

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7241 CS PCB STA 06-01 Workers' Compensation JUA  
**SPONSOR(S):** State Administration Appropriations Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2118

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	9 Y, 0 N	Rayman	Belcher
1) Insurance Committee	17 Y, 1 N, w/CS	Callaway	Cooper
2) Fiscal Council			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

The bill amends laws in section 627.311, Florida Statutes, governing the Florida Workers' Compensation Joint Underwriting Association (JUA) to provide greater accountability and oversight, to authorize additional funding mechanisms, and to require prior approval of rates. The bill requires the Financial Services Commission to select and appoint 8 of the 9 members of the JUA board of governors, including representatives of the insurance industry. The bill strengthens the Office of Insurance Regulation's (OIR) oversight over the plan of operation. The bill requires the OIR to conduct periodic market conduct examinations of the JUA. The JUA is required to obtain prior approval of its rates by the OIR before implementing the rates.

The bill requires the JUA's senior managers, officers, and board members to comply with the Code of Ethics applicable to state employees (part III of ch. 112, F.S.) relating to standards of conduct, public disclosure and reporting of financial interests to the Commission on Ethics on an annual basis. It requires current and prospective employees to submit an annual statement to the JUA attesting that no conflict of interest exists. The bill prohibits any senior manager or officer, employed on January 1, 2007, regardless of the original date of hire, and who retires or terminates from the JUA from representing another person before the JUA for a two-year period. It also prohibits employees and board members from accepting gifts or expenditures from a lobbyist or their employee under contract with the JUA or under consideration for a contract. The bill provides penalties, such as fines and loss of retirement benefits, for failure to comply with the ethical requirements. The bill provides procurement guidelines for the JUA similar to those used by state agencies. It provides guidelines for the JUA to use in the hiring of outside attorneys and precludes the hiring of an outside lobbyist, similar to state agency guidelines.

The JUA is required to use any policyholder surplus attributable to former subplan C prior to requesting funding from the State or assessing policyholders in the voluntary market for funding deficits in the former subplans, Tier One, or Tier Two. The deadline for levying "below-the-line" assessments to fund deficits in the former subplans, Tier One, or Tier Two is extended from July 1, 2007, to July 1, 2011. The JUA is required to return any state funds in excess of the amount necessary to fund deficits in former subplan D or any tier.

The bill requires all assets of the JUA be applied to pay all debts and obligations of the plan and any remaining assets to become property of the State and deposited in the Workers' Compensation Administration Trust Fund. The JUA is required to seek a letter ruling or determination from the IRS as to the JUA's eligibility as a 501(c)(3) tax-exempt organization

The bill extends the JUA's time to access the \$15 million contingency reserve in Workers' Compensation Administration Trust Fund to pay any deficit in the tiers or former subplans from July 1, 2007 until July 1, 2011 and allows the JUA to request funding from the contingency reserve to cover its 6-month cash flow, rather than its 3-month cash flow.

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:** 4/5/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Prior to the creation of the Florida Workers' Compensation Underwriting Association (JUA) in 1993, the Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market or insurer of last resort, for workers' compensation insurance coverage. The FWCIP administered by the National Council on Compensation Insurance (NCCI), provided workers' compensation insurance to employers who were required by law to maintain coverage and who were unable to purchase such insurance through the voluntary market. Deficits in the FWCIP were funded by assessments on carriers writing such coverage in the voluntary market based on their market share in the voluntary market.

In 1993, the Legislature eliminated the FWCIP and created the current JUA as a nonprofit, self-funding entity, governed by a nine-member board, to act as a residual market.<sup>1</sup> The board is comprised of three members appointed by the Financial Services Commission (FSC); two members representing the top 20 domestic insurers writing workers' compensation; two members representing the top 20 foreign insurers writing workers' compensation; one person appointed by the largest property and casualty insurance agents' association; and the Consumer Advocate for the Department of Financial Services.

