State Administration Appropriations Committee

Friday, March 24, 2006
9:00 a.m. – 5:00 p.m.
Room 12 HOB

Allan G. Bense
Speaker

Kimberly (Kim) Berfield
Chair

The Florida House of Representatives

Fiscal Council
State Administration Appropriations Committee

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Agenda
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Time: 9:00 a.m. – 5:00 p.m.
Location: Room 12 HOB

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

PCB STA 06-01 - Workers' Compensation JUA

PCB STA 06-02 - State Planning and Budgeting

PCB STA 06-03 - Governmental Operations/Regulatory Fees

PCB STA 06-04 - Agency Planning and Accountability

V. 2006-2007 Budget Preparation Workshop

VI. Closing Remarks

VII. Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-6204

1 A bill to be entitled
2 An act relating to the Florida Workers' Compensation Joint
3 Underwriting Association; amending s. 627.311, F.S.; providing
4 requirements for the joint underwriting plan of insurers which
5 operates as the association; revising the membership of the board
6 of governors that oversees operation of the joint underwriting
7 plan; providing for continuous review of the plan; requiring that
8 the market-assistance plan be periodically reviewed and updated;
9 providing guidelines for procurement of goods and services,
10 including legal services; prohibiting hiring an outside lobbyist;
11 authorizing the use of surplus funds of former plan C; extending
12 the deadline to access contingency reserves; authorizing the
13 board of the association to request a transfer of funds from the
14 Workers' Compensation Administration Trust Fund under certain
15 circumstances; providing that the plan is subject to the same
16 requirements for filing and approval of rating plans as workers'
17 compensation insurers; deleting certain provisions limiting the
18 disapproval of rates by the Office of Insurance Regulation;
19 requiring that excess funds received by the plan be returned to
20 the state; providing applicability of specified statutes
21 regulating ethical standards; requiring annual statements by plan
22 employees that they do not have conflicts of interest;
23 prescribing limits on representing persons or entities before the
24 plan by former senior managers or officers of the plan;
25 prohibiting any part of the plan's income from inuring to the
26 benefit of a private individual; prohibiting employees and board
27 members from accepting expenditures from a lobbyist or a
28 lobbyist's principal; providing applicability; requiring periodic
29 comprehensive market examinations; prescribing disposition of

30 assets of the plan upon dissolution; amending s. 2 of ch. 2004-
31 266, Laws of Florida; extending the period for maintaining the
32 contingency reserve and the period for projecting current cash
33 needs; requiring the plan to submit a request for an Internal
34 Revenue Service letter concerning the plan's eligibility as a
35 tax-exempt organization; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Subsections (5), (6), and (7) of section
40 627.311, Florida Statutes, are amended to read:
41 627.311 Joint underwriters and joint reinsurers; public
42 records and public meetings exemptions.--
43 (5)(a) The office shall, after consultation with insurers,
44 approve a joint underwriting plan of insurers which shall operate
45 as <u>the Florida Workers' Compensation Joint Underwriting</u>
46 <u>Association,</u> a nonprofit entity. For the purposes of this
47 subsection, the term "insurer" includes group self-insurance
48 funds authorized by s. 624.4621, commercial self-insurance funds
49 authorized by s. 624.462, assessable mutual insurers authorized
50 under s. 628.6011, and insurers licensed to write workers'
51 compensation and employer's liability insurance in this state.
52 The purpose of the plan is to provide workers' compensation and
53 employer's liability insurance to applicants who are required by
54 law to maintain workers' compensation and employer's liability
55 insurance and who are in good faith entitled to but who are
56 unable to procure such insurance through the voluntary market.
57 Except as provided herein, the plan must have actuarially sound
58 rates that ensure that the plan is self-supporting.

59 (b) The operation of the plan is subject to the supervision
60 of a 9-member board of governors. Each member described in
61 subparagraph 1., subparagraph 2., subparagraph 3., or
62 subparagraph 5. shall be appointed by the Financial Services
63 Commission and shall serve at the pleasure of the commission. The
64 board of governors shall be comprised of:
65 ~~1. Three members appointed by the Financial Services~~
66 ~~Commission. Each member appointed by the commission shall serve~~
67 ~~at the pleasure of the commission;~~
68 1.~~2.~~ Two representatives of the 20 domestic insurers, as
69 defined in s. 624.06(1), having the largest voluntary direct
70 premiums written in this state for workers' compensation and
71 employer's liability insurance~~, which shall be elected by those~~
72 ~~20 domestic insurers~~;
73 2.~~3.~~ Two representatives of the 20 foreign insurers as
74 defined in s. 624.06(2) having the largest voluntary direct
75 premiums written in this state for workers' compensation and
76 employer's liability insurance~~, which shall be elected by those~~
77 ~~20 foreign insurers~~;
78 3.~~4.~~ One representative of ~~person appointed by~~ the largest
79 property and casualty insurance agents' association in this
80 state; ~~and~~
81 4.~~5.~~ The consumer advocate appointed under s. 627.0613 or
82 the consumer advocate's designee; and~~.~~
83 5. Three other persons appointed by the commission.
84
85 Each board member shall be appointed to ~~serve~~ a 4-year term and
86 may be appointed to ~~serve~~ consecutive terms. A vacancy on the
87 board shall be filled in the same manner as the original

88 appointment for the unexpired portion of the term. The Financial
89 Services Commission shall designate a member of the board to
90 serve as chair. No board member shall be an insurer which
91 provides services to the plan or which has an affiliate which
92 provides services to the plan or which is serviced by a service
93 company or third-party administrator which provides services to
94 the plan or which has an affiliate which provides services to the
95 plan. The meetings and records ~~minutes, audits, and procedures~~ of
96 the board of governors and plan are subject to chapters ~~chapter~~
97 119 and 286, unless otherwise exempted by law.
98 (c) The operation of the plan shall be governed by a plan
99 of operation that is prepared at the direction of the board of
100 governors and approved by order of the office. The plan is
101 subject to continuous review by the office. The office may, by
102 order, withdraw approval of all or part of a plan if the office
103 determines that conditions have changed since approval was
104 granted and that the purposes of the plan require changes in the
105 plan. ~~The plan of operation may be changed at any time by the~~
106 ~~board of governors or upon request of the office. The plan of~~
107 ~~operation and all changes thereto are subject to the approval of~~
108 ~~the office.~~ The plan of operation shall:
109 1. Authorize the board to engage in the activities
110 necessary to implement this subsection, including, but not
111 limited to, borrowing money.
112 2. Develop criteria for eligibility for coverage by the
113 plan, including, but not limited to, documented rejection by at
114 least two insurers which reasonably assures that insureds covered
115 under the plan are unable to acquire coverage in the voluntary
116 market.

117 3. Require notice from the agent to the insured at the time
118 of the application for coverage that the application is for
119 coverage with the plan and that coverage may be available through
120 an insurer, group self-insurers' fund, commercial self-insurance
121 fund, or assessable mutual insurer through another agent at a
122 lower cost.
123 4. Establish programs to encourage insurers to provide
124 coverage to applicants of the plan in the voluntary market and to
125 insureds of the plan, including, but not limited to:
126 a. Establishing procedures for an insurer to use in
127 notifying the plan of the insurer's desire to provide coverage to
128 applicants to the plan or existing insureds of the plan and in
129 describing the types of risks in which the insurer is interested.
130 The description of the desired risks must be on a form developed
131 by the plan.
132 b. Developing forms and procedures that provide an insurer
133 with the information necessary to determine whether the insurer
134 wants to write particular applicants to the plan or insureds of
135 the plan.
136 c. Developing procedures for notice to the plan and the
137 applicant to the plan or insured of the plan that an insurer will
138 insure the applicant or the insured of the plan, and notice of
139 the cost of the coverage offered; and developing procedures for
140 the selection of an insuring entity by the applicant or insured
141 of the plan.
142 d. Provide for a market-assistance plan to assist in the
143 placement of employers. All applications for coverage in the plan
144 received 45 days before the effective date for coverage shall be
145 processed through the market-assistance plan. A market-assistance

