

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/SB 1966

INTRODUCER: Commerce and Consumer Services Committee and Senator Garcia

SUBJECT: Corporation Not For Profit Self-Insurance Funds

DATE: March 29, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute would authorize any two or more not for profit corporations located in Florida and organized under Florida law to form a self-insurance fund for pooling liabilities of its members for any property, casualty, or surety risk, provided that the fund:

- has annual normal premiums in excess of \$5 million;
- has only members who each receive at least 75 percent of its revenue from local, state, or federal government sources;
- uses a qualified actuary (as defined) to determine rates who annually submits to the Office of Insurance Regulation (OIR) a certification that the rates are actuarially sound and are not inadequate;
- uses 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;
- maintains excess insurance, with a retention (amount of loss retained or assumed by the fund) that does not exceed \$350,000 per occurrence;
- submits to OIR annual audited financial statements;
- has a governing body comprised entirely of corporation not for profit officials;
- uses 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 that such persons must meet all of the licensure requirements;
- submits to OIR contracts used for its members which clearly establish the liability of each member for obligations of the fund; and
- annually submits to OIR a certification by the governing body that, to the best of its knowledge, the requirements of this law are met.

This bill creates section 624.4624 of the Florida Statutes.

## II. Present Situation:

### **Self-Insurance Funds, Generally**

As an alternative to obtaining insurance from a licensed insurance company, the 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. The 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 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.

### **Commercial Self-Insurance Funds (Property and Casualty; Surety)**

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 OIR. Such funds may pool and spread liabilities of its group members for any commercial property or casualty risk or surety insurance. 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 no less than 10 condominium associations meeting certain requirements.<sup>1</sup>

In most cases, a commercial self-insurance fund must be operated by a board of trustees. 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.

Requirements for commercial self-insurance funds also include:

- a certificate of authority from the OIR;

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<sup>1</sup> Section 624.462(2)(a), F.S.

- an indemnity agreement binding each fund member to individual, several, and proportionate liability;
- a plan of risk management which has established measures to minimize the frequency and severity of losses;
- proof of competent and trustworthy persons to administer or service the fund;
- an aggregate net worth of all members of at least \$500,000;
- a combined ratio of current assets to current liabilities of more than 1 to 1;
- a deposit of cash or securities, or a surety bond, of \$100,000;
- specific and aggregate excess insurance with limits and retention levels satisfactory to the OIR;
- a fidelity bond or insurance providing coverage of at least 10 percent of the funds handled annually by the fund;
- 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;
- participation in the Florida Self-Insurance Fund Guaranty Association; and
- such additional information as the Financial Services Commission or the OIR reasonably requires.<sup>2</sup>

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.<sup>3</sup> Under current law a commercial self-insurance fund is also subject to the premium tax and regulatory oversight regarding rehabilitation, liquidation, reorganization and conservation.<sup>4</sup>

Rates for commercial self-insurance funds may not be excessive, inadequate, or unfairly discriminatory and must be filed with the OIR for approval. 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. 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.<sup>5</sup>

The Commercial Self-Insurance Fund Act also applies many of the sections of the Florida Insurance Code to the commercial self-insurance funds.<sup>6</sup> 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; reports by insurers and health care providers; and, as

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<sup>2</sup> Sections 624.462, 624.464, and 624.466, F.S.

<sup>3</sup> Sections 624.470, 624.473, 624.474, 624.480, and 624.482, F.S.

<sup>4</sup> Sections 624.475 and 624.477, F.S.

<sup>5</sup> Section 624.482, F.S.

<sup>6</sup> Section 624.488, F.S.

previously indicated, provisions relating to insurer insolvency; rehabilitation and liquidation; and the Florida Self-Insurance Fund Guaranty Association.

### **Group Self-Insurance Funds (Workers' Compensation)**

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, referred to as a group self-insurance fund. Such funds must comply with administrative rules adopted by the Financial Services Commission relating to its organization and operation, required reinsurance, and reserve requirements to insure their financial solvency and in accordance with accepted actuarial techniques.

Current law establishes restrictions on dividend or premium refunds made by a group self-insurance fund. Such funds are subject to 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. The law also requires group self-insurance funds to participate in the Florida Self-Insurance Fund Guaranty Association;<sup>7</sup> however that fund 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.<sup>8</sup>

A group self-insurance fund must 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 workers' compensation self-insurance funds.<sup>9</sup>

### **Local Government Self Insurance Funds; Independent Educational Institution 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 non-profit 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 the 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 (for local government self-insurance funds) and independent educational institution officials (for educational self-insurance funds).

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<sup>7</sup> Section 624.4621(9), F.S.

<sup>8</sup> Section 631.911, F.S.; ch. 97-262, L.O.F.

<sup>9</sup> Section 440.38(2), F.S.

However, 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.

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 a self-insurance fund under that section. According to a representative of the Florida Independent Colleges and Universities Risk Management Association, accreditation requires that members submit to rigorous programmatic and financial review of this federally sanctioned accrediting agency, which ensures their pooled members are financially stable and have the appropriate resources to conduct their operations. The federal government relies on this accreditation status for participation in all federally sponsored programs such as student financial aid, research contracts and other types of grants. Also, the colleges and universities rely on this accreditation status to be the primary test of an institution's financial strength.

### **Social Service Organizations; Current Insurance Market Problems**

Community-based, social service organizations report that workers' compensation coverage is generally not available at standard rates and that coverage must either be obtained from the Florida Workers' Compensation Joint Underwriting Association or on a "consent to rate" basis for which a voluntary market insurer may charge a rate in excess of the filed rate. With regard to the option of forming a self-insurance fund under current law, the committee substitute's proponents cite the high costs involved in managing a commercial self-insurance fund due to the restrictions and regulation of the funds by the OIR, as well as an alleged antipathy to self-insurance funds by OIR that generally discourages the formation of any new funds. Proponents also cite the lack of a single umbrella organization covering all types of publicly funded, social service organizations as a factor hindering a formation of a self-insurance fund.

