

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 517 CS

Corporation Not For Profit Self--Insurance Funds

**SPONSOR(S):** Ross

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1966

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) State Administration Appropriations Committee	9 Y, 0 N, w/CS	Rayman	Belcher
3) Commerce Council	11 Y, 0 N, w/CS	Callaway	Randle
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Pursuant to 624.462, F.S., commercial self-insurance funds can only be created by specified groups, including a not-for-profit trade association, industry association, or professional association of employers or professionals which has been organized for purposes other than that of obtaining or providing insurance. These funds are created for the purpose of pooling and spreading liabilities of its group members in any commercial property or casualty risk or surety insurance. Self-insurance funds can also be created by two or more employers for workers' compensation risks. Current law provides numerous requirements relating to the formation and regulation of self-insurance funds. The Office of Insurance Regulation (OIR) regulates self-insurance funds. Local governments are authorized under current law to form self-insurance funds. Certain specified independent nonprofit colleges, universities, or secondary educational institutions are authorized to form self-insurance funds for property or casualty risks, workers' compensation risks, or for surety insurance. Self-insurance funds created by these entities do not have to comply with all the provisions in current law relating to self-insurance funds and thus are not subject to significant regulation by the OIR. The bill clarifies local governments can self insure for property risks and clarifies independent educational institution self-insurance funds are not eligible and cannot participate in the insurance guaranty associations.

This bill also provides that, notwithstanding any other provision of law, certain corporations not for profit may form a self-insurance fund to cover any property or casualty risk or surety insurance or worker's compensation risk. This authorization is predicated upon the fund: 1) having annual normal premiums in excess of \$5 million; 2) having only members who receive at least 75 percent of its funding from governmental sources; 3) using a credentialed actuary to set rates with annual submission to the OIR regarding actuarial soundness of the rates; 4) setting reserves by an actuary with annual reporting of the reserves to the OIR, 5) maintaining a continuing program of excess insurance coverage and reserve evaluation to protect the fund's financial stability; 6) submitting to the OIR annual audited financial statements; 7) having a governing body comprised entirely of corporation not for profit officials; 8) using personnel to run the fund that have a minimum of 5 years' insurance experience; 9) submitting member liability contracts to the OIR, and 10) submitting an annual certification to the OIR the preceding nine requirements are met.

The bill provides for payment of insurance premium tax at a reduced rate by corporation not for profit self-insurance funds. The Revenue Estimating Conference met on April 7, 2006, and adopted a positive, but indeterminate, impact on the General Revenue Fund for Fiscal Year 2006-07 and beyond relating to the reduced premium tax rate.

The bill also exempts corporation not for profit self-insurance funds from many of the provisions in current law relating to self-insurance funds such as the solvency, reserve and financial reporting requirements pertaining to workers compensation self-insurance funds, as well as from participation in the insurance guaranty association. These exemptions preclude significant regulation of the newly created self-insurance funds by the OIR.

The bill also prevents a party to a construction contract from requiring another party to the contract providing workers' compensation insurance from a self-insurance fund to require the self-insurance fund is rated by a nationally-recognized insurance rating service.

The bill provides an effective date of July 1, 2006.

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

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**DATE:** 4/25/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government:** The bill exempts certain corporations not for profit from the current statutory requirements relating to formation and regulation of self-insurance funds, thus, preventing significant regulation of such funds by the Office of Insurance Regulation (OIR or office).

**Safeguard Individual Liberty:** Any inability of the newly created self-insurance fund to pay claims could mean injured employees otherwise eligible for workers compensation benefits may not have medical and lost wage expenses paid; damaged property may go unrepaired; and fund participants may be drawn into costly litigation to personally defend against a liability claim.

**Promote Personal Responsibility:** The bill will place more responsibility for ensuring financial accountability and solvency on the corporations not for profit who participate in the self-insurance fund authorized by the bill.

