The Florida Senate

# PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: PCS/SB 1894

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Workers' Compensation Insurance Joint Underwriting Association

DATE: March 1, 2007 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Deffenbaugh | BI | **Pre-meeting** |
| 2. | | | GO | |
| 3. | | | GA | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:


The proposed committee substitute amends laws governing the Florida Workers Compensation Joint Underwriting Association (JUA), Inc., to provide greater accountability and oversight, to assist the JUA in achieving tax-exempt status, to authorize additional funding mechanisms, and to require prior approval of rates. Some of the provisions are recommendations included in the 2006 Senate Banking and Insurance Committee staff interim report entitled Florida's Workers' Compensation Insurance Rating System.[1] Also, provisions related to the Code of Ethics, financial disclosures, and procurement of goods and services were modeled after legislation enacted last year to provide greater accountability and oversight of Citizens, Property Insurance Corporation (Citizens), the property insurer of last resort.[2]

**Board Oversight; Tax-Exempt Status**

- The bill revises the board appointment process by requiring the Financial Services Commission (FSC) to appoint all nine members instead of three members. The insurance industry would continue to have five representatives, as currently provided by law; however, the FSC would select and appoint the representatives. The number of state governmental appointees would remain at four members (including the Consumer Advocate of the Department of Financial Services).
- Upon dissolution of the JUA, the bill requires all assets of the JUA to be first used to pay all debts and obligations of the plan and any remaining assets to become property of the State and deposited in the Workers' Compensation Administration Trust Fund. This provision will also assist the JUA in its efforts to obtain tax-exempt status.


[1] Senate Banking and Insurance Committee Interim Report 2006-101.
[2] Ch. 2006-12, L.O.F.

- To avoid significant, future federal tax liabilities, the bill requires, that on or before January 1, 2008, the JUA is required to seek a letter ruling or determination from the IRS regarding the JUA's eligibility as a tax-exempt organization. Since its inception in 1994, the JUA has incurred an estimated $33 million in federal income tax expenses, including $16 million in 2006.

**Code of Ethics and Financial Disclosure**

- Senior managers, officers, and board members are subject to part III of ch. 112, F.S., including but not limited to, standards of conduct, public disclosure and reporting of financial interests to the Commission on Ethics on an annual basis. Currently, senior managers of state agencies are subject to these provisions.
- Current and prospective employees are required to submit an annual statement to the JUA attesting that no conflict of interest exists.
- Any senior manager or officer of the JUA, employed as of January 1, 2008, who retires or terminates employment, is prohibited from representing another person before the JUA for a two-year period.
- Employees and board members are prohibited from accepting gifts of any value from a person or entity, or an employee or representative of such person or entity, that has a contractual relationship with the plan or who is under consideration for a contract. Employees or board members that fail to comply with this provision are subject to penalties, such as fines and loss of retirement benefits. The executive and legislative branches of government are subject to a similar prohibition as applied to lobbyists.
- The JUA is prohibited from retaining an outside lobbyist; however, the JUA is authorized to engage a full-time employee of the plan to register as a lobbyist for the plan. State agencies are currently subject to this requirement.

**Deficit Funding**

- The JUA is required to use any policyholder surplus attributable to former subplan C prior to requesting funding from the state or assessing policyholders in the voluntary market for funding subplan D deficits on a cash flow basis. The surplus in subplan C is approximately $39 million and the estimated, additional funding needed is less than $5 million. However, the receipt of state funds by the JUA could trigger federal tax liability, thus significantly reducing the value of any state funds. The bill also requires the use of surplus funds in subplan C to fund any deficits in Tiers One or Two, prior to using any state funds or levying assessments on policyholders.
- Access to funds in the contingency reserve for funding deficits in subplan D is extended from July 1, 2007, to July 1, 2012.
- The deadline for levying "below-the-line" assessments to fund deficits in subplan D, Tiers One and Two is extended from July 1, 2007, to July 1, 2012.
- The JUA is required to return any state funds in excess of the amount necessary to fund deficits in former subplan D or any tier.