146 plan specifically designed to serve the needs of small, good
147 policyholders as defined by the board must be reviewed and
148 updated periodically ~~finalized by January 1, 1994~~.
149 5. Provide for policy and claims services to the insureds
150 of the plan of the nature and quality provided for insureds in
151 the voluntary market.
152 6. Provide for the review of applications for coverage with
153 the plan for reasonableness and accuracy, using any available
154 historic information regarding the insured.
155 7. Provide for procedures for auditing insureds of the plan
156 which are based on reasonable business judgment and are designed
157 to maximize the likelihood that the plan will collect the
158 appropriate premiums.
159 8. Authorize the plan to terminate the coverage of and
160 refuse future coverage for any insured that submits a fraudulent
161 application to the plan or provides fraudulent or grossly
162 erroneous records to the plan or to any service provider of the
163 plan in conjunction with the activities of the plan.
164 9. Establish service standards for agents who submit
165 business to the plan.
166 10. Establish criteria and procedures to prohibit any agent
167 who does not adhere to the established service standards from
168 placing business with the plan or receiving, directly or
169 indirectly, any commissions for business placed with the plan.
170 11. Provide for the establishment of reasonable safety
171 programs for all insureds in the plan. All insureds of the plan
172 must participate in the safety program.
173 12. Authorize the plan to terminate the coverage of and
174 refuse future coverage to any insured who fails to pay premiums

175 or surcharges when due; who, at the time of application, is
176 delinquent in payments of workers' compensation or employer's
177 liability insurance premiums or surcharges owed to an insurer,
178 group self-insurers' fund, commercial self-insurance fund, or
179 assessable mutual insurer licensed to write such coverage in this
180 state; or who refuses to substantially comply with any safety
181 programs recommended by the plan.
182 13. Authorize the board of governors to provide the goods
183 and services required by the plan through staff employed by the
184 plan, through reasonably compensated service providers who
185 contract with the plan to provide services as specified by the
186 board of governors, or through a combination of employees and
187 service providers.
188 a. The procurement of goods with a value of less than
189 $2,500 shall be carried out using good purchasing practices, such
190 as the receipt of written quotes or written records of telephone
191 quotes. Purchases that equal or exceed $2,500 but are less than
192 or equal to $25,000, may be made by using best purchasing
193 practices, such as receipt of written quotes, written record of
194 telephone quotes, or informal bids, whenever practical. The
195 procurement of goods or services valued over $25,000 are subject
196 to competitive solicitation, except in situations in which the
197 goods or services are provided by a sole source or are deemed an
198 emergency purchase, or the services are exempted from competitive
199 solicitation requirements under s. 287.057(5)(f). Justification
200 for the sole-sourcing or emergency procurement must be
201 documented. Contracts for goods or services valued at or over
202 $100,000 are subject to board approval.
203 b. In determining whether legal services should be provided

204 by staff attorneys or outsourced to private attorneys, the plan
205 shall consider the following factors:
206 (I) The nature of the attorney services to be provided and
207 the issues involved.
208 (II) The need for use of private attorneys, rather than
209 staff attorneys, using the criteria provided in sub-subparagraph
210 c.
211 (III) The criteria by which the plan selected the private
212 attorney or law firm it proposes to employ, using the criteria
213 provided in sub-subparagraph c.
214 (IV) Competitive fees for similar attorney services.
215 (V) The plan's analysis estimating the number of hours for
216 attorney services, the costs, the total contract amount, and,
217 when appropriate, a risk or cost-benefit analysis.
218 (VI) Which partners, associates, paralegals, research
219 associates, or other personnel will be used and how their time
220 will be billed to the plan.
221 (VII) Any other information that the plan deems appropriate
222 for the proper evaluation of the need for such private attorney
223 services.
224 c. The plan shall use the following criteria when selecting
225 outside firms for attorney services:
226 (I) The magnitude or complexity of the case.
227 (II) The firm's rating and certifications.
228 (III) The firm's minority status.
229 (IV) The firm's physical proximity to the case and the
230 plan.
231 (V) The firm's prior experience with the plan.
232 (VI) The firm's prior experience with similar cases or

233 issues.
234 (VII) The firm's billing methodology and proposed rate.
235 (VIII) The firm's current or past adversarial position, or
236 conflict of interest, with the plan.
237 (IX) The firm's willingness to use resources of the plan to
238 minimize costs.
239 d. The plan may not retain a lobbyist to represent it
240 before the legislative or executive branch. However, full-time
241 employees of the plan may register as lobbyists and represent
242 that employer before the legislative or executive branch.
243 14. Provide for service standards for service providers,
244 methods of determining adherence to those service standards,
245 incentives and disincentives for service, and procedures for
246 terminating contracts for service providers that fail to adhere
247 to service standards.
248 15. Provide procedures for selecting service providers and
249 standards for qualification as a service provider that reasonably
250 assure that any service provider selected will continue to
251 operate as an ongoing concern and is capable of providing the
252 specified services in the manner required.
253 16. Provide for reasonable accounting and data-reporting
254 practices.
255 17. Provide for annual review of costs associated with the
256 administration and servicing of the policies issued by the plan
257 to determine alternatives by which costs can be reduced.
258 18. Authorize the acquisition of such excess insurance or
259 reinsurance as is consistent with the purposes of the plan.
260 19. Provide for an annual report to the office on a date
261 specified by the office and containing such information as the

262 office reasonably requires.
263 20. Establish multiple rating plans for various
264 classifications of risk which reflect risk of loss, hazard grade,
265 actual losses, size of premium, and compliance with loss control.
266 At least one of such plans must be a preferred-rating plan to
267 accommodate small-premium policyholders with good experience as
268 defined in sub-subparagraph 22.a.
269 21. Establish agent commission schedules.
270 22. For employers otherwise eligible for coverage under the
271 plan, establish three tiers of employers meeting the criteria and
272 subject to the rate limitations specified in this subparagraph.
273 a. Tier One.--
274 (I) Criteria; rated employers.--An employer that has an
275 experience modification rating shall be included in Tier One if
276 the employer meets all of the following:
277 (A) The experience modification is below 1.00.
278 (B) The employer had no lost-time claims subsequent to the
279 applicable experience modification rating period.
280 (C) The total of the employer's medical-only claims
281 subsequent to the applicable experience modification rating
282 period did not exceed 20 percent of premium.
283 (II) Criteria; non-rated employers.--An employer that does
284 not have an experience modification rating shall be included in
285 Tier One if the employer meets all of the following:
286 (A) The employer had no lost-time claims for the 3-year
287 period immediately preceding the inception date or renewal date
288 of the employer's coverage under the plan.
289 (B) The total of the employer's medical-only claims for the
290 3-year period immediately preceding the inception date or renewal

291 date of the employer's coverage under the plan did not exceed 20
292 percent of premium.
293 (C) The employer has secured workers' compensation coverage
294 for the entire 3-year period immediately preceding the inception
295 date or renewal date of the employer's coverage under the plan.
296 (D) The employer is able to provide the plan with a loss
297 history generated by the employer's prior workers' compensation
298 insurer, except if the employer is not able to produce a loss
299 history due to the insolvency of an insurer, the receiver shall
300 provide to the plan, upon the request of the employer or the
301 employer's agent, a copy of the employer's loss history from the
302 records of the insolvent insurer if the loss history is contained
303 in records of the insurer which are in the possession of the
304 receiver. If the receiver is unable to produce the loss history,
305 the employer may, in lieu of the loss history, submit an
306 affidavit from the employer and the employer's insurance agent
307 setting forth the loss history.
308 (E) The employer is not a new business.
309 (III) Premiums.--The premiums for Tier One insureds shall
310 be set at a premium level 25 percent above the comparable
311 voluntary market premiums until the plan has sufficient
312 experience as determined by the board to establish an actuarially
313 sound rate for Tier One, at which point the board shall, subject
314 to paragraph (e), adjust the rates, if necessary, to produce
315 actuarially sound rates, provided such rate adjustment shall not
316 take effect prior to January 1, 2007.
317 b. Tier Two.--
318 (I) Criteria; rated employers.--An employer that has an
319 experience modification rating shall be included in Tier Two if