The JUA is authorized to establish and use its rates at any time, but no more than two times per calendar year for any rating class. This is commonly referred to as "use and file." This method of rate regulation allows the JUA to file its rates and immediately begin using the new rates. If the Office of Insurance Regulation (OIR) subsequently determines that the rates are excessive, the JUA would be required to refund the excess premium collected. In contrast, the OIR must approve rate filings for workers' compensation insurers in the voluntary market before the rates become effective.<sup>2</sup> The standard for approving insurance rates in Florida is that the rate may not be excessive, inadequate, or unfairly discriminatory.<sup>3</sup>

##### **2003 JUA Legislation**

In 2003 and 2004, the Legislature addressed concerns regarding affordability and availability of workers' compensation insurance for small employers in the JUA. In 2003, the Legislature established subplan D in the JUA to provide coverage for generally small employers (15 or fewer employees).<sup>4</sup> Although rates in this subplan were capped at 25 percent over the voluntary market rates, the policies were subject to assessments for additional premiums to cover any deficit in the subplan. At the time, the JUA estimated that its premiums for subplan D should have been 2.57 times higher than the voluntary market premium to remain actuarially sound; hence, it projected subplan D would likely incur a deficit. As of December 31, 2003, the JUA reported a \$9.9 million deficit. In February 2004, there were approximately 2,500 policyholders in subplan D.

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<sup>1</sup> Section 627.311(5), F.S.

<sup>2</sup> Section 627.101(2), F.S.

<sup>3</sup> Sections 627.062(1) and 627.151, F.S.

<sup>4</sup> The law also provided coverage for certain charitable organizations that was capped at 10 percent over the voluntary market rates.

## **2004 JUA Legislation**

In 2004, the Legislature enacted changes to the JUA law to address the growing deficit in subplan D and provide affordable coverage for small employers that are unable to obtain coverage in the voluntary market.<sup>5</sup> The law provided a one-time appropriation of \$10 million from the Workers' Compensation Administration Trust Fund (WCATF) in the Department of Financial Services to fund any deficit in the JUA. Additionally, the bill authorized the JUA to request periodic transfers, not to exceed a total of \$15 million, from the WCATF to cover any remaining subplan D deficit, subject to approval by the Legislative Budget Commission. The Governor subsequently vetoed the \$10 million appropriation to the JUA.

The law also restructured the JUA by eliminating subplans A, B, C, and D and creating three tiers with eligibility based on an employer's loss experience, effective July 1, 2004.<sup>6</sup> Premiums in Tier One and Two were capped at 25 percent and 50 percent above the premiums of the voluntary market, respectively, until there is sufficient experience for the JUA to establish actuarially sound rates for the tiers, but no earlier than January 1, 2007. Tier Three rates were required to be actuarially sound and these policies are subject to assessments for additional premiums to cover any deficit.

The 2004 legislation allowed any deficits in Tiers One, Tier Two, or any deficit remaining from any of the former subplans to be funded by a "below-the-line" assessment on workers' compensation policies in the voluntary market until July 1, 2007. Policyholders in the voluntary market and nongovernmental self-insurance funds are subject to the assessment. The 2004 legislation also permitted the JUA to request funding through the Legislative Budget Commission for any deficit in Tier Three in the event assessments on Tier Three policyholders were inadequate to fund such a deficit. Former subplan D policyholders were not subject to assessments for the funding of any deficits.

### **Oversight and Regulation of the JUA**

The JUA, as a residual market mechanism, is exempt from many provisions of the Insurance Code that are applicable to insurers in the voluntary market, such as surplus and solvency requirements. However, the JUA and the other residual markets are subject to market conduct examinations pursuant to the OIR's authority under s. 624.3161, F.S., to determine whether the entity is complying with applicable provisions of the Insurance Code and the Workers' Compensation Law. In addition, the JUA's plan of operation and any changes to the plan are subject to the approval of the OIR pursuant to s. 627.311, F.S.

