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HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1703 (PCB FS 97-04)

RELATING TO: The Special Disability Trust Fund

SPONSOR(S): Committee on Financial Services, Representative Safley & others

STATUTE(S) AFFECTED: Section 440.49, F.S.

COMPANION BILL(S): SB 1464 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 13 NAYS 0
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I. SUMMARY:

The Special Disability Trust Fund (the “Fund”) is the state’s second injury fund. The Fund has approximately 100,000 pending Notices of Claim. A recent actuarial analysis estimated the Fund liability to be $1.65 billion (discounted) and $4.05 billion (undiscounted).

This bill terminates the Fund, prospectively, effective with accidents occurring on or after January 1, 1998.

All Notices of Claim filed or re-filed on or after July 1, 1997, must be accompanied by a $250 notification fee. A Proof of Claim, and a $1,000 fee, must be filed within 1 year of the filing date of all Notices of Claim, or the claim will be barred. Notices of Claim which are in the system prior to June 30, 1997, and for which no Proof of Claim has been filed, may be withdrawn and refiled at a later date providing the refiling is within the time period specified in s. 440.49(7), F.S.

The $250 notification fee will be waived if the Notice of Claim and the Proof of Claim are submitted together as a single filing. The Special Disability Trust Fund shall pay the accepted claims on a first-in, first-out basis. Fees are waived for an insurer in receivership proceedings.

If the Special Disability Trust Fund accepts the claim for reimbursement, the Fund will reimburse $500 of the $1,000 fee at the time the initial reimbursement on the claim is paid. All fees will be utilized for cost recovery in Fund claims handling, to assist in the retirement of the Fund’s liability, and to help off-set reduced revenues resulting from imposition of a capped, maximum assessment rate. The assessment rate is capped at 4.52 percent.

Current methods for reporting anticipated recoveries from the SDTF on financial statements will be phased out over time. Uniform methods for reporting, and disclosures, are required.

The Florida Department of Labor and Employment Security shall provide an annual report to the Legislature which reflects the current status of the Special Disability Trust Fund.

This bill is expected to have a positive, though indeterminate, fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Special Disability Trust Fund (the "Fund") was legislatively created in 1955, as an incentive for employers to hire workers with a pre-existing physical impairment. Specifically, the Fund is aimed at encouraging the employment of previously injured employees, decreasing the litigation between insurers on apportionment issues, and protecting employers from excess liability. Such impairments were thought to make such persons less employable due to the likelihood of subsequent injuries which might exacerbate the prior condition or worsen the overall physical condition of the worker, the totality of which the employer was liable under the workers' compensation statute. The Fund is established in Chapter 440, F.S., the workers' compensation law.

Administrative responsibility for the Fund is delegated to the Division of Workers' Compensation of the Florida Department of Labor and Employment Security. There are several basic requirements for qualifying for a Fund reimbursement. These are:

1. A Qualifying Pre-existing Permanent Impairment: Florida law recognizes twenty-six qualifying conditions which are specified in s. 440.49 (6)(a), F.S.
2. Employer Knowledge of the Pre-existing Condition: Section 440.49 (6)(a), F.S., requires the employer have knowledge of the qualifying pre-existing condition prior to the occurrence of the subsequent injury or occupational disease.
3. Subsequent Permanent Impairment: The Special Disability Trust Fund statute language requires a permanent impairment resulting from the subsequent injury.
4. Subsequent Injury "merges" with Pre-existing Permanent Impairment: A statutory definition of "merger" is found in s. 440.49 (2)(c), F.S.
5. Timeliness of Filed Claim: Section 440.49 (2), F.S., requires a claim (Notice of Claim) against the Fund be made within two years of the last date of maximum medical improvement or within two years after the date of first payment of permanent disability payments, whichever is later.
6. $10,000 Deductible: All claims must have met a $10,000 deductible threshold.

A Notice of Claim is the notification that an employer/insurer intends to file a Fund claim. By law, it must be filed within 2 years after (a) the date the employee reaches maximum medical improvement, or (b) the date of the first payment for compensation, or the right to reimbursement is barred. Once the Notice of Claim is filed, there is no time limitation whereby a Proof of Claim must be filed. The Proof of Claim contains the factual documentation required to establish the claim's reimbursement eligibility. Once a complete Proof of Claim is received, the Division is required to review and either accept or deny payments within 120 days. The statute provides for timely hearings on controverted claims. Because of the inherent "tail" (time lag between injury, benefits settlement, and payment of all awarded benefits) in workers' compensation and the absence of a time bar between the Notice of Claim and Proof of Claim, there are over 100,000 pending Notices of Claims which may or may not ever become an actual claim.