One of the organizations that may qualify to form a self-insurance fund under the committee substitute is the Florida Council for Community Mental Health (council). The council is a statewide association of 70 community-based mental health and substance abuse agencies. According to the council, availability of property, liability, automobile and workers' compensation insurance is limited for its members and members of its sister organization, the Florida council for Behavioral Healthcare. The council maintains its 70 member treatment organizations are a critical part of the state's safety net, providing publicly funded mental health and substance abuse services to Floridians who cannot afford the cost of their care. They report difficulty in obtaining insurance coverage that recognizes the type of services they provide and the risks to which they are exposed.

### III. Effect of Proposed Changes:

This committee substitute provides that, notwithstanding any other provision of law, any two or more not for profit corporations located in Florida and organized under Florida law to form a self-insurance fund for pooling liabilities of its members for any property, casualty, or surety risk, provided that the fund:

- has annual normal premiums in excess of \$5 million;
- has only members who each receive at least 75 percent of its revenue from local, state, or federal government sources;
- uses a qualified actuary (as defined) to determine rates who annually submits to the Office of Insurance Regulation (OIR) a certification that the rates are actuarially sound and are not inadequate;
- uses 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;
- maintains excess insurance, with a retention (amount of loss retained or assumed by the fund) that does not exceed \$350,000 per occurrence;
- submits to OIR annual audited financial statements;
- has a governing body comprised entirely of corporation not for profit officials;
- uses 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;
- submits to OIR contracts used for its members which clearly establish the liability of each member for obligations of the fund; and
- annually submits to OIR a certification by the governing body that, to the best of its knowledge, the requirements of this law are met.

A self-insurance fund formed under this bill would be exempt from the insurance premium tax (1.75 percent of gross premiums). The fund would not be covered by any insurance guaranty association, meaning that if the fund became insolvent, the claims would not be paid by any guaranty association. These self-insurance funds would also be exempt from the rules promulgated by the Department of Financial Services (DFS) relating to reports filed by workers' compensation self-insurance funds.

If a corporation not for profit self-insurance fund fails to meet the specified requirements, it would become subject to the requirements of s. 624.4621, F.S. (group self-insurance funds for workers' compensation), if the fund provides only workers' compensation coverage, or would be subject to the requirements of ss. 624.460-624.488, F.S., (commercial self-insurance funds) if the fund provides coverage for other property, casualty, or surety risks.

The language of this committee substitute is modeled after the existing statutory authorization for local governments and independent colleges and universities, with certain additional criteria. Corporations not for profit that have been identified as qualifying to form self-insurance funds under the committee substitute include Hospice organizations, community actions agencies such

as Head Start and Meals on Wheels, community transportation coordinators, the Florida Council on Aging, and the Association of Retarded Citizens. It is unknown how many corporations not for profit will qualify to form a self-insurance fund under the committee substitute or will choose to self-insure; however, the committee substitute's proponents estimate a premium base of \$15 – 25 million for qualifying corporations not for profit. The committee substitute's proponents predict the newly created corporation not for profit self insurance fund will assume some of the Florida Workers' Compensation Joint Underwriting Association's policies, leading to its depopulation. They also report a significant increase in liability insurance premiums for community mental health providers. If this committee substitute passes, the Council anticipates self-insuring for property, automobile, general and professional liability, and workers' compensation insurance. The council estimates 30-50 members will participate in the self-insurance fund.

#### **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:**

A self-insurance fund formed under this committee substitute would be exempt from the insurance premium tax (1.75 percent of gross premiums), which will result in an indeterminate decrease in revenues to the state.

##### **B. Private Sector Impact:**

By allowing certain not for profit corporations to self-insure as a group, in lieu of obtaining insurance from an insurance carrier, such corporations may realize a savings on insurance premiums, assuming the fund operates on a non-profit basis, has lower expenses than private carriers, or more favorable loss experience than insured plans. However, if premiums are inadequate, fund members may be liable for deficit assessments. The lack of regulatory oversight also creates a greater potential for insolvency or inadequate funding, which creates the potential for unpaid claims to injured employees, auto accident victims, and other beneficiaries of property and casualty risks insured by the fund.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Insurance Regulation has expressed concerns that the committee substitute effectively removes solvency and rate regulation oversight over the self-insurance fund authorized by the committee substitute. According to OIR, if a corporation not for profit self-insurance fund assumes significant risk, the fund may be unable to pay resulting claims due to an inadequate financial framework.

Even though local governments and specified educational institutions are currently authorized to form self-insurance funds under criteria similar to this committee substitute, the OIR notes local governments and state/private universities have a level of institutional expertise and experience in operating risk management programs, in administering and adjusting claims against the fund, and, most importantly, an outside source of financial scrutiny beyond the governing board of the self insurance fund itself. A board of county commissioners, a city council, or a university board of trustees assume implicit financial and managerial oversight for a self-insurance fund organized for the benefit of the local government or state/private university. In contrast, there may be no oversight organization or entity that would stand behind a corporation not for profit self-insurance fund created in accordance with the committee substitute.

Unlike a local government with the authority to raise tax revenue or issue bonds or the ability of a state/private university to raise tuition and fees, there is no clear source of outside revenue available for a corporation not for profit self-insurance fund in the event a deficit occurs. In order to raise funds, the corporation not for profit self insurance fund would have to raise revenue. Revenue sources for nonprofits include public donations and government funding. Raising additional revenue from these sources may be difficult and is not a guaranteed revenue stream.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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