**Regulatory Oversight**

- The Office of Insurance Regulation (OIR) must provide prior approval of the JUA's rates prior to the JUA implementing the rates. Currently, the JUA is not subject to prior approval like the insurers in the voluntary market. Rather, the burden is on the OIR to determine that the rates are not actuarially sound or comply with statutory caps.
- The OIR is required to conduct periodic market conduct examinations of the JUA.
- The OIR is authorized to require the JUA to withdraw approval of all or part of the plan of operation. Currently, all changes to the plan are subject to approval by the OIR.

**Procurement of Goods and Services**

- Competitive selection of goods and services valued at over $25,000 is generally required. Exceptions for exempted services (legal and auditing, etc.), sole sourcing and emergency purchases are authorized. Any purchase that exceeds $100,000 requires approval by the board of governors. Under current law, state agencies are generally required to procure goods and services valued over $25,000 through competitive selection process.
- Guidelines and criteria are provided for determining whether staff attorneys or outside attorneys should be used and factors to be used in selecting outside firms. These procedures are modeled after the guidelines state agencies use.

This bill substantially amends the following sections of the Florida Statutes: 627.311.

## II. Present Situation:

Prior to the creation of the Florida Workers' Compensation Underwriting Association (JUA) in 1993, the Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market or insurer of last resort, for workers' compensation insurance coverage. The FWCIP administered by the National Council on Compensation Insurance (NCCI), provided workers' compensation insurance to employers who were required by law to maintain coverage and who were unable to purchase such insurance through the voluntary market. Deficits in the FWCIP were funded by assessments on carriers writing such coverage in the voluntary market based on their market share in the voluntary market.

In 1993, the Legislature eliminated the FWCIP and created the current JUA as a nonprofit, self-funding entity, governed by a nine-member board, to act as a residual market.[3] The board is comprised of three members appointed by the Financial Services Commission (FSC); two members representing the top 20 domestic insurers writing workers' compensation; two members representing the top 20 foreign insurers writing workers' compensation; 1 person appointed by the largest property and casualty insurance agents' association; and the Consumer Advocate for the Department of Financial Services.

The JUA is authorized to establish and use its rates at any time, but no more than two times per calendar year for any rating class. This is commonly referred to as "use and file." This method of rate regulation allows the JUA to file its rates and immediately begin using the new rates. If the Office of Insurance Regulation (OIR) subsequently determines that the rates are excessive, the JUA would be required to refund the excess premium collected. In contrast, the OIR must

[3] Section 627.311(5), F.S.

approve rate filings for workers' compensation insurers in the voluntary market before the rates become effective.[4] The standard for approving insurance rates in Florida is that the rate may not be excessive, inadequate, or unfairly discriminatory.[5]

**2003 JUA Legislation**

In 2003 and 2004, the Legislature addressed concerns regarding affordability and availability of workers' compensation insurance for small employers in the JUA. In 2003, the Legislature established subplan D in the JUA to provide coverage for generally small employers (15 or fewer employees). Although rates in this subplan were capped at 25 percent over the voluntary market rates, the policies were subject to assessments for additional premiums to cover any deficit in the subplan. At the time, the JUA estimated that its premiums for subplan D should have been 2.57 times higher than the voluntary market premium to remain actuarially sound; hence, it projected subplan D would likely incur a deficit. As of December 31, 2003, the JUA reported a $9.9 million deficit.

**2004 JUA Legislation**

In 2004, the Legislature enacted changes to the JUA law to address the growing deficit in subplan D and provide affordable coverage for small employers that are unable to obtain coverage in the voluntary market.[6] The law provided a one-time appropriation of $10 million from the Workers' Compensation Administration Trust Fund (WCATF) in the Department of Financial Services to fund any deficit in the JUA, which was subsequently vetoed by the Governor. Additionally, the bill authorized the JUA to request periodic transfers, not to exceed a total of $15 million, from the WCATF to cover any remaining subplan D deficit, subject to approval by the Legislative Budget Commission.

The law also restructured the JUA by eliminating subplans A, B, C, and D and creating three tiers with eligibility based on an employer's loss experience, effective July 1, 2004.[7] Premiums in Tier One and Two were capped at 25 percent and 50 percent above the premiums of the voluntary market, respectively, until there is sufficient experience for the JUA to establish actuarially sound rates for the tiers, but no earlier than January 1, 2007. On January 1, 2007, rates in Tiers one, Two, and Three were set at 1.34, 2.15, and 2.88 times the voluntary rate, respectively.