#### B. EFFECT OF PROPOSED CHANGES:

##### Self-Insurance Funds

Sections 624.460-624.488, F.S. are known as the "Commercial Self-Insurance Fund Act." Self-insurance fund means both commercial insurance funds organized under s. 624.462, F.S., and group self-insurance funds organized under s. 624.4621, F.S. In general, self-insurance is the assumption of some or all of one's financial risk oneself, rather than paying an insurance company to assume it.<sup>1</sup>

##### **Commercial Self-Insurance Funds**

Commercial self-insurance funds may be authorized by the OIR to cover property or casualty or surety insurance risks. Such funds may be formed only by:

- 1) a not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated in Florida, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year;
- 2) a (medical malpractice) self-insurance trust fund organized pursuant to s. 627.357, F.S., and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section;
- 3) a group of 10 or more health care providers for purposes of providing medical malpractice coverage; or
- 4) a not-for-profit group comprised of no less than 10 condominium associations meeting certain requirements.<sup>2</sup>

In most cases, a commercial self-insurance fund must be operated by a board of trustees.<sup>3</sup> If formed pursuant to (1) or (3), above, the board of trustees must be responsible for appointing independent certified public accountants, legal counsel, actuaries, and investment advisers as needed; approving payment of dividends to members; and contracting with an administrator authorized under s. 626.88, F.S., to administer the affairs of the fund. For funds formed pursuant to (2) or (4) above, a majority of

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<sup>1</sup> <http://www.iii.org/> (last viewed on February 5, 2006).

<sup>2</sup> s 624.462(2)(a), F.S. (2005).

<sup>3</sup> s 624.462(2)(b), F.S. (2005).

the trustees or directors must be owners, partners, officers, directors, or employees of one or more members of the fund.<sup>4</sup>

Requirements for commercial self-insurance funds also include:

- 1) a certificate of authority from the OIR;
- 2) an indemnity agreement binding each fund member to individual, several, and proportionate liability;
- 3) a plan of risk management which has established measures to minimize the frequency and severity of losses;
- 4) proof of competent and trustworthy persons to administer or service the fund;
- 5) an aggregate net worth of all members of at least \$500,000;
- 6) a combined ratio of current assets to current liabilities of more than 1 to 1;
- 7) a deposit of cash or securities, or a surety bond, of \$100,000;
- 8) specific and aggregate excess insurance with limits and retention levels satisfactory to the OIR;
- 9) a fidelity bond or insurance providing coverage of at least 10 percent of the funds handled annually by the fund;
- 10) a plan of operation designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles, and a statement by an actuary to that effect;
- 11) participation in the Florida Self-Insurance Fund Guaranty Association and
- 12) such additional information as the Financial Services Commission or the OIR reasonably requires.<sup>5</sup>

After the OIR issues a certificate of authority for a commercial self-insurance fund, additional requirements are imposed related to restrictions on premiums that may be written, annual reports, dividends, assessments, and approval of forms and rates.<sup>6</sup> Under current law a commercial self insurance fund is also subject to the premium tax, form and rate approval, and regulatory oversight regarding rehabilitation, liquidation, reorganization and conservation, and is required to participate in the Florida Self-Insurance Guaranty Association.<sup>7</sup>

Rates for commercial self-insurance funds may not be excessive, inadequate, or unfairly discriminatory and must be filed with the OIR for approval.<sup>8</sup> But, the standard for excessiveness is limited to a determination of whether the expense factors are not justified or are not reasonable for the benefits and services provided.<sup>9</sup> A fund has the burden of proving a rate filed is adequate if, during the first 5 years of issuing policies, the fund files a rate that is below the rate for loss and loss adjustment expenses for the same type and classification of insurance that has been filed by the Insurance Services Office and approved by the OIR.<sup>10</sup>

The Commercial Self-Insurance Fund Act also contains a provision which makes over 228 sections of the Florida Insurance Code applicable to the self-insurance funds.<sup>11</sup> Among those many provisions are laws relating to civil remedy and civil liability; accounting, assets and liabilities investments, administration of deposits, insurance field representatives and operations; unfair methods of competition and unfair or deceptive acts or practices; powers of department and office; cease and desist procedures and penalties; policyholders bill of rights claims administration; payment of

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<sup>4</sup> Id.