The Office of Insurance Regulation noted the JUA premiums are consistently higher than residual markets or JUAs in other states. The rates in Tier Three policies are currently set at 170 percent above the voluntary market rate.<sup>7</sup> In contrast, the OIR noted that residual markets in 21 other states charge rates with an average differential of 35 percent above the voluntary market rate.<sup>8</sup> In its *2004 Workers' Compensation Annual Report*, the OIR noted that the capped rates for Tiers One and Two expire on January 1, 2007, and then the rates are required to be actuarially sound. Since the ability to levy below-the-line assessments for Tiers One and Two expires on July 1, 2007, there will no funding mechanism for deficits in Tiers One and Two. The report notes that this will undoubtedly result in the use of very conservative actuarial assumptions to prevent deficits, which can only mean higher rates. The OIR

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<sup>5</sup> Chapter 2004-266, L.O.F.

<sup>6</sup> Tier One provides coverage for employers that have an experience-rating modification factor of less than 1.0 or, if nonrated, the employers must have a continuous three-year history of workers' compensation coverage and a good loss history. Tier Two provides coverage for new employers, employers with moderate experience (experience-rating modification factor equal to or greater than 1.0 but not greater than 1.10), and employers with good experience who do not have a continuous 3-year history of workers' compensation coverage. Tier Three provides coverage for all other employers.

<sup>7</sup> Preferred Insurance Capital Consultants, LLC, *Actuarial Review of the Florida Workers' Compensation Joint Underwriting Association*, November 22, 2004.

<sup>8</sup> Office of Insurance Regulation, *2004 Workers' Compensation Annual Report* (2005).

recommends that the Legislature extend or eliminate the July 1, 2007 expiration date of the below-the-line assessments for Tiers One and Two in order to keep these rates at a more reasonable level.

Due to concerns regarding the accountability of the JUA, the Legislature directed the Auditor General to perform an operational audit of the JUA.<sup>9</sup> In 2004, the Auditor General released the audit report, which included findings and recommendations regarding the administration, rates, and funding of the JUA.<sup>10</sup> The Auditor General's contracted actuary concluded, among other findings, that: required reserves of the JUA should be significantly less than the JUA actuary's best estimate of required reserves and the JUA could have established a lower rate for Tier Three policies. The Auditor General recommended the Legislature consider enacting legislation that expedites the requirement that rates for Tiers One and Two are determined on an actuarially sound basis. The report also recommended the Legislature consider enacting legislation addressing the use of surplus funds attributable to other subplans, such as subplan C, to fund the deficit in subplan D.

Through legislative action, the report noted that it might be possible to reduce the JUA's costs by making the JUA exempt from federal taxation. The report recommended the Legislature consider enacting legislation to qualify the JUA as a tax-exempt organization under s. 501(c) of the Internal Revenue Code. Currently, Citizens Property Insurance Corporation, the property and casualty joint underwriting association, and the Florida Automobile Joint Underwriting Association qualify as tax-exempt organizations.

### ***Funding Deficits in the JUA***

According to the JUA 2005 annual statement, the JUA recognized an overall surplus of \$8,472,401 in 2005. The surplus can be broken down by subplan and tier as follows:

<b>Subplan/Tier</b>	<b>2005 Total Surplus/(Deficit)</b>
A, B, and C	\$30,092,485
D	(\$11,834,198)
1	(\$1,467,245)
2	(\$4,823,657)
3	(\$3,494,984)

On June 30, 2004, the JUA ceased writing policies in subplans A, B, C, D when these subplans were eliminated and Tiers One, Two, and Three were created, effective July 1, 2004.

In a letter to Legislative leaders on February 28, 2006, regarding the JUA cash flow needs for Subplan D, the chair of the JUA board stated, "If the JUA's recently adjusted reserves are sufficient to meet the future obligations of Subplan D, the projected Subplan D deficit will be reduced. In turn, the \$15 million contingency reserve the Legislature established in 2004 (House Bill 1251) appears to be sufficient and probably will eliminate the need to ever consider assessments to fund the Subplan D deficit. The current revised estimate for funding Subplan D obligations through the contingency reserve is approximately \$12.9 million."<sup>11</sup>

Access to the contingency reserve is eliminated, effective January 1, 2007, by the 2004 legislation. It is anticipated the JUA will be unable to access all of the funds needed to defray the Subplan D deficit by that date because the JUA can only access the contingency reserve on a cash flow basis. Without legislative action, the only currently available source of additional funding for the Subplan D deficit is the below-the-line assessment. Individual, self-insured employers and governmental self-insurance

<sup>9</sup> Chapter 2004-266, L.O.F.