Any deficits in Tiers One, Tier Two, or any deficit remaining from any of the former subplans can be funded by a "below-the-line" assessment on workers' compensation policies in the voluntary market until July 1, 2007. Policyholders in the voluntary market and nongovernmental self-insurance funds are subject to the assessment. The JUA may request funding through the Legislative Budget Commission for any deficit in Tier Three in the event assessments on Tier

[4] Section 627.101(2), F.S.
[5] Sections 627.062(1) and 627.151, F.S.
[6] Chapter 2004-266, L.O.F.
[7] Tier One provides coverage for employers that have an experience-rating modification factor of less than 1.0 or, if nonrated, the employers must have a continuous three-year history of workers' compensation coverage and a good loss history. Tier Two provides coverage for new employers, employers with moderate experience, and employers with good experience who do not have a continuous 3-year history of workers' compensation coverage. Tier Three provides coverage for all other employers.

Three policyholders are inadequate to fund such a deficit. Former subplan D policyholders are not subject to assessments for the funding of any deficits.

**Oversight and Regulation of the JUA**

The JUA, as a residual market mechanism, is exempt from many provisions of the Insurance Code that are applicable to insurers in the voluntary market, such as surplus and solvency requirements. However, the JUA and the other residual markets are subject to market conduct examinations pursuant to the OIR's authority under s. 624.3161, F.S., to determine whether the entity is complying with applicable provisions of the Insurance Code and the Workers' Compensation Law. In addition, the JUA's plan of operation and any changes to the plan are subject to the approval of the OIR pursuant to s. 627.311, F.S.

In its *2006 Workers' Compensation Annual Report*, the OIR noted that the capped rates for Tiers One and Two expire on January 1, 2007, and then the rates are required to be actuarially sound. Since the ability to levy below-the-line assessments for Tiers One and Two expires on July 1, 2007, there will no funding mechanism for deficits in Tiers One and Two. The report notes that this will undoubtedly result in the use of very conservative actuarial assumptions to prevent deficits, which can only mean higher rates.

Due to concerns regarding the accountability of the JUA, the Legislature directed the Auditor General to perform an operational audit of the JUA.[8] In 2004, the Auditor General released the audit report, which included findings and recommendations regarding the administration, rates, and funding of the JUA.[9] The Auditor General's contracted actuary concluded, among other findings, that: required reserves of the JUA should be significantly less than the JUA actuary's best estimate of required reserves and the JUA could have established a lower rate for Tier Three policies. The report recommended that the Legislature consider enacting legislation addressing the use of surplus funds attributable to other subplans, such as subplan C, to fund the deficit in subplan D. Through legislative action, the report noted that it might be possible to reduce the JUA's costs by making the JUA exempt from federal taxation. The report recommended that the Legislature consider enacting legislation to assist the JUA in qualifying as a tax-exempt organization the Internal Revenue Code. Currently, Citizens and the Florida Automobile Joint Underwriting Association qualify as tax-exempt organizations. For calendar year 2006, the JUA presently anticipates incurring $16,590,095 in federal income tax expenses. This would be in addition to the estimated $16 million in federal incomes taxes expenses the JUA has incurred since its inception in 1994.

**Funding Deficits in the JUA**

On June 30, 2004, the JUA ceased writing policies in subplans A, B, C, D when these subplans were eliminated and Tiers One, Two, and Three were created, effective July 1, 2004. As of January 31, 2007, the JUA had 3,026 policies in force.

[8] Chapter 2004-266, L.O.F.

[9] Auditor General, State of Florida, *Operational Audit of the Florida Workers' Compensation Joint Underwriting Association, Inc*, (2004).

