

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1251 w/CS Joint Underwriting Plan of Insurers
SPONSOR(S): Berfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	18 Y, 0 N w/CS	Callaway	Cooper
2) Commerce&Local Gov't. Affairs Approp. (Sub)			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

SB 50A (chapter 412, L.O.F.) contained comprehensive changes to the workers' compensation law. Restrictions on exemptions in the construction industry enacted by SB 50A were expected to increase the volume of workers' compensation policies written by the Florida Workers' Compensation Joint Underwriting Association (WCJUA). The WCJUA provides workers' compensation insurance for employers who cannot obtain it in the voluntary market. In order to address the expected increased volume of workers' compensation policies written by the WCJUA, SB 50A added a fourth subplan to the WCJUA, subplan "D." Subplan "D" was designed to offer affordable coverage to small employers and non-profit organizations by placing a cap on premiums written by the WCJUA for these groups.

When the WCJUA does not have enough money from premiums from policies issued in a subplan to pay out the claims in the subplan or to establish adequate reserves for the future claims in the subplan, the WCJUA has a "deficit." On February 27, 2004, the WCJUA notified OIR that subplan "D" incurred a deficit of \$9,864,901 in 2003. The WCJUA has projected a deficit of more than \$36 million in subplan "D" as of December 31, 2004. According to WCJUA representatives, the only option provided in law to eliminate the deficit in subplan "D" is to assess policyholders in subplan "D." The WCJUA is anticipating an assessment in July or August 2004, but the amount of assessment is unknown.

This bill proposes various changes to the WCJUA in order to reduce and eliminate the deficit and to insure a future deficit will not occur. It proposes a three-tier system to replace the WCJUA's current four-subplan system. The new system will insure employers are written insurance policies in tiers that better define their risk and to provide for a premium better associated with that risk. The bill also provides for additional WCJUA depopulation measures and changes to the consent to rate law, which will encourage insurers in the voluntary market to write insurance for existing and potential WCJUA policyholders. It proposes a one-time capital contribution of \$10 million from the Workers' Compensation Administration Trust Fund (WCATF) to the WCJUA to help defray the existing deficit. If Tiers 1 or 2 incur a deficit, the bill provides a surcharge on all workers' compensation policyholders that are not in the WCJUA. A deficit in Tier 3 is paid by assessments against the policyholders in Tier 3.

There is no anticipated fiscal impact on local government. State government transfers \$10 million from a workers' compensation trust fund. Voluntary market carriers may receive additional premiums due to depopulation and consent to rate measures in the bill. If Tiers 1 or 2 run a deficit, voluntary market policyholders may have increased premiums due to the surcharge provided in the bill.

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

STORAGE NAME: h1251a.in.doc
DATE: April 13, 2004

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:

BACKGROUND

The Workers' Compensation Joint Underwriting Association (WCJUA) was created by statute by the 1993 Legislature and began writing claims on January 1, 1994. The WCJUA is an insurer of last resort, meaning it provides workers' compensation insurance for those employers who cannot obtain it in the voluntary market (from private insurers, self insurance funds, etc.)¹ It operates as a self-funded residual market and is nonprofit.

The day-to-day operations of the WCJUA are performed by staff and an executive director.² A Board of Governors provides additional oversight.³

The premiums charged by the WCJUA are typically two to three times the premium that would be charged to an employer in the voluntary market if the employer could obtain insurance in the voluntary market. Because the WCJUA premiums are so much higher than the voluntary market premiums, employers are not tempted to get out of the voluntary market and in the WCJUA.