<sup>5</sup> s. 624.466, F.S. (2005). Participation in the Florida Self-Insurance Guaranty Association is mandated under s. 624.462, F.S. (2005).

<sup>6</sup> s. 624.468, F.S. (2005); s. 624.470, F.S. (2005) relating to annual reports; s. 624.473, F.S. (2005) relating to dividends; s. 624.474, F.S. (2005) relating to assessments.

<sup>7</sup> s. 624.475, F.S. (2005) relating to premium tax; s. 624.477, F.S. (2005) relating to liquidation, rehabilitation, reorganization, and conservation; s. 624.480, F.S. (2005) relating to approval of forms; s. 624.482, F.S. (2005) relating to rate approval; s. 624.462, F.S. relating to participation in the Florida Self-Insurance Guaranty Association.

<sup>8</sup> s. 624.482, F.S. (2005).

<sup>9</sup> s. 624.482(2), F.S. (2005).

<sup>10</sup> s. 624.482(6), F.S. (2005).

<sup>11</sup> s. 624.488, F.S. (2005).

settlements; attorney's fees; insurance rates and contracts; motor vehicle and casualty contracts; professional liability claims and actions; reports by insurers and health care providers; and, as previously indicated, provisions relating to insurer insolvency; rehabilitation and liquidation; and the Florida Self-Insurance Fund Guaranty Association.

### **Group Self-Insurance Funds**

Under s. 624.4621, F.S., two or more employers are allowed to pool their workers' compensation liabilities and form a self insurance fund for workers' compensation purposes. This type of self-insurance fund is called a group self-insurance fund. Such a fund must comply with administrative rules adopted by the Financial Services Commission<sup>12</sup> relating to reserve requirements, organization, and operation. The rules relating to reserve requirements are designed to insure the self-insurance fund can maintain financial solvency. Current law also requires workers' compensation self-insurance funds to carry reinsurance, unless the fund is comprised of state or local government employers.<sup>13</sup>

Current law establishes restrictions on dividend or premium refunds made by a workers' compensation self insurance fund.<sup>14</sup> Workers' compensation self-insurance funds are subject to the insurance premium tax, but at a reduced rate. The rate is reduced from 1.75 percent of the gross receipt of insurance premiums to 1.6 percent.<sup>15</sup> Workers' compensation self-insurance funds are subject to license taxes and premium receipt taxes.<sup>16</sup> Current law also requires workers' compensation self-insurance funds to participate in the Florida Self-Insurance Fund Guaranty Association (Association).<sup>17</sup> The Association will step in and pay workers' compensation claims of self-insurance funds that become insolvent.<sup>18</sup>

In addition to complying with the administrative rules for workers' compensation self-insurance established by the Financial Services Commission, a workers' compensation self-insurance fund must comply with administrative rules adopted by the Department of Financial Services (DFS) relating to the filing of reports by workers' compensation self-insurance funds.<sup>19</sup>

### **Local Government and Independent Educational Institution Self-Insurance Funds**

Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for the purpose of securing the payment of benefits under the workers' compensation law. According to a representative of local government self-insurance funds, these funds are currently also self-insuring for property risks under the home rule powers authorized by the Florida Constitution. Under s. 624.4623, F.S., any two or more independent nonprofit colleges or universities may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under the workers' compensation law.

Both the local government and education self-insurance funds have similar requirements which include:

- having annual premiums in excess of \$5 million;
- maintaining excess insurance coverage and reserve to protect the financial stability of the fund;
- submitting annual audited fiscal year end-financial statements by an independent certified public accountant to the OIR; and

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<sup>12</sup> The Financial Services Commission is comprised of the Governor and Cabinet.