It is important to note that injured workers receive their benefits. The Fund was created, in part, to reimburse self-insured employers and carriers for the costs incurred as a result of a worker's second injury.

Self-insurers, carriers, and third party administrators (which may include law firms) reportedly routinely submit Notices of Claim soon after an injury has occurred, often well before an injury has been evaluated. In the past few years, a cottage industry has grown up around filing Fund claims on behalf of carriers.

The Special Disability Trust Fund is funded through annual assessments imposed on workers' compensation insurers which are based upon the pro rata share of premiums written by these insurers. The assessment formula is statutorily set forth in s. 440.49 (9)(b), F.S. The assessment rate has been rising annually. For the past two fiscal years, the Legislature has capped the assessment rate at 4.52 percent. Without this cap, the Division of Workers' Compensation had predicted the assessment rate would rise to over 7% for FY 1995-96 and double digits for FY 1996-97. The current cap expires on June 30, 1997.

Revenues deposited into the Special Disability Trust Fund are subject to the General Revenue deduction of 7 percent taken against most trust funds pursuant to s. 215.20, F.S.

In 1995, the Division of Workers' Compensation contracted with the firm of Milliman & Robertson, Inc., in an effort to quantify the Fund's liability. In their initial report dated January 12, 1996, an actuarial determination was made of the total dollar amount of the Fund's liability for future payments for expenses on all claims which had been approved by the Fund through June 30, 1995. In their follow-up report dated January 13, 1997, Milliman & Robertson, Inc. estimated the total dollar amount of the Fund's liability for accidents occurring on or prior to September 30, 1996, to be approximately $4.05 billion, undiscounted. This includes $133 million of payments accepted but not paid, $2.25 billion on known claims, and $1.7 billion on claims incurred but not reported (IBNR). The discounted liability (assuming 6% interest per year) was estimated to be $1.65 billion.

The January 13, 1997, Milliman & Robertson report estimates the total liability for new accidents and the number of claims accepted for payment as follows:

Date of Accident	$ Liability	Claims
October 1996-June 1997	$ 220.0 million	1,592
Fiscal Year 1997-1998	$ 232.0 million	2,125
Fiscal Year 1998-1999	$ 244.0 million	2,121
Fiscal Year 1999-2000	$ 256.0 million	2,114
Fiscal Year 2000-2001	$ 267.0 million	2,107

The study proposed that if the Fund continued to accept claims and the assessment was kept at the 4.52 percent rate, its backlog of claims would steadily increase for approximately 18 years, and it would take 32 years before claims could begin to be paid on a current basis. By contrast, closing the Fund, effective January 1, 1998, and keeping the assessment rate at 4.52 percent, the Fund could begin to pay on a current basis in approximately 10 years.

B. EFFECT OF PROPOSED CHANGES:

This bill terminates the Fund, prospectively, effective with accidents occurring on or after January 1, 1998. The assessment rate is capped at 4.52 percent.

A Proof of Claim along with a $1,000 fee, must be filed for each Notice of Claim on file on or before June 30, 1997, within 1 year from the date the Notice of Claim was filed, or the claim will be barred. Such claims may be withdrawn and re-filed at a later date providing the date of re-filing is within the time period provided in s. 440.49(7), F.S. (the later date of either: 2 years after MMI has been reached; or, within 2 years after the first payment of permanent total disability).

All Notices of Claim filed or re-filed on or after July 1, 1997, must be accompanied by a $250 notification fee. A Proof of Claim, and a $1,000 Proof of Claim fee, must be filed within 1 year of the filing date of all Notices of Claim filed on or after July 1, 1997, or the claim will be barred. The $250 notification fee will be waived if the Notice of Claim and the Proof of Claim are submitted together as a single filing. The Special Disability Trust Fund shall pay all accepted claims on a first-in, first-out basis reflecting the order in which the reimbursement requests are received.

For Proofs of Claim submitted for Notices of Claims which are in the system prior to June 30, 1997, the SDTF shall have 120 days to serve notice of acceptance of the claim for reimbursement. For Proofs of Claim submitted for Notices of Claim which are filed on or after July 1, 1997, the SDTF shall have 180 days to serve notice of acceptance of the claim for reimbursement.