The WCJUA is funded by premiums paid by policyholders/employers on insurance policies issued by the WCJUA.⁴ By statute, the WCJUA's premium rates must be “actuarially sound”, meaning high enough to pay the claims and establish claim reserves.⁵ The WCJUA is also required to be self-supporting.⁶

Prior to the passage of SB 50A (chapter 412, L.O.F.) in 2003, the WCJUA was composed of three subplans: “A,” “B,” and “C.” Restrictions on exemptions in the construction industry, enacted by SB 50A, were expected to increase the WCJUA volume, prompting the Legislature to address affordability of WCJUA coverage. In order to address this issue, SB 50A added a fourth subplan to the WCJUA, subplan “D.” Subplan “D” was designed to offer affordable coverage to small employers and non-profit organizations by placing a cap on premiums written by the WCJUA for these groups.⁷

¹ s. 627.311(5)(a), F.S. (2003)

² s. 627.311(5)(b)13, F.S. (2003)

³ s. 627.311(5)(b), F.S. (2003)

⁴ s. 627.311(5)(d), F.S. (2003)

⁵ s. 627.311(5)(a), F.S. (2003)

⁶ s. 627.311(5)(a), F.S. (2003)

⁷ The premium cap for small employers is 25 percent of the voluntary market rate. The premium cap for non-profits is 10 percent of the voluntary market rate.

The WCJUA puts an employer in the appropriate subplan when it writes or renews a policy. The criteria for each subplan are set by statute.⁸ The employer must meet all of the statutory criteria for the subplan in order to be placed in the subplan.

Current criteria for WCJUA Subplans:

“A”

- Annual premium less than or equal to \$2,500 (excludes the JUA flat fee)
- No lost time claims for the immediate two years
- Medical-only claims less than or equal to 50 percent of premium for the immediate two years

Assessability Feature: Not assessable

Rate Cap: None, however, rates are typically 42.9 percent above the voluntary market rate and the policies are not charged a surcharge.⁹ Thus, the total premium is about 143 percent of the market rate.

“B”:

- An employer’s governing classification code must be one of the codes identified by the WCJUA’s Board of Governors as high-risk due solely to the nature of the operations being performed and for which no voluntary market exists
- Experience modification less than 1.00
- Effective June 1, 2001, there are no qualifying subplan “B” classification codes.
- Currently, there are no employers in subplan “B”

Assessability Feature: Not assessable

Rate Cap: None, however, rates are typically 42.9 percent above the voluntary market rate and the policies are charged a 13 percent surcharge.¹⁰ Thus, the total premium is about 166 percent of the market rate.

“C”:

- All other employers not eligible for subplans “A,” “B,” or “D.”

Assessability Feature: Assessable

Rate Cap: None, however rates are typically 42.9 percent above the voluntary market rate and the policies are charged a 99 percent surcharge.¹¹ Thus, the total premium is about 242 percent of the market rate.

“D”:

- Experience modification less than or equal to 1.10 (includes non-rated employers)

AND EITHER

- less than or equal to 15 employees OR
- exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code and greater than 50 percent of funding is from gifts, endowments, or federal or state contracts.
- As of December 31, 2003, 1,719 employers are in subplan “D”

Assessability Feature: Assessable

Rate Cap: 25 percent of the voluntary market rate for employers with less than or equal to 15 employees; 10 percent of the voluntary market rate for non-profits.¹² Thus, the total premium is 125 percent or 110 percent of the market rate, depending on which rate cap applies.

⁸ s. 627.311(5)(c) 22., F.S (2003)

⁹ Authorized Producers Bulletin 03-08 from WCJUA.

¹⁰ Id.

¹¹ Id.

Currently, only policies issued to employers in subplans "C" or "D" are assessable, meaning if premiums taken in by the WCJUA for policies written in each subplan are not sufficient to cover the claims or reserves of the subplan, then the employers in each subplan can be charged an additional amount to cover the difference between the premiums taken in and the amount the subplan has had to pay out in claims or the reserves that must be set aside.¹³ The additional amount is pro rated among employers in the subplan based on the premium each employer paid.¹⁴ There is no statutory limit on the number of times employers can be assessed or on the amount of the assessment.