<sup>13</sup> s. 624.4621(4), F.S. (2005).

<sup>14</sup> s. 624.4621(5), F.S. (2005).

<sup>15</sup> s. 624.4621(7), F.S. (2005); s. 624.509(1), F.S. (2005).

<sup>16</sup> s. 624.509(2), F.S. (2005).

<sup>17</sup> s. 624.4621(9), F.S. (2005).

<sup>18</sup> See s. 440.385(3)(a), F.S. (2005).

<sup>19</sup> s. 440.38(2)(b), F.S. (2005); See Chapter 69L-5, F.A.C. for the administrative rules relating to workers' compensation self-insurance funds.

- having a governing body comprised entirely of local elected officials (in local government self-insurance funds) and independent educational institution officials (in educational self-insurance funds).

The bill clarifies local government self-insurance funds can self-insure for property risks. It also clarifies independent educational institution self-insurance funds are not eligible to participate in the insurance guaranty associations.

### **Proposed Changes Regarding Self-Insurance Funds**

This bill provides that, notwithstanding any other provision of law, any two or more corporation not for profit located in Florida and organized under Florida law may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under worker's compensation.<sup>20</sup> The fund can self-insure for only property/casualty, only surety, or only workers' compensation or can self-insure for a combination of these risks. This authorization is predicated upon the fund:

- 1) having annual normal premiums in excess of \$5 million;
- 2) having only members who receive at least 75 percent of its revenue from local, state, or federal government sources<sup>21</sup>;
- 3) using a credentialed actuary to set rates with annual submission to the OIR regarding actuarial soundness of the rates;
- 4) setting reserves by an actuary with annual reporting of the reserves to the OIR,
- 5) maintaining a continuing program of excess insurance coverage and reserve evaluation to protect the fund's financial stability;
- 6) submitting to the Office of Insurance Regulation annual audited financial statements;
- 7) having a governing body comprised entirely of corporation not for profit officials;
- 8) using personnel to run the fund that have a minimum of 5 years' insurance experience;
- 9) submitting member liability contracts to the OIR; and
- 10) submitting an annual certification to the OIR the preceding nine requirements are met.

The bill provides for payment of insurance premium tax at a reduced rate by corporation not for profit self-insurance funds. (1.6% for the corporation not for profit self-insurance fund verses 1.75% for regular insurers). However, under current law most self-insurance funds pay premium tax at 1.6%. In fact, local government self-insurance funds pay 1.6% premium tax for the first five years they are in existence, but pay no premium tax after five years.

The bill exempts corporation not for profit self insurance funds from the provisions in current law applicable to group self-insurance funds (i.e. those self-insurance funds covering workers' compensation risks only). Additionally, the bill exempts these self-insurance funds from the rules promulgated by DFS relating to reports workers' compensation self-insurance funds must file with DFS.

The bill revokes the exemptions described above if the corporation not for profit self-insurance fund does not meet the ten requirements set forth above.

There is statutory precedent for allowing specific types of organizations to have less stringent statutory requirements relating to the formation and regulation of self-insurance funds. The statutory requirements for self-insurance funds formed by local governments or independent nonprofit colleges or universities are different than the requirements for other commercial self-insurance funds and are less restrictive.

<sup>20</sup> In the 2005 Session, HB 881 was filed giving certain nonprofit community mental health and substance abuse providers the authority to form self-insurance funds; however, the bill died in messages. This bill is very similar to the original text of HB 881 from the 2005 Session.

<sup>21</sup> The 75% funding level can be solely from a local government, solely from the state government or solely from the federal government or can be comprised from a combination of funding from local, state, and federal government as long as the combination of funding totals 75%.