<sup>10</sup> Auditor General, State of Florida, *Operational Audit of the Florida Workers' Compensation Joint Underwriting Association, Inc.* (2004).

<sup>11</sup> Letter from Ray Neff, Chair of the JUA Board of Directors dated February 28, 2006, on file with the Insurance Committee.

funds are not subject to the assessment. Access to the surplus funds in subplan C to fund the deficits in subplan D, Tier One, Tier Two, or Tier Three would require a statutory change.

The elimination of the deficit in Tier Three relies upon the deficit being eliminated by increasing rates. At the JUA's September 20, 2005 meeting, the board considered a recommendation to increase the average premium level of Tier Three by 2 percent, based upon the current voluntary market rate levels, effective January 1, 2007.

The board of the JUA also discussed the option of eliminating deficits in Tiers One and Two by increasing the premiums in these tiers on January 1, 2007, when the rate caps are eliminated. The JUA board reviewed analysis from their actuary that indicated a need for a premium level increase of 35.4% for Tier 1 and 32.3% for Tier 2 based upon current voluntary market rates. The board also noted that the current law provides for a "below-the-line" assessment to fund such deficits.

The JUA believes the rates in effect for former subplans A, B, and C were actuarially sound and the loss reserves carried through 2004 make a reasonable provision for all unpaid loss obligations of those subplans. Thus, the JUA does not anticipate a deficit in these three subplans. The surplus balance in former subplan C is approximately \$15 million. Currently, the operation manual of the JUA prohibits the use of surplus funds related to other subplans to fund the subplan D deficit. However, the statutes do not clearly address this issue. Subplans B and C issued assessable policies. The JUA states that no policyholder assessments will be required for these subplans.<sup>12</sup>

### ***Applicability of the "Government-in-the-Sunshine Law"***

Florida's Government-in-the-Sunshine Law (The Sunshine Law) provides a right of access to governmental records and proceedings at both the state and local governmental levels. Historically, this law has been held to apply to private entities created by law or by public agencies, unless specifically exempted by law. Section 119.01, F.S., the public records laws, requires that records made or received in connection with the transaction of official business by an agency must be open for inspection in the absence of a statute exempting the record or making it confidential. The law defines the term, "agency," to include any authority, board, commission, or other separate unit of government, *created or established by law* and any other public or private agency, person, partnership, corporation, or business entity, acting on behalf of any public agency.<sup>13</sup> Section 286.011, F.S., relating to public meetings and records provides that all meetings of any board of any state agency or authority at which official acts are to be taken are open to the public unless exempted.

Citizens Property Insurance Corporation, the Florida Automobile Joint Underwriting Association, and the Florida Medical Malpractice Joint Underwriting Association, which operate as residual markets, have public record exemptions created in law. These exemptions include portions of meetings and claims and underwriting records related to ongoing litigation. This type of exemption assists residual markets during the litigation of a claim, since the release of such information could jeopardize or compromise ongoing or pending litigation. Presently, the JUA does not have statutory exemptions from the Sunshine Law.

Section 627.311(5)(b), F.S., provides that the minutes, audits, and procedures of the JUA board are subject to ch. 119, F.S. In recent years, representatives of the JUA have contended that the JUA is not statutorily subject to the "Government-in-the-Sunshine" provisions; however, the JUA "has agreed to conduct its meetings in the spirit of those requirements pursuant to regulatory requests."<sup>14</sup> The Office of the Attorney General has opined that joint underwriting associations, such as the former Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting

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<sup>12</sup> 2004 Management's Discussion and Analysis, Florida Workers' Compensation Joint Underwriting Association filed with the OIR April 1, 2005.