When the WCJUA does not have enough money from premiums from policies issued in a subplan to pay out the claims in the subplan or to establish adequate reserves for the future claims in the subplan, the WCJUA has a "deficit."¹⁵ In the past, the WCJUA had a deficit in subplan "C," but did not have to assess the employers to cover it because it knew its investment income would be sufficient to cover the deficit.¹⁶

On February 27, 2004, the executive director of the WCJUA notified OIR that subplan "D" incurred a deficit of \$9,864,901 in 2003.¹⁷ The other three subplans had an aggregate surplus of \$5,348,033. According to the WCJUA's projected annual financial statements, subplan "D" will incur a deficit of more than \$36 million as of December 31, 2004, if no additional funding is provided.

Representatives of the WCJUA believe the deficit has been created primarily by the premium cap on rates for policies issued in subplan "D."¹⁸ According to a WCJUA representative, as long as the premium rates in subplan "D" are capped at a rate which is not actuarially sound, the deficit will continue to occur and will grow.¹⁹ A WCJUA representative indicated the premium in subplan "D" needed an overall increase of 114 percent in premium level in order to have actuarially sound rates and to operate without a deficit.²⁰ This translates into a premium rate of 264 percent of the voluntary market rate.²¹

According to a WCJUA representative, since the creation of subplan "D," some employers previously in subplan "C" are moving into subplan "D."²² This move may decrease the premium received by the WCJUA on the employer's policy because when the employer was in subplan "C" it had an actuarially sound premium (approximately 66 percent over the voluntary market rate), but when it moves to subplan "D" the premium is capped at 25 percent or 10 percent over the voluntary market rate. This adds to the deficit.

By law, whenever a deficit exists, the WCJUA is required to submit a plan to eliminate the deficit to the Office of Insurance Regulation (OIR).²³ The plan to eliminate the deficit may include several actions, including increasing premiums, applying policyholder surplus, and levying assessments against policyholders.²⁴ Inasmuch as subplan "D" rates cannot be increased above statutorily capped levels and there is no surplus available in subplan "D," the only option available to the WCJUA to fund the

¹² s. 627.311(5)(c)22.d., F.S. (2003)

¹³ s. 627.311(5)(d)2., F.S. (2003)

¹⁴ s. 627.311(5)(d)2., F.S. (2003)

¹⁵ Testimony at Committee on Insurance meeting February 4, 2004 from Thomas Maida, General Counsel, WCJUA

¹⁶ Id.

¹⁷ WCJUA 2003 Annual Statement dated February 27, 2004.

¹⁸ Testimony at Committee on Insurance meeting February 4, 2004 from Thomas Maida, General Counsel, WCJUA

¹⁹ Id.

²⁰ Letter from Thomas Maida, General Counsel, WCJUA, to Honorable Kimberly Berfield, Chair, Florida House of Representatives, Committee on Insurance, dated March 2, 2004.

²¹ Testimony from Laura Torrence, Executive Director, WCJUA, at Committee on Insurance meeting on March 15, 2004.

²² Id.

²³ s. 627.311(5)(g), F.S. (2003)

²⁴ s. 627.311(5)(g), F.S. (2003)

deficit in subplan "D" is to assess subplan "D" policyholders. According to WCJUA representatives, it is highly likely that assessments against subplan "D" policyholders will be necessary in the very near future, if effective statutory provisions are not enacted to fund the existing projected deficit.²⁵ The WCJUA has not determined how much or how often assessments will be levied in subplan "D." However, assessments are anticipated to be levied in July or August 2004.²⁶

On February 27, 2004, the WCJUA indicated in a letter to OIR that it would be submitting a plan to OIR to eliminate the deficit based on an assessment of subplan "D" policyholders. The WCJUA is required to file this plan within 90 days of the deficit notification. According to WCJUA, the collection of the full amount of any assessment is doubtful, given the limited financial resources of many small employers, as well as the history of largely unsuccessful attempts at collecting assessments from members of insolvent group self-insurance funds.²⁷

It should be noted that to predict the amount of the deficit, the WCJUA is using its claims data from the past nine years.²⁸ The WCJUA's deficit prediction does not account for any reduction of the costs of claims due to the passage of SB 50A.²⁹ It does, however, account for the 14 percent rate decrease from SB 50A.

