

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 Banking and Insurance Committee

BILL: CS/SB 2462

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Group Self-Insurance Funds

DATE: April 1, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.			EA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Section 624.4621, F.S. allows two or more employers to pool their liabilities under the workers' compensation act and form a group self-insurance fund (fund). The Office of Insurance Regulation (OIR) regulates these funds, which are subject to requirements primarily intended to address solvency and financial ability to pay claims. There are four active authorized group self-insurance funds in Florida.

The bill amends current law relating to the process by which group self-insurance funds pay dividends to members. The bill allows the trustees of a fund, established prior to June 1, 2008, to distribute dividends to fund members without prior approval of the OIR; however, the fund must notify the OIR within 10 days after the dividend distribution and provide certain information to support the dividend payment. The bill limits the amount of the dividend and prohibits the distribution of dividends if it jeopardizes the financial condition of the fund. Group self-insurance funds established after June 1, 2008 are required to obtain prior approval of the OIR for the distribution of dividends for the first 7 years of operation.

This bill substantially amends the following section of the Florida Statutes: 624.462.

II. Present Situation:

The Florida Workers' Compensation Act (ch. 440) requires employers to secure the payment of compensation by buying an insurance policy or qualifying as a self-insurer, individually or as a member of a self-insurance fund.¹

Regulation of Self-Insurance Funds

Sections 624.460-624.488, F.S., are collectively known as the "Commercial Self-Insurers Fund Act." Under s. 624.4621, F.S., two or more employers may pool their workers' compensation liabilities and form a group self-insurance fund for workers' compensation purposes. Self-insurance funds are created for the purpose of pooling and spreading the risks of its group members in any commercial property or casualty risk or surety insurance. In Florida, the four group self-insurance funds are Florida Citrus, Business, and Industries Fund, Florida Retail Federation Self Insurers Fund, Florida Rural Electric Self Insurers Fund, and the FRSA Self Insurers Fund.

The OIR is responsible for the regulation of group self-insurance funds created pursuant to s. 624.4621, F.S. A group self-insurance fund must comply with administrative rules adopted by the Financial Services Commission² relating to reserve requirements, organization, and operation. Group self-insurance funds are required to submit annual financial statements, audited financial statements, and actuarial reports pursuant to rule 69O-190.059, F.A.C. Workers' compensation self-insurance funds are required to participate in the Florida Workers' Compensation Insurance Guaranty Association (association).³ The association will assume the payment of workers' compensation claims of self-insurance funds that become insolvent.⁴

In addition, the law establishes restrictions on dividend or premium refunds made by a workers' compensation self-insurance fund.⁵ Under current law, if a group self-insurance fund has surplus monies for a year in excess of the amount necessary to fulfill the obligations of the fund, the fund may refund surplus monies to fund members in the form of dividends. The trustees of the fund determine whether payment of a dividend is warranted. Premium dividends are only payable to fund members (employers) who paid premium to the fund during the year the profit occurred, however, investment income dividends are payable to any fund member meeting specified criteria.⁶ Before the fund can distribute a dividend to fund members, the fund must provide financial information to the OIR and obtain approval for the dividend distribution.⁷ The OIR has 60 days to approve the dividend distribution or the distribution is deemed approved.

¹ Section 440.381, F.S.

² The Financial Services Commission is comprised of the Governor and Cabinet.

³ Section 624.4621(9), F.S. Pursuant to s. 631.911, F.S., the Florida Self-Insurance Fund Guaranty Association was merged into the Florida Workers' Compensation Insurance Guaranty Association and the Florida Self-Insurance Fund Guaranty Association no longer exists. The merger was effective October 1, 1997.

⁴ Section 631.913, F.S.

⁵ Section 624.4621(5), F.S.

⁶ Rule 69O-190.065(2), F.A.C.

⁷ Section 624.4621(5), F.S. (2007).

