

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 845

Self-Insurance Funds

SPONSOR(S): General Government Policy Council, Insurance, Business & Financial Affairs Policy Committee, Drake

TIED BILLS: IDEN./SIM. BILLS: SB 1138

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee | 20 Y, 0 N, As CS | Callaway | Cooper. Row 2: General Government Policy Council | 17 Y, 0 N, As CS | Callaway | Hamby. Rows 3-5 are empty.

SUMMARY ANALYSIS

As an alternative to obtaining insurance from a licensed insurance company, current 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. Current law authorizes eight types of self-insurance funds to be established, with varying degrees of state regulation or oversight. 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, OIR has little or no regulatory oversight if certain criteria are met.

For independent educational institution self-insurance funds, a type of self-insurance authorized under current law, the bill clarifies these funds are exempt from the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). These funds do not currently participate in FWCIGA and have never participated in the guaranty association.

The bill changes the reporting period for insurance administrators of a pooled governmental self-insurance program or of a university from a calendar year to a fiscal year and provides reporting deadlines.

This bill offers electric cooperatives a new option for self-insuring their workers' compensation risks by authorizing electric cooperatives to form a self-insurance fund that is not subject to state regulation. The bill prescribes requirements for the fund's formation and continued existence. An electric cooperative self-insurance fund authorized by the bill will not participate in FWCIGA. Thus, if the fund becomes insolvent, the fund members will not be able to have any workers' compensation claims against the fund paid by the Guaranty Association. An electric cooperative self-insurance fund authorized by the bill must pay insurance premium taxes, but at a reduced rate of 1.6 percent, rather than 1.75 percent.

There is no fiscal impact to state government relating to the lower insurance premium tax rate the new electric cooperative self-insurance fund will pay because most electrical cooperatives currently self insure and pay insurance premium tax at the same reduced tax rate proposed in the bill. There is no fiscal impact on the Workers' Compensation Administration Trust Fund and the Special Disability Trust Funds because the electric cooperative self-insurance fund authorized by the bill must pay assessments to these trust funds, like the electric cooperative self-insurance fund in current operation. If the electric cooperatives form the type of self-insurance fund authorized in the bill, the OIR will no longer have regulatory responsibility for the fund. Thus, any regulatory expenses incurred by the OIR relating to regulation of the existing electric cooperative self-insurance fund will be avoided. Electric cooperatives may have decreased costs if they choose to form the self-insurance fund authorized by the bill. Any savings to the cooperatives can be passed on to the cooperative's consumer members.

The bill is effective July 1, 2009.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Self-Insurance Funds, Generally

As an alternative to obtaining insurance from a licensed insurance company, current 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.¹ Current law allows for various types of self-insurance funds to be established, with varying degrees of state regulation or oversight. 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 allowed by law include:

1. Commercial self-insurance funds
2. Group self-insurance funds
3. Local government self-insurance funds
4. Self-insured public utilities
5. Public housing authorities self-insurance funds
6. Independent educational institution self-insurance funds
7. Corporation not for profit self-insurance funds
8. Hospital alliances

Lines of insurance allowed by law to be self-insured vary by the type of self-insurance fund as follows:

- Property insurance: commercial self-insurance funds, local government self-insurance funds, public housing authorities self-insurance funds, independent educational institution self-insurance funds, corporation not for profit self-insurance funds, hospital alliances;
- Casualty insurance: commercial self-insurance funds, public housing self-insurance funds, independent educational institution self-insurance funds, corporation not for profit self-insurance funds;
- Surety insurance: commercial self-insurance funds, independent educational institution self-insurance funds;
- Worker's compensation insurance²: group self-insurance funds, local government self-insurance funds, independent educational institution self-insurance funds.

¹ <http://www.iii.org/media/glossary/alfa.S/> (last viewed on March 4, 2009).

² Although workers' compensation insurance is casualty insurance as that term is defined in s. 624.605, F.S., current law specifically authorizes certain self-insurers to self-insure for workers' compensation.

Current law also allows a single employer to self-insure workers' compensation insurance as an individual self-insurer. Individual self-insured employers assume all of the risk of loss and pay all workers' compensation claims against the employer. Individual self-insurers participate in the Florida Self-Insurers Guaranty Association which pays workers' compensation claims of insolvent individual self-insurers. Examples of individual self insurers are Publix and the Walt Disney World Company.

