

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: SB 1748

INTRODUCER: Senators Gaetz, Baker, and Bennett

SUBJECT: Insurance Contracts/Workers' Compensation

DATE: March 22, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.	Oxamendi	Imhof	RI	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill prohibits a person, such as a contractor, from rejecting workers' compensation coverage from a self-insurance fund that is subject to part V of ch. 631, F.S.,¹ based upon the self-insurance fund not being rated by a nationally recognized insurance rating agency. Such coverage is required pursuant to a construction project. Currently, some builders, notably national companies, require contractors or subcontractors to secure coverage with a workers' compensation carrier rated not less than an "A" by a nationally recognized rating agency as a condition of being a vendor or receiving payment.

In Florida, workers' compensation insurance is offered by insurance companies and commercial self-insurance funds whose claims are protected by the Florida Workers' Compensation Insurance Guaranty Association in the event of insolvency. There are currently four self-insurance funds in Florida and none of these are rated. There is no current law requiring workers' compensation insurers or self-insurance funds to be rated by a rating service as a condition of being authorized to write workers' compensation insurance.

This bill creates the section 627.442, Florida Statutes.

¹ Part V, ch. 631, F.S. establishes the Florida Workers' Compensation Insurance Guaranty Association to pay claims for insolvent insurers and self-insurance fund authorized under s. 624.4621, F.S. Local government self-insurance funds created under s. 624.4622, F.S., are excluded from such coverage. However, Independent Educational Institutions Self-Insurance Funds, created under s. 624.4623, F.S., are not subject to s. 624.4621, F.S. requirements and association participation, if certain conditions are met.

II. Present Situation:

Background on Construction Contracts and Insurance Requirements

Most general contractors and subcontractors carry numerous kinds of insurance, such as workers' compensation,² commercial liability, professional liability, and automobile liability. Insurance costs are factored into the contractors' bids on a construction project. Insurance requirements for a particular construction project are included in the resulting construction contracts between the owner and general contractor, the general contractor and subcontractor, or subcontractor and subcontractor.

Although there are no laws specifically addressing the practice, a general contractor or subcontractor may require, as a part of the construction contract, a certificate of insurance or an insurance policy to be submitted by a subcontractor as a condition of work. The certificate of insurance is evidence of insurance in lieu of an actual copy of an insurance policy. At some point upon signing a construction contract, sometimes before the work begins and sometimes after, the subcontractor provides a certificate of insurance to the general contractor listing the insurance provided by the subcontractor. Generally, the general contractor reviews all documents required to be submitted under the construction contract, including the certificate of insurance, prior to paying the first invoice for each subcontractor. If an insurance policy or certificate of insurance is not submitted, or if it does not meet the standards of the general contractor requiring the policy under the contract, the contractor may prohibit the other party from working on the construction project or may withhold payment for work already done until the proper insurance is obtained and proof is submitted.

According to proponents of the bill, as part of the construction contract, some contractors, typically general contractors, require their subcontractors to secure workers' compensation insurance from an insurer that is rated by a nationally recognized insurance rating service, e.g., A.M. Best, Standard & Poor's, and Moody's.³ The contractors further require the insurer to maintain a specified rating from the rating service, e.g. "A," "A-" or better. If such workers' compensation insurance is not written by a rated insurer, and in order to overcome any insurance concern, some general contractors allow subcontractors to furnish evidence that the subcontractor has a reinsurance endorsement with a reinsurer meeting the rating requirement⁴ or to furnish financial information about the subcontractor's insurer for the general contractor to review. However, some general contractors do not allow subcontractors to provide information to overcome the insurance concern.

² Employers in the construction industry with one or more employees must provide workers' compensation coverage for the employees under s. 440.02(17)(b)2., F.S. If a subcontractor does not have workers' compensation coverage, the general contractor must provide workers' compensation benefits for any injured employee of the subcontractor.

³ A contractor may require commercial liability or professional insurance to be placed with a carrier with no less than an "A" rating.

⁴ Typically, a "cut-through" endorsement to a reinsurer is required. This is a guarantee by a reinsurance company that provides payment for losses incurred by a third party, i.e. general contractor, will be made even if the third party has no contractual arrangement with the reinsurance company.

