sup>3</sup> Corporations not for profit are organized under Chapter 617, F.S. A corporation not for profit “means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under [ch. 617].” s. 617.01401(5), F.S.

<sup>4</sup> The Office of Insurance Regulation reports that there is only one fund operating under s. 624.4625, F.S. (agency bill analysis on file with the Insurance and Banking Subcommittee).

<sup>5</sup> <http://floridainsurancetrust.com/index.php> (last viewed March 10, 2015). The FIT has been in existence since 2007.

<sup>6</sup> The FIT offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers’ Compensation; Commercial Automobile; and, Employee Health Benefits. See <http://floridainsurancetrust.com/coverage.html> (last viewed on March 10, 2015).

<sup>7</sup> Non-profits whose incomes were less than \$500,000 and their assets less than \$1.25 million can file a Form 990EZ.

<sup>8</sup> Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

<sup>9</sup> There are two ways an organization can qualify as a publically supported one: the 33 1/3 support test and the 10 percent facts and circumstances test. Calculations for both tests are set forth on Schedule A, Form 990 or Form 990EZ).

<sup>10</sup> Schedule A (Form 990 or 990-EZ and Instructions for Schedule A available at [http://www.irs.gov/uac/About-Schedule-A-\(Form-990-or-990EZ\)](http://www.irs.gov/uac/About-Schedule-A-(Form-990-or-990EZ)) (last viewed on March 10, 2015).

The bill maintains current law allowing membership for corporations not for profit that receive at least 75 percent of their revenue from local, state, or federal government sources. By retaining current law in this regard, all current members of corporation not for profit self-insurance funds are essentially grandfathered in and thus, will be able to continue to qualify for fund membership, as long as their governmental funding level does not fall below 75 percent.

Presently, a member qualifies for a corporation not for profit self-insurance fund by drawing at least 75 percent of its revenue from governmental sources. The calculation of public support for purposes of IRS form 1099, Schedule A, includes support from the general public. Accordingly, the bill expands the potential membership of the fund(s) to include corporations not for profit that gather substantial support from the general public, rather than just those that receive at least 75 percent of their revenue from governments. Additionally, current law does not average the threshold 75 percent governmental funding over time. The revision proposed by the bill differs from the current standard in that under Schedule A, Part II, the level of funding necessary to determine public support is averaged over the preceding five tax years.

In addition, the bill establishes a requirement that publicly supported organizations qualifying for a fund must maintain surplus in a positive amount with the loss and loss adjustment expense reserve at the 70 percent confidence level as of the end of the fiscal year, as determined by a qualified actuary already specified in s. 624.4625(1)(d), F.S. The bill sets parameters for these types of funds if they do not maintain the 70 percent confidence level, requiring the fund to file with the Office of Insurance Regulation (OIR) a remedial plan addressing the financial condition of the fund. The remedial plan is subject to determination by the OIR that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency. The bill also specifies that funds operating under s. 624.4625, F.S., prior to July 1, 2015, shall have until July 1, 2020 to comply with the new requirements set forth in the bill. Finally the bill requires that funds operating under s. 624.4625, F.S., maintain excess insurance with a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner of the OIR.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 624.4625(1), F.S., relating to corporation not for profit self-insurance funds eligibility criteria.

Section 2: Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

According to the Revenue Estimating Impact Conference held on March 6, 2015, there will be an insignificant negative fiscal impact<sup>11</sup> to insurance premium tax revenue collections<sup>12</sup>. Premium tax revenues will be impacted to the extent that increased participation in corporation not for profit self-insurance funds moves premiums from the generally applicable rate of 1.75 percent of premium to the 1.6 percent of premium applicable to funds organized under s. 624.4625, F.S.

##### 2. Expenditures:

None.

---

<sup>11</sup> The Revenue Estimating Conference denotes that an insignificant negative impact is less than \$50,000.

<sup>12</sup> Revenue Estimating Conference impact analysis (March 6, 2015) available online at <http://edr.state.fl.us/Content/conferences/revenueimpact/index.cfm> (Last visited March 11, 2015)

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

1. Revenues:

None.

2. Expenditures:

None.

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

Corporations not for profit that choose to self-insure their risks by joining or forming a corporation not for profit self-insurance fund should be able to obtain savings over purchasing coverage of these risks in the general market. This would reduce their fundraising burdens and/or allow revenues to be redirected to other purposes. The extent of the savings has not been estimated.

**D. FISCAL COMMENTS:**

The impact to premium tax revenue collections as a result of this legislation could potentially be mitigated if corporations not for profit choose to obtain self-insurance for lines that they do not currently carry, thus increasing premium tax revenue.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2015, the Government Operations Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends s. 624.4625(1), F.S., to expand the types of corporations not for profit qualifying for membership in a not-for-profit self-insurance fund.
- Provides loss and loss adjustment expense reserve amounts that not-for-profit self-insurance funds qualifying under this legislation shall maintain.

- Provides remedial actions for not-for-profit self-insurance funds qualifying under this legislation, which do not maintain the requisite loss and loss adjustment expense reserve amounts.
- Provides a compliance date of July 1, 2020 for corporation not-for-profit self-insurance funds currently operating prior to July 1, 2015.
- Provides a requirement that funds operating under s. 624.4625, F.S., maintain excess insurance with a rating of A- or higher from a statistical rating organization deemed acceptable by the commissioner of the OIR.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.