Commercial Self-Insurance Funds

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 the OIR. Such funds may pool and spread liabilities of its group members for any commercial property or casualty risk or surety insurance. Commercial self-insurers are heavily regulated by the OIR. A commercial self-insurance fund may be formed only by:

- 1) a not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated in Florida, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year;
- 2) a (medical malpractice) self-insurance trust fund organized pursuant to s. 627.357, F.S., and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section;
- 3) a group of 10 or more health care providers for purposes of providing medical malpractice coverage; or
- 4) a not-for-profit group comprised of one or more community associations meeting certain requirements.³

In most cases, a commercial self-insurance fund must be operated by a board of trustees.⁴ If formed pursuant to 1) or 3), above, the board of trustees must be responsible for appointing independent certified public accountants, legal counsel, actuaries, and investment advisers as needed; approving payment of dividends to members; and contracting with an administrator authorized under s. 626.88, F.S., to administer the affairs of the fund. For funds formed pursuant to 2) or 4) above, a majority of the trustees or directors must be owners, partners, officers, directors, or employees of one or more members of the fund.⁵

Requirements for commercial self-insurance funds also include:

- 1) a certificate of authority from the OIR;
- 2) an indemnity agreement binding each fund member to individual, several, and proportionate liability;
- 3) a plan of risk management which has established measures to minimize the frequency and severity of losses;
- 4) proof of competent and trustworthy persons to administer or service the fund;
- 5) an aggregate net worth of all members of at least \$500,000;
- 6) a combined ratio of current assets to current liabilities of more than 1 to 1;
- 7) a deposit of cash or securities, or a surety bond, of \$100,000;
- 8) specific and aggregate excess insurance with limits and retention levels satisfactory to the OIR;
- 9) a fidelity bond or insurance providing coverage of at least 10 percent of the funds handled annually by the fund;
- 10) a plan of operation designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles, and a statement by an actuary to that effect; and
- 11) such additional information as the Financial Services Commission or the OIR reasonably requires.⁶

³ s. 624.462(2)(a), F.S. (2008).

⁴ s. 624.462(2)(b), F.S.

⁵ Id.

⁶ s. 624.466, F.S. Participation in the Florida Self-Insurance Guaranty Association is mandated under s. 624.462, F.S.

After the OIR issues a certificate of authority for a commercial self-insurance fund, additional requirements are imposed related to restrictions on premiums that may be written, annual reports, dividends, assessments, and approval of forms and rates.⁷ Under current law a commercial self insurance fund is also subject to the premium tax and form and rate approval.⁸

Rates for commercial self-insurance funds may not be excessive, inadequate, or unfairly discriminatory and must be filed with the OIR for approval.⁹ But, the standard for excessiveness is limited to a determination of whether the expense factors are not justified or are not reasonable for the benefits and services provided.¹⁰ A fund has the burden of proving a rate filed is adequate if, during the first 5 years of issuing policies, the fund files a rate that is below the rate for loss and loss adjustment expenses for the same type and classification of insurance that has been filed by the Insurance Services Office and approved by the OIR.¹¹

The Commercial Self-Insurance Fund Act also applies many of the sections of the Florida Insurance Code to commercial self-insurance funds.¹² Among those many provisions are laws relating to civil remedy and civil liability; accounting, assets and liabilities investments, administration of deposits, insurance field representatives and operations; unfair methods of competition and unfair or deceptive acts or practices; powers of department and office; cease and desist procedures and penalties; policyholders bill of rights claims administration; payment of settlements; attorney's fees; insurance rates and contracts; motor vehicle and casualty contracts; professional liability claims and actions; and reports by insurers and health care providers. Commercial self-insurance funds are assessable for deficits in the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

There is one commercial self-insurance fund currently licensed by the OIR.¹³

Group Self-Insurance Funds

Under s. 624.4621, F.S., two or more employers are allowed to pool their workers' compensation liabilities and form a self insurance fund for workers' compensation purposes. This type of self-insurance fund is called a group self-insurance fund. Such a fund must comply with administrative rules adopted by the Financial Services Commission¹⁴ relating to reserve requirements, organization, and operation. The rules relating to reserve requirements are designed to insure the self-insurance fund can maintain financial solvency. Current law also requires workers' compensation self-insurance funds to carry reinsurance, unless the fund is comprised of state or local government employers.¹⁵

Current law establishes restrictions on dividend or premium refunds made by a workers' compensation self insurance fund.¹⁶ Such funds are subject to the license taxes and to the insurance premium tax, but at a reduced rate of 1.6 percent rather than 1.75 percent of the gross receipt of insurance premiums.¹⁷ The law also requires group self- insurance funds to participate in the Florida Self-Insurance Fund Guaranty Association;¹⁸ however, that Association was abolished in 1997 and merged into the Florida Workers' Compensation Insurance Guaranty Association, which pays workers' compensation claims of group self-insurance funds that become insolvent.¹⁹

⁷ s. 624.468, F.S.; s. 624.470, F.S. relating to annual reports; s. 624.473, F.S. relating to dividends; s. 624.474, F.S. relating to assessments.