320 the employer meets all of the following:
321 (A) The experience modification is equal to or greater than
322 1.00 but not greater than 1.10.
323 (B) The employer had no lost-time claims subsequent to the
324 applicable experience modification rating period.
325 (C) The total of the employer's medical-only claims
326 subsequent to the applicable experience modification rating
327 period did not exceed 20 percent of premium.
328 (II) Criteria; non-rated employers.--An employer that does
329 not have any experience modification rating shall be included in
330 Tier Two if the employer is a new business. An employer shall be
331 included in Tier Two if the employer has less than 3 years of
332 loss experience in the 3-year period immediately preceding the
333 inception date or renewal date of the employer's coverage under
334 the plan and the employer meets all of the following:
335 (A) The employer had no lost-time claims for the 3-year
336 period immediately preceding the inception date or renewal date
337 of the employer's coverage under the plan.
338 (B) The total of the employer's medical-only claims for the
339 3-year period immediately preceding the inception date or renewal
340 date of the employer's coverage under the plan did not exceed 20
341 percent of premium.
342 (C) The employer is able to provide the plan with a loss
343 history generated by the workers' compensation insurer that
344 provided coverage for the portion or portions of such period
345 during which the employer had secured workers' compensation
346 coverage, except if the employer is not able to produce a loss
347 history due to the insolvency of an insurer, the receiver shall
348 provide to the plan, upon the request of the employer or the

349 employer's agent, a copy of the employer's loss history from the
350 records of the insolvent insurer if the loss history is contained
351 in records of the insurer which are in the possession of the
352 receiver. If the receiver is unable to produce the loss history,
353 the employer may, in lieu of the loss history, submit an
354 affidavit from the employer and the employer's insurance agent
355 setting forth the loss history.
356 (III) Premiums.--The premiums for Tier Two insureds shall
357 be set at a rate level 50 percent above the comparable voluntary
358 market premiums until the plan has sufficient experience as
359 determined by the board to establish an actuarially sound rate
360 for Tier Two, at which point the board shall, subject to
361 paragraph (e), adjust the rates, if necessary, to produce
362 actuarially sound rates, provided such rate adjustment shall not
363 take effect prior to January 1, 2007.
364 c. Tier Three.--
365 (I) Eligibility.--An employer shall be included in Tier
366 Three if the employer does not meet the criteria for Tier One or
367 Tier Two.
368 (II) Rates.--The board shall establish, subject to
369 paragraph (e), and the plan shall charge, actuarially sound rates
370 for Tier Three insureds.
371 23. For Tier One or Tier Two employers which employ no
372 nonexempt employees or which report payroll which is less than
373 the minimum wage hourly rate for one full-time employee for 1
374 year at 40 hours per week, the plan shall establish actuarially
375 sound premiums, provided, however, that the premiums may not
376 exceed $2,500. These premiums shall be in addition to the fee
377 specified in subparagraph 26. When the plan establishes

378 actuarially sound rates for all employers in Tier One and Tier
379 Two, the premiums for employers referred to in this paragraph are
380 no longer subject to the $2,500 cap.
381 24. Provide for a depopulation program to reduce the number
382 of insureds in the plan. If an employer insured through the plan
383 is offered coverage from a voluntary market carrier:
384 a. During the first 30 days of coverage under the plan;
385 b. Before a policy is issued under the plan;
386 c. By issuance of a policy upon expiration or cancellation
387 of the policy under the plan; or
388 d. By assumption of the plan's obligation with respect to
389 an in-force policy,
390
391 that employer is no longer eligible for coverage through the
392 plan. The premium for risks assumed by the voluntary market
393 carrier must be no greater than the premium the insured would
394 have paid under the plan, and shall be adjusted upon renewal to
395 reflect changes in the plan rates and the tier for which the
396 insured would qualify as of the time of renewal. The insured may
397 be charged such premiums only for the first 3 years of coverage
398 in the voluntary market. A premium under this subparagraph is
399 deemed approved and is not an excess premium for purposes of s.
400 627.171.
401 25. Require that policies issued and applications must
402 include a notice that the policy could be replaced by a policy
403 issued from a voluntary market carrier and that, if an offer of
404 coverage is obtained from a voluntary market carrier, the
405 policyholder is no longer eligible for coverage through the plan.
406 The notice must also specify that acceptance of coverage under

407 the plan creates a conclusive presumption that the applicant or
408 policyholder is aware of this potential.
409 26. Require that each application for coverage and each
410 renewal premium be accompanied by a nonrefundable fee of $475 to
411 cover costs of administration and fraud prevention. The board
412 may, with the prior approval of the office, increase the amount
413 of the fee pursuant to a rate filing to reflect increased costs
414 of administration and fraud prevention. The fee is not subject to
415 commission and is fully earned upon commencement of coverage.
416 (d)1. The funding of the plan shall include premiums as
417 provided in subparagraph (c)22. and assessments as provided in
418 this paragraph.
419 2.a. If the board determines that a deficit exists in Tier
420 One or Tier Two or that there is any deficit remaining
421 attributable to any of the plan's former subplans and that the
422 deficit cannot be fully funded by using policyholder surplus
423 attributable to former subplan C or, if the surplus in the former
424 subplan C does not fully fund the deficit and the deficit cannot
425 be fully funded by using any remaining funds in the contingency
426 reserve ~~without the use of deficit assessments~~, the board shall
427 request the office to levy, by order, a deficit assessment
428 against premiums charged to insureds for workers' compensation
429 insurance by insurers as defined in s. 631.904(5). The office
430 shall issue the order after verifying the amount of the deficit.
431 The assessment shall be specified as a percentage of future
432 premium collections, as recommended by the board and approved by
433 the office. The same percentage shall apply to premiums on all
434 workers' compensation policies issued or renewed during the 12-
435 month period beginning on the effective date of the assessment,

436 as specified in the order.
437 b. With respect to each insurer collecting premiums that
438 are subject to the assessment, the insurer shall collect the
439 assessment at the same time as the insurer collects the premium
440 payment for each policy and shall remit the assessments collected
441 to the plan as provided in the order issued by the office. The
442 office shall verify the accurate and timely collection and
443 remittance of deficit assessments and shall report such
444 information to the board. Each insurer collecting assessments
445 shall provide such information with respect to premiums and
446 collections as may be required by the office to enable the office
447 to monitor and audit compliance with this paragraph.
448 c. Deficit assessments are not considered part of an
449 insurer's rate, are not premium, and are not subject to the
450 premium tax, to the assessments under ss. 440.49 and 440.51, to
451 the surplus lines tax, to any fees, or to any commissions. The
452 deficit assessment imposed shall become plan funds at the moment
453 of collection and shall not constitute income to the insurer for
454 any purpose, including financial reporting on the insurer's
455 income statement. An insurer is liable for all assessments that
456 the insurer collects and must treat the failure of an insured to
457 pay an assessment as a failure to pay premium. An insurer is not
458 liable for uncollectible assessments.
459 d. When an insurer is required to return unearned premium,
460 the insurer shall also return any collected assessments
461 attributable to the unearned premium.
462 e. Deficit assessments as described in this subparagraph
463 shall not be levied after July 1, 2011 ~~2007~~.
464 3.a. All policies issued to Tier Three insureds shall be