Regulation of Self-Insurance Funds

Sections 624.460-624.488, F.S., are collectively known as the “Commercial Self-Insurers Fund Act.” 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. Self-insurance funds are created for the purpose of pooling and spreading the risks of its group members in any commercial property or casualty risk or surety insurance.

The Office of Insurance Regulation (OIR) is responsible for the regulation of group self-insurance funds created pursuant to s. 624.4621, F.S. A group self-insurance fund must comply with administrative rules adopted by the Financial Services Commission⁵ relating to reserve requirements, organization, and operation. Group self-insurance funds are required to submit annual financial statements, audited financial statements, and actuarial reports pursuant to rule 69O-190.059, F.A.C. The reserve requirements are designed to insure that the self-insurance fund maintains financial solvency. Each self-insurer fund is required to deposit with the OIR acceptable securities or post a surety bond equal to the greater of \$250,000, 10 percent of the normal premium, and 10 percent of the total loss reserves.⁶

The self-insurance funds are required to maintain a specific excess insurance with a limit of not less than \$1,000,000 or five times the policy retention, whichever is greater. The law establishes restrictions on dividend or premium refunds made by a workers’ compensation self-insurance fund.⁷ These entities are subject to market conduct examinations by the OIR. Workers’ compensation self-insurance funds are required to participate in the Florida Workers’ Compensation Insurance Guaranty Association (association).⁸ The association will assume the payment of workers’ compensation claims of self-insurance funds that become insolvent.⁹

In Florida, there are four group self-insurance funds. These self-insurance funds are: Florida Citrus, Business, and Industries Fund, Florida Retail Federation Self Insurers Fund, Florida Rural Electric Self Insurers Fund, and the FRSA Self Insurers Fund. None of these funds are rated by a national rating agency.

Financial Rating of Insurance Companies and Self-Insurance Funds

Five independent agencies – A.M. Best, Fitch, Moody’s, Standard & Poor’s, and Weiss – assess the financial strength and ongoing ability of insurers to meet obligations to policyholders. These ratings are also used by investors to evaluate and compare the performance and financial condition of companies. Various qualitative and quantitative data is used to evaluate a company. These factors may include balance sheet strength, operating performance, and business profile.¹⁰

⁵ The Financial Services Commission is comprised of the Governor and Cabinet.

⁶ Rule 69O-190.060, F.A.C.

⁷ Section 624.4621(5), F.S.

⁸ Section 624.4621(9), F.S. Pursuant to s. 631.911, F.S., the Florida Self-Insurance Fund Guaranty Association was merged into the Florida Workers’ Compensation Insurance Guaranty Association and the Florida Self-Insurance Fund Guaranty Association no longer exists. The merger was effective October 1, 1997.

⁹ Section 631.913, F.S.

¹⁰ See A.M. Best’s website: www.ambest.com.

Various documents and reports are included in the evaluation process, including but not limited to: annual reports, audited financial statements, actuarial reports, management structure, operating plan, reinsurance reports, and the history of losses and premiums.

Each agency has its own rating scale and rating standards. Each rating agency uses numbers or pluses and minuses to distinguish variations within a rating class. Rating agencies may rate an insurance company's financial strength differently. Best's ratings are reviewed formally every 12 months and continually to detect interim changes. Rating agencies also rate self-insurance funds.

III. Effect of Proposed Changes:

Section 1 prohibits a person, such as a contractor, from rejecting the workers' compensation insurance based solely on the fact the self-insurance fund that is subject to part V of ch. 631, F.S., is not rated by a nationally recognized insurance rating service. This prohibition is only effective if the self-insurance fund participates in the Florida Workers' Compensation Insurance Guaranty Association, which is required of commercial self-insurance funds created under s. 624.462, F.S.

This change in the law will assist many small contractors or subcontractors who can only secure workers' compensation coverage through a self-insurance fund that is not rated.

Under current law, workers' compensation insurers or self-insurance funds are not required to be rated by a rating service as a condition of being authorized to write workers' compensation insurance.

Section 2 provides that the bill will take effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in some expansion of the use of self-insurance funds by construction subcontractors because many small contractors or subcontractors can only secure workers' compensation coverage through a self-insurance fund that is not rated.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