The language of this bill is modeled after the existing statutory authorization for local governments and independent colleges and universities and, in fact, is mostly identical. However, there are several important differences in the language. Regarding local government, the language allowing the formation of self-insurance funds for workers' compensation purposes only contains the following:

(3) Notwithstanding subsection (2), a local government self-insurance fund created under this section after October 1, 2004, shall initially be subject to the requirements of a commercial fund under s. 624.4621 and, for the first 5 years of its existence, shall be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively.

(4)(a) A local government self-insurance fund formed after January 1, 2005, shall, for its first 5 fiscal years, file with the office full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding fiscal year shall be filed within 60 days after the end of the fund's fiscal year, and quarterly statements shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing an annual or quarterly statement. The statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used by insurers for financial statements, sworn to by at least two executive officers of the self-insurance fund. The form for financial statements shall be the form currently approved by the National Association of Insurance Commissioners for use by property and casualty insurers.

(b) Each annual statement shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries. Work papers in support of the statement of opinion must be provided to the office upon request.<sup>22</sup>

In other words, local government self-insurance funds must comply with current law governing self-insurance funds upon creation and for the first five years the fund is in existence. This involves significant oversight of the local government self-insurance fund by the OIR. Additionally, the OIR also reviews information on the local government self-insurance fund's financial status for the first five years the fund is in existence.

Self-insurance funds composed of independent colleges and universities also have less stringent formation and regulation requirements than other self-insurance funds. Even though this bill is modeled after existing law allowing these entities to self insure, there is a difference in the statutory language. Pursuant to s. 624.4623, F.S., only those educational institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or accredited schools chartered by the State of Florida are eligible to form self-insurance funds.

According to a representative of the Florida Independent Colleges and Universities Risk Management Association the prerequisite for accreditation requires their members submit to the rigorous programmatic and financial review of this federally sanctioned accrediting agency. This outside review ensures their pooled members are financially stable and have the appropriate resources to conduct their operations. The Federal government relies on this accreditation status for participation in all federally sponsored programs such as student financial aid, research contracts and other types of grants. Also, the colleges and universities rely on this accreditation status to be the primary test of an institution's financial strength.<sup>23</sup>

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<sup>22</sup> s. 624.4622(4), F.S. (2005).

<sup>23</sup> Email from Ben Donatelli, Collaborative Ventures, Independent Colleges and Universities of Florida, March 19, 2005, on file with the Insurance Committee.

Among the financial and resource requirements necessary for good standing and membership are the following statements from the accrediting standards manual:

### 3.10 Financial and Physical Resources

- 1) The institution's recent financial history demonstrates financial stability.
- 2) The institution provides financial statements and related documents, including multiple measures for determining financial health as requested by the Commission, which accurately and appropriately represent the total operation of the institution.
- 3) The institution audits financial aid programs as required by federal and state regulations.
- 4) The institution exercises appropriate control over all its financial and physical resources.
- 5) The institution maintains financial control over externally funded or sponsored research and programs.
- 6) The institution takes reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.
- 7) The institution operates and maintains physical facilities, both on and off campus, that are adequate to serve the needs of the institution's educational programs, support services, and other mission-related activities

There is no provision in the bill requiring accreditation of corporation not for profit wanting to form a self-insurance fund.

Corporations not for profit that would qualify to form self-insurance funds under the bill include Hospice organizations, community actions agencies such as Head Start and Meals on Wheels, community transportation coordinators, the Florida Council on Aging, and the Association of Retarded Citizens. It is unknown how many corporations not for profit will qualify to form a self-insurance fund under the bill or will choose to self-insure; however, the bill's proponents estimate a premium base of \$15 – 25 million for qualifying corporations not for profit.<sup>24</sup>

Although the bill allows corporations not for profit to create self-insurance funds for property, casualty, surety or workers' compensation risks, proponents of the bill envision the self-insurance funds created will cover primarily workers' compensation risks. In many cases the workers' compensation insurance premiums for non-profit organizations are higher than the filed premium rate which leads to high insurance premiums. Additionally, according to the bill's proponents, although workers' compensation insurance is currently available for corporations not for profit, in many cases, it is written by the Florida Workers' Compensation Joint Underwriting Association, the workers' compensation insurer of last resort. The bill's proponents predict the newly created corporation not for profit self insurance fund will assume some of the Florida Workers' Compensation Joint Underwriting Association's policies, leading to depopulation of it.