III. Effect of Proposed Changes:

Section 1 amends s. 624.4621, F.S., by revising the current process for the distribution and payment of dividends to fund members. The bill allows the trustees of a fund to distribute fund dividends to fund members without obtaining prior approval of the OIR if the fund was established before June 1, 2008. Under current law, the OIR has 60 days to deny a request for a dividend or premium refund to a group self-insurance fund or it is deemed approved.

The bill provides that the fund may declare any money in excess of the amount necessary to fund all obligations of the self-insurer as refundable to the members or policyholders of the self-insurer. The bill restricts the amount of dividends distributed to no more than the total of the dividends declared and unpaid to policyholders and unassigned funds, as documented in the most recent audit report of the fund. Under current law, there is no restriction on the amount of the dividend. In addition, the bill prohibits the distribution of dividends if the dividend payment would jeopardize the financial condition of the fund or result in the self-insurer having a negative unassigned funds balance. Current law does not provide this restriction. The bill maintains current law prohibiting funds to require continued membership in the fund or renewal of a workers' compensation policy with the fund in order for the fund member to receive a dividend.

Within 10 days after the payment of the dividend or premium refund, the group self-insurance fund is required to submit written notice to the OIR along with the following information:

- Audited financial statements for the most recent fund year.
- Annual evaluation of loss reserves by a qualified independent actuary, as of the most recently completed fund year.

Under current law, a group self-insurance fund must provide audited financial statements, the annual evaluation of loss reserves, and a report on the financial condition of the fund to the OIR, along with the request for approval for a dividend or premium refund. The bill eliminates the submission of an annual report on the financial condition of the self-insurance fund. If a group self-insurance fund does not declare or distribute a dividend during the year, the audited financial statements and actuarial analysis are submitted annually. Otherwise, the fund is required to provide these documents at the time written notice is given to the OIR of the dividend or premium refund.

The change in the dividend distribution and payment process, as provided in the bill, will allow funds to record transactions using an accrual method of accounting. Under an accrual method, a business generally reports income in the year earned and deducts or capitalizes expenses in the year incurred. A business is generally allowed to deduct or capitalize a business expense when both of the following conditions are satisfied:

- The all-events test has been met. The test is met when all events have occurred that fix the fact of liability, and the liability can be determined with reasonable accuracy.
- Economic performance has occurred.

Any group self-insurance fund created after June 1, 2008, is required to obtain prior approval of the OIR for dividend distributions for the first 7 years of the fund's operation. The bill requires

the OIR to issue a decision granting or denying the dividend or premium refund within 60 days after receiving a request from a self-insurance fund created after June 1, 2008. These group self-insurance funds are required to submit audited financial statements and annual evaluations of loss reserves annually even if the fund does not declare or distribute a dividend. If the fund is requesting a dividend, these documents must accompany the dividend request.

Section 2 provides that this act will become effective 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill eliminates the OIR's ability to review and approve dividends prior to distribution for group self-insurance funds established before June 1, 2008. Group self-insurance funds created after June 1, 2008, must obtain prior approval from the OIR for a dividend distribution for the first 7 years of operation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Under current law, a group self-insurance fund must obtain prior approval from the OIR before distributing a dividend to fund members. The CS allows a group self-insurance fund established before June 1, 2008, to declare and distribute dividends or premium refunds without obtaining prior approval by the Office of Insurance Regulation. However, the group self-insurance fund is required to meet the following conditions:

- The amount of the distribution cannot exceed the total sum of the dividends declared and unpaid to the policyholders and unassigned funds based on the most recent audited financial statements.
- The payment of the dividend or premium refund cannot jeopardize the financial condition of the self-insurer or result in a negative unassigned fund balance.
- The fund must provide written notice to the office within 10 days after the payment of the dividend or premium refund.

Any group self-insurance fund established after June 1, 2008, must obtain prior approval from the Office of Insurance Regulation for a dividend or premium refund during the fund's first 7 years of operation. The office is required to issue a decision within 60 days after receiving a request.

B. Amendments:

None.