

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/CS/SB 1138

INTRODUCER: Policy and Steering Committee on Ways and Means; Higher Education Committee; Communications, Energy, and Public Utilities Committee and Senator Gaetz

SUBJECT: Self Insurance Funds/Electric Cooperatives

DATE: April 21, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>Harkey</u>	<u>Matthews</u>	<u>HE</u>	<u>Fav/CS</u>
4.	<u>Frederick</u>	<u>Kelly</u>	<u>WPSC</u>	<u>Fav/CS</u>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill authorizes any two or more electric cooperatives to operate a self-insurance fund for pooling and spreading liabilities of group members in securing payment of benefits for workers' compensation purposes. The legislation establishes standards for these electric cooperative self-insurance funds which include:

- Requiring members to be jointly and severally liable for the obligations of the fund;
- Maintaining excess insurance coverage and reserves to protect the financial stability of the fund as determined by an independent actuary;
- Using a certified public accountant to complete annual financial statements;
- Limiting membership to Florida electric cooperatives;
- Requiring the governing body to be comprised of a representative from each member of the fund;
- Subscribing to a rating organization;
- Disclosing to members that the fund is not regulated by the Office of Insurance Regulation; and
- Being subject to premium taxes.

The bill also exempts the electric cooperative self-insurance fund and the independent educational institution self-insurance fund from being members of the Florida Workers' Compensation Insurance Guaranty Association.

The bill changes the financial data 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.

The bill amends ss. 624.4621 626.89 and 631.904, Florida Statutes.

This bill creates s. 624.4626, Florida Statutes.

II. Present Situation:

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

Regulation of Self-Insurance Funds Providing Workers' Compensation Insurance

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

The Office of Insurance Regulation (OIR) is responsible for the regulation of group self-insurance funds created pursuant to s. 624.4621, F.S. These funds must comply with administrative rules adopted by the Financial Services Commission² relating to finance, organization, and operation. Group self-insurance funds must use independent certified public accountants for financial reporting and are required to submit quarterly and annual financial statements, audited financial statements, and actuarial reports pursuant to rule 69O-190.059, F.A.C. Such funds must maintain monetary reserves to insure their financial solvency and carry reinsurance. In addition, these funds must file reports with the OIR pertaining to coverage, accident experience, compensation payments, payroll records and such periodic reports as further required by the OIR. These funds are also required to participate in the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA or association).³ The association assumes the payment of workers' compensation claims of self-insurance funds that become insolvent.⁴

¹Section 440.381, F.S.

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

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

⁴Section 631.913, F.S.

Florida Rural Electric Self-Insurer's Fund

The Florida Rural Electric Self-Insurance Fund (FRESIF or fund) was established in Florida in 1979 under the group self-insurance law (s. 624.4621, F.S.) to operate as a self-insurer to provide workers' compensation insurance to electric cooperatives that were not able to access the commercial markets. By pooling their workers' compensation liabilities, the fund was able to provide substantial savings to these electric cooperatives. The fund has 17 cooperative members⁵ who serve on the fund's board. 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 FRESIF has paid out \$10.9 million in dividends. Members of the fund provide electricity to over one million consumers in 57 of 67 Florida counties.

Representatives with the fund assert that the fund could realize substantial savings if it did not have to comply with the regulatory, accounting and other regulations imposed by the OIR under the group self-insurance provisions (s. 624.4621, F.S.). These representatives state that currently most of their members could individually self-insure their own workers' compensation liabilities and be exempt from the compliance requirements and regulations. When these cooperatives group together for a better risk spread and stronger solvency, however, the group then comes under the OIR compliance and filing requirements that would not be applied to any of the cooperatives individually. These representatives state that it is not necessary for the fund to participate as a member of the Florida Workers' Compensation Insurance Guaranty Association because the fund has substantial surplus and reserves and each cooperative member is jointly and severally obligated to pay any assessments that are needed to cover losses incurred by the fund.