If the Special Disability Trust Fund accepts the claim for reimbursement, the Fund will reimburse $500 of the $1,000 Proof of Claim fee at the time the initial reimbursement on the claim is paid. All fees will be utilized for cost recovery in Fund claims handling, to assist in the retirement of the Fund's liability, and to help off-set reduced revenues from imposition of a capped, maximum assessment rate. All fees are waived for an insurer which is in receivership proceedings.

The Florida Department of Labor and Employment Security shall provide an annual report to the Legislature which reflects the current status of the Special Disability Trust Fund. The report shall, among other things, update the projected change in Fund liability, total the number of claims processed and paid, and report on the fee revenues refunded and applied to pay down the liability of the Fund.

Insurers reporting anticipated recoveries from the SDTF in financial statements may only use such in the determination of loss reserves, and may not be reflected in the financial statements in any other manner. Starting in 1999, and continuing through 2002, recording anticipated recoveries from the SDTF on the basis of anything other than claims accepted for payment or claims paid, will be phased out. Beginning in 1998, each insurer is required to disclose in the notes to financial statements any credit in loss reserves taken for anticipated recoveries from the SDTF.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

A Proof of Claim, along with a $1,000 fee, must be filed for each Notice of Claim on file on or before June 30, 1997, within 1 year from the date the Notice of Claim was filed, or the claim will be barred.

All Notices of Claim filed or re-filed on or after July 1, 1997, must be accompanied by a $250 notification fee. A Proof of Claim, and a $1,000 fee, must be filed within 1 year of the filing date of all Notices of Claim filed on or after July 1, 1997, or the claim will be barred. The $250 notification fee will be waived if the Notice of Claim and the Proof of Claim are submitted together as a single filing.

The Department of Labor and Employment Security may experience an increased workload given the potential influx of Proofs of Claim, and withdrawals of Notices of Claim.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

None.

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

Yes. Proofs of Claim filed for Notices of Claim in the system as of June 30, 1997, must be accompanied by a $1,000 Proof of Claim fee.

Notices of Claim filed on or after July 1, 1997 must be accompanied by a $250 notification fee. Proofs of Claim filed for Notices of Claim which are filed after July 1, 1997, must be accompanied by a $1,000 Proof of Claim fee.

The bill provides for a refund of $500 of the proof of claim fee, and a waiver of the $250 notification fee, under certain circumstances.

c. Does the bill reduce total taxes, both rates and revenues?

Although not a tax, the assessment rate is capped at 4.52 percent.

d. Does the bill reduce total fees, both rates and revenues?

The capped rate will keep assessment levels constant, and likely avoid a two or three-fold increase in the rate over the next several years were it allowed to float. At such time as the Fund is current (estimated to be within 10 years), whereby the assessment is expected to decrease as claims are run-off.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. In addition to assessments, those filing the claims for reimbursement must also pay a notification fee with their Notice of Claim, and a Proof of Claim fee.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

No.

(2) service providers?

No.

(3) government employees/agencies?

No.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsections (7), (9), and (11) of s. 440.49, Florida Statutes, providing for procedures and requirements for reimbursement; providing for barring claims for reimbursement under certain circumstances; providing for a maximum fund assessment rate; providing for certain fees and refunds under certain circumstances; providing for an annual report; providing for limitation of liability of the Special Disability Trust Fund under certain circumstances.

Section 2: Adds subsection (4) to s. 625.091, F.S., providing for accounting for anticipated recoveries under the Special Disability Trust Fund; providing for requirement that insurers identify anticipated recoveries from the fund.

Section 3 provides an effective date.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects</u>:

Expenditures:

Workload: There may be a indeterminate negative effect upon the Special Disability Trust Fund based upon the anticipated costs to the Department of Labor and Employment Security to hire additional employees on a temporary basis to help process the initial influx of withdrawal of claims, and increased number of Proof of Claim filings.

The total, unfunded liability of the Special Disability Trust Fund may be positively affected by an indeterminate number of claims which may be barred by operation of the statute or inaction by the claimant.

2. Recurring Effects:

There are currently approximately 100,000 Notices of Claim on file with the Special Disability Trust Fund. According to the Department of Labor and Employment Security, the Fund currently has the resources to process approximately 3500 Proofs of Claim in a year.

Revenues:

Fees: There may be an indeterminate, yet positive effect upon the Special Disability Trust Fund for FY 97/98, FY 98/99, and beyond, based on the required submission of a $1,000 per Proof of Claim fee for all Notices of Claim filed or re-filed. The Fund may also be positively effected by the required submission of a $250 per Notice of Claim fee for all notices filed after July 1, 1998.