Recently, the WCJUA Board of Governors (Board) issued the following legislative recommendations to address solvency and assessment issues:³⁰

- **Funding the Existing Deficit.** Regardless of the method or methods enacted to address the future insolvency concerns, if an assessment is to be avoided, measures must be adopted to fund the existing deficit. The Board recommends that the Legislature consider authorizing a loan from the Workers' Compensation Administration Trust Fund (WCATF) to the WCJUA to fund the existing deficit in subplan "D." Under existing statutory accounting principles (SAP), a simple loan from the WCATF would not suffice to alleviate the deficit, because the WCJUA would be required to record the loan as a debt obligation, thereby doing nothing to eliminate the statutory deficit.

Instead, the Board suggests that consideration be given to a loan of funds from the WCATF to the WCJUA in return for the issuance of a subordinated surplus debenture (commonly known as a surplus note). Under the terms of a surplus note, any payments of principal and interest must first be approved by OIR. Under SAP, the WCJUA would be able to immediately recognize funds received through the surplus note mechanism as additions to surplus. The Board further suggests that this entire process, including certification of the need for such funding, be subject to the active participation of OIR.

The Board further suggests that the loan be made at no interest, unless further research reveals that unintended adverse federal tax consequences would result from an interest-free loan. Interest should be paid out of the savings the WCJUA would realize from exemptions from premium taxation and Special Disability Trust Fund (SDTF) and WCATF assessments. As a matter of financial prudence, repayments of principal should be made only to the extent of accumulated surplus, and again, only from the savings the WCJUA would realize from exemptions from premium taxation, and SDTF and WCATF assessments.

²⁵ WCJUA Statement of the Board of Governors Regarding 2004 Legislative Activities dated February 13, 2004.

²⁶ Testimony from Laura Torrence, Executive Director, WCJUA, at Committee on Insurance meeting March 15, 2004.

²⁷ Letter from Laura Torrence, Executive Director, WCJUA, to Phil Arnold, OIR, dated February 27, 2004 regarding WCJUA 2003 Annual Statement

²⁸ Testimony at Committee on Insurance meeting February 4, 2004 from Thomas Maida, General Counsel, WCJUA

²⁹ *Id.*

³⁰ Florida Workers' Compensation Joint Underwriting Association, Inc. *Statement of the Board of Governors Regarding 2004 Legislative Activities*, dated February 13, 2004.

Although the Board suggests the surplus note should be repaid in the manner set forth in the foregoing paragraph, the Board nevertheless acknowledges that alternative repayment methods might be considered. For example, repayment of the surplus note could be funded through the one-time implementation of a “below the line surcharge.”³¹ In order to repay the surplus note, the WCJUA would certify to OIR the need for a surcharge to be applied to every workers’ compensation insurance policy issued in Florida. If approved and ordered by OIR, the one-time surcharge would be collected by voluntary market carriers and the WCJUA from their policyholders on a pro-rata basis. The funds would then be remitted directly to the WCJUA to enable it to pay interest or principal due on the note.

- **Caps on Rates.** There are several possible solutions to address the probability of the continuing growth of subplan “D” deficits. The Board feels constrained to note that the elimination of artificial rate caps and a return to the requirement that the Board maintain actuarially sound rates in all subplans would likely return the WCJUA to relatively stable financial footing. In the nine years prior to the enactment of SB 50A, the WCJUA did not impose assessments against any of its policyholders. While no assurances can be given that the elimination of rate caps will guarantee that no assessments will be required in the future, the organization’s history at least demonstrates that the Board’s effort to maintain actuarially sound rates has effectively obviated the need for assessments up to this point.
- **Depopulation Incentives.** The depopulation of the WCJUA is unquestionably in the best interests of WCJUA policyholders. Immediately following the creation of the WCJUA in 1994, Florida’s workers’ compensation residual market experienced rapid and dramatic depopulation. While current WCJUA policy counts continue to be far below their 1994 levels, further depopulation should be a continuing goal. Providing additional encouragement and incentives to the voluntary market to take-out and keep-out residual market business seems to be the most effective way of doing that.