<sup>13</sup> Section 119.011(2), F.S.

<sup>14</sup> Florida Workers' Compensation Joint Underwriting Association, Inc. Minutes of the Board of Governors Meeting, June 22, 2005.

Association are subject to Public Records Law. The Attorney General's Office has opined that residual markets are considered "agencies" as defined in chapter 119, F.S., and are accordingly, subject to the provisions of the Government-in-the-Sunshine Law, unless specifically exempted from the provisions.<sup>15</sup> Recently, the Office of Insurance Regulation directed the JUA to amend its plan of operations to provide for meetings noticed in accordance with the Sunshine Laws and to comply promptly with all public record requests unless the information is exempt from the public record laws.<sup>16</sup>

### **Senate Banking and Insurance 2005 – 2006 Interim Report Recommendations**

The interim report (Interim Project Report 2006-101), issued November 2005, provided the following legislative recommendations to address funding, availability, affordability, accountability issues relating to the JUA:

- Authorize the JUA to use some of the estimated \$15 million surplus funds attributable to former subplan C to mitigate the estimated \$4.77 million deficit in subplan D and any deficits in Tiers One and Two that are a result of the capped rates. The capped rates in Tiers One and Two are eliminated by January 1, 2007.
- Exclude former policyholders of subplan C from any potential assessments to prevent these former policyholders from incurring any potential liability in the event the JUA's estimated surplus in these plans adversely changes.
- Consider extending the current expiration date of January 1, 2007, for accessing the \$15 million contingency reserve to allow the JUA to use any remaining funds beyond the deadline to fund the subplan D deficit.
- Consider extending or eliminating the July 1, 2007 expiration date for the below-the-line assessments for Tiers One and Two in order to keep these rates at a more reasonable level. As an alternative to extending the below-the-line assessment, the Legislature should consider providing funding from the Workers' Compensation Administrative Trust Fund through the current Legislative Budget Commission process to cover deficits attributable to capped rates in Tiers One and Two.
- Require the JUA to obtain approval of its rates prior to using the rates, as is currently required of the voluntary market insurers, to ensure that the rates are not excessive, inadequate, or unfairly discriminatory, subject to statutory requirements regarding capped rates.
- Require the JUA to return any unused state funds allocated for funding subplan D deficit to the State of Florida.
- Consider enacting legislation to assist the JUA in meeting criteria to qualify as a tax-exempt organization under s. 501(c) of the Internal Revenue Code, such as changing the board composition of the JUA so that the state appoints a majority of the board members.
- Create public records and meetings exemption for the JUA that are comparable to the exemptions provided to other JUAs. This type of exemption, which currently exists for many other residual markets, aids residual markets during the litigation of a claim since the release of such information could jeopardize or compromise ongoing or pending litigation.

### **Changes Proposed by the Bill**

Several sections of 627.311, F.S., will be affected. The bill requires the Financial Services Commission to select and appoint 8 of the 9 members of the JUA board of governors, including representatives of the insurance industry. This change will assist the JUA in meeting IRS requirements regarding state governance of the JUA. The Financial Services Commission may remove any of the 8 members it appoints. The consumer advocate is not appointed by the Financial Services Commission and cannot be removed by the Financial Services Commission.

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<sup>15</sup> AGO 94-32 and AGO 95-32.

<sup>16</sup> Letter from Kevin M. McCarty, Commissioner of the OIR to Laura Torrence, Executive Director of the JUA, dated October 12, 2005.

The bill authorizes the Office of Insurance Regulation (OIR) to withdraw approval of all or part of the JUA's plan of operation. Currently, all changes to the plan are subject to approval by the OIR. This language strengthens the OIR's oversight of the JUA and its plan of operation. The bill requires the OIR to conduct periodic market conduct examinations of the JUA.