465 assessable. All Tier Three assessable policies must be clearly
466 identified as assessable by containing, in contrasting color and
467 in not less than 10-point type, the following statement:
468 "This is an assessable policy. If the plan is unable to pay its
469 obligations, policyholders will be required to contribute on a
470 pro rata earned premium basis the money necessary to meet any
471 assessment levied."
472 b. The board may from time to time assess Tier Three
473 insureds to whom the plan has issued assessable policies for the
474 purpose of funding plan deficits. Any such assessment shall be
475 based upon a reasonable actuarial estimate of the amount of the
476 deficit, taking into account the amount needed to fund medical
477 and indemnity reserves and reserves for incurred but not reported
478 claims, and allowing for general administrative expenses, the
479 cost of levying and collecting the assessment, a reasonable
480 allowance for estimated uncollectible assessments, and allocated
481 and unallocated loss adjustment expenses.
482 c. Each Tier Three insured's share of a deficit shall be
483 computed by applying to the premium earned on the insured's
484 policy or policies during the period to be covered by the
485 assessment the ratio of the total deficit to the total premiums
486 earned during such period upon all policies subject to the
487 assessment. If one or more Tier Three insureds fail to pay an
488 assessment, the other Tier Three insureds shall be liable on a
489 proportionate basis for additional assessments to fund the
490 deficit. The plan may compromise and settle individual assessment
491 claims without affecting the validity of or amounts due on
492 assessments levied against other insureds. The plan may offer and
493 accept discounted payments for assessments which are promptly

494 paid. The plan may offset the amount of any unpaid assessment
495 against unearned premiums which may otherwise be due to an
496 insured. The plan shall institute legal action when necessary and
497 appropriate to collect the assessment from any insured who fails
498 to pay an assessment when due.
499 d. The venue of a proceeding to enforce or collect an
500 assessment or to contest the validity or amount of an assessment
501 shall be in the Circuit Court of Leon County.
502 e. If the board finds that a deficit in Tier Three exists
503 for any period and that an assessment is necessary, the board
504 shall certify to the office the need for an assessment. No sooner
505 than 30 days after the date of such certification, the board
506 shall notify in writing each insured who is to be assessed that
507 an assessment is being levied against the insured, and informing
508 the insured of the amount of the assessment, the period for which
509 the assessment is being levied, and the date by which payment of
510 the assessment is due. The board shall establish a date by which
511 payment of the assessment is due, which shall be no sooner than
512 30 days nor later than 120 days after the date on which notice of
513 the assessment is mailed to the insured.
514 f. Whenever the board makes a determination that the plan
515 does not have a sufficient cash basis to meet 6 ~~3~~ months of
516 projected cash needs due to a deficit in Tier Three, the board
517 may request the department to transfer funds from the Workers'
518 Compensation Administration Trust Fund to the plan in an amount
519 sufficient to fund the difference between the amount available
520 and the amount needed to meet a 6-month ~~3-month~~ projected cash
521 need as determined by the board and verified by the office,
522 subject to the approval of the Legislative Budget Commission. If

523 the Legislative Budget Commission approves a transfer of funds
524 under this sub-subparagraph, the plan shall report to the
525 Legislature the transfer of funds and the Legislature shall
526 review the plan during the next legislative session or the
527 current legislative session, if the transfer occurs during a
528 legislative session. This sub-subparagraph shall not apply until
529 the plan determines and the office verifies that assessments
530 collected by the plan pursuant to sub-subparagraph b. are
531 insufficient to fund the deficit in Tier Three and to meet 6 ~~3~~
532 months of projected cash needs.
533 4. The plan may offer rating, dividend plans, and other
534 plans to encourage loss prevention programs.
535 (e) For rates and rating plans effective on or after
536 January 1, 2007, the plan shall be subject to the same
537 requirements of this part for the filing and approval of its
538 rates and rating plans as apply to workers' compensation
539 insurers, except as otherwise provided. ~~establish and use its~~
540 ~~rates and rating plans, and the plan may establish and use~~
541 ~~changes in rating plans at any time, but no more frequently than~~
542 ~~two times per any rating class for any calendar year. By December~~
543 ~~1, 1993, and December 1 of each year thereafter, except as~~
544 ~~provided in subparagraph (c)22., the board shall establish and~~
545 ~~use actuarially sound rates for use by the plan to assure that~~
546 ~~the plan is self-funding while those rates are in effect. Such~~
547 ~~rates and rating plans must be filed with the office within 30~~
548 ~~calendar days after their effective dates, and shall be~~
549 ~~considered a "use and file" filing. Any disapproval by the office~~
550 ~~must have an effective date that is at least 60 days from the~~
551 ~~date of disapproval of the rates and rating plan and must have~~

552 ~~prospective effect only. The plan may not be subject to any order~~
553 ~~by the office to return to policyholders any portion of the rates~~
554 ~~disapproved by the office. The office may not disapprove any~~
555 ~~rates or rating plans unless it demonstrates that such rates and~~
556 ~~rating plans are excessive, inadequate, or unfairly~~
557 ~~discriminatory.~~
558 (f) No later than June 1 of each year, the plan shall
559 obtain an independent actuarial certification of the results of
560 the operations of the plan for prior years, and shall furnish a
561 copy of the certification to the office. If, after the effective
562 date of the plan, the projected ultimate incurred losses and
563 expenses and dividends for prior years exceed collected premiums,
564 accrued net investment income, and prior assessments for prior
565 years, the certification is subject to review and approval by the
566 office before it becomes final.
567 (g) Whenever a deficit exists, the plan shall, within 90
568 days, provide the office with a program to eliminate the deficit
569 within a reasonable time. The deficit may be funded through
570 increased premiums charged to insureds of the plan for subsequent
571 years, through the use of policyholder surplus attributable to
572 any year<u>, including policyholder surplus in former subplan C as</u>
573 <u>authorized in subparagraph (d)2.</u>, through the use of assessments
574 as provided in subparagraph (d)2., and through assessments on
575 assessable policies as provided in subparagraph (d)3.
576 <u>Policyholders in former subplan C shall not be subject to any</u>
577 <u>assessments.</u>
578 (h) Any premium or assessments collected by the plan in
579 excess of the amount necessary to fund projected ultimate
580 incurred losses and expenses of the plan and not paid to insureds

581 of the plan in conjunction with loss prevention or dividend
582 programs shall be retained by the plan for future use. Any state
583 funds received by the plan in excess of the amount necessary to
584 fund deficits in subplan D or any tier shall be returned to the
585 state.
586 (i) The decisions of the board of governors do not
587 constitute final agency action and are not subject to chapter
588 120.
589 (j) Policies for insureds shall be issued by the plan.
590 (k) The plan created under this subsection is liable only
591 for payment for losses arising under policies issued by the plan
592 with dates of accidents occurring on or after January 1, 1994.
593 (l) Plan losses are the sole and exclusive responsibility
594 of the plan, and payment for such losses must be funded in
595 accordance with this subsection and must not come, directly or
596 indirectly, from insurers or any guaranty association for such
597 insurers.
598 (m) Senior managers and officers, as defined in the plan of
599 operation, and members of the board of governors shall be subject
600 to part III of ch. 112, including, but not limited to, the code
601 of ethics and public disclosure and reporting of financial
602 interests, pursuant to s. 112.3145. Senior managers, officers,
603 and board members are also required to file such disclosures with
604 the Office of Insurance Regulation. The executive director of the
605 plan or his or her designee shall notify each newly appointed and
606 existing appointed member of the board of governors, senior
607 manager and officer of their duty to comply with the reporting
608 requirements of part III of ch. 112. At least quarterly, the
609 executive director of the plan or his or her designee shall