These revenue sources will be offset by the following two contingencies: (a) all claims which are ultimately accepted for payment by the Fund will receive a $500 refund at the time the initial reimbursement on the claim is paid; and, (b) the notification fee will be waived if a Notice of Claim and Proof of Claim are submitted together as a single filing.

Assessments: There may be an indeterminate, modestly negative effect upon the General Revenue Fund for FY 97/98, FY 98/99, and beyond, based on the assessment cap which may not exceed 4.52 percent. A seven percent service fee is levied against SDTF assessments and placed in the General Revenue Fund. For example, if the SDTF assessment rate were permitted to “float” to 7 percent, the difference between the capped rate and the 7 percent rate - 2.5 percent - would be included in the General Revenue Fund.

Expenditures:

Workload: There may be an indeterminate, yet negative effect on the Department of Labor and Employment Security, Division of Workers’ Compensation for FY 97/98, 98/99, and beyond, for costs associated with an increased workload due to the anticipated influx of withdrawals of Notices of Claim, and for processing, evaluating, and tracking filed or re-filed Notices of Claim and Proofs of Claim. There may likely be a workload increase in accounting services for processing and tracking two separate fees, a refund option, and a fee waiver.

The Department of Labor and Employment Security, Division of Workers’ Compensation may be required to hire additional staff on a temporary basis, and secure additional physical space, with furnishings and electronic equipment, to efficiently track, process, and retire existing and new claims.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   See III.A., above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   Local governments, like other self-insurers, would experience reduced Fund's assessments resulting from the rate cap. However, if the local governments are awaiting reimbursement from the Fund, such reimbursements may be delayed due to a reduction in Fund's revenues to satisfy the claims.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Those filing Proofs of Claim for Notices of Claims in the system prior to June 30, 1997, must submit a $1,000 proof of claim fee. Those filing or re-filing Notices of Claims on or after July 1, 1997, must submit a $250 notification fee. Proofs of Claim with a $1,000 proof of claim fee must be filed within 1 year of the filing date of Notices of Claim. Currently, there is no fee for filing Notices or Proofs of Claim. Abolishment of the Fund may lead to an increase in workers' compensation rates.

2. Direct Private Sector Benefits:

   The $250 notification fee will be waived if Notices of Claim and Proofs of Claim are submitted together as a single filing. Furthermore, if the Fund accepts a claim for payment, it will refund $500 of the $1,000 fee at the time the initial reimbursement on the claim is paid.

   The assessment rate for the Fund will be capped at a maximum of 4.52 percent, providing a stable and consistent assessment rate until such time as the Fund begins paying claims on a current basis, whereby the assessment rate is projected to decrease. Over time, when the Fund's deficit is retired and claims are being payed on a current basis, the assessment rate itself may decrease, resulting in decreased workers' compensation rates.

3. Effects on Competition, Private Enterprise and Employment Markets:

Abolishment of the Fund may lead to an increase in workers' compensation rates. Abolishment of the Fund may result in civil litigation between carriers over apportionment of claims arising from second injuries. Uniform requirements for recording anticipated recoveries from the SDTF may eventually result in a stronger, more actuarially sound environment for the insurance industry as a whole.

D. FISCAL COMMENTS:

According to the January 13, 1997 Milliman & Robertson actuarial report, the total dollar liability of the Fund's for all future payments required on accidents occurring on or prior to 6/30/96 is approximately $4.05 billion, undiscounted. This includes $105 million of payments accepted but not paid, $2.25 billion on known claims, and $1.7 billion on claims that Milliman & Robertson has estimated will be filed and accepted in the future, i.e. incurred but not reported (IBNR). The discounted liability (assuming 6% interest per year) is estimated to be $1.65 billion.

The assessment cap imposed by the bill will reduce the amount of future revenues that would otherwise flow into the Fund were the rates allowed to float. By doing so, the General Revenue deduction applied to the Fund pursuant to s. 215.20, F.S., may be applied to a smaller base and thereby, over time, generate fewer dollars for the General Revenue Fund.

The January 13, 1997, Milliman & Robertson report estimates the total liability for new accidents and the number of claims accepted for payment as follows:

Date of Accident	$ Liability	Accepted Claims
October 1996-June 1997	$ 220.0 million	1592
Fiscal Year 1997-1998	$ 232.0 million	2125
Fiscal Year 1998-1999	$ 244.0 million	2121
Fiscal Year 1999-2000	$ 256.0 million	2114
Fiscal Year 2000-2001	$ 267.0 million	2107

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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