The bill clarifies the JUA's meetings and records are subject to ch. 119 and ch. 286, F.S. Under current law, the JUA does not have any specific public records or public meetings exemptions. This clarification is consistent with Attorney General's opinions and the change to the JUA's plan of operation the OIR directed in October 2005.

Code of ethics and financial disclosure requirements contained in the bill require senior managers, officers, and board members to be subject to part III of ch. 112, F.S., including but not limited to, standards of conduct, public disclosure and reporting of financial interests to the Commission on Ethics on an annual basis. The disclosure information is also required to be filed with the OIR. Currently, senior management of state agencies is subject to these provisions. The bill requires current and prospective employees to submit an annual statement to the JUA attesting that no conflict of interest exists. It prohibits any senior manager or officer, employed on January 1, 2007, regardless of the original date of hire, and who retires or terminates from the JUA from representing another person before the JUA for a two-year period. It also prohibits JUA employees or board members receiving gifts or expenditures from lobbyists or their employees under contract or under consideration for a contract. Employees or board members that fail to comply with this provision are subject penalties, such as fines and loss of retirement benefits.

The bill includes requirements for procurement of goods and services, including competitive selection of goods and services valued at over \$25,000. Exceptions for exempted services (legal and auditing, etc.), sole-sourcing and emergency purchases are authorized for the JUA. Under current law, state agencies are generally required to procure goods and services valued over \$25,000 through competitive selection with exceptions for sole sourcing and emergency purchases. Any purchase that exceeds \$100,000 requires approval by the board of governors. Purchases that are equal to or less than \$25,000 are required to be accomplished using good purchasing practices, such as written quotations or informal quotations, whenever practical.

The bill provides guidelines and criteria for determining whether staff attorneys or outside attorneys should be used and factors to be used in selecting outside firms. These guidelines and criteria are modeled after the guidelines state agencies use. The JUA is prohibited from retaining an outside lobbyist but the JUA is authorized to employ a full-time employee of the plan to register as a lobbyist for the plan. State agencies are currently subject to this statutory requirement.

The JUA is required to fund any deficits in any of the former subplans (including subplan D), Tiers One, and Tier Two by using policyholder surplus attributable to former subplan C, or if the surplus in subplan C does not fully fund the deficit, the JUA may request accessing any remaining funds in the contingency reserve in the Workers Compensation Administration Trust Fund.

Currently, the funding mechanisms for subplan D are the contingency reserve first, and then, assessments on policyholders in the voluntary market, if the contingency reserve cannot fully fund the deficit. The funding mechanisms under current law for deficits in Tiers One and Two is through assessments on policyholders in the voluntary market until July 1, 2007. The bill extends the deadline for levying assessments to fund deficits in any tier or subplan from July 1, 2007, to July 1, 2011. The bill also makes conforming changes to the procedure the JUA uses to access moneys in the contingency reserve to allow the JUA to access moneys to pay claims for any tier or subplan, rather than only subplan D.

Deficit funding for Tier Three continues to be provided through assessments on policyholders in Tier Three.

The bill also provides that policyholders in former subplan C are not subject to any assessments attributable to deficits in subplan D and Tiers One, Two, and Three.

The bill revises the rate approval process for the JUA by requiring prior approval of its rates by the Office of Insurance Regulation before the rates can be used. Carriers in the voluntary market are presently subject to this type of rate regulation.

The bill requires the JUA to return any state funds in excess of the amount necessary to fund a deficit in subplan D or any tier.

The bill transfers two general provisions relating to plans and associations, including the JUA, that are currently found in the JUA subsection of s. 627.311, F.S. to two newly created subsections in s. 627.311, F.S. to provide greater clarity that the provisions apply to all joint underwriting associations, not just the Florida Workers' Compensation Joint Underwriting Association. One provision clarifies each joint underwriting association created in s. 627.311, F.S. is not a state agency, board, or commission, but the Florida Workers' Compensation is a political subdivision of the state for the purposes of s. 1999.183(1), F.S. (intangible personal property tax section) and is exempt from the corporate income tax. The other provision allows each joint underwriting association, including the Florida Workers' Compensation Joint Underwriting Association, to elect to pay premium taxes on premiums it collects.

