

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4085 Workers' Compensation

SPONSOR(S): Caldwell

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Callaway	Cooper
2) Economic Affairs Committee	16 Y, 0 N	Callaway	Tinker

SUMMARY ANALYSIS

This bill repeals two statutes relating to workers' compensation. Section 627.092, F.S., relating to a Workers' Compensation Administrator position is repealed and s. 627.312(2), F.S., providing obsolete transition guidelines for policies of the Workers' Compensation Joint Underwriting Association is repealed.

Workers' Compensation Administrator

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws. Thus, this bill repeals s. 627.092, F.S.

Florida Workers' Compensation Joint Underwriting Association

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

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound. Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

In response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. The legislation also created a three-tier rating system to replace the subplan rating system.

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

The bill has no fiscal impact and is effective on July 1, 2012.

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

STORAGE NAME: h4085c.EAC

DATE: 12/8/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Administrator

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator. Moreover, the OIR is not statutorily responsible for overall monitoring and auditing of the performance of workers' compensation insurance companies. Instead, the Bureau of Monitoring and Audit within the Division of Workers' Compensation in the Department of Financial Services has this statutory responsibility.¹ The OIR's responsibility in workers' compensation is primarily to review and approve workers' compensation rates.

This bill repeals s. 627.092, F.S., because the OIR does not have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws.

Florida Workers' Compensation Joint Underwriting Association

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

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans. All three subplans had to maintain actuarially sound rates but the rate charged varied in each subplan in accordance with the risk characteristics of the employers obtaining workers' compensation insurance in the subplan. Employers in Subplan C received an assessable workers' compensation policy, meaning these employers could be assessed to pay any deficits incurred in Subplan C.² Policies in Subplans A and B were not assessable.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound.³ Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

However, in response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied.⁴ The changes made to the FWCJUA in 2004 were done to reduce and eliminate the deficit in Subplan D and to ensure future

¹ s. 440.525, F.S., authorizes the Department of Financial Services to examine and investigate workers' compensation insurers.

² A deficit occurred if the premiums taken in by the WCJUA for policies written in the subplan were not sufficient to cover the claims or reserves of the subplan. If a deficit occurred, then the employers in each subplan were charged an additional amount to cover the difference between the premiums taken in and the amount the subplan had to pay out in claims or the reserves that were required to be set aside. The additional amount was pro rated among employers in the subplan based on the premium each employer paid. There was no statutory limit on the number of times employers could be assessed or on the amount of the assessment. Although the WCJUA had a deficit in Subplan C during the subplan's existence, the Association did not assess the employers in Subplan C to cover the deficit because the Association's investment income was sufficient to cover the deficit.

³ Rates for policies in Subplan D were priced at the voluntary market rate with a surcharge not to exceed 25%, however the surcharge for those organizations exempt from federal income tax under 501(c)(3) was not to exceed 10%.

⁴ Ch. 2004-266, L.O.F.

deficits in the FWCJUA would not occur. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. Accordingly, employers in Subplan D were never assessed for the subplan's deficit.

The 2004 legislation also created a three-tier rating system to replace the subplan rating system. Statutory criteria for each tier ensured employers obtaining workers' compensation insurance in the FWCJUA were placed in tiers that better defined the employer's risk. The tier rating system also provided the WCJUA with a premium better associated with the employer's risk.⁵

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

B. SECTION DIRECTORY:

Section 1: Repeals s. 627.092, F.S., relating to the position of Workers' Compensation Administrator.

Section 2: Repeals s. 627.312(2), F.S., relating to transitional provisions for the Florida Workers' Compensation Joint Underwriting Association.

Section 3: Provides an effective date of July 1, 2012.

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.

⁵ Initially, the premiums for two of the three tiers were capped at a percentage above the voluntary market rate but by January 1, 2007, the premiums in all tiers were required to be actuarially sound.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.