610 submit to the Commission on Ethics a list of names of the senior
611 managers, officers, members of the board of governors that are
612 subject to the public disclosure requirements under s. 112.3145.
613 ~~Each joint underwriting plan or association created under this~~
614 ~~section is not a state agency, board, or commission. However, for~~
615 ~~the purposes of s. 199.183(1) only, the joint underwriting plan~~
616 ~~is a political subdivision of the state and is exempt from the~~
617 ~~corporate income tax.~~
618 (n) On or before July 1 of each year, employees of the plan
619 are required to sign and submit a statement to the plan attesting
620 that they do not have a conflict of interest, as defined in part
621 III of ch. 112. As a condition of employment, all prospective
622 employees are required to sign and submit a conflict-of-interest
623 statement to the plan. ~~Each joint underwriting plan or~~
624 ~~association may elect to pay premium taxes on the premiums~~
625 ~~received on its behalf or may elect to have the member insurers~~
626 ~~to whom the premiums are allocated pay the premium taxes if the~~
627 ~~member insurer had written the policy. The joint underwriting~~
628 ~~plan or association shall notify the member insurers and the~~
629 ~~Department of Revenue by January 15 of each year of its election~~
630 ~~for the same year. As used in this paragraph, the term "premiums~~
631 ~~received" means the consideration for insurance, by whatever name~~
632 ~~called, but does not include any policy assessment or surcharge~~
633 ~~received by the joint underwriting association as a result of~~
634 ~~apportioning losses or deficits of the association pursuant to~~
635 ~~this section.~~
636 (o) Any senior manager or officer of the plan who is
637 employed by the plan as of January 1, 2007, regardless of the
638 date of hire, and who subsequently retires or terminates

639 employment is prohibited from representing another person or
640 entity before the plan for 2 years after retirement or
641 termination of employment from the plan.
642 (p) No part of the income of the plan may inure to the
643 benefit of any private person.
644 (q) Notwithstanding ss. 112.3148 and 112.3149 or other
645 provision of law, an employee or board member may not knowingly
646 accept, directly or indirectly, any expenditure from a lobbyist
647 or his or her principal. An employee or board member that fails
648 to comply with this paragraph is subject to penalties provided
649 under ss. 112.317 and 112.3173.
650 (r) Nothing contained in this section shall be construed as
651 barring the plan from providing insurance coverage to any
652 employer with whom a former employee of the plan is affiliated or
653 employing or reemploying any former employee of the plan in a
654 part-time, full-time, temporary, or permanent capacity, so long
655 as such employment does not violate any provision of part III of
656 ch. 112.
657 (s) ~~(o)~~ Neither the plan nor any member of the board of
658 governors is liable for monetary damages to any person for any
659 statement, vote, decision, or failure to act, regarding the
660 management or policies of the plan, unless:
661 1. The member breached or failed to perform her or his
662 duties as a member; and
663 2. The member's breach of, or failure to perform, duties
664 constitutes:
665 a. A violation of the criminal law, unless the member had
666 reasonable cause to believe her or his conduct was not unlawful.
667 A judgment or other final adjudication against a member in any

668 criminal proceeding for violation of the criminal law estops that
669 member from contesting the fact that her or his breach, or
670 failure to perform, constitutes a violation of the criminal law;
671 but does not estop the member from establishing that she or he
672 had reasonable cause to believe that her or his conduct was
673 lawful or had no reasonable cause to believe that her or his
674 conduct was unlawful;
675 b. A transaction from which the member derived an improper
676 personal benefit, either directly or indirectly; or
677 c. Recklessness or any act or omission that was committed
678 in bad faith or with malicious purpose or in a manner exhibiting
679 wanton and willful disregard of human rights, safety, or
680 property. For purposes of this sub-subparagraph, the term
681 "recklessness" means the acting, or omission to act, in conscious
682 disregard of a risk:
683 (I) Known, or so obvious that it should have been known, to
684 the member; and
685 (II) Known to the member, or so obvious that it should have
686 been known, to be so great as to make it highly probable that
687 harm would follow from such act or omission.
688 (t) ~~(p)~~ No insurer shall provide workers' compensation and
689 employer's liability insurance to any person who is delinquent in
690 the payment of premiums, assessments, penalties, or surcharges
691 owed to the plan or to any person who is an affiliated person of
692 a person who is delinquent in the payment of premiums,
693 assessments, penalties, or surcharges owed to the plan. For
694 purposes of this paragraph, the term "affiliated person" of
695 another person means:
696 1. The spouse of such other natural person;

697 2. Any person who directly or indirectly owns or controls,
698 or holds with the power to vote, 5 percent or more of the
699 outstanding voting securities of such other person;
700 3. Any person who directly or indirectly owns 5 percent or
701 more of the outstanding voting securities that are directly or
702 indirectly owned or controlled, or held with the power to vote,
703 by such other person;
704 4. Any person or group of persons who directly or
705 indirectly control, are controlled by, or are under common
706 control with such other person;
707 5. Any officer, director, trustee, partner, owner, manager,
708 joint venturer, or employee, or other person performing duties
709 similar to persons in those positions, of such other persons; or
710 6. Any person who has an officer, director, trustee,
711 partner, or joint venturer in common with such other person.
712 (u) ~~(q)~~ Effective July 1, 2004, the plan is exempt from the
713 premium tax under s. 624.509 and any assessments under ss. 440.49
714 and 440.51.
715 (v) The Office of Insurance Regulation shall perform a
716 comprehensive market conduct examination of the plan periodically
717 to determine compliance with its plan of operation and internal
718 operating policies and procedures.
719 (w) Upon dissolution, the assets of the plan shall be
720 applied first to pay all debts, liabilities, and obligations of
721 the plan, including the establishment of reasonable reserves for
722 any contingent liabilities or obligations, and all remaining
723 assets of the plan shall become property of the state and shall
724 be deposited in the Workers' Compensation Administration Trust
725 Fund. However, dissolution shall not take effect as long as the

726 plan has financial obligations outstanding unless adequate
727 provision has been made for the payment of financial obligations
728 pursuant to the documents authorizing the financial obligations.
729 (6) Each joint underwriting plan or association created
730 under this section is not a state agency, board, or commission.
731 However, for the purposes of s. 199.183(1) only, the joint
732 underwriting plan created under subsection (5) is a political
733 subdivision of the state and is exempt from the corporate income
734 tax.
735 (7) Each joint underwriting plan or association may elect
736 to pay premium taxes on the premiums received on its behalf or
737 may elect to have the member insurers to whom the premiums are
738 allocated pay the premium taxes if the member insurer had written
739 the policy. The joint underwriting plan or association shall
740 notify the member insurers and the Department of Revenue by
741 January 15 of each year of its election for the same year. As
742 used in this paragraph, the term "premiums received" means the
743 consideration for insurance, by whatever name called, but does
744 not include any policy assessment or surcharge received by the
745 joint underwriting association as a result of apportioning losses
746 or deficits of the association pursuant to this section.
747 (8) ~~(6)~~ As used in this section and ss. 215.555 and 627.351,
748 the term "collateral protection insurance" means commercial
749 property insurance of which a creditor is the primary beneficiary
750 and policyholder and which protects or covers an interest of the
751 creditor arising out of a credit transaction secured by real or
752 personal property. Initiation of such coverage is triggered by
753 the mortgagor's failure to maintain insurance coverage as
754 required by the mortgage or other lending document. Collateral

755 protection insurance is not residential coverage.
756 (9) ~~(7)~~ (a) The Florida Automobile Joint Underwriting
757 Association created under this section shall be deemed to have
758 appointed its general manager as its agent to receive service of
759 all legal process issued against the association in any civil
760 action or proceeding in this state. Process so served shall be
761 valid and binding upon the insurer.
762 (b) Service of process upon the association's general
763 manager as the association's agent pursuant to such an
764 appointment shall be the sole method of service of process upon
765 the association.
766 Section 2. Section 2 of chapter 2004-266, Laws of Florida,
767 appearing as a footnote to section 627.311, Florida Statutes, is
768 amended to read:
769 Notwithstanding the provisions of ss. 440.50 and 440.51,
770 Florida Statutes, subject to the following procedures and
771 approval, the Department of Financial Services may request
772 transfer funds from the Workers' Compensation Administration
773 Trust Fund within the Department of Financial Services to the
774 workers' compensation joint underwriting plan provided in s.
775 627.311(5), Florida Statutes.
776 (1) The department shall establish a contingency reserve
777 within the Workers' Compensation Administration Trust Fund, from
778 which the department is authorized to expend funds as provided in
779 the subsection, in an amount not to exceed $15 million to be
780 released only upon the approval of a budget amendment presented
781 to the Legislative Budget Commission. For actuarial deficits
782 projected for policyholders, based on actuarial best estimates,
783 covered in subplan "D" prior to July 1, 2004, and upon