The bill's proponents allege corporations not for profit cannot comply with existing law relating to the formation and regulation of self-insurance funds because of the high costs involved in managing a commercial self-insurance fund due to the restrictions and regulation of the funds by the OIR. They also cite the lack of a single entity covering all corporations not for profit that can assume management of the fund thereby reducing the costs of complying with current self-insurance fund laws and the overhead associated with running a self-insurance fund as a reason corporations not for profit cannot comply with existing self-insurance fund laws.<sup>25</sup>

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<sup>24</sup> Telephone conversation with representative of Public Risk Underwriters on February 3, 2006.

<sup>25</sup> Id.

One of the organizations that may qualify to form a self-insurance fund under the bill is the Florida Council for Community Mental Health (Council). The Council is a statewide association of 70 community-based mental health and substance abuse agencies. According to the Council, availability of property, liability, automobile and workers' compensation insurance is limited for its members and members of its sister organization, the Florida Council for Behavioral Healthcare. The Council maintains its 70 member treatment organizations are a critical part of the state's safety net, providing publicly funded mental health and substance abuse services to Floridians who cannot afford the cost of their care. They report difficulty in obtaining insurance coverage that recognizes the type of services they provide and the risks to which they are exposed.<sup>26</sup> They also report a significant increase in liability insurance premiums for community mental health providers.<sup>27</sup> If this bill passes, the Council anticipates self-insuring for property, automobile, general and professional liability, and workers' compensation insurance. The Council estimates 30-50 members will participate in the self-insurance fund.<sup>28</sup>

## Regulatory Issues

In Florida, regulation of the insurance industry is shared by the DFS and the OIR. The state's Chief Financial Officer (CFO) heads DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, (i.e. an insurer based in Florida), must possess a certificate of authority in order to conduct business in Florida. Similarly, many insurers are required by law to seek the OIR approval for their rates, or the prices they charge for coverage, and approval of the insurance forms they use for issuing policies. The OIR investigates allegations of fraud against insurers and administers state laws governing the financial reserve requirements imposed on insurers.

The OIR is concerned the bill effectively removes any and all solvency and rate regulation oversight over the corporation not for profit self-insurance fund authorized by the bill. The OIR exercises solvency and rate regulation oversight in order to protect Florida's insurance consumers. According to the OIR, if a corporation not for profit self-insurance fund assumes significant risk, the fund may be unable to pay resulting claims due to an inadequate financial framework. Any inability to pay claims means injured employees otherwise eligible for workers compensation benefits may not have medical and lost wage expense paid; damaged property may go unrepaired; and fund participants may be drawn into costly litigation to personally defend against a liability claim.<sup>29</sup>

However, the OIR notes local governments and state/private universities have a level of institutional expertise and experience in operating risk management programs, in administering and adjusting claims against the fund, and, most importantly, an outside source of financial scrutiny beyond the governing board of the self insurance fund itself. A local government Board of County Commissioners, a City Council, a university Board of Trustees – all assume implicit financial and managerial oversight for a self-insurance fund organized for the benefit of the local government or state/private university. In contrast, in the OIR's view, there may be no oversight organization or entity that would stand behind a corporation not for profit self-insurance fund created in accordance with the bill.

Unlike a local government with the authority to raise tax revenue or issue bonds or the ability of a state/private university to raise tuition and fees, there is no clear source of outside revenue available for

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<sup>26</sup> Florida Council for Behavioral Healthcare proposal "Community Mental Health and Substance Abuse Provider Self-Insurance Fund" on file with the Insurance Committee.