⁸ s. 624.475, F.S. relating to premium tax; s. 624.477, F.S. relating to liquidation, rehabilitation, reorganization, and conservation; s. 624.480, F.S. relating to approval of forms; s. 624.482, F.S. relating to rate approval.

⁹ s. 624.482, F.S.

¹⁰ s. 624.482(2), F.S.

¹¹ s. 624.482(6), F.S.

¹² s. 624.488, F.S.

¹³ Information obtained from the company search function on the OIR website available at <http://www.flair.com/CompanySearch/index.asp> (last viewed March 9, 2009).

¹⁴ The Financial Services Commission is comprised of the Governor and Cabinet.

¹⁵ s. 624.4621(4), F.S.

¹⁶ s. 624.4621(5), F.S.

¹⁷ s. 624.4621(7), F.S.; s. 624.509(1) and (2), F.S.

¹⁸ s. 624.4621(9), F.S.

¹⁹ See s. 631.911, F.S.

A group self-insurance fund must also comply with rules adopted by the Department of Financial Services, the agency responsible for administration of the workers' compensation law (ch. 440, F.S.), relating to the filing of reports by worker's compensation self-insurance funds.²⁰

There are four group self-insurance funds currently operating in Florida.²¹

The bill requires group self-insurance funds to disclose to applicants for coverage by the fund in bold font, rather than color contrasting font, that the insurance policy is assessable if there is a deficit in the fund.

Local Government and Independent Educational Institution Self-Insurance Funds

Local government and independent educational institution self-insurance funds are the least regulated types of self-insurance funds. Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for the purpose of securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent nonprofit 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. Both local government and education self-insurance funds have similar requirements which include:

- having annual premiums in excess of \$5 million;
- maintaining excess insurance coverage and reserve to protect the financial stability of the fund;
- submitting annual audited fiscal year end-financial statements by an independent certified public accountant to the OIR; and
- having a governing body comprised entirely of local elected officials (in local government self-insurance funds) and independent educational institution officials (in educational self-insurance funds).

A local government self-insurance fund created after October 1, 2004, must initially be subject to the requirements of a commercial fund under s. 624.4621, F.S., and, for the first 5 years of its existence, must be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively. A local government self-insurance fund formed after January 1, 2005, must, for its first 5 fiscal years, file with OIR annual and quarterly financial statements containing information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices, sworn to by at least two executive officers of the self-insurance fund, and using the form approved by the National Association of Insurance Commissioners for use by property and casualty insurers. The annual statement must also contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries. Local government self-insurance funds do not participate in the Florida Workers' Compensation Insurance Guaranty Association.²²

There are currently 12 local government self-insurance funds.²³

Pursuant to s. 624.4623, F.S., only those educational institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or accredited schools chartered by the State of Florida are eligible to form an independent educational self-insurance fund. The Florida Independent Colleges and Universities Risk Management Association Self-Insurance Fund (FICURMA or fund) is the only independent educational institution self-insurance fund currently in existence.²⁴ This fund was created in 2003, the year legislation was enacted authorizing independent educational institution self-insurance funds. The fund is a nonprofit educational risk pool offering its eleven member colleges and universities property, casualty, workers' compensation, fleet auto, educator's legal and

²⁰ s. 440.38(2)(b), F.S. ; See Chapter 69L-5, F.A.C. for the administrative rules relating to workers' compensation self-insurance funds.

²¹ Information obtained from the company search function on the OIR website available at <http://www.flair.com/CompanySearch/index.asp> (last viewed March 9, 2009).

²² s. 631.904(5), F.S.

²³ Id.