784 verification by the Office of Insurance Regulation, the plan is
785 authorized to request and the department is authorized to submit
786 a budget amendment in an amount not to exceed $15 million for the
787 purpose of funding deficits in subplan "D".
788 (2) After the contingency reserve is established, whenever
789 the board determines subplan "D" does not have a sufficient cash
790 basis to meet a 6-month period ~~3 months~~ of projected cash needs
791 due to any deficit in subplan "D~~,"~~ remaining after accessing any
792 policyholder surplus attributable to former subplan C, the board
793 is authorized to request the department to transfer funds from
794 the contingency reserve fund within the Workers' Compensation
795 Administration Trust Fund to the plan in an amount sufficient to
796 fund the difference between the amount available and the amount
797 needed to meet subplan "D"'s projected cash need for the
798 subsequent 6-month ~~3-month~~ period. The board and the office must
799 first certify to the Department of Financial Services that there
800 is not sufficient cash within subplan "D" to meet the projected
801 cash needs in subplan "D" within the subsequent 6-month period ~~3~~
802 ~~months~~. The amount requested for transfer to subplan "D" may not
803 exceed the difference between the amount available within subplan
804 "D" and the amount needed to meet subplan "D"'s projected cash
805 need for the subsequent 6-month ~~3-month~~ period, as jointly
806 certified by the board and the Office of Insurance Regulation to
807 the Department of Financial Services, attributable to the former
808 subplan "D" policyholders. The Department of Financial Services
809 may submit a budget amendment to request release of funds from
810 the Workers' Compensation Administration Trust Fund, subject to
811 the approval of the Legislative Budget Commission. The board will
812 provide, for review of the Legislative Budget Commission,

813 information on the reasonableness of the plan's administration,
814 including, but not limited to, the plan of operations and costs,
815 claims costs, claims administration costs, overhead costs, claims
816 reserves, and the latest report submitted on administration cost
817 reduction alternatives as required in s. 627.311(5)(c)17.,
818 Florida Statutes.
819 (3) This section expires July 1, 2011 ~~2007~~.
820 Section 3. No later than January 1, 2007, the plan shall
821 submit a request to the Internal Revenue Service for a letter
822 ruling or determination on the plan's eligibility as a section
823 501(c)(3) tax-exempt organization.
824 Section 4. Except as otherwise expressly provided in this
825 act, this act shall take effect July 1, 2006.
826
827

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB STA 06-01 Workers' Compensation JUA
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee		Rayman	Belcher
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends laws in section 627.311, Florida Statutes, governing the Florida Workers' Compensation Joint Underwriting Association (JUA) to provide greater accountability and oversight, to authorize additional funding mechanisms, and to require prior approval of rates. The bill requires the Financial Services Commission to select and appoint all 9 members of the JUA board of governors, including representatives of the insurance industry and the consumer advocate. The Office of Insurance Regulation (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. This language strengthens the OIR's authority over the plan. The bill requires the OIR to conduct periodic market conduct examinations of the JUA.

The bill provides senior managers, officers, and board members of the JUA 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. It requires current and prospective employees to submit an annual statement to the JUA attesting that no conflict of interest exists. The bill prohibits any senior manager or officer, employed on January 1, 2007, 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. It also prohibits employees and board members from accepting gifts or any value from a lobbyist or his or her principal. 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 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 deficits in former subplan D, Tiers One, and Tiers Two. The deadline for levying "below-the-line" assessments to fund deficits in subplan D, Tier One, and Tier Two is extended from July 1, 2007, to July 1, 2008. 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. The JUA is required to obtain prior approval of its rates by the Office of Insurance Regulation before implementing the rates

The bill requires all assets of the JUA be applied 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. The JUA is required to seek a letter ruling or determination from the IRS as to the JUA's eligibility as a 501(c)(3) tax-exempt organization

The bill extends the time to access the Workers' Compensation Administration Trust Fund, in the Department of Financial Services, for the $15 million contingency reserve from July 1, 2007 until July 1, 2011. The JUA is required to use the estimated $15 million of policyholder surplus attributable to former subplan C prior to using any state funds or levying assessments on policyholders.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Background

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.[1] 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; one 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 approve rate filings for workers' compensation insurers in the voluntary market before the rates become effective.[2] The standard for approving insurance rates in Florida is that the rate may not be excessive, inadequate, or unfairly discriminatory.[3]

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).[4] 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. In February 2004, there were approximately 2,500 policyholders in subplan D.

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[1] Section 627.311(5), F.S.
[2] Section 627.101(2), F.S.
[3] Sections 627.062(1) and 627.151, F.S.
[4] The law also provided coverage for certain charitable organizations that was capped at 10 percent over the voluntary market rates.

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.5 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. 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 Governor subsequently vetoed the $10 million appropriation to the JUA.

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.[6] Premiums in Tier One and Two are 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. Tier Three rates are required to be actuarially sound and these policies are subject to assessments for additional premiums to cover any deficit.

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 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.

The Office of Insurance Regulation noted that the JUA premiums are consistently higher than residual markets or JUA's in other states. The rates in Tier Three policies are currently set at 170 percent above the voluntary market rate.[7] In contrast, the OIR noted that residual markets in 21 other states charge rates with an average differential of 35 percent above the voluntary market rate.[8] In its *2004 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. The OIR recommends that the Legislature extend or eliminate the July 1, 2007 expiration date of the below-the-line assessments for Tiers One and Two in order to keep these rates at a more reasonable level.

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

[6] 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 (experience-rating modification factor equal to or greater than 1.0 but not greater than 1.10), 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.

[7] Preferred Insurance Capital Consultants, LLC, *Actuarial Review of the Florida Workers' Compensation Joint Underwriting Association,* November 22, 2004.

[8] Office of Insurance Regulation, *2004 Workers' Compensation Annual Report* (2005).

Due to concerns regarding the accountability of the JUA, the Legislature directed the Auditor General to perform an operational audit of the JUA.[9] In 2004, the Auditor General released the audit report, which included findings and recommendations regarding the administration, rates, and funding of the JUA.[10] 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 Auditor General recommended that the Legislature consider enacting legislation that expedites the requirement that rates for Tiers One and Two are determined on an actuarially sound basis. The report also 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 qualify the JUA as a tax-exempt organization under s. 501(c) of the Internal Revenue Code. Currently, Citizens and the Florida Automobile Joint Underwriting Association qualify as tax-exempt organizations.

Funding Deficits in the JUA

According to the 2005 annual statement, the JUA recognized an overall surplus of $8,472,401 in 2005. The surplus can be broken down by suplan and tier as follows:

Subplan/Tier	2005 Total Surplus/(Deficit)
A, B, and C	$30,092,485
D	($11,834,198)
1	($1,467,245)
2	($4,823,657)
3	($3,494,984)

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.

In response to Committee staff inquiries regarding the JUA cash flow needs, the executive director of the JUA stated, "With regard to your inquiry regarding the cash flow projections, if the JUA's recently adjusted reserves are sufficient to meet the future obligations of Subplan D, the projected Subplan D deficit will be reduced. In turn, the $15 million contingency reserve the Legislature established in 2004 (House Bill 1251) appears to be sufficient and probably will eliminate the need to ever consider assessments to fund the Subplan D deficit. The current revised estimate for funding Subplan D obligations through the contingency reserve is approximately $12.9 million."

Access to the contingency reserve is eliminated, effective January 1, 2007, by the 2004 legislation. It is anticipated that the JUA will be unable to access all of these funds, on a cash flow basis, by that date. Without legislative action, the only currently available source of additional funding is the below-the-line assessment. Access to the surplus funds in subplan C would require a statutory change. Individual, self-insured employers and governmental self-insurance funds are not subject to the assessment. The JUA contemplates collecting the assessment in 12 equal installments, effective July 31, 2006.[11] To fund the deficit, an estimated assessment in the range of 0.1 - 0.2 percent would be required on every policy in the voluntary market.

