

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 830

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Regulation of Corporation Not for Profit Self-insurance Funds

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			CM	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 830 expands the types of entities that are eligible to be members of a corporation not for profit self-insurance fund (fund) authorized under s. 624.4625, F.S. In 2007, the Legislature authorized two or more not-for-profit corporations to create a self-insurance fund for purposes of pooling property or casualty insurance, if each member of the fund receives at least 75 percent of its revenue from governmental sources, and other conditions are met.¹ CS/SB 830 maintains this requirement but also allows publicly supported organizations, under section 501(c)(3) of the Internal Revenue Code, receiving at least 75 percent of their support from the public to be members of the fund if the fund meets certain solvency requirements. The bill also establishes solvency requirements for the fund relating to the existing account of nonprofit members. The fund is required to obtain actuarial certification regarding the financial solvency of the existing nonprofit members account and the new publicly supported members account and submit remedial plans, if applicable, to the Office of Insurance Regulation (OIR). The OIR is authorized to order remedial action if the fund is not operating on an actuarially sound basis.

II. Present Situation:

Regulation of Self-Insurance Funds

The Office of Insurance Regulation (OIR) regulates the activities of insurers and other risk-

¹ Section 14, chapter 2007-1, Laws of Florida.

bearing entities.² As an alternative to obtaining insurance from a licensed insurance company, the current law allows certain persons to form and obtain insurance coverage from a self-insurance fund. Generally, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company.³

Section 624.4625, F.S., provides that two or more not-for-profit corporations⁴ located and organized under Florida law may form a self-insurance fund. The purpose of the self-insurance fund must be to pool and spread the property and casualty liabilities of group members. The fund must meet a number of requirements including that it:

- Has annual normal premiums in excess of \$5 million;
- Has only members who receive at least 75 percent of its revenues from local, state, or federal governmental sources;
- Uses a qualified actuary to determine actuarially sound rates and adequate reserves and submits annual certifications to the OIR;
- Maintains excess insurance coverage; and
- Submits an annual audited financial report to the OIR.

A corporation not for profit self-insurance fund that meets the requirements of this section is not an insurer for purposes of participation in or coverage by any guaranty association established under ch. 631, F.S. Further, such a self-insurance fund is not subject to s. 624.4621, F.S., and is not required to file any report with the Department of Financial Services under s. 440.38(2)(b), F.S., that is uniquely required of group self-insurer funds qualified under s. 624.4621, F.S.

Florida Insurance Trust

The Florida Insurance Trust (FIT) is a corporation not for profit self-insurance fund created in 2007. Currently, the FIT has approximately 175 participating non-profit social service entities.⁵ According to representatives of the FIT, the existing statutes provide for a potential field of membership of 9,000, of which only 175 are currently members. The FIT provides property, general liability, professional liability, employment practice liability, workers compensation, health insurance, and commercial automobile coverage to its members.

The FIT is required to ensure that all members are eligible pursuant to s. 624.4625, F.S. Any potential member is required to submit a notarized certification, signed by an officer of the member that at least 75 percent of funding comes from governmental sources as required under

² Section 20.121(3)(a)1., F.S.

³ The Commercial Self-Insurance Fund Act (ss. 624.460-624.488, F.S.), authorizes certain groups and associations to form a commercial self-insurance fund, subject to the approval of OIR. Under s. 624.4621, F.S., two or more employers may pool their workers' compensation liabilities and form a self-insurance fund for workers' compensation purposes, referred to as a group self-insurance fund. Such funds must comply with administrative rules adopted by the Financial Services Commission. Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent non-profit 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.

⁴ Section 617.1803, F.S., defines the term, "corporation not for profit" to mean a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

⁵ Florida Insurance Trust, *Florida Insurance Trust Current Membership Overview* (February 27, 2015) (on file with the Senate Committee on Banking and Insurance).

s. 624.4625, F.S. Each member must submit Form 990 for review and, if necessary, audited financial statements to confirm compliance with eligibility requirements.⁶ Recently, during an OIR inquiry into the eligibility determination process of the FIT, the FIT noted that four entities did not meet statutory eligibility requirements.⁷ According to the OIR, the FIT represented that these accounts have been nonrenewed. Based on the results of its inquiry, the OIR does not have any objections to the manner in which the FIT reviews eligibility. The OIR determined that none of the entities brought to its attention, except for the four entities referenced above, were ineligible for membership.

In the event premiums are inadequate, the trustees of the FIT, or an agency or court of competent jurisdiction may assess members of the FIT for payment of the obligations of the FIT as necessary based proportionately on premiums earned from each member. If one or more members fail to pay the assessment, the other members are liable on a proportionate basis for an additional assessment.

Section 501(c)(3) Tax Exempt Organizations

Organizations described in section 501(c)(3) of the Internal Revenue Code are commonly referred to as charitable organizations. To qualify as exempt from federal income tax, an organization must meet requirements set forth in the Internal Revenue Code and apply for recognition of an exemption. For section 501(c)(3) organizations, the law provides only limited exceptions to this requirement. Applying for recognition of an exemption results in formal IRS recognition of an organization's status, and may be preferable for that reason. To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes⁸ set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.⁹

Generally, exempt organizations, other than private foundations, that are described in section 501(c)(3) must file their annual information returns on Form 990 or 990-EZ, unless excepted from filing and must also complete Schedule A. Schedule A is used to report and substantiate information about an organization's public charity status and public support.