According to the 2006 annual statement, the JUA recognized an overall surplus of $8,472,398. The following table summarizes the financial condition of the subplans and tiers for calendar years 2004, 2005, and 2006:

| Subplan/Tier | 2006 Surplus/Deficits | 2005 Surplus/(Deficit) | 2004 Surplus/(Deficit) |
|---|---|---|---|
| A, B, and C | $39,890,318 | $30,092,485 | $17,506,004 |
| D | ($2,430,546) | ($11,834,198) | ($20,545,523) |
| Tier 1 | $2,069,992 | ($1,467,245) | ($466,859) |
| Tier 2 | $2,432,075 | ($4,823,657) | ($2,894,005) |
| Tier 3 | $6,832,253 | ($3,494,984) | ($2,936,215) |

According to the JUA's Business Plan Status Report, for the first quarter of 2006, the JUA initially estimated that it would need the entire $15 million legislative appropriation to fund deficits attributable to subplan D. To date, the JUA has received a total of $7.9 million of this amount. However, due to positive loss developments, the JUA currently estimates that it is projecting a total deficit of $9.3 million attributable to subplan D, thereby only requiring an additional $1.4 million to fund deficits. However, aaccess to the contingency reserve was eliminated, effective July 1, 2007, by the 2004 legislation.

Without legislative action, the only currently available source of additional funding is the below-the-line assessment. Access to surplus funds in subplan C would apparently require a statutory change. Individual, self-insured employers and governmental self-insurance funds are not subject to the assessment.

The surplus balance in former subplans A, B, and C is approximately $39 million. Subplans B and C issued assessable policies. The JUA states that no policyholder assessments will be required for these subplans.[10] Currently, the operation manual of the JUA prohibits the use of surplus funds related to other subplans to fund the subplan D deficit. However, the statutes do not clearly address this issue.

**Applicability of the "Government-in-the-Sunshine Law"**

Florida's Government-in-the-Sunshine Law (The Sunshine Law) provides a right of access to governmental records and proceedings at both the state and local governmental levels. Historically, this law has been held to apply to private entities created by law or by public agencies, unless specifically exempted by law. Section 119.01, F.S., the general public records law, requires that records made or received in connection with the transaction of official business by an agency must be open for inspection in the absence of a statute exempting the record or making it confidential. The law defines the term, "agency," to include any authority, board, commission, or other separate unit of government, *created or established by law* and any other public or private agency, person, partnership, corporation, or business entity, acting on behalf of any public agency.[11] Section 286.011, F.S., relating to public meetings and records provides that all meetings of any board of any state agency or authority at which official acts are to be taken are open to the public, unless exempted.

[10] 2004 Management's Discussion and Analysis, Florida Workers Compensation Joint Underwriting Association filed with the OIR April 1, 2005.
[11] Section 119.011(2), F.S.

The Office of the Attorney General has opined that other joint underwriting associations, such as the former Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association, are subject to public records laws. The Attorney General's Office has opined that residual markets are "agencies" as defined in chapter 119, F.S., and are accordingly, subject to the provisions of the Government-in-the-Sunshine Law, unless specifically exempted from the provisions.[12] Consistent and somewhat duplicative with the general public records' law, s. 627.311(5)(b), F.S., provides that the minutes, audits, and procedures of the JUA board are subject to ch. 119, F.S. In recent years, representatives of the JUA have contended that the JUA is not statutorily subject to the "Government-in-the-Sunshine" provisions; however, the JUA "has agreed to conduct its meetings in the spirit of those requirements pursuant to regulatory requests."[13] In 2005, the Office of Insurance Regulation directed the JUA to amend its plan of operation to provide for meetings noticed in accordance with the Sunshine Laws and to comply promptly with all public record requests unless the information is exempt from the public record laws.[14]The JUA did so, but the amended plan of operation provides that the public records law applies "to the extent required by law."[15]

Citizens Property Insurance Corporation, the Florida Automobile Joint Underwriting Association, and the Florida Medical Malpractice Joint Underwriting Association, which operate as residual markets, have public record exemptions created in law. These exemptions include portions of meetings and claims and underwriting records related to ongoing litigation. This type of exemption assists residual markets during the litigation of a claim, since the release of such information could jeopardize or compromise ongoing or pending litigation. Presently, the JUA does not have a statutory exemption from the Sunshine Law.