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA or association) provides for the payment of covered claims for insurers or group self-insurance funds under s. 624.4621, F.S., that are declared insolvent and unable to continue making payment to injured workers. All insurers and group self-insurance funds are members of FWCIGA as a condition of their authority to offer workers' compensation coverage in Florida. Assessments are levied based upon the premiums written by member companies in Florida; however, the last year the association levied assessments was in 2005. The association was formed in 1997 under part V of ch. 631, F.S., and is governed by a Board of Directors comprised of 11 members who meet at least quarterly to discuss the operations of the association.

Individual self-insured entities are not entitled to coverage from the FWCIGA. The self-insurance funds which are covered by FWCIGA include a group self insurance fund,⁶ a commercial self-insurance fund writing workers' compensation insurance,⁷ and an assessable mutual insurer.⁸ There are two self-insurance funds which are not covered by the FWCIGA: a local government self-insurance fund,⁹ and an individual self-insurance fund.¹⁰

⁵The cooperatives include: Escambia River Electric, Choctawhatchee Electric, West Florida Electric, Gulf Coast Electric, Talquin Electric, Tri-County Electric, Suwannee Valley Electric, Okfenokee Electric, Central Florida Electric, Withlacoochee Electric, Peace River Electric, Glades Electric, Florida Keys Electric, Seminole Electric, Florida Electric, Suwannee Valley Services and the Cooperative Computer Center.

⁶Section 624.4621, F.S.

⁷Section 624.462, F.S.

⁸Section 628.6011, F.S.

⁹Section 624.4622, F.S.

Independent Educational Institution Self-Insurance Funds

In 2003, the Legislature enacted legislation creating the independent educational institution self-insurance fund under s. 624.4623, F.S.¹¹ The law authorizes any two or more accredited independent nonprofit colleges or universities and independent, nonprofit, accredited secondary schools chartered by the State of Florida to 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 payment of benefits under workers' compensation. That same year the Florida Independent Colleges and Universities Risk Management Association Self-Insurance Fund (FICURMA or fund) formed as a nonprofit educational risk pool under s. 624.4623, F.S., offering its 11-member colleges and universities property, casualty, workers' compensation, fleet auto, educator's legal, and officers and directors insurance.¹²

Under the law, the fund must maintain annual premiums in excess of \$5 million, maintain a program of excess insurance, submit annually to the OIR an audited fiscal year-end financial statement by an independent certified public accountant and have a governing body comprised entirely of independent educational institution officials. Representatives with the fund state that as of December 31, 2008, they have a cash surplus of \$4.2 million, cash assets of \$9.0 million and cash reserves of \$3.3 million. Officials with the fund state that it is not necessary for the fund to participate as a member of FWCIGA because the fund has substantial surplus and reserves.

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, and 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 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.

III. Effect of Proposed Changes:**Electric Cooperative Self-Insurance Funds**

The bill provides that, notwithstanding other laws, two or more electric cooperatives which are organized under ch. 425, F.S. (Rural Electric Cooperative Law), may operate a self-insurance fund for the purpose of pooling and spreading liabilities of group members in paying workers'

¹⁰Section 440.385, F.S.

¹¹Chapter 2003-281, L.O.F.

¹²The members of FICURMA 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.

compensation benefits under ch. 440, F.S. (Workers' Compensation Law). The legislation establishes standards for self-insurance funds which include:

- Requiring members of the fund to be jointly and severally liable¹³ for the obligations of the fund;
- Maintaining excess insurance coverage and reserves to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary;
- Subscribing to or being a member of a rating organization provided in s. 627.231, F.S.;¹⁴
- Employing an independent certified public accountant to complete an audit of its year-end financial statement within six months after the end of the fiscal year;
- Having a governing body comprised of a representative from each fund member;
- Limiting membership in the fund to electric cooperatives operating in Florida, their subsidiaries, and the current members of the Florida Rural Electric Self-Insurer's Fund; and
- Providing members of the fund, at renewal, a disclosure statement notifying members that the fund is not regulated by the Office of Insurance Regulation (OIR).