²⁴ Information obtained from the company search function on the OIR website available at <http://www.flair.com/CompanySearch/index.asp> (last viewed March 9, 2009).

officers and directors insurance.²⁵ As of December 31, 2008, the fund has a cash surplus of \$4.2 million, cash assets of \$9.0 million, and cash reserves of \$3.3 million.²⁶

The bill clarifies independent educational institution self-insurance funds are exempt from the Florida Workers' Compensation Guaranty Association (FWCIGA). Therefore, if one of these funds becomes insolvent, the guaranty association will not pay the workers' compensation claims of the fund's members. These funds do not currently participate in FWCIGA and have never participated in the guaranty association.²⁷ In addition, according to a FICURMA representative, it is necessary for FICURMA to participate in the Florida Workers' Compensation Guaranty Association as the fund has substantial surplus and reserves.

Corporation Not for Profit Self-Insurance Funds

In 2007, nonprofit corporations were authorized to form self-insurance funds to insure property or casualty risks. These funds must meet the following requirements:

- have annual normal premiums in excess of \$5 million;
- have only members who each receive at least 75 percent of its revenue from local, state, or federal government sources;
- use a qualified actuary (as defined) to determine rates who annually submits to the OIR a certification that the rates are actuarially sound and are not inadequate;
- use a qualified actuary to establish reserves who annually submits to OIR a certification that the reserves are adequate, subject to a requirement for the fund to file a remedial plan if the reserves are not adequate;
- maintain excess insurance, with a retention (amount of loss retained or assumed by the fund) that does not exceed \$350,000 per occurrence;
- submit to the OIR annual audited financial statements;
- have a governing body comprised entirely of corporation not for profit officials;
- use knowledgeable personnel to administer the fund that have a minimum of 5 years' experience with commercial self-insurance funds, group self-insurance funds, or domestic insurers and such persons must meet all of the licensure requirements;
- submit to the OIR contracts used for its members which clearly establish the liability of each member for obligations of the fund; and
- annually submit to the OIR a certification by the governing body that, to the best of its knowledge, the requirements of this law are met.

Corporation not for profit self-insurance funds pay premium taxes but at a reduced rate of 1.6 percent, rather than 1.75 percent. Such funds do not participate in any insurance guaranty association. Additionally, the fund must comply with the statutory provisions relating to commercial self-insurance funds and group self-insurance funds if it fails to meet the requirements listed above, which subjects the fund to more stringent regulation by the OIR.

There is one corporation not for profit self-insurance fund currently operating.²⁸

Public Housing Authorities Self-Insurance Funds

In 2008, two or more public housing authorities were authorized by law to form a self-insurance fund for property or casualty risk. The requirements for fund formation are the same as those for corporation not for profit self-insurance funds except that public housing authorities funds must have a governing body comprised of commissioners of public housing authorities or the commissioner's appointees. Public housing authorities funds cannot be assessed for deficits in the Florida Hurricane Catastrophe

²⁵ <http://www.ficurma.org/>.

The members of the fund are: Barry University, Clearwater Christian College, Florida Institute of Technology, Jacksonville University, Nova Southeastern University, Palm Beach Atlantic University, Ringling College of Art and Design, Webber International University, the University of Tampa, St. Edward's School and St. Paul's School.

²⁶ Information on file with the Insurance, Business, & Financial Affairs Policy Committee.

²⁷ Information obtained from representatives of FWCIGA and FICURMA.

²⁸ Information obtained from the company search function on the OIR website available at <http://www.flor.com/CompanySearch/index.asp> (last viewed March 9, 2009).

Fund, Citizens Property Insurance Corporation, and do not participate in any insurance guaranty association.

There are no public housing authority self-insurance funds currently operating.²⁹

Hospital Alliances

Section 395.106, F.S. allows two or more hospitals licensed and located in Florida to form an alliance to self-insure property risks. Hospital alliances must meet the following requirements:

- have annual premiums in excess of \$3 million;
- set premiums and reserves using catastrophe modeling or other risk-estimating methodologies;
- prepare annual financial statements; and
- have a governing body comprised solely of hospital entities as specified in the alliance organizational documents.

Hospital alliances are not subject to any provision of the Florida Insurance Code, do not pay insurance premium tax, do not participate in any insurance guaranty association, and cannot be assessed for deficits in the Florida Hurricane Catastrophe Fund or in Citizens Property Insurance Corporation.

Hospital alliances do not file reports with the OIR, so it is unknown how many, if any, hospital alliances are currently operating.

Self Insurance for Electrical Cooperatives

There are 17 electric cooperatives in Florida. Currently, electrical cooperatives wanting to self-insure can participate in the Florida Rural Electric Self-Insurance Fund (fund). This fund was established in 1979 and provides workers' compensation insurance to electric cooperatives as a group self-insurance fund. The fund has 17 members and all members serve on the fund's board. All but three Florida electric cooperatives are members of the Florida Rural Electric Self-Insurance Fund. Members of the fund provide electricity to over 1 million consumers in 57 of 67 Florida counties. For fiscal year 2008, the fund had \$2.2 million in premiums, \$2.9 million in surplus, and \$10 million in reserves. Since 1979, the fund has paid to members \$10.9 million in dividends.