**Tax-Exempt Organizations**

Under section 61 of the Internal Revenue Code, gross income means all income from whatever source derived, except as otherwise provided.[16] Income earned by a state, a political subdivision of a state, or an integral part of a state or political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income. In cases involving the status of an organization as an instrumentality of the state, the following factors are taken into consideration:[17]

- Whether it is used for a governmental purpose and performs a governmental function;
- Whether performance of its function is on behalf of one or more states or political subdivisions;
- Whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner;

[12] AGO 94-32 and AGO 95-32.
[13] Florida Workers' Compensation Joint Underwriting Association, Inc. Minutes of the Board of Governors Meeting, June 22, 2005.
[14] Letter from Kevin M. McCarty, Commission of the OIR to Laura Torrence, Executive Director of the JUA, dated October 12, 2005.
[15] Section 13, Sixth Amended Bylaws of the Florida Workers' Compensation Joint Underwriting Association, as approved by Order of the Office of Insurance Regulation, Nov. 15, 2006.
[16] 26 U.S.C. s. 26.
[17] Rev. Rul. 57-128.

- Whether control and supervision is vested in public authority;
- If express or implied authority is necessary for the creation, and or use of such an instrumentality, and whether such authority exists; and
- The degree of financial autonomy and the source of its operating expenses.

In determining whether an entity is an integral part of a state, it is necessary to consider, in addition to factors established in revenue rulings addressing this issue, the totality of the circumstances, including the state's degree of control over the entity and the state's financial commitment to the enterprise, as discussed below.

The Legislature created the JUA in 1994 to serve as a residual market for workers' compensation insurance. A nine-member board comprised of five members appointed by the insurance industry and four members appointed by state government, governs the JUA. Currently, the state does not exercise majority control of the board. In 2004, the Legislature exempted the JUA from premium insurance tax and assessments for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund. In 2003 and 2004, the Legislature capped the rates in subplan D and Tiers One and Two, respectively. Since 2004, the Legislature has provided approximately $7.9 million to the JUA to fund deficits in subplan D. The JUA is subject to the public records and meeting laws of chs. 119, and 286, F.S., as an agency for purposes of ch. 119, F.S. However, the law does not address the distribution of assets of the JUA to the state upon dissolution of the JUA.

Recently, tax consultants engaged by the JUA provided written guidance as to the requirements for the JUA to be recognized as a tax-exempt entity for federal income taxes.[18] The consultants also recommended legislative changes to allow the state to have control of the board of governors and to require that, upon dissolution of the JUA, any remaining assets after payment of liabilities would be distributed to the state. Since its inception in 1994, the JUA has incurred $33 million in federal income tax expenses, including $16,590,095 for 2006.

**Senate Banking and Insurance Interim Report Recommendations**
The 2005 interim report provided the following legislative recommendations to address funding, availability, affordability, accountability issues relating to the JUA:

- Authorize the JUA to use some of the estimated $15 million surplus funds attributable to former subplan C to mitigate the estimated $4.77 million deficit in subplan D and any deficits in Tiers One and Two that are a result of the capped rates. The capped rates in Tiers One and Two are eliminated by January 1, 2007.
- Exclude former policyholders of subplan C from any potential assessments to prevent these former policyholders from incurring any potential liability in the event the JUA's estimated surplus in these plans adversely changes.
- Consider extending the current expiration date of January 1, 2007, for accessing the $15 million contingency reserve to allow the JUA to use any remaining funds beyond the deadline to fund the subplan D deficit.

[18] Correspondence from Thomas Howell Ferguson P.A. to Laura Torrence, Executive Director of the JUA, dated February 14, 2006.

- Consider extending or eliminating the July 1, 2007 expiration date for the below-the-line assessments for Tiers One and Two in order to keep these rates at a more reasonable level. As an alternative to extending the below-the-line assessment, the Legislature should consider providing funding from the Workers' Compensation Administrative Trust Fund through the current Legislative Budget Commission process to cover deficits attributable to capped rates in Tiers One and Two.
- Require the JUA to obtain approval of its rates prior to using the rates, as is currently required of the voluntary market insurers, to ensure that the rates are not excessive, inadequate, or unfairly discriminatory, subject to statutory requirements regarding capped rates.
- Require the JUA to return any unused state funds allocated for funding subplan D deficit to the State of Florida.
- Consider enacting legislation to assist the JUA in meeting criteria to qualify as a tax-exempt organization under s. 501(c) of the Internal Revenue Code, such as changing the board composition of the JUA so that the state appoints a majority of the board members.
- Create public records and meetings exemption for the JUA that are comparable to the exemptions provided to other JUAs. This type of exemption, which currently exists for many other residual markets, aids residual markets during the litigation of a claim since the release of such information could jeopardize or compromise ongoing or pending litigation.