The bill provides that self-insurance funds meeting the above requirements are subject to the assessments under s. 624.4621(7), F.S.,¹⁵ and the assessments under ss. 440.49(0) and 440.51(1), F.S.¹⁶ However, such funds are not subject to other provisions of s. 624.4621, F.S.,¹⁷ and are not required to file reports with the OIR under s. 440.38(2), F.S.¹⁸

As a separate self-insurance fund for electric cooperatives, the Florida Rural Electric Self-Insurer's Fund would not be under the regulatory authority of the OIR and would not have to comply with specified financial and reporting provisions for group self-insurance funds under s. 624.4621, F.S. However, the fund still would have to adhere to the bill's requirements to maintain excess insurance coverage and reserve evaluation to protect the stability of the fund in a manner determined by a qualified and independent actuary, employ an independent certified public accountant to complete an annual financial statement, pay premium taxes and meet other requirements.

Exceptions to the Requirements of Florida Workers' Compensation Insurance Guaranty Association Act

The bill clarifies that both the independent educational institution self-insurance fund and the electric cooperative self-insurance fund are exempt from the workers' compensation guaranty

¹³Joint and several liability means that each fund member is responsible together and individually for the obligations of the fund.

¹⁴Section 627.231, F.S., provides that insurance rating organizations must permit any insurer to subscribe to its rating services. The National Council on Compensation Insurance (NCCI) manages the nation's largest database of workers compensation insurance information and prepares workers compensation insurance rate recommendations on behalf of insurers.

¹⁵Section 624.4621(7), F.S., provides that premiums, contributions and assessments received by group self-insurance funds are subject to premium taxes under ss. 624.509 and 624.5092, F.S. The tax rate is 1.6 percent of the gross amount of premiums, collections and assessments.

¹⁶These sections relate to assessments for the workers' compensation Special Disability Trust Fund and for the department's administrative expenses, respectively.

¹⁷Section 624.4621, F.S., authorizes two or more employers to self-insure for liabilities under the workers' compensation law (ch. 440, F.S.).

¹⁸Section 440.38(2)(b), F.S., requires self-insurers to file specified reports pertaining to workers' compensation with the OIR.

association. Representatives with the guaranty association state that since both of these self-insurance funds are not under the full review of the OIR with appropriate checks and balances, then it is appropriate they not be members of the association.

The bill requires each application for workers' compensation coverage issued by a group self-insurance fund to contain a notice that it is a fully assessable policy and that if the fund is unable to meet its obligations, policyholders must contribute, on a pro rata earned premium basis, the money necessary to meet any unfilled obligations. The notice must be in boldface type of not less than 10 points in size.

The bill changes the financial data 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 or 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 and provides specified reporting deadlines.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives with the Florida Rural Electric Self-Insurer's Fund state that the bill would save the fund approximately \$100,000 per year in regulatory, accounting, legal and other costs which can be passed on to the electric cooperatives' consumer members.

C. Government Sector Impact:

The OIR would not have regulatory responsibility for electric cooperative self-insurance funds that are authorized under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Policy and Steering Committee on Ways and Means on April 21, 2009:

The CS adds a provision which changes the financial data reporting year for insurance administrators of a pooled governmental self-insurance program or of a university from a calendar year to a fiscal year and provides specified reporting deadlines.

CS by Communications, Energy and Public Utilities on March 24, 2009:

The committee substitute:

- Provides that the self-insurance funds are subject to assessments for the workers' compensation Special Disability Trust Fund and for the department's administrative expenses; and
- Changes the disclosure requirements relating to the liability of each member for the obligations of the commercial self-insurance fund to require that the disclosure be printed in boldface, not a contrasting color.

CS by Higher Education on April 6, 2009:

The committee substitute requires each application for workers' compensation coverage issued by a group self-insurance fund to contain a notice that it is a fully assessable policy and that, if the fund is unable to meet its obligations, members would be required to contribute on a pro rata basis to meet the obligations.

B. Amendments:

None.