

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 Commerce and Tourism

BILL: CS/SB 830

INTRODUCER: Banking and Insurance Committee and Senator Simmons

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

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 830 expands eligibility for membership in a corporation not for profit self-insurance fund (fund) to include organizations that receive 75 percent or more of their revenue from public sources, such as retail sales or donations from the public. Currently, the not for profit self-insurance fund is statutorily limited to members that receive at least 75 percent of their revenue from government funding.¹ The bill also establishes solvency requirements for the fund, including that the fund must obtain actuarial certification regarding the financial solvency of its members and must 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-bearing entities.² As an alternative to traditional insurance from a licensed insurance company, the Legislature created various self-insurance funds to cover specific liabilities for specific groups or purposes.³ The self-insurance funds may be classified as a commercial self-insurance

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

² Section 20.121(3)(a)1., F.S.

³ See, ss. 624.460-624.488, F.S.

fund, which may cover commercial property, casualty risk, or surety insurance liabilities;⁴ a group self-insurance fund, which may cover worker's compensation liabilities;⁵ or a specific purpose self-insurance fund that is created to address the needs of a specific group, e.g. local governments or not for profit corporations. While the types of insurance provided and membership eligibility requirements vary among the different types of self-insurance funds, all members of self-insurance funds share the common characteristic that they agree by virtue of their membership in a self-insurance fund to assume the risk of loss among themselves, rather than transferring the risk in its entirety to an insurance company.⁶ Therefore, members generally see a lower annual cost for insurance in a self-insurance fund, but have a risk of higher assessment or cost in the case of a loss experienced either by themselves or a fellow member.

Not For Profit Self-Insurance Funds

Section 624.4625, F.S., governs not for profit self-insurance funds, and provides that two or more not for profit corporations⁷ located in Florida and organized under Florida law may form a self-insurance fund with the purpose of pooling and spreading the property and casualty liabilities between its group members. The operating fund must:

- Have at least \$5 million in annual normal premiums;
- Use a qualified actuary to determine an actuarially-sound rate, level of reserves, and loss adjustment expenses and submit annual certifications thereof to the OIR;
- Maintain excess insurance coverage and reserve evaluation;
- Submit to the OIR an annual audited fiscal year-end financial statement performed by an independent CPA;
- Have a governing body that consists of officers of its member not for profit corporations, which must submit an annual certification that the fund meets all statutory operating requirements;
- Be operated by Florida-licensed personnel who have at least 5 years' experience with commercial self-insurance funds or domestic insurers; and
- Use contracts that clearly delineate the fund's members' liabilities and obligations.

The members of a corporation not for profit self-insurance fund must receive at least 75 percent of their revenues from government funding.⁸

⁴ Section 624.462, F.S.

⁵ Section 624.4621, F.S.

⁶ 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.

⁷ Section 617.01401, 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.

⁸ Section 624.4625(1)(b), F.S.

A corporation not for profit self-insurance fund may not participate in or be covered by any guaranty association established under ch. 631, F.S. Additionally, these funds are neither subject to rules and regulations promulgated by the Financial Services Commission under s. 624.4621, F.S., nor required to file any report with the Department of Financial Services under s. 440.38(2)(b), F.S.

Florida Insurance Trust

The Florida Insurance Trust (FIT) is the only corporation not for profit self-insurance fund operating in Florida.⁹ Created in 2007, the FIT provides property, general liability, professional liability, employment practice liability, workers compensation, health insurance, and commercial automobile coverage to its members. According to representatives of the FIT, 9,000 not for profit social service entities are eligible for FIT membership under current law, but only 175 are currently members.¹⁰

The FIT must ensure that all members are eligible pursuant to s. 624.4625, F.S. Potential members are required to submit a notarized certification, signed by the members' corporate officer, which states that at least 75 percent of its funding comes from governmental sources as required under s. 624.4625, F.S. Each member must submit a Form 990 for review and, if necessary, audited financial statements to confirm compliance with eligibility requirements.¹¹ Recently, the FIT noted during an OIR inquiry into eligibility of the FIT's members that four entities did not meet statutory eligibility requirements because they received less than 75 percent of their funding from government sources.¹² The FIT represents that these accounts have been nonrenewed. Based on the results of its inquiry, the OIR does not object to the FIT's eligibility review process.

In the event premiums fail to cover a loss, 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 proportionately liable for an additional assessment.