## III. Effect of Proposed Changes:

**Section 1** amends s. 627.311, F.S., by revising the appointment process for selecting members on the board of the Florida Workers' Compensation Joint Underwriting Association (JUA). The bill would require the Financial Services Commission to appoint all members, rather than only three members. The representation by the remaining members would be unchanged by the bill, two representatives of the top twenty domestic workers' compensation insurers, two representatives of the top twenty foreign workers' compensation insurers, one person representing the largest property and casualty agents' association in Florida, and the consumer advocate appointed by the Chief Financial Officer. However, the commission would select and appoint all insurance representatives. Currently, the insurance representatives are elected by the insurance industry. The Financial Services Commission may remove any member for cause.

The bill provides, technical, clarifying changes related to public records and meetings of the JUA. The bill provides that the records and meetings of the board of governors and the plan be subject to ch. 286, F.S., as well as ch. 119, F.S., unless otherwise provided by law. Under the general public records law in ch. 119, F.S., minutes, audits, and procedures are already subject to the public records law, unless specifically exempted. Presently, the JUA does not have any specific public record or public meeting exemption in its governing laws. Therefore, all of these records and meetings would be subject to chs. 119 and 286, F.S., unless otherwise provided by these statues. Chapter 286, F.S., requires all meetings and minutes of such meetings of any board or commission or any agency or authority of the state are open to the public, except as otherwise provided by law.

This section also authorizes the OIR to withdraw approval of all or part of the plan of operation if the OIR determines that conditions warrant such action. Currently, any changes to the plan of

operation are subject to approval of the OIR. This change strengthens the OIR's oversight of the operations of the JUA and appears to codify current practice of the OIR. Citizens is also subject to this same type of oversight.

The following procedures and guidelines for the procurement of goods and services are specified in the bill, which are also required of Citizens:

- Generally, the bill requires competitive selection of goods and services valued at over $25,000. Exceptions for exempted services (legal and auditing, etc.), sole sourcing and emergency purchases are authorized. Any purchase that exceeds $100,000 requires approval by the board of governors. Under current law, state agencies are generally required to procure goods and services valued over $25,000 through competitive selection. Purchases valued at or below $25,000 must be secured through written or verbal quotes or informal bids, whenever practical.
- The bill provides guidelines and criteria for determining whether the JUA should engage staff attorneys or outside attorneys and delineates factors for selecting outside firms. This language is modeled after the guidelines state agencies use pursuant to ch. 287, F.S.
- The bill prohibits the JUA from retaining an outside lobbyist and authorizes the JUA to employee a full-time employee of the plan to register as a lobbyist for the plan. State agencies and Citizens are currently subject to this statutory requirement pursuant to s. 11.062, F.S.

The bill provides the following requirements related to standards of conduct and financial disclosure, which are also currently required of Citizens:

- Senior managers, officers, and board members are subject to part III of ch. 112, F.S., including but not limited to, standards of conduct, public disclosure and reporting of financial interests to the Commission on Ethics on an annual basis. Currently, senior manager of state agencies are subject to these provisions.
- Current and prospective employees are required to submit an annual statement to the JUA attesting that no conflict of interest exists.
- Any senior manager or officer, employed on January 1, 2008, regardless of the original date of hire, and who retires or terminates from the JUA from representing another person before the JUA for a two-year period.
- Employees and board members are prohibited from accepting gifts or expenditures of any value from a person or entity, or an employee or representative of such person or entity, that has a contractual relationship with the plan or who is under consideration for a contract. Employees or board members that fail to comply with this provision are subject penalties, such as fines and loss of retirement benefits.

The JUA is required to fund any deficits in subplan D, Tiers One, or Tier Two by using policyholder surplus attributable to former subplan C, or if the surplus in subplan C does not fully fund the deficit, the JUA may request access to any remaining funds in the contingency reserve. Currently, the funding mechanism for subplan D is the contingency reserve first, and then, assessments on policyholders in the voluntary market, if the contingency reserve cannot fully fund the deficit. Current law provides funding for deficits in Tiers One and Two through

assessments on policyholders in the voluntary market until July 1, 2007, which is extended until July 1, 2012. Entities that were policyholders in former subplan C are not subject to any assessments.