<sup>27</sup> According to the Council, the average cost of liability insurance for a community mental provider was \$238,847 in FY 2002–2003. The average cost in FY 2003–2004 was \$355,715, an increase of 49%. But, for some providers, the increase in premiums was 150% or more.

<sup>28</sup> Florida Council for Behavioral Healthcare proposal "Community Mental Health and Substance Abuse Provider Self-Insurance Fund" on file with the Insurance Committee.

<sup>29</sup> Concerns expressed are contained in Office of Insurance Regulation's Legislative Analysis dated January 30, 2006 on file with the Insurance Committee.



a corporation not for profit self-insurance fund in the event a deficit occurs. In order to raise funds, the corporation not for profit self insurance fund would have to raise revenue. Revenue sources for nonprofits include public donations and government funding. Raising additional revenue from these sources may be difficult and is not a guaranteed revenue stream.

Additionally, the OIR opines it could be difficult to determine the proper division of reserves related to the multiple lines of coverage provided by the fund in any type of forensic handling of the corporation not for profit self-insurance fund. This problem is not present with local government self-insurance funds because those funds provide only workers' compensation insurance coverage.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 624.4622, F.S., clarifying local government self-insurance funds to cover property insurance.

**Section 2:** Amends s. 624.4623, F.S.; clarifying independent educational institution self-insurance funds may not participate in insurance guaranty associations.

**Section 3:** Creates s. 624.4264, F.S., allowing creation of corporation not for profit self-insurance funds, providing requirements for formation of such funds, providing exceptions to current statutory requirements for self-insurance funds; providing for payment of insurance premium tax at a reduced rate by corporation not for profit self-insurance funds.

**Section 4:** Creating s. 627.443, F.S.; prohibiting one party to a construction contract from requiring another party obtain workers' compensation insurance from a self-insurance fund that is rated by a nationally recognized insurance rating service.

**Section 5:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The Revenue Estimating Conference met on April 7, 2006, and adopted a positive, but indeterminate, impact on the General Revenue Fund for Fiscal Year 2006-07 and beyond. The fiscal impact is due to the decreased premium tax rate the nonprofit self-insurance fund pays (1.6% vs. 1.75%).

The corporation not for profit self-insurance fund is required to purchase excess insurance, thus the state will receive increased revenue in the form of premium tax on the excess insurance purchase.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Inasmuch as the bill allows corporations not for profit to self-insure in lieu of obtaining insurance from a private insurance carrier, corporations not for profit may save money on insurance premiums.<sup>30</sup> The amount of premium dollars saved for each nonprofit is indeterminable. Additionally, if premiums collected by the self-insurance fund are not sufficient to pay claims and a deficit results, the fund's members must be assessed to cover the deficit.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not delegate rule-making authority to any administrative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Other Comments**

In its legislative analysis for the original text of the bill, the Office of Insurance Regulation provided the following technical comments<sup>31</sup>:

The newly created SIF, as drafted in this legislation, does not contain the definition of "commercial" self-insurance fund (otherwise defined at 624.462). Thus, the provisions of 624.460 – 624.488 ("Commercial Self Insurance Funds") would not apply to this newly created SIF.

And, the newly created SIF is, at subsection (2) of this bill, exempt from 624.4621 for purposes of definition and regulation as group self-insurance fund formed to provide workers compensation coverage.

Thus, by construction of the statute, the newly created SIF appears regulated only by the specific provisions within its newly created statute, s. 624.4624. That construction:

<sup>30</sup> The portion of the premium rate attributable to cover claims should be approximately the same as the portion charged by private insurers; however, premium rates for self-insurance funds typically do not include a profit factor (usually about 5 percent of premium). Additionally, self-insurance funds sometimes have less expense than private insurers. The absence of a profit factor built into premium rates and lower expenses could lead to premium rates for self-insurance funds that are lower than those of private insurers.