Because the fund is organized as a group self-insurance fund, its operation is governed by the rules and regulations relating to such funds described previously. This bill offers electric cooperatives a new option for self-insuring their workers' compensation risks by authorizing electric cooperatives to form a self-insurance fund that is not regulated by the state. Rules and regulations relating to the new fund's operation are patterned on those required of local government and independent educational institution self-insurance funds and require the fund to:

- have members that are jointly and severally liable³⁰ for fund obligations,
- maintain excess insurance coverage as prescribed by an independent actuary,
- have a governing body composed only of fund members,
- have only members who are electric cooperatives located in Florida, subsidiaries of these electric cooperatives, or are current members of the Florida Rural Electric Self-Insurance Fund,
- notify members the fund is not regulated by the OIR,
- have an independent accountant audit the fund's financial statement each year,
- participate in a rating organization,³¹ and
- obtain an evaluation of reserves by an independent actuary.

An electric cooperative self-insurance fund authorized by the bill must pay insurance premium taxes, but at a reduced rate of 1.6 percent, rather than 1.75 percent. This is consistent with the premium tax

²⁹ Information obtained from the company search function on the OIR website available at <http://www.flor.com/CompanySearch/index.asp> (last viewed March 9, 2009).

³⁰ Joint and several liability means all fund members are responsible together and individually for the obligations of the fund.

³¹ Section 626.231, F.S. requires insurance rating organizations to permit any insurer to subscribe to its rating services. The National Council on Compensation Insurance manages the nation's largest database of workers' compensation insurance information and prepares workers' compensation insurance rate recommendations on behalf of insurers. This organization is the rating organization used in Florida for workers' compensation rates.

paid by commercial self-insurance funds, group self-insurance funds, corporation not for profit self-insurance funds, and public housing authorities self-insurance funds.

Like local government self-insurance funds, an electric cooperative self-insurance fund authorized by the bill will not participate in the Florida Workers' Compensation Insurance Guaranty Association. Thus, if the fund becomes insolvent, the fund members will not be able to have any workers' compensation claims against the fund paid by the Guaranty Association.

The requires electric cooperative self-insurance funds authorized under the bill to pay assessments to the Workers' Compensation Administration Trust Fund³² or to the Special Disability Trust Fund³³. The current self-insurance fund formed by electric cooperatives pays both assessments as the current fund is organized as a group self-insurance fund.³⁴

In addition, the bill requires commercial self-insurance funds to disclose to policyholders in bold font, rather than color contrasting font, that the insurance policy is assessable if there is a deficit in the fund.

Insurance Administrators

Part VII of ch. 626, F.S. governs the conduct of insurance administrators. Generally, an insurance administrator, also referred to as a third party administrator, solicits coverage, adjusts or settles claims, or collects charges or premiums from commercial self-insurance funds, life or health insurance self-insurance programs, life or health insurers, or health maintenance organizations. Insurance administrators are licensed and regulated by the OIR. Insurance administrators must annually file a statement with the OIR outlining the administrator's financial condition, transactions, and affairs along with an audited financial statement. These statements must be filed within the timeframes established by s. 626.89, F.S. The information contained in the statements is based on a calendar year.

Section 218.33, F.S. requires local governments to operate on a fiscal year that runs from October 1 through September 30. Thus, the reporting period for insurance administrators that are affiliated with local governments does not correspond to the local government's fiscal year. The bill amends the reporting period for insurance administrators of a pooled governmental self-insurance program from a calendar year to a fiscal year to align the reporting period to the local government's fiscal year. The bill also changes the reporting period for insurance administrators of a university to align the reporting period to the university's fiscal year for universities that have fiscal years that are different than the calendar year.

B. SECTION DIRECTORY:

Section 1: amends s. 624.4621, F.S. relating to group self-insurance funds.

Section 2: creates s. 624.4626, F.S. relating to electric cooperative self-insurance funds.

Section 3: amends s. 626.89, F.S. relating to annual financial statements of insurance administrators.

Section 4: amends s. 631.904 relating to definitions applicable to the Florida Workers' Compensation Insurance Guaranty Association.

