

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161 Group Self-Insurance Funds

SPONSOR(S): Brown

TIED BILLS: IDEN./SIM. BILLS: SB 2462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Insurance</u>	<u>12 Y, 0 N</u>	<u>Callaway/Topp</u>	<u>Overton</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

Section 624.4621, F.S. allows two or more employers to pool their liabilities under the workers' compensation act and form a group self-insurance fund (fund). There are four active authorized group self-insurance funds currently in Florida. All members of a self-insurance fund must have common interest. The Financial Services Commission through the Office of Insurance Regulation (OIR) has promulgated extensive rules dealing with self-insurance funds. A basic requirement is that the fund must have, and will continue to have, the financial strength to pay claims.

Under current law, if a group self-insurance fund has surplus monies for a year in excess of the amount necessary to fulfill the obligations of the fund, the surplus monies may be refunded to fund members in the form of dividends. The trustees of the fund determine whether payment of a dividend is warranted. Before a dividend can be distributed to fund members, the fund must provide financial information about the fund to the OIR and obtain approval for the dividend distribution from the OIR. The OIR has sixty days to approve the dividend distribution or the distribution is deemed approved. A fund cannot require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for a fund member to receive a dividend.

The bill amends current law relating to the process by which group self-insurance funds pay dividends to members. It does not change what type of dividends are payable and it maintains authority for the fund trustees to decide whether to pay dividends to the fund members. The bill changes current law by allowing the trustees of the fund to distribute fund dividends to fund members without prior approval of the OIR but with notification to the OIR of the dividend distribution within 10 days of the distribution. The self-insurance fund must also provide certain information and records to the OIR to support the dividend payment. The bill restricts the amount of dividends distributed to no more than the sum total of the dividends declared and recorded on the current audited financial statement of the fund. There is no restriction on dividend amount in current law. In addition, the bill prohibits the distribution of dividends to jeopardize the financial condition of the fund. Current law does not specify this restriction either. The bill maintains current law prohibiting funds to require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for the fund member to receive a dividend.

The bill is effective "upon becoming a law."

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

STORAGE NAME: h1161b.INS.doc

DATE: 3/19/2008

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:

Florida Workers' Compensation Act (ch. 440) requires employers to "secure the payment of compensation" in two ways. The first way is buying an insurance policy from an authorized insurance company, either directly or through the Joint Underwriting Association. The second way is qualifying as a self-insurer, either individually or as a member of a self-insurance fund. "Securing the payment of workers' compensation" means obtaining coverage that meets the requirements of the workers' compensation statutes and the Florida Insurance Code.

Section 624.4621, F.S. allows two or more employers to pool their liabilities under the workers' compensation act and form a group self-insurance fund (fund). There are four active authorized group self-insurance funds currently in Florida.¹

All members of a self-insurance fund must have common interest. The Financial Services Commission through the Office of Insurance Regulation (OIR) has promulgated extensive rules dealing with self-insurance funds.² A basic requirement is that the fund must have, and will continue to have, the financial strength to pay claims. Further, all self-insurance funds must join the Florida Workers' Compensation Guaranty Association (Guaranty Fund). In the event a self-insured fund becomes insolvent, the Guaranty Fund takes over handling and paying the employer's claims, thus assuring the injured worker continues to receive workers' compensation benefits. Most self-insurance funds contract with licensed service companies to adjust workers' compensation claims made against the fund.

Under current law, if a group self-insurance fund has surplus monies for a year in excess of the amount necessary to fulfill the obligations of the fund, the surplus monies may be refunded to fund members in the form of dividends. The trustees of the fund determine whether payment of a dividend is warranted. Premium dividends are only payable to fund members (employers) who paid premium to the fund during the year the profit occurred, however, investment income dividends are payable to any fund member meeting specified criteria.³ Before a dividend can be distributed to fund members, the fund must provide financial information about the fund to the OIR and obtain approval for the dividend distribution from the OIR.⁴ The OIR has sixty days to approve the dividend distribution or the distribution is deemed approved. A fund cannot require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for a fund member to receive a dividend.

The bill amends current law relating to the process by which group self-insurance funds pay dividends to members. It does not change what type of dividends are payable and it maintains authority for the fund trustees to decide whether to pay dividends to the fund members. The bill changes current law by allowing the trustees of the fund to distribute fund dividends to fund members without prior approval of the OIR but with notification to the OIR of the dividend distribution within 10 days of the distribution. The self-insurance fund must also provide certain information and records to the OIR to support the dividend payment. The bill restricts the amount of dividends distributed to no more than the sum total of the dividends declared and recorded on the current audited financial statement of the fund. There is no restriction on dividend amount in current law. In addition, the bill prohibits the distribution of

¹ <http://www.flor.com/CompanySearch/> (search for licensed group self-insurance funds last viewed on March 5, 2008).

² Rule 690-190.056 – 690-190.074, F.A.C.

³ Rule 690-190.065(2), F.A.C.

⁴ Section 624.4621(5), F.S. (2007).

dividends to jeopardize the financial condition of the fund. Current law does not specify this restriction either. The bill maintains current law prohibiting funds to require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for the fund member to receive a dividend.

Independent Educational Institution Self-Insurance Funds

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.

Education self-insurance funds must meet statutory requirements for formation and licensure 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
- having a governing body comprised entirely of independent educational institution officials.

The bill clarifies independent educational institution self-insurance funds do not participate in the Florida Insurance Guaranty Association or the Florida Workers' Compensation Insurance Guaranty Association. This is similar to current law relating to corporation not for profit self-insurance funds which provides such funds do not participate in any guaranty funds.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.4621 relating to group self-insurance funds.

Section 2: Amends s. 624.4623 relating to Independent Educational Institution Self-Insurance Funds.

Section 3: Provides an effective of "upon becoming a law".

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be a title problem with this bill. The title of the bill is "an act relating to group self insurance funds." "Group self insurance funds" are defined in statute as those formed by two or more employers to pool only workers' compensation risk among fund members. In contrast, section 2 of the bill relates to independent educational institution self-insurance funds. Independent educational institution self-insurance funds can be formed by two or more independent nonprofit colleges or universities to pool property and casualty risk, surety risk, or workers' compensation risk among fund members. Thus, independent educational institution self-insurance funds cover more types of risks than group self-insurance funds. The amendment adopted by the Committee on Insurance on March 13, 2008 resolved this issue.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2008, the Committee on Insurance heard the bill, adopted one amendment, and reported the bill favorably. The amendment removed the section of the bill relating to independent educational institution self-insurance funds.