<sup>31</sup> Office of Insurance Regulation Legislative Analysis dated January 30, 2006 on file with the Insurance Committee. (emphasis supplied)

- Exempts the fund from any form of solvency requirement;
- Does not provide the OIR with authority to protect member participants against inadequate rates and premium collection;
- Does not contain requirements otherwise applicable to self-insurance funds – either those formed to provide self-insurance for workers compensation insurance or those formed for sharing property and casualty and surety risk; and,
- Creates an ambiguity related to Guaranty Fund Protection – i.e.,:
  - For risks associated with property/casualty and surety, it is not clear if the newly created SIF would qualify for FIGA protection, because at s. 624.462(5) a commercial self-insurance fund is required to participate in FIGA. This newly created SIF is not bound by the provisions of 624.462;
  - For risks associated with workers compensation, s. 631.905(5) the FIGA workers compensation account may cover this SIF, because the definition of covered entities specifically excludes only local government SIFs organized under s. 624.4622 (group self-insurance funds formed specifically for providing workers compensation benefits);

#### **Subsection (1)**

In describing the risk being assumed by the newly created SIF the term “securing the payment of benefits under Chapter 440” may mean the SIF intends to provide workers compensation coverage to its participants.

However, at subsection (2) the legislation specifically exempts the newly created SIF from the requirements that apply to group self-insurance funds at s. 624.4621, designed for SIFs that provide workers compensation insurance to member participants.

**Subsection (1)(a)** -- requires the fund to have “annual normal premiums in excess of \$5 million”

It appears the newly created statute implies no OIR oversight of policy form or rate approval. Member participants would not benefit from the protections of form and rate approval that assure rates are not excessive, inadequate, or non-discriminatory and that contracts issued by the fund provide reasonable benefits for the risks being assumed by the fund.

**Subsection (1)(b)** – requires for participation that each member receive at least 75% of its revenues from local, state, or federal governmental sources. While such requirement may suggest that these revenues are more likely to be received on a more consistent basis, the ability of the SIF’s members to fund any deficits is also constrained to the level of public funding.

**Subsection (1)(c)** - requires the fund, as determined by a qualified actuary, to maintain a program of excess insurance coverage. The actuary is also to provide a reserve evaluation – but not an actuarial opinion -- in light of the need to protect the financial stability of the fund. Subsection (1)(c) does not require

rate development by a qualified actuary and does not require the fund to maintain reserves sufficient to meet the cost of risks associated with the coverage the fund will provide.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 7, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported the bill favorably with a Committee Substitute. The strike-all amendment maintained the text of the original bill with the following additions:

- Requires the self-insurance fund to use an actuary to set rates that are not excessive, not inadequate, or not discriminatory and are based on actuarial principles.
- Requires the fund to purchase excess insurance to pay claims after a certain amount is paid on the claim by the fund.
- Requires the fund to use personnel with prior insurance experience to administer the fund.

The amendment also changed the name of the self-insurance fund from nonprofit organization self-insurance fund to corporation not for profit self insurance fund to maintain consistency with existing law. The staff analysis was updated to reflect adoption of the strike-all amendment.

On April 17, 2006, the State Administration Appropriations Committee considered the bill, adopted an amendment, and reported the bill favorably. The amendment provides for payment of insurance premium tax at a reduced rate by corporation not for profit self-insurance funds. The staff analysis was updated to reflect the adoption of the amendment.

On April 20, 2006, the Commerce Council considered the bill, adopted a strike-all amendment, and reported the bill favorably with a Council Substitute. The strike-all amendment maintained the provisions in the bill and added the following provisions to the bill:

- Additional safeguards to ensure the nonprofit self-insurance fund maintains solvency and is managed appropriately.
- Clarification that independent educational institution self-insurance funds do not participate in the Florida Insurance Guaranty Association.
- Clarification that local government self-insurance funds can self-insure for property insurance.
- Preclusion of a party to a construction contract requiring another party to obtain workers' compensation insurance from self-insurance fund that is rated by a national rating organization.

The staff analysis was updated to reflect the adoption of the strike-all amendment.