SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1638

SPONSOR: Senator Horne

SUBJECT: Workers' Compensation

DATE: April 25, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.	White	Wilson	GO	Favorable
3.				
4.				
5.				

I. Summary:

The Florida Workers' Compensation Joint Underwriting Association, Inc., (FWCJUA) is the insurer of last resort, or residual market for workers' compensation coverage in Florida. The FWCJUA provides coverage to applicants who are unable to obtain coverage through the voluntary market. Many smaller employers and employers that have experienced a high incident of workplace injuries obtain insurance through the FWCJUA.

The bill would require the Workers' Compensation Administrative Trust to transfer an amount, not to exceed $1.5 million, to the FWCJUA to cover fixed operating costs, if the gross premiums of the FWCJUA are less than $30 million for the preceding year. The bill also authorizes the FWCJUA to use policyholder surplus attributable to any year to fund a deficit in the plan.

This bill substantially amends the following sections of the Florida Statutes: 440.50, 440.51, and 627.311.

II. Present Situation:

Effective January 1, 1994, the Florida Workers' Compensation Joint Underwriting Association, Inc. (FWCJUA), was created to provide workers' compensation and employer's liability insurance to persons who are unable to purchase such insurance through the voluntary market. The FWCJUA replaced the Florida Workers' Compensation Insurance Plan, which assessed workers' compensation insurers for the deficits in the plan.

The FWCJUA is governed by a 13-member board of governors comprised of members appointed by and representing the Insurance Commissioner, Department of Insurance Consumer Advocate, domestic insurers, foreign insurers, and property and casualty insurance agents. Each member serves a 4-year term.

Under the provisions of s. 627.311, F.S., the FWCJUA must have actuarially sound rates that assure that the plan is self-supporting. In the event a deficit occurs, the plan must provide the Department of Insurance with a program to eliminate the deficit within a reasonable time. The FWCJUA is authorized to fund deficits through increased premiums charged to insureds of the plan for subsequent years and through assessments on insureds in the plan, if the plan uses assessable policies. As of March 2000, no assessments have been made. Any premiums or assessments that exceed the amount necessary to fund the projected ultimate incurred losses and expenses of the plan that have not been paid to insureds in conjunction with loss prevention or dividends are required to be retained by the plan for future years.

According to the Department of Insurance, the average premium for a policy obtained through the FWCJUA is 4.8 times higher than a policy obtained in the voluntary market. As of December 31, 1999, the average, annual premium in the FWCJUA was approximately $8,300. In the event the FWCJUA is unable to obtain additional funding or is unable to reduce fixed operating costs any further, the policyholders of the FWCJUA could be subject to increased premiums or an assessment. Since the FWCJUA is the insurer of last resort, a policyholder is already paying higher premiums than a policyholder in the voluntary market and such an assessment could be substantial and unaffordable for a policyholder in the FWCJUA.

During the last several years, the market share, premiums written, and policies issued by the FWCJUA have decreased dramatically, due to a stable economy and an increase in the number of carriers in the voluntary market. The total dollar amount of gross written premium has declined from approximately $78 million in 1995 to $8.1 million, as of December 31, 1999. The amount of gross written premium has been below $30 million since 1997. The market share of the FWCJUA has decreased from 8 percent in 1994 to less than 1 percent in 1999. The number of policies in effect for the same period has dropped from approximately 14,000 to 623. However, fixed or overhead (personnel, telecommunications, rent, actuarial and accounting) costs have not significantly decreased in recent years. The following table reflects recent trends in underwriting gains and losses, operating gains and losses, surplus, and policies in force for the period of 1994-1999 that was provided by the FWCJUA.

	1999	1998	1997	1996	1995
Rate Differential from 1993 Assigned Risk Rates	3.141	2.293	1.771	1.653	1.500
Net Underwriting Gain/ (Loss)	$6,794,454	$13,466,653	($2,636,295)	($783,968)	($117,379)
Net Operating Gain/ (Loss)	$9,850,630	$16,741,529	$1,087,022	$4,746,539	($8,938,682)
Surplus/ (Deficit)	$1,279,245	($7,984,241)	($22,077,945)	($23,009,896)	($32,882,286)
Policies Issued that Year	623	1,427	3,171	6,654	10,339

During the period of 1995 - 1999, the FWCJUA has eliminated a $32.9 million deficit and has produced net underwriting gains of $6.8 million and $13.5 million for 1999 and 1998, respectively. For 1998 and 1999, the FWCJUA has experience net operating gains of

$16.7 million and $9.9 million, respectively. The rate differential from the 1993 assigned risk plan has increased from 1.500 to 3.141 during the period of 1995 - 1999.