Current law provides that voluntary market carriers may take policies out of subplan “D,” charging the policyholder rates no greater than those offered by the WCJUA in subplan “D” for a period of two years after the take-out. Policies taken out of the WCJUA in this fashion do not count against “consent to rate” limitations contained in section 627.171, F. S. The Board suggests consideration be given to expanding this incentive program.

The Board recommends the current depopulation program be expanded to all WCJUA subplans. Thus, voluntary market carriers could take-out policies from any WCJUA subplan, and write that business at rates no greater than the WCJUA rates applicable to the policyholder, without the policy counting toward the section 627.171 limitation. Additionally, the Board suggests that the two-year consent to rate moratorium be extended to five years, so that voluntary market carriers could continue to write the take-out business for five years, so long as the policyholder and the carrier were willing to continue doing business under that rating arrangement.

- **Policyholder Subplan Election.** Under current law, an employer who qualifies for subplan “D” must be written in subplan “D,” and may not voluntarily choose to participate in subplan “C.” Although subplan “D” rates are lower than subplan “C” rates, the WCJUA believes, if given a choice, many employers would choose the higher, but actuarially sound rates of subplan “C” over lower subplan “D” rates, which expose them to almost certain assessments. Thus, the Board suggests that the Legislature consider revising the WCJUA law to permit eligible policyholders to choose between subplan “C” and subplan “D.”

³¹ A “below the line surcharge” is a surcharge on all workers’ compensation policies and is to be paid in addition to the policy premium.

- **Exemption from Certain Taxes and Assessments.** The Board also suggests that the Legislature consider granting an exemption to the WCJUA from paying premium taxes and assessments to the WCATF and the Special Disability Trust Fund (SDTF). Because the WCJUA is entitled to offset WCATF payments against its premium tax obligations, the organization has not paid premium taxes. From 1994 through 2003, the WCJUA did, however, pay more than \$19 million in WCATF and SDTF assessments. The Board suggests this money could be put to better use reducing the likelihood or extent of future deficits.
- **Escheat Laws.** Under Florida's escheat laws, if the WCJUA owes unearned premium, producer fees or claim payments to a policyholder, producer, claimant, or provider and it is unable to locate the payee after making a diligent effort, the money is escheated or paid over to the State of Florida. Although a relatively small amount of money is involved, the Board suggests that the Legislature provide for an exception to the escheat laws, which would allow the WCJUA to retain these funds. While the relatively small savings would not, in itself, cure the financial troubles facing subplan "D," retention of these funds would contribute to surplus and reduce future assessments.
- **Other Measures.** The Board recognizes that it cannot now predict the direction the Legislature may wish to take on matters relating to the WCJUA. The WCJUA could be asked to provide input on proposals which are not contemplated in this statement. For example, the Legislature might prefer a short-term approach to addressing the subplan "D" deficit. In that case, it might be important for the WCJUA to suggest that the Legislature also consider clarifying statutory language regarding assessments.

PROPOSED CHANGES

The bill changes the WCJUA from a four-subplan system to a three-tier system and completely revamps the criteria for the WCJUA tiers. The tiers are described as follows:

Tier One Composition:

- Rated Employers with:
 1. Experience Mod below 1.00,
 2. No lost-time claims after experience mod rating period, and
 3. Medical only claims after experience mod rating period total 20 percent or less of premium.
- Non-Rated Employers that are not a new business with:
 1. No lost-time claims for 3 years before policy issued or renewed,
 2. Medical-only claims for 3 years before policy issued or renewed total 20 percent or less of premium,
 3. Workers' compensation insurance for 3 years before policy issued or renewed, and
 4. A loss history from prior insurer to provide the WCJUA

Premiums: Until January 1, 2007, set at 25 percent above voluntary market premiums. Thereafter, set at actuarially sound premiums.

Tier Two Composition:

- Rated Employers with:
 1. Experience Mod between 1.00 and 1.10,
 2. No lost-time claims after experience mod rating, and
 3. Medical-only claims after experience mod rating period total 20 percent or less of premium.

