

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 693 Florida Workers' Compensation Insurance Guaranty Association  
**SPONSOR(S):** Hasner, Troutman  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1766

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	8 Y, 0 N	Thomas	Schulte
2) Insurance		Thomas	Schulte
3) Commerce & Local Affairs Apps. (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

The purpose of the Florida Workers' Compensation Insurance Guaranty Association is to provide for the payment of covered claims and benefits to injured workers in the event of the insolvency of an insurer. The association pays the claims of insolvent workers' compensation insurers and self-insurance funds, but does not pay claims for insolvent individually self-insured employers.

The association is funded through annual assessments levied on workers' compensation insurers and self-insurance funds. Assessments are capped at 2 percent of Florida net direct written premium for insurers and 1.5 percent of Florida net direct written premium for self-insurance funds. Assessments are currently being made at the maximum assessment rates. The association projects that, based on current and anticipated insurer insolvencies, it will be operating in a deficit by January 2004.

Based on national model legislation, the bill excludes an employer with a net worth of greater than \$25 million from coverage of its claims by the association, but provides that the employer may maintain its claim against the estate of the insolvent insurer.

The bill does not have a fiscal impact on state or local government.

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

**STORAGE NAME:** h0693a.in.doc  
**DATE:** April 9, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

In general, when the assets of an insolvent insurer are insufficient to pay claims, the claims are paid in whole or in part by a guaranty fund. Guaranty funds are funded by assessments on solvent insurers. For workers' compensation insurers in Florida, the appropriate guaranty fund is the Florida Workers' Compensation Insurance Guaranty Association. Florida is one of only two states to have a separate guaranty fund for workers' compensation insurers.

The purpose of the Florida Workers' Compensation Guaranty is to provide for the payment of covered claims and benefits to injured workers in the event of the insolvency of a member insurer. The association was created in 1997 by merging the Florida Self-Insurance Fund Guaranty Association and the workers' compensation account of the Florida Insurance Guaranty Association. The association evaluates workers' compensation claims made by injured employees against insolvent member companies or funds and determines if such claims are covered claims that should be paid or settled with association funds. The association pays the claims of insolvent workers' compensation insurers and self-insurance funds, but does not pay claims for insolvent individually self-insured employers.

In order to keep its fund solvent, the association determines whether an assessment against its members is necessary to pay covered claims or to reimburse the association for its administrative expenses. Section 631.941, F.S., provides the association with the authority to annually assess self-insurance funds at a rate of up to 1.5 percent, and all other insurers at a rate of up to 2 percent, of annual net direct written premium for workers' compensation policies in Florida. Assessments are currently being made at the maximum assessment rates of 1.5 percent (self-insurance funds) and 2 percent (all others) annually. In 1999, the Legislature granted the association additional assessment authority of up to 1.5 percent of premiums if assessments otherwise authorized are insufficient to make all payments on reimbursements then owing; however, this authority has not been used.

For calendar year 2003, the association projects it will take in approximately \$61,286,188 in revenues, and, based on current and projected insolvencies, it will expend approximately \$128,236,891. With \$52,136,675 in cash on January 1, 2003, the association estimates it will be operating in a deficit by January of 2004. The recent insolvency of a very large insurer, Reliance, has caused a major unanticipated drain on the guaranty fund. The association anticipates the insolvency of another large insurer this year. Currently, the association has outstanding reserves of \$372,340,318, and is handling the estates of 54 insolvent insurers and 2,874 open claims by injured workers.

The bill addresses the association's financial projections by adopting a provision of the National Association of Insurance Commissioners (NAIC) Model Act on Guaranty Funds relating to employer net worth. The bill provides that employers with a net worth of greater than \$25 million are not entitled to coverage by the state guaranty fund, but may maintain their claim against the estate of the insolvent insurer. The association projects that this provision will save an estimated \$35 million in paid claims annually. NAIC reports that 32 states have adopted some form of the net-worth provision.

NAIC states the philosophy behind the net worth limitations is as follows:

Fund assessment capacity is limited. Guaranty funds are designed as a remedy to ameliorate the hardship created when an insurance company becomes insolvent and cannot pay its claims. In order to preserve guaranty fund capacity for those who need it most, via net worth, coverage is diverted from entities that can pay their own obligations. An insured with a net worth of \$25 million would be able to absorb its own workers comp obligations. This preserves guaranty fund resources for those who would not have such ability and would suffer hardship but for the guaranty fund payments.

The bill revises the definition of "covered claim" to exclude claims by employers with a net worth greater than \$25 million. "Net worth" is based on the employer's net worth on December 31 of the year prior to the year in which the insurer became insolvent and shall include the aggregate net worth of the employer and all of its subsidiaries and affiliates as calculated on a consolidated basis. The net worth exclusion does not apply to governmental entities.

The proposed net worth provision does not apply to an employer if the employer has applied or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of its assets; filed a voluntary petition for bankruptcy; filed a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law; or if a court adjudicates the employer bankrupt or insolvent or approves a petition-seeking reorganization.

The bill also provides that the association's obligation to return any unearned premium to an employer shall not exceed \$50,000 per policy. The bill authorizes the association to recover the amount of any claim paid on behalf of an employer that had a net worth of greater than \$25 million on December 31 of the year prior to the year in which the insurer became insolvent. The bill authorizes the association to recover the amount of any claim paid on behalf of any person who is the affiliate of the insolvent insurer.

The bill amends section 631.924, F.S., to extend this section's application regarding the mandatory stay of proceedings regarding insolvent self-insurers to include proceedings against insolvent insurers.

The bill also adds a severability clause that provides that if any provision of the workers' compensation guaranty fund law (Part V of chapter 631, F.S.) is held invalid, the invalidity does not affect other provisions of Part V.

C. SECTION DIRECTORY:

Section 1: Amends s. 631.904, F.S., relating to definitions.

Section 2: Amends s. 631.913, F.S., relating to the powers and duties of the Florida Workers' Compensation Insurance Guaranty Association, Inc.

Section 3: Amends s. 631.923, F.S., relating to the effect of claims paid by the association.

Section 4: Amends s. 631.924, F.S., relating to the stay and reopening of proceedings involving insolvent insurers.

Section 5: Provides a severability clause.

Section 6: Provides an effective date of 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:

1. Revenues:

None.

2. Expenditures:

None.

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

The bill eliminates the ability of employers with a net worth over \$25 million to have the protections of the Florida Workers' Compensation Insurance Guaranty Association. The bill is intended to eliminate the need for increased assessments against all workers' compensation insurers and self-insurance funds.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require cities or counties to spend funds or take an action requiring the expenditure of funds.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Insurance Regulation adopted one amendment. The amendment strikes all of the original provisions of the bill and provides as follows:

Requires assessments made by the Florida Workers' Compensation Guaranty Association to be based on the full policy premium value of workers' compensation insurance policies without taking into account any credit or offset for the deductible.

Maintains two provisions from the original bill as filed –

- That the association's obligation to return any unearned premium to an employer shall not exceed \$50,000 per policy
- Amends section 631.924, F.S., to extend this section's application regarding the mandatory stay of proceedings regarding insolvent self-insurers to include proceedings against insolvent insurers