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

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

[11] Letter from Milliman Consultants and Actuaries to Laura Torrence, Executive Director of the JUA, dated September 7, 2005..

The elimination of the deficit in Tier Three relies upon the deficit being eliminated by increasing rates. At the JUA's September 20, 2005 meeting, the board considered a recommendation to increase the average premium level of Tier Three by 2 percent, based upon the current voluntary market rate levels, effective January 1, 2007. The board of the JUA also discussed the option of eliminating deficits in Tiers One and Two by increasing the premiums in these tiers on January 1, 2007, when the rate caps are eliminated. The board also noted that the current law provides for a "below-the-line" assessment to fund such deficits. The JUA board reviewed analysis from their actuary that indicated a need for a premium level increase of 35.4% for Tier 1 and 32.3% for Tier 2 based upon current voluntary market rates.

The JUA believes that the rates in effect for former subplans A, B, and C were actuarially sound and the loss reserves carried through 2004 make a reasonable provision for all unpaid loss obligations of those subplans. The surplus balance in former subplan C is approximately $15 million. Subplans B and C issued assessable policies. The JUA states that no policyholder assessments will be required for these subplans. [12] 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 public records laws, 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.[13] 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.

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 statutory exemptions from the Sunshine Law.

Section 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."[14] The Office of the Attorney General has opined that 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 Law. The Attorney General's Office has opined that residual markets are considered "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.[15] Recently, the Office of Insurance Regulation directed the JUA to amend its plan of operations to

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[12] 2004 Management's Discussion and Analysis, Florida Workers' Compensation Joint Underwriting Association filed with the OIR April 1, 2005..
[13] Section 119.011(2), F.S.
[14] Florida Workers' Compensation Joint Underwriting Association, Inc. Minutes of the Board of Governors Meeting, June 22, 2005.
[15] AGO 94-32 and AGO 95-32.

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.[16]

Senate Banking and Insurance Interim Report Recommendations

The 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.
- 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.

Changes Proposed by the Bill

Several sections of 627.311, F.S., will be affected. The bill requires the Financial Services Commission to select and appoint all 9 members of the JUA board of governors, including representatives of the insurance industry and the consumer advocate. This change will assist the JUA in meeting IRS requirements regarding state governance of the JUA. The Financial Services Commission may remove any member for cause.

The bill authorizes the Office of Insurance Regulation (OIR) 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. This language strengthens the OIR's authority over the plan. The bill requires the OIR to conduct periodic market conduct examinations of the JUA.

The bill clarifies that the meeting minutes, audits, and procedures of the board of governors are subject to ch. 286, F.S. This chapter requires all meetings and minutes of such meetings of any board or

[16] Letter from Kevin M. McCarty, Commissioner of the OIR to Laura Torrence, Executive Director of the JUA, dated October 12, 2005.

commission or any agency or authority of the state are open to the public, except as otherwise provided in the statutes or the Florida Constitution.

Code of ethics and financial disclosure requirements contained in the bill require senior managers, officers, and board members to be 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 management of state agencies is subject to these provisions. The bill requires current and prospective employees to submit an annual statement to the JUA attesting that no conflict of interest exists. It prohibits any senior manager or officer, employed on January 1, 2007, 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. It also prohibits employees and board members from accepting gifts or any value from a lobbyist or his or her principal. Employees or board members that fail to comply with this provision are subject penalties, such as fines and loss of retirement benefits.

The bill includes requirements for procurement of goods and services, including 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. Purchases that are equal to or less than $25,000 are required to be accomplished using good purchasing practices, such as written quotations or informal quotations, whenever practical. Under current law, state agencies are generally required to procure goods and services valued over $25,000 through competitive selection with exceptions for sole sourcing and emergency purchases. 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 staff attorneys or outside attorneys should be used and factors to be used in selecting outside firms. These guidelines and criteria are modeled after the guidelines state agencies use. The JUA is prohibited from retaining an outside lobbyist but the JUA is authorized to employee a full-time employee of the plan to register as a lobbyist for the plan. State agencies are currently subject to this statutory requirement.

The JUA is required to fund any deficits in subplan D, Tiers One, and 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 accessing any remaining funds in the contingency reserve. Currently, the funding mechanisms for subplan D are 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. The bill extends the deadline for levying assessments to fund deficits in any tier or former subplan from July 1, 2007, to July 1, 2011.

Deficit funding for Tier Three continues to be initially provided through assessments on policyholders in Tier Three. The JUA would fund any remaining deficit by requesting the transfer of funds 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 also provides that policyholders in former subplan C are not subject to any assessments attributable to deficits in subplan D and Tiers One, Two, and Three.

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 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 transfers two general provisions relating to plans and associations including the JUA, to two newly created sections to provide greater clarity. It requires all assets of the JUA be applied 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. Requires the JUA to seek a letter ruling or determination from the IRS as to the JUA's eligibility as a 501(c) (3) tax-exempt organization.

The bill amends 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 the subplan D deficit on a 6-month basis rather than the current 3-month basis for accessing the contingency reserve established to fund the deficit. The Workers' Compensation Administration Trust Fund provides funding for the contingency reserve. The section requires the JUA to determine cash flow needs for subplan D after accessing any available policyholder surplus attributable to subplan C. The section extends the deadline for accessing funds from the contingency reserve from January 1, 2007, to January 1, 2011.

C. SECTION DIRECTORY:

Section 1. Amends subsections (5), (6), and (7) of s. 627.311, F.S., to provide requirements for the joint underwriting plan of insurers that operates as the association; to revise the membership of the board of governors that oversees operation of the joint underwriting plan; to provide for continuous review of the plan; to require that the market-assistance plan be periodically reviewed and updated; providing guidelines for procurement of goods and services, including legal services; to prohibit hiring an outside lobbyist; to authorize the use of surplus funds of former plan C; to extend the deadline to access contingency reserves; to authorize the board of the association to request a transfer of funds from the Workers' Compensation Administration Trust Fund under certain circumstances; to provide that the plan is subject to the same requirements for filing and approval of rating plans as workers' compensation insurers; to delete certain provisions limiting the disapproval of rates by the Office of Insurance Regulation; to require that excess funds received by the plan be returned to the state; providing applicability of specified statutes regulating ethical standards; to require annual statements by plan employees that they do not have conflicts of interest; to prescribe limits on representing persons or entities before the plan by former senior managers or officers of the plan; to prohibit any part of the plan's income from inuring to the benefit of a private individual; to prohibit employees and board members from accepting expenditures from a lobbyist or a lobbyist's principal; to provide applicability; requiring periodic comprehensive market examinations; to prescribe disposition of assets of the plan upon dissolution.

Section 2. Amends s. 2 of ch. 2004-266, Laws of Florida; appearing as a footnote to section 627.311, Florida Statutes, to extend the period for maintaining the contingency reserve and the period for projecting current cash needs.

Section 3. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 1, 2, and 3 and part I of ch. 627, F.S., which provides that rates not be inadequate, excessive, or discriminatory.

D. FISCAL COMMENTS:

Given the JUA is in a surplus position, it is not statutorily required pursuant to section 627.311(5) (g), Florida Statutes, to submit a deficit elimination plan to the Office of insurance Regulation (OIR). However, with four of its five rating plans posting deficits, the JUA will develop a plan to eliminate the individual rating plan deficits and submit said plan to the OIR. By law, the plan to eliminate the individual rating plan deficits may include several actions, including increasing premiums; applying policyholder surplus; levying assessments against policyholders; requesting OIR to levy, by order, a deficit assessment premiums charged to insureds for workers' compensation insurance by insurers as defined in s. 631.904(5), Florida Statutes; and accessing the $15 million contingency reserve established in 2004 in the Workers' Compensation Administration Trust Fund (WCATF) for the purpose of funding deficits in subplan D.[17]

If the adjusted reserves are sufficient to meet the future obligations of subplan D, the projected subplan D deficit will be reduced. In turn, the $15 million contingency reserve the Legislature established in 2004 (House Bill 1251) appears to be sufficient and probably will eliminate the need to ever consider assessments to fund the subplan D deficit. The current revised estimate for funding suplan D obligations through the contingency reserve is approximately $12.9 million. [18]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None noted.