- New business
- Non-Rated Employers with 3 years of loss experience before policy issued or renewed with:
 1. No lost-time claims for 3 years before policy issued or renewed,
 2. Medical-only claims for 3 years before policy issued or renewed total 20 percent or less of premium, and
 3. A loss history from prior insurer(s) to provide to WCJUA.

Premiums: Until January 7, 2007, set at 50 percent above voluntary market premiums. Thereafter, set at actuarially sound premiums.

Tier Three Composition

- All employers not qualifying for Tiers 1 or 2.

Premiums: Actuarially sound from the beginning.

Depopulation Changes

The bill allows depopulation of all three tiers.³² Current law only provides for a depopulation program for one subplan, subplan "D." Depopulation for all policyholders in the WCJUA is not allowed under current law. Depopulation allows voluntary market carriers to take-out policies from the WCJUA , and write that business at rates no greater than the WCJUA rates applicable to the policyholder, without the policy counting toward the section 627.171 limitation, so long as the policyholder and the carrier were willing to continue doing business under that rating arrangement. Under the bill, the voluntary market carrier is allowed to charge the policyholder the WCJUA premium for as long as the policy is written, but cannot increase the premium to reflect the WCJUA premium more than one time annually.

Capital Contribution

The bill proposes a one-time capital contribution of \$10 million to be appropriated to the WCJUA from the WCATF. The purpose of the WCATF is to pay all expenses associated with the administration of chapter 440, F.S.³³ This includes funding the Division of Workers' Compensation, administering the payment of PTD supplemental benefits for certain injured workers, and providing funding for chapter 440 programs administered by the Office of the Judges of Compensation Claims, the Department of Education, the Agency for Health Care Administration, and the Department of Business and Professional Regulation.³⁴

Money in the WCATF is generated from assessments to all carriers and self-insurers writing workers' compensation insurance.³⁵ The assessment rate is statutorily capped at 2.75 percent of an insurer's net premiums earned or 2.75 percent of net premiums calculated for self-insurers.³⁶ For the calendar year 2003-04, insurers and self-insurers pay 1.5 percent of net premiums earned or calculated for the WCATF assessment.³⁷

³² Depopulation is the process of removing policyholders from the WCJUA to the voluntary market, under specified circumstances.

³³ s. 440.50, F.S. (2003). Chapter 440, F.S. is the workers' compensation chapter.

³⁴ This does not include the Special Disability Trust Fund created under s. 440.49, F.S. This is a second injury fund that is funded by a separate assessment on self-insured employers and carriers.

³⁵ s. 440.51, F.S. (2003)

³⁶ s. 440.51, F.S. (2003)

³⁷ E-mail dated March 30, 2004 from Andrew Sabolic, Division of Workers' Compensation.

As of June 30, 2003, the WCATF had an unreserved fund balance of \$187,904,889.³⁸ The cash balance as of June 30, 2004 is estimated to be \$215,921,037.³⁹ However, this estimated cash balance does not account for a transfer of \$50 million from the WCATF to the General Revenue Fund proposed by the Governor in his budget.⁴⁰ For fiscal year 2003-04, the Division provided a contingent liability or funding for \$152 million in refund requests associated with litigation regarding the calculation of assessments for the WCATF and the SDTF prior to July 1, 2001.

Additionally, the Division noted “. . . in order to maintain the assessment rate at 1.50 percent, the trust fund reserves must begin to be utilized. The reserve depletion will continue in future years unless the assessment rate is adjusted accordingly. In addition, our analysis also projects a reduction in the premium base due to the 14 percent workers’ compensation rate reduction that became effective October 1, 2003, and the benefit of the change in the assessment calculation to full policy premium value has been completely realized.”⁴¹

The Division does not believe the \$10 million transfer from the WCATF to the WCJUA is expected to result in an increase in the current assessment rate of 1.5 percent for self-insured employers and carriers for the fiscal year 2004-05.⁴² However, a transfer of \$10 million from the WCATF to the WCJUA and a transfer of \$50 million from the WCATF to General Revenue would result in an increase in the assessment rate of 1.5 percent. Additionally, the Division’s analysis assumes the expenditures and non-assessment revenues (fees, fines, and penalties) for fiscal year 2004-05 are the same as fiscal year 2003-04. However, as a result of pending litigation, the expenditures of the WCATF could increase next fiscal year due to refund claims for assessments, refund claims on assessments paid on brokerage fees and assessments paid on commissions.