Section 501(c)(3) Tax Exempt and Publicly Supported Organizations

Corporations not for profit, defined in s. 617.01401, F.S., as corporations that do not distribute any part of their income or profit to members, directors, or officers, are distinct from tax exempt organizations, and more specifically, publicly supported organizations.

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be

⁹ Florida Insurance Trust, *SB 830: Regulation of Not For Profit Self-Insurance Funds* (March 30, 2015) (on file with the Senate Commerce and Tourism Committee).

¹⁰ Florida Insurance Trust, *Florida Insurance Trust Current Membership Overview* (February 27, 2015) (on file with the Senate Commerce and Tourism Committee).

¹¹ Office of Insurance Regulation letter to the Florida Insurance Trust (July 25, 2014) (on file with the Senate Banking and Insurance Committee).

¹² *Id.*

organized and operated exclusively for exempt purposes¹³ set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.¹⁴ Only limited exceptions to this requirement for section 501(c)(3) organizations exist. Generally, exempt organizations 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.

A publicly supported organization is a tax exempt organization that meets one of the following requirements:

- The organization receives a substantial part of its support in the form of contributions from publicly supported organizations, governmental units, or the general public; or
- The organization receives one-third or less of its support from gross investment income and more than one-third of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions.¹⁵

III. Effect of Proposed Changes:

The bill expands the eligibility for membership in 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.¹⁶ The bill also allows an organization that receives at least 75 percent of its support from the public to be a member of the fund. An applicant must prove its revenue source by submission of its most recent IRS Form 990 or Form 990EZ and Schedule A.

However, funds must become a publicly supported organization under s. 501(c)(3) of the Internal Revenue Code and meet specific solvency requirements (discussed below) prior to admitting publicly supported organizations. Additionally, the fund must place this expanded class of members in an account separate from its governmentally-funded not for profit members. 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.

Only corporation not for profit self-insurance funds created prior to July 1, 2015, may expand their membership in accordance with this bill.

¹³ 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 accessed April 9, 2015).

¹⁴ 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 accessed April 9, 2015).

¹⁵ Internal Revenue Service, *Publicly Supported Charities*, (March 31, 2015) available at <http://www.irs.gov/Charities-%26-Non-Profits/Charitable-Organizations/Publicly-Supported-Charities>, (last accessed April 9, 2015).

¹⁶ Section 14, ch. 2007-1, Laws of Florida.

The bill requires corporation not for profit self-insurance funds that wish to take on publicly supported organizations to meet the following solvency requirements:

- A qualified actuary must certify that the fund is able to establish and maintain total assets solely for the publicly supported organizations in an amount equal to or greater than the loss and loss adjustment expense reserves for such assets at the 80 percent confidence level for the fund;
- The fund must submit an actuarial certification to the OIR; and
- The fund may not include publicly supported organizations in the new account until it is compliant with the solvency requirements.

A fund with participating members comprised of the existing not for profit 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 has 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 is subject to an OIR determination that the fund is operating at an actuarially sound basis and does not pose a significant risk of insolvency. The OIR may issue a cease and desist order to a fund that maintains total assets of 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 may order remedial action and 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 has an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The tax and fee impact is 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 allows public support organizations that are 501(c)(3) entities and that receive 75 percent of their support from public sources to become members of a corporation not for profit self-insurance fund. Such corporations may realize a savings on insurance premiums from membership in a not for profit self-insurance fund versus traditional insurance, 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), the bill allows 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 a finite number of entities for each of these classes in Florida (9 Goodwill Industries, 41 Boys & Girls Clubs, and 24 YMCAs) would become members.¹⁷

The bill places additional solvency requirements on the fund and requires separate accounts for existing members and new members authorized under the bill, and thereby provides 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:

Paragraph 1(b)2. of the bill requires submission of a “Form 990-EX.” No Form 990 EX for submission to the IRS exists; this should be amended to require a “Form 990-EZ.”

Additionally, the same paragraph (1(b)2.) requires that the organizing trust fund be classified as a publicly supported organization under s. 501(c)(3) of the Internal Revenue Code. However, it appears that the bill actually intends that the member organization rather than the organizing fund be a publicly supported organization.

VII. Related Issues:

None.

¹⁷ Florida Insurance Trust, *Florida Insurance Trust Current Membership Overview* (March 30, 2015) (on file with the Senate Commerce and Tourism Committee).

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.