For the period of 1994 - 1998, the FWCJUA had experienced a deficit in the range of approximately $22 - 8 million, respectively. For 1999, the FWCJUA reported a surplus of $1.3 million. The amount of general and administrative expenses of the FWCJUA for the period of 1995 - 1999 has ranged from $1.7 million to $1.2 million. Personnel (salaries, benefits, incentives, taxes, training) expenses as a percentage of the general and administrative expenses for 1999 and 1998 were 56 percent and 54 percent, respectively. Prior to 1995, NCCI administered the plan and the general and administrative expenses were $2.9 million, the total amount of written premium was $73 million, and approximately 14,000 policies were issued in 1994.

The Division of Workers' Compensation is primarily funded through assessments on insurance companies, self-insurance funds, assessable mutual companies, the Workers' Compensation Joint Underwriting Association, and self-insurers. The assessments are deposited into the Workers' Compensation Administrative Trust Fund. Entities are also subject to a 4.52 percent assessment that is used to finance the Special Disability Trust Fund. The Workers' Compensation Administration Trust Fund assessment on net premiums collected, or net premiums imputed for self-insurers, may not exceed 4 percent, under the provisions of s. 440.51, F.S. The assessment rate for fiscal year 1999-2000 is 3.48 percent for the Workers' Compensation Administration Trust Fund.

The assessment used to the fund the Workers' Compensation Administration Trust Fund is based on the total budget of the Division of Workers' Compensation (as well as the portions of the budget for the Division of Fraud within the Department of Insurance, the program area in the Agency for Health Care Administration that regulates managed care arrangements, and the Office of the Judges of Compensation Claims).

Insurance companies receive a dollar-for-dollar credit against the insurance premium tax equal to the amount of their assessments paid into the Workers' Compensation Administration Trust Fund.[1] The insurance premium tax, equal to 1.75 percent of each insurer's gross premiums, is collected by the Department of Revenue and goes primarily into the General Revenue Fund.

III. Effect of Proposed Changes:

Section 1. Amends subsection (1) of s. 440.50, F.S., to expand the list of obligations of the Workers' Compensation Administration Trust Fund to include the funding of the fixed operating expenses of the FWCJUA.

Section 2. Subsections (13) and (14) are added to s. 440.51, F.S., to define "plan" as the workers' compensation joint underwriting plan. "Fixed operating expenses" are defined to mean the expenses of the plan, not to exceed $1.5 million, which are directly related to the plan's operation and administration but which do not vary in direct relationship to the amount of premium written by the plan and does not include loss adjustment premiums.

[1] Section 624.509(6), F.S.

The plan is required to report to the Division of Workers' Compensation, prior to July 1 of each year, the plan's gross written premiums for the preceding year. In the event the plan's gross written premium are less than $30 million, the division is required to transfer to the plan an amount equal to the plan's fixed operating expenses for the prior year.

Section 3. Subsection (4) of s. 627.411, F.S., is amended to allow the FWCJUA to fund deficits through the use of policyholder surplus attributable to any policy year.

Section 4. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

If the Workers' Compensation Administration Trust Fund assessment rate increases due to funding the FWCJUA, causing insurers to pay higher assessments, insurers would also be entitled to larger credits against the insurance premium tax. The fiscal impact of the higher assessment payments on the insurance premium tax is indeterminate because of the mix of business written by different insurers.

Those insurers that write only workers' compensation insurance generally do not pay premium tax because the Workers' Compensation Administration Trust Fund assessment of 3.48 percent on workers' compensation premiums far exceeds the insurance premium tax of 1.75 percent on the gross premiums of all of the insurer's lines of insurance. However, for insurers that write multiple lines of insurance, the Workers' Compensation Administration Trust Fund tax credit may not entirely eliminate the insurer's premium tax liability. For those insurers, any increase in Workers' Compensation Administration Trust Fund assessments would result in larger premium tax credits and lower premium tax revenues.

The funding of the FWCJUA by the trust fund would increase the Division's budget, and would increase assessments levied on insurers.

B. Private Sector Impact:

Any increases in the assessments against insurers for the Workers' Compensation Trust Fund would be reflected in the workers' compensation rates. A $1.5 million increase in funding for the trust fund would increase the assessment by less than 1 percent.

By subsidizing the fixed operating expenses of the FWCJUA, by up to $1.5 million, premiums charged to policyholders would be reduced.

C. Government Sector Impact:

In order to continue funding at the current level, the Division of Workers' Compensation may find it necessary to raise the Workers' Compensation Administrative Trust Fund assessment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.