According to the bill, whenever there is a deficit in Tiers 1 or 2 or if there is any deficit remaining from the former subplans of the WCJUA, the WCJUA can levy a surcharge on all workers’ compensation policyholders. In other words, the assessment is levied on all workers’ compensation policyholders in the voluntary market (approximately 180,000 employers as of calendar year 2003), and the WCJUA policyholders are not subject to this assessment. The assessment can be levied for as many years as is necessary to cover the deficit and will be a percentage. The percentage will be determined by the board of the WCJUA and approved by OIR. The OIR must verify the deficit before assessments can be levied on all workers’ compensation policyholders. The assessment is added to a policyholder’s calculated premium as a line item. Current law does not provide for a capital contribution from the WCATF to fund deficits in the WCJUA. It provides WCJUA deficits should be funded by increased premiums to policyholders, by use of policyholder surplus, or by assessments on policyholders in whichever subplan is running a deficit.

Whenever there is a deficit in Tier 3, the WCJUA must fund the deficit through an assessment levied on policyholders in Tier 3 on a premium ratio basis (i.e. the ratio of the total deficit to the total premiums). The bill provides a mechanism for the WCJUA to collect assessments from Tier 3 policyholders and to notify policyholders of the assessment. It also provides a time frame for the assessment.

The bill authorizes the WCJUA to request a transfer of funds from the WCATF to the WCJUA if a Tier 3 deficit exceeds 1 percent of the net direct workers’ compensation premiums written in Florida by all workers’ compensation insurers (currently, approximately \$28 million). The transfer of funds is subject to the approval of the Legislative Budget Commission.

³⁸ Information from House Appropriations Committee.

³⁹ Information from House Appropriations Committee.

⁴⁰ Governor’s Appropriations Bill 2004-2005

⁴¹ Effective July 1, 2001, the methodology for calculating the assessment base was revised and resulted in a larger assessment base. (ch. 2000-150, L.O.F.); Senate Bill Analysis for SB 2270; E-mail dated March 30, 2004 from Andrew Sabolic, Division of Workers’ Compensation.

⁴² E-mail dated March 30, 2004 from Andrew Sabolic, Division of Workers’ Compensation.

Flat Administrative Fee

The bill allows the WCJUA to charge a \$475 administrative fee on all policies written by the WCJUA. Under current law, the WCJUA is allowed to charge the \$475 administrative fee on only policies issued in subplans "A," "B," or "C."

The administrative fee can be increased only upon a rate filing and only to compensate for increased administrative fees or fraud prevention.

Tax and Assessment Exemption

Beginning July 1, 2004, the bill exempts the WCJUA from premium tax, assessments for the WCATF and SDTF. Under current law the WCJUA is required to pay the premium tax and WCATF and SDTF assessments and paid almost \$4 million in premium tax and assessments for the WCATF and SDTF in 2003. Thus, the proposed bill should result in a reduction in expenditures by the WCJUA, which in turn, should help reduce the estimated current deficit.

Fraud

In order to further combat fraud by an existing WCJUA policyholder or a potential WCJUA policyholder, the bill prohibits the WCJUA from issuing policies for any person affiliated with a person delinquent in payment of WCJUA premiums, assessments, penalties, or surcharges.

C. SECTION DIRECTORY:

Section 1 amends s. 627.311, F.S.; revising the WCJUA composition into three tiers; specifying criteria and rates for each tier; eliminating WCJUA policies from the consent to rate limitation in s. 627.171, F.S.; allowing for depopulation of all WCJUA tiers; providing deficit funding for the WCJUA by a one-time capital contribution from the WCATF; providing for additional deficit funding by assessments; providing payment of an administrative fee by all policyholders; providing an exemption from certain taxes and assessments; and providing additional fraud provisions.