Section 5: provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³² This trust fund pays for the administration of the workers' compensation laws by the Division of Workers' Compensation within the Department of Financial Services. (See s. 440.50, F.S.)

³³ This trust fund reimburses employers or their carriers for the excess in workers' compensation benefits they provide to an employee with a pre-existing impairment who is subsequently injured in a covered workers' compensation accident.

³⁴ s. 440.49(9)(b), F.S.; s. 440.51(1)(b), F.S.

1. Revenues:

Because electrical cooperatives currently self insure and pay insurance premium tax at the same reduced tax rate proposed in the bill, the bill has no impact relating to the collection of the insurance premium tax.

The bill requires the electric cooperative authorized under the bill to pay the Workers' Compensation Administration Trust Fund and Special Disability Trust Fund assessments required of workers' compensation insurers, individual self-insurers, and certain self-insurance funds under s. 440.49, F.S. and s. 440.51, F.S. The electric cooperative self-insurance fund currently in existence pays these assessments as this fund is organized as a group self-insurance fund and current law requires group self-insurance funds to pay these assessments.

In 2008, the electric cooperative currently in existence paid \$5,952 for the Workers' Compensation Administration Trust Fund assessment and \$100,039 for the Special Disability Trust Fund assessment.³⁵

2. Expenditures:

If the electric cooperatives form the type of electric cooperative self-insurance fund authorized in the bill, the OIR will no longer have regulatory responsibility for the fund. Thus, any regulatory expenses incurred by the OIR relating to regulation of the existing electric cooperative self-insurance fund will be avoided. This is because the existing electric cooperative self-insurance fund is organized as a group self-insurance fund which is a type of self-insurance fund subject to regulation by the OIR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In general, allowing electric cooperatives to self-insure as a group, in lieu of obtaining workers' compensation insurance from an insurance carrier on an individual basis, may result in a savings on insurance premiums to the cooperatives, assuming the self-insurance fund operates on a non-profit basis, has lower expenses than private insurance companies, or more favorable loss experience than insurance companies. Electrical cooperatives, however, already experience many of these savings as the majority of the cooperatives self insure as a group self-insurance fund. Nevertheless, representatives with the electric cooperative group self-insurance fund assert organizing the electric cooperatives under the self-insurance fund structure proposed by the bill will save the electric cooperatives participating in the fund a total of \$98,000 a year in regulatory, accounting, legal and other costs. The savings are incurred because the proposed self-insurance fund will not be subject to regulation by the OIR and the proposed fund will not have to comply with the numerous statutory requirements relating to group self-insurance funds. Any savings incurred by electric cooperatives can be passed on to the electric cooperative's consumer members.

If premiums of the new electric cooperative self-insurance fund are inadequate, fund members may be liable for deficit assessments. The lack of regulatory oversight of the new fund may create a greater potential for insolvency or inadequate funding, leading to the potential for unpaid claims to injured employees insured by the fund. However, because electric cooperatives have been self-insuring for over 30 years, the cooperatives should have sufficient experience to minimize the risk of fund insolvency. In the event of a fund deficit, the fund would have to raise revenue by increasing electric rates to cooperative customers to avoid unpaid claims. Electric cooperatives do not have to obtain

³⁵ Information obtained from the Division of Workers' Compensation.

approval from the Public Service Commission to raise rates; thus, the fund will have a clear source of outside revenue to avoid fund insolvency.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Insurance, Banking, & Financial Affairs Policy Committee considered the bill, adopted two amendments, and reported the bill favorably with a committee substitute. One amendment required the electric cooperative self-insurance fund authorized by the bill to pay yearly assessments to the Workers' Compensation Administration Trust Fund and to the Special Disability Trust Fund. These assessments are paid by the electric cooperatives self-insurance fund currently operating as a group self-insurance fund. The second amendment required commercial self-insurance funds to disclose to policyholders in bold font, rather than color contrasting font, that the insurance policy is assessable if there is a deficit in the fund. The staff analysis was updated to reflect the committee substitute.

On April 14, 2009, the General Government Policy Council considered the bill, adopted a strike all amendment, and reported the bill favorably. The strike all amendment maintained the provisions of the bill relating to electric cooperative self-insurance funds; moved the provision in the bill requiring group self-insurance funds to provide the required notice to applicants in bold font, rather than color contrasting font, to the group self-insurance fund statute; and added a provision changing the reporting year for insurance administrators of a pooled governmental self-insurance program or of a university from a calendar year to a fiscal year with specified reporting deadlines. The staff analysis was updated to reflect the council substitute.