

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 850

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Public Housing Authority Insurance

DATE: March 27, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------|
| 1. | Billmeier | Knudson | BI | Fav/CS |
| 2. | _____ | _____ | CA | _____ |
| 3. | _____ | _____ | RC | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 850 allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

Section 626.46226, F.S., governs public housing authority self-insurance funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000, per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months of the end of the fiscal year;
- Is governed by a body of public housing authority commissioners;
- Is administered by licensed knowledgeable people or business entities with required experience;

- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

II. Present Situation:

Florida's role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities). Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations, housing authorities may acquire property to be used for, or in connection with, housing projects. Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.

Current law provides for the creation of special district, city, county, and regional housing authorities. The determination of the need for a city or county housing authority may be made by the governing body of the city or county or upon the filing of a petition signed by 25 residents.¹ A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.² The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.³ Among other things, housing authorities have the power to:

- Acquire, lease, and operate housing projects;
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project;
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project;
- Invest funds held in reserves or sinking funds;
- Organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.⁴

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the federal government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the federal government. In addition, an authority is authorized to do any and all things necessary or desirable to secure the aid or cooperation of the federal government for any housing project by the housing authority. Because the federal government has exhibited an interest in shifting more resources from ownership of public housing projects to offering tenants assistance with their rental costs through the Rental Assistance Demonstration Program, it is

¹ ss. 421.04, 421.05, 421.27, F.S.

² s. 421.28, F.S.

³ s. 421.06, F.S.

⁴ s. 421.08, F.S.

anticipated that public housing authorities will organize business entities to facilitate local ownership of public housing projects.⁵

Public Housing Authority Self-Insurance Funds

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form and obtain insurance coverage from a self-insurance fund. In general, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company. Various types of self-insurance funds may be established, with varying degrees of state regulation. For certain self-insurance funds, the law requires approval and licensure by the Office of Insurance Regulation (OIR), subject to regulatory requirements that are less restrictive than for insurance companies, but which are intended to provide adequate protections against insolvency and unfair trade practices. For other funds, however, there is little or no regulatory oversight by OIR if certain criteria are met.

Types of self-insurance funds include:

- Commercial self-insurance funds;⁶
- Group self-insurance funds;⁷
- Local government self-insurance funds;⁸
- Self-insured public utilities;⁹
- Public housing authorities self-insurance funds;¹⁰
- Independent educational institution self-insurance funds;¹¹
- Corporation not for profit self-insurance funds;¹²
- Electric cooperative self-insurance fund;¹³ and
- Hospital alliances.¹⁴

Section 624.46226, F.S., governs public housing authority trust funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over \$5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than \$350,000 per loss, in retained risk;

⁵ Information on the federal RAD program can be found at <https://portal.hud.gov/hudportal/HUD?src=/RAD> (last accessed March 22, 2017).

⁶ s. 624.462, F.S.

⁷ s. 624.4621, F.S.

⁸ s. 624.4622, F.S.

⁹ s. 624.46225, F.S.

¹⁰ s. 624.46226, F.S.

¹¹ s. 624.4623, F.S.

¹² s. 624.4625, F.S.

¹³ s. 624.4626, F.S.

¹⁴ s. 395.106, F.S.

- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months of the end of the fiscal year;
- Is governed by a body of public housing authority commissioners;
- Is administered by licensed knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

If the self-insurance fund meets these requirements, then they are not considered insurers for purposes of the insurance guaranty associations or subject to the provision of the group self-insurance fund law and are relieved of any workers' compensation reporting requirement that is unique to group self insurance funds. Public housing authority self-insurance funds that fail to meet the stated requirements must operate under the more extensive regulations of the Commercial Self-Insurance Fund Act.

Other benefits of operating as a public housing authority self-insurance fund include:

- Reduced premium taxes.
- Exemption from the Florida Insurance Guaranty Association Assessment, the Florida Hurricane Catastrophe Fund assessment, and various insurance risk apportionment plans.
- Authority to purchase reinsurance.

The Florida Public Housing Authority Self Insurance Fund is the only self-insurance fund operating under s. 624.46226, F.S.¹⁵

Under current law, entities organized by a public housing authority pursuant to s. 421.08(8), F.S., cannot purchase insurance through a public housing authority self-insurance fund because participation in such funds is limited to public housing authorities.

III. Effect of Proposed Changes:

The bill allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁵ <https://www.fphasif.com/> (last accessed March 22, 2017).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.46226 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 on March 27, 2017:

The CS clarifies that the entity formed pursuant to s. 421.08(8), F.S., may only participate in the self-insurance fund to insure risks related to public housing.

B. Amendments:

None.