Section 2 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:

The bill requires a \$10 million transfer of funds from the Workers' Compensation Administration Trust Fund to the WCJUA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The effect of the bill's amendment to the consent to rate provisions should be to depopulate the WCJUA. Although the exact number of policyholders that would move out of the WCJUA as a result of the bill's changes to existing law is unknown, depopulation will reduce the number of employers in the WCJUA and increase the number of employers in the voluntary market. The depopulation and consent to rate provisions of the bill will allow voluntary market insurers to collect premiums in excess of their filed rates.

Workers' compensation policyholders may be required to pay an assessment/surcharge for workers' compensation insurance, if the \$10 million capital infusion is not sufficient to fund the current WCJUA deficit and the WCJUA experiences a future deficit in Tiers 1 or 2. The policyholders in the WCJUA would not have to pay the additional assessment. It is unknown whether the assessment would be a one-time assessment or would be assessed multiple times. This decision would depend on the amount of the money raised by the assessment and the deficit of the WCJUA.

All workers' compensation insurers and self-insurers may have to pay increased WCATF assessments because the \$10 million reduction in the WCATF provided in this bill and the anticipated \$50 million reduction in the WCATF by the Governor requires the Division of Workers' Compensation to raise the WCATF assessment on all insurers and self-insurers above the 1.5 percent current assessment rate. However, the \$10 million reduction alone will not cause an increase in the WCATF assessment rate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2004, the Committee on Insurance adopted a strike-everything amendment and three other amendments. The bill, as amended, was reported favorably. The strike-everything amendment is summarized as follows:

- **Criteria change:** Changes the WCJUA plans available for policyholders from a four-subplan system to a three-tier system. The three-tier system is designed with criteria better suited to an employer's risk and is designed to have premiums better associated with the employer's risk. In other words, employers with good records will pay less in premium than employers with bad records.

- **Premium change:** Initially, the premium for Tier 1 employers (good employers) is 25 percent above the voluntary market rate, and the premium for Tier 2 employers is 50 percent above the voluntary market rate. Premiums in Tiers 1 and 2 change to actuarially sound premiums after 3 years. Employers in Tier 3 will pay actuarially sound premium.
- **Deficit Funding for Tiers 1 & 2:** If Tiers 1 or 2 incur a deficit in the future, then OIR will levy an assessment on all workers' compensation premiums collected. i.e. "below-the-line surcharge."
- **Deficit Funding for Tier 3:** If Tier 3 incurs a deficit in the future, then the WCJUA will levy an assessment against employers in that tier. The strike-all provides a mechanism for the WCJUA to levy the assessment and to collect it. If the assessment is not sufficient to cover the deficit, the WCJUA is authorized to request a transfer of funds from the WCATF to cover the deficit, subject to specified circumstances.
- **Tax and Assessment Exemption:** Exempts the WCJUA from the burden of assessments to the WCATF and SDTF and from premium tax collection.
- **Depopulation:** Allows depopulation of all tiers.
- **Flat Administrative Fee:** Requires WCJUA policyholders in every tier to pay an administrative fee of \$475 upon application for coverage. Currently, every subplan but "D" collects an administrative fee of \$475.
- **One-time Capital Contribution:** Provides a one-time infusion of capital of \$10 million from the WCATF into the WCJUA to help defray the existing deficit.
- **Fraud:** Provides the WCJUA with an additional method to combat fraud in the issuance of the policy.

The other amendments adopted at the April 1, 2004, Committee on Insurance meeting:

- Clarified that any money collected by insurers as deficit assessments is not income to the insured for reporting purposes.
- Provided that an insurance carrier taking an employer out of the WCJUA or keeping an employer out of the WCJUA can charge the appropriate WCJUA premium as long as the employer is in the voluntary market.
- Removed the definition of "premium" in the bill because it was not necessary.