Upon dissolution of the JUA, the bill requires all assets of the JUA be applied to pay all debts and obligations of the plan and any remaining assets to become property of the State and deposited in the Workers' Compensation Administration Trust Fund. This provision will also assist the JUA in its efforts to obtain tax-exempt status. The bill also requires the JUA to seek a letter ruling or determination from the IRS as to the JUA's eligibility as a 501(c) (3) tax-exempt organization.

The bill amends Section 2 of chapter 2004-266, L.O.F., appearing as a footnote to s. 627.311, F.S., to allow the JUA to evaluate cash flow needs for funding any tier or subplan deficit on a 6-month basis rather than the current 3-month basis for accessing the contingency reserve established to fund the deficit. The Workers' Compensation Administration Trust Fund provides funding for the contingency reserve. The section requires the JUA to determine cash flow needs for any tier or subplan after accessing any available policyholder surplus attributable to subplan C. The section extends the deadline for accessing funds from the contingency reserve from January 1, 2007, to January 1, 2011.

#### C. SECTION DIRECTORY:

Section 1. Amends subsections (5), (6), and (7) of s. 627.311, F.S., to provide requirements for the joint underwriting plan of insurers that operates as the association; to revise the membership of the board of governors that oversees operation of the joint underwriting plan; to provide for continuous review of the plan; to require that the market-assistance plan be periodically reviewed and updated; providing guidelines for procurement of goods and services, including legal services; to prohibit hiring an outside lobbyist; to authorize the use of surplus funds of former plan C; to extend the deadline to access contingency reserves; to authorize the board of the association to request a transfer of funds from the Workers' Compensation Administration Trust Fund under certain circumstances; to provide that the plan is subject to the same requirements for filing and approval of rating plans as workers' compensation insurers; to delete certain provisions limiting the disapproval of rates by the Office of Insurance Regulation; to require that excess funds received by the plan be returned to the state; providing applicability of specified statutes regulating ethical standards; to require annual statements by plan employees that they do not have conflicts of interest; to prescribe limits on representing persons or entities before the plan by former senior managers or officers of the plan; to prohibit any part of the plan's income from inuring to the benefit of a private individual; to prohibit employees and board members from accepting gifts or expenditures from a lobbyist under contract or considered for a contract; to provide applicability; requiring periodic comprehensive market examinations; to prescribe disposition of assets of the plan upon dissolution.



Section 2. Amends s. 2 of ch. 2004-266, Laws of Florida; appearing as a footnote to section 627.311, Florida Statutes, to extend the period for maintaining the contingency reserve and the period for projecting current cash needs; providing the contingency reserve can be used to pay any deficits in any tier or subplan; and providing the procedure for the JUA to access the contingency reserve to pay deficits.

Section 3. Provides an effective date of July 1, 2006, for the bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

Policyholders in the JUA may benefit from the change in rate approval process since the rates will be subject to prior approval by the OIR. Because the JUA will now be required to obtain approval of its rates prior to using the rates, the burden will be on the JUA to demonstrate that the rates comply with the statutory requirements established for Tiers 1, 2, and 3 and part I of ch. 627, F.S., which provides that rates not be inadequate, excessive, or discriminatory.

### D. FISCAL COMMENTS:

Given the JUA is in a surplus position, it is not statutorily required pursuant to section 627.311(5) (g), Florida Statutes, to submit a deficit elimination plan to the OIR. However, with four of its five rating plans posting deficits, the JUA indicates it will develop a plan to eliminate the individual rating plan deficits and submit said plan to the OIR. By law, the plan to eliminate the individual rating plan deficits may include several actions, including increasing premiums; applying policyholder surplus; levying assessments against policyholders; requesting OIR to levy, by order, a deficit assessment premiums charged to insureds for workers' compensation insurance by insurers as defined in s. 631.904(5), Florida Statutes; and accessing the \$15 million contingency reserve established in 2004 in the Workers' Compensation Administration Trust Fund (WCATF) for the purpose of funding deficits in subplan D.<sup>17</sup>