⁶ Office of Insurance Regulation letter to the Florida Insurance Trust (July 25, 2014) (on file with the Senate Banking and Insurance Committee).

⁷ *Id.*

⁸ The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. See [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501\(c\)\(3\)](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501(c)(3)) (last visited February 28, 2015).

⁹ See Internal Revenue Service, *Frequently Asked Questions about Applying for Tax Exemption* accessible at: <http://www.irs.gov/Charities-&-Non-Profits/Frequently-Asked-Questions-About-Applying-for-Tax-Exemption> (last visited February 28, 2015).

III. Effect of Proposed Changes:

Section 1. CS/SB 830 expands the types of entities that are eligible to be members of a corporation not-for-profit self-insurance fund authorized under s. 624.4625, F.S. Currently, two or more not-for-profit corporations may create a self-insurance fund for purposes of pooling property or casualty insurance, if each member of the fund receives at least 75 percent of its revenue from governmental sources, and other conditions are met.¹⁰

CS/SB 830 maintains this requirement and allows a publicly supported organization under section 501(c)(3) of the Internal Revenue that receive at least 75 percent of its support from a governmental unit or the public to be a member in a separate account if the fund meets certain solvency requirements. The bill limits the provisions of this section to funds authorized prior to July 1, 2015. The eligibility of the publicly supported organizations would be evidenced on the most recent Internal Revenue Service Form 990 or Form 990EZ and Schedule A.

A fund with participating members comprised of publicly supported organizations, as provided under the bill, would only be authorized if a qualified actuary had certified that the fund is able to establish and maintain total assets solely for the publicly supported organizations in an amount at least equal to or greater than the loss and loss adjustment expense reserves for such assets at the 80 percent confidence level for the fund. A fund with such participating members is not authorized to operate until the actuarial certification is submitted to the OIR. The bill prohibits a fund from including participating members comprised of publicly supported organizations into the new account until the fund is compliant with the solvency requirements.

A fund with participating members comprised of the existing nonprofit members that does not maintain a loss or loss adjustment expense reserves at least equal to or greater than 80 percent confidence level, as certified by a qualified actuary, is required to file a remedial plan with the OIR. Once the remedial plan is filed, the fund would have 5 years to submit a remedial filing with the OIR, certified by a qualified actuary indicating that the fund has a loss or loss adjustment expense reserves at the 80 percent confidence level. This remedial filing would be subject to a determination by the OIR that the fund is operating at an actuarially sound basis and does not pose a significant risk of insolvency. The OIR is authorized to issue a cease and desist order to a fund that maintains total assets in an amount less than the loss and loss adjustment expense reserves at the 70 percent confidence level as of the end of the fiscal year.

Further, the OIR is authorized to order remedial action and to issue a cease and desist order to a fund if the OIR finds that the fund is not operating on an actuarially sound basis and poses a significant risk of insolvency.

The bill would take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ Section 14, chapter 2007-1, Laws of Florida.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Indeterminate. Premiums, contributions, and assessments received by a corporation not for profit self-insurance fund are subject to the premium tax, like insurers, except that the tax rate is 1.6 percent (instead of 1.75 percent) of the gross amount of such premiums, contribution, and assessments.

B. Private Sector Impact:

The bill would allow public support organizations that are 501(c)(3) entities and receive 75 percent of their support from public sources to become members of a corporation not for profit self-insurance fund organized under s. 624.4625, F.S. By allowing such entities to self-insure as a group, in lieu of obtaining insurance from the private market, such corporations may realize a savings on insurance premiums, assuming the fund has lower expenses than private insurers or more favorable loss experience than insured plans.

According to representatives of the Florida Insurance Trust (FIT), SB 830 would allow additional classes of business including Goodwill Industries, Boys & Girls Clubs, food banks, rescue missions (homeless shelters), Salvation Army, Big Brothers Big Sisters, and YMCAs to become members. FIT estimates that the bill would increase the number of additional eligible entities by 125 to 150 entities. The FIT asserts that there are a finite number of entities for each of these classes in Florida (9 Goodwill Industries, 41 Boys & Girls Clubs, and 24 YMCAs) that would become members.

The bill provides additional solvency requirements for the fund and separate accounts for existing members and new members authorized under the bill, thereby providing protections for existing and future members of the fund. Currently, the fund must submit annual actuarial certifications on the rates and reserves and audited financial statements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.4625 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on March 23, 2015:

The CS requires a corporation not for profit self-insurance fund to meet solvency criteria before adding publicly supported organizations under 501(c)(3) of the Internal Revenue Code as members. The bill also requires such funds to meet additional solvency requirements for their existing nonprofit members within 5 years.

- B. **Amendments:**

None.