Funding for Tier Three deficits would continue to be initially provided through assessments on policyholders in Tier Three. The JUA could continue to request funding for any remaining deficit from the Workers Compensation Administration Trust Fund, subject to the approval of the Legislative Budget Commission (LBC). The LBC would evaluate such requests for funds based on the cash flow needs of the JUA on a 6-months basis, rather than the current 3-month basis. The bill requires the JUA to return any state funds in excess of the amount necessary to fund a deficit in subplan "D" or any tier.

The bill revises the rate approval process for the JUA by requiring prior approval of its rates by the Office of Insurance Regulation before the rates can be used. Carriers in the voluntary market are presently subject to this type of rate regulation.

The bill transfers two general provisions relating to plans and associations including the JUA, to two newly created subsections to provide greater clarity.

**Section 2** revises section 2 of chapter 2004-266, L.O.F., appearing as a footnote to s. 627.311, F.S., to allow the JUA to evaluate cash flow needs for funding deficits of subplan D on a 6-month basis rather than the current 3-month basis. The Workers' Compensation Administration Trust Fund would be a funding mechanism for this subplan only after the JUA had exhausted any available policyholder surplus (approximately $39 million) in subplan C. The section extends the deadline for accessing funds from the contingency reserve from July 1, 2007, to July 1, 2012. The bill also allows the contingency reserve to be used to fund any deficits in Tier One or Tier Two.

**Section 3** requires, that on or before January 1, 2008, the JUA must seek a letter ruling or determination from the IRS as to the JUA's eligibility as a tax-exempt organization. Since its inception in 1994, the JUA has incurred an estimated $33 million in federal income tax expenses.

**Section 4** provides that this act shall take effect July 1, 2007, except as otherwise provided.

## 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:

Without legislative action to provide additional contingency funding beyond January 1, 2007, or authorization for the JUA to access some of its $39 million surplus, the JUA may find it necessary to levy a "below-the-line" assessment on policyholders in the voluntary market to fund the estimated $1.4 million deficit. Individual, self-insured employers and governmental self-insurance funds are not subject to the assessment. Contingent upon the future financial condition of the JUA, the receipt of state funds could generate additional federal income tax liability for the JUA, thereby reducing the ultimate value of such state funds provided to the JUA.

Once legislative changes related to the organization and operations of the JUA are enacted and the JUA is able to receive a tax ruling or determination from the Internal Revenue Service that it qualifies as a tax-exempt organization, the JUA would be eligible to be exempt from federal income tax as a tax exempt entity. Since 1994, the JUA has incurred $33 million in federal income tax expenses, including $16 million in 2006. Reductions in such administrative costs could result in reduced rates for policyholders, since federal income taxes, as a percentage of the JUA's gross earned premium in 2006, totaled 31 percent.

### B. Private Sector Impact:

Policyholders in the JUA may benefit from the change in rate approval process since the rates will be subject to prior approval by the Office of Insurance Regulation. Since the JUA will now be required to obtain approval of its rates prior to using the rates, the burden will be on the JUA to demonstrate that the rates comply with the statutory requirements established for Tiers One, Two, and Three and part I of ch. 627, F.S., which provides that rates cannot be inadequate, excessive, or discriminatory. The current caps on Tiers One and Two were eliminated, effective January 1, 2007, and rates in Tiers One, Two, and Three were set at 1.34, 2.15, and 2.88 times the voluntary rate, respectively.

### C. Government Sector Impact:

If the JUA is required to use some of the estimated $39 million of policyholder surplus attributable to former subplan C before accessing the contingency reserve for funding subplan D deficits on a cash flow basis, the State of Florida will be able to reduce the amount of funding provided to the JUA. If the surplus in subplan C is not used, and in order to prevent assessments on policyholders, it is estimated that the state would be required to transfer an additional $1-2 million to fund deficits in former subplan D. However, funds provided by the state would be taxable income for the JUA, thereby significantly reducing the value of any funds received and possibly increasing the JUA's federal tax liability. If the surplus in subplan C is inadequate to fund deficits, the bill extends the time to access the state contingency reserve and assessment mechanism from January 1, 2007 to January 1, 2012.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

# VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.