If the adjusted reserves are sufficient to meet the future obligations of subplan D, the projected subplan D deficit will be reduced. In turn, the \$15 million contingency reserve the Legislature established in 2004 (House Bill 1251) appears to be sufficient and probably will eliminate the need to ever consider

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<sup>17</sup> Letter from Laura Torrence, Executive Director of the JUA, to Mr. Haynes Poole, CLU, CPCU, ARe, Florida Office of Insurance Regulation, dated February 28, 2006.

assessments to fund the subplan D deficit. The current revised estimate for funding suplan D obligations through the contingency reserve is approximately \$12.9 million.<sup>18</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None noted.

#### B. RULE-MAKING AUTHORITY:

None.

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

Additional statutory changes in the laws governing the JUA will be necessary to address IRS section 501(c) tax-exempt requirements. Certain organizational and operational requirements, such as the use of assets and the distribution of assets upon dissolution, must be addressed.

It appears there is a conflict in the bill between lines 433–440 and lines 796-843. Lines 433-440 allow the JUA to use the contingency reserve in the Workers' Compensation Administration Trust Fund to pay for deficits in Tier One, Tier Two, or any of the former subplans. Lines 796-808 provide specifics about setting up the contingency reserve and how funds in the reserve are to be accessed. Lines 801-808 state “[f]or actuarial deficits projected for policyholders, based on actuarial best estimates, covered in **subplan D** prior to July 1, 2004, or **Tier One or Tier Two** . . . the department is authorized to submit a budget amendment in an amount not to exceed \$15 million for the purpose of funding deficits in the subplan or the tier .” (emphasis supplied) These lines do not authorize the \$15 million to be used for the purpose of funding deficits in subplans A, B, or C, as lines 433-440 allow. Arguably, because subplans A, B, and C are not accepting new policies and at this time do not predict deficits, the statutory language may not pose a problem. However, it is still in conflict with lines 433-440 and if subplans A, B, or C happen to incur a deficit in the future while the subplans A, B, or C are running off claims, the contingency reserve may not be able to be used to fund the deficit due to the wording of lines 801-808.

Additionally, lines 796-843 repeatedly refer to use of the contingency reserve fund to fund the **subplan or tier’s** cash need, whereas, lines 433-440 allow use of the contingency reserve to fund the cash needs of Tier One, Tier Two, or the former subplans. The contingency reserve cannot be used to fund any Tier Three deficit based on the wording in lines 433-440. Accordingly, the use of the word “tier” in lines 796-843 infers the use of the contingency reserve for Tier Three too, contrary to lines 433-440 which allow use of the reserve only to fund Tier One, Tier Two, or the former subplans (A, B,C, and D).

Insurance Committee staff recommends lines 796-843 be amended to clarify the contingency reserve can only be used to fund the deficits and cash needs of Tier One, Tier Two, or the former subplans to remove the inconsistent language, if this reflects the intent of the bill sponsor.

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<sup>18</sup> Letter from Ray Neff Chair, Chair, Board of Governors of the JUA, to House Speaker and Senate President, dated February 28, 2006, on file with the Insurance Committee.

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

On April 5, 2006, the Insurance Committee heard the bill, adopted four amendments, and reported the bill favorably with a committee substitute. The amendments:

- Changed the prohibition of JUA employees or board members receiving gifts or expenditures from lobbyists to prohibit gifts or expenditures from lobbyists or their employees under contract or under consideration for a contract.
- Made conforming changes to the procedure for the JUA to access the contingency reserve to ensure it can be accessed to offset deficits in all tiers or subplans.
- Inserted the correct name of the Workers' Compensation Joint Underwriting Association in statute and clarified the association is a corporation not for profit, rather than a nonprofit entity to conform to the name of nonprofits currently found in statute.

The staff analysis was updated to reflect the adoption of the amendments.