B. RULE-MAKING AUTHORITY:

None.

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[17] Letter from Laura Torrence, Executive Director of the JUA, to Mr. Haynes Poole, CLU, CPCU, ARe, Florida Office of Insurance Regulation, dated February 28, 2006.

[18] Letter from Ray Neff Chair, Chair, Board of Governors of the JUA, to House Speaker and Senate President, dated February 28, 2006.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Additional statutory changes in the laws governing the JUA will be necessary to address IRS section 501(c) tax-exempt requirements. Certain organizational and operational requirements, such as the use of assets and the distribution of assets upon dissolution, must be addressed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

PCB STA 06-02

1 A bill to be entitled
2 An act relating to state planning and budgeting; amending
3 s. 11.90, F.S.; revising the membership of the Legislative
4 Budget Commission; providing for the appointment of
5 presiding officers; revising requirements for meetings and
6 a quorum; revising requirements for appointing the staff
7 of the commission; requiring the commission to review
8 budget amendments recommended by the Governor or Chief
9 Justice; authorizing the commission to perform other
10 duties prescribed by the Legislature; creating s. 11.91,
11 F.S.; creating the Government Efficiency Task Force for
12 the purpose of recommending improvements to governmental
13 operations and cost reductions; providing for the
14 Governor, the President of the Senate, and the Speaker of
15 the House of Representatives to appoint its members;
16 requiring that the task force meet at 4-year intervals
17 beginning on a specified date; authorizing the task force
18 to conduct meetings through teleconferences; providing for
19 members to be reimbursed for per diem and travel expenses;
20 requiring the task force to complete its work within 1
21 year and report to the Legislative Budget Commission, the
22 Governor, and the Chief Justice of the Supreme Court;
23 amending s. 29.0095, F.S.; requiring the legislative
24 appropriations committees to prescribe the format of
25 budget expenditure reports; amending s. 100.371, F.S.;
26 specifying that the Financial Impact Estimating Conference
27 is within the legislative branch of government and under
28 the direction of the President of the Senate and the
29 Speaker of the House of Representatives; revising

30 provisions governing public meetings of the conference;
31 amending s. 216.011, F.S.; redefining the term
32 "consultation" and defining the term "long-range financial
33 outlook" for purposes of state fiscal affairs; creating s.
34 216.012, F.S.; providing requirements for the long-range
35 financial outlook prepared by the Legislative Budget
36 Commission; requiring state agencies to provide certain
37 information; prescribing authority of the commission with
38 respect to such information; specifying timeframes for the
39 commission in completing the long-range financial outlook;
40 amending s. 216.023, F.S.; clarifying certain requirements
41 for legislative budget instructions; amending s. 216.065,
42 F.S.; requiring that fiscal impact statements be provided
43 to the Legislative Budget Commission in addition to the
44 legislative appropriations committees; requiring that such
45 statements contain information concerning subsequent
46 fiscal years; amending s. 216.162, F.S.; revising the date
47 for the Governor's recommended budget to be furnished to
48 the Legislature; authorizing the presiding officers of the
49 Legislature to approve submission of the Governor's
50 recommended budget at a later date than otherwise
51 required; amending s. 216.178, F.S.; extending the
52 deadline for production of the final budget; providing a
53 contingent effective date.
54
55 Be It Enacted by the Legislature of the State of Florida:
56
57 Section 1. Section 11.90, Florida Statutes, is amended to
58 read:

59 11.90 Legislative Budget Commission.--
60 (1) There is created the Legislative Budget Commission,
61 which is the joint Legislative Budget Commission created in s.
62 19, Art. III of the State Constitution, composed of seven members
63 of the Senate appointed by the President of the Senate and seven
64 members of the House of Representatives appointed by the Speaker
65 of the House of Representatives. Each member shall serve at the
66 pleasure of the officer who appointed the member. A vacancy on
67 the commission shall be filled in the same manner as the original
68 appointment. From November of each odd-numbered year through
69 October of each even-numbered year, the chairperson of the
70 commission shall be appointed by the President of the Senate and
71 the vice chairperson of the commission shall be appointed by the
72 Speaker of the House of Representatives. From November of each
73 even-numbered year through October of each odd-numbered year, the
74 chairperson of the commission shall be appointed by the Speaker
75 of the House of Representatives and the vice chairperson of the
76 commission shall be appointed by the President of the Senate.
77 ~~There is created a standing joint committee of the Legislature~~
78 ~~designated the Legislative Budget Commission, composed of 14~~
79 ~~members as follows: seven members of the Senate appointed by the~~
80 ~~President of the Senate, to include the chair of the Senate~~
81 ~~Budget Committee or its successor, and seven members of the House~~
82 ~~of Representatives appointed by the Speaker of the House of~~
83 ~~Representatives, to include the chair of the Fiscal~~
84 ~~Responsibility Council or its successor.~~ The terms of members
85 shall be for 2 years and shall run from the organization of one
86 Legislature to the organization of the next Legislature.
87 ~~Vacancies occurring during the interim period shall be filled in~~

88 ~~the same manner as the original appointment. During even-numbered~~
89 ~~years, the chair of the commission shall be the chair of the~~
90 ~~Senate Budget Committee or its successor, and the vice chair of~~
91 ~~the commission shall be the chair of the House Fiscal~~
92 ~~Responsibility Council or its successor. During odd-numbered~~
93 ~~years, the chair of the commission shall be the chair of the~~
94 ~~House Fiscal Responsibility Council or its successor, and the~~
95 ~~vice chair of the commission shall be the chair of the Senate~~
96 ~~Budget Committee or its successor.~~
97 (2) The Legislative Budget Commission shall be governed by
98 joint rules of the Senate and the House of Representatives which
99 shall remain in effect until repealed or amended by concurrent
100 resolution.
101 (3) The commission shall convene at the call of the
102 President of the Senate and the Speaker of the House of
103 Representatives at least quarterly. A majority of the commission
104 members of each house plus one additional member from either
105 house constitutes a quorum. ~~The commission shall meet at least~~
106 ~~quarterly and more frequently at the direction of the presiding~~
107 ~~officers or upon call of the chair. A quorum shall consist of a~~
108 ~~majority of members from each house, plus one additional member~~
109 ~~from either house.~~ Action by the commission requires a majority
110 vote of the members present of each house.
111 (4) The commission may conduct its meetings through
112 teleconferences or other similar means.
113 (5) The commission shall be staffed by legislative staff
114 members, as assigned by the President of the Senate and the
115 Speaker of the House of Representatives. ~~The commission will be~~
116 ~~jointly staffed by the appropriations committees of the House of~~

117 ~~Representatives and the Senate. During even-numbered years, the~~
118 ~~Senate will serve as lead staff, and during odd-numbered years,~~
119 ~~the House of Representatives will serve as lead staff.~~
120 (6) The commission shall have the power and duty to:
121 (a) Review and approve or disapprove budget amendments
122 recommended by the Governor or the Chief Justice of the Supreme
123 Court as provided in chapter 216. ~~Annually review the amount of~~
124 ~~state debt outstanding and submit to the President of the Senate~~
125 ~~and the Speaker of the House of Representatives an estimate of~~
126 ~~the maximum amount of additional state tax-supported debt that~~
127 ~~prudently may be authorized during the current fiscal year. The~~
128 ~~estimate shall be advisory and shall in no way bind the~~
129 ~~Legislature.~~
130 (b) Develop the long-range financial outlook described in
131 s. 19, Art. III of the State Constitution. ~~Promptly after~~
132 ~~receiving the report required by s. 215.98(2)(c), the commission~~
133 ~~shall submit to the President of the Senate and the Speaker of~~
134 ~~the House of Representatives the commission's estimate of tax-~~
135 ~~supported debt which prudently may be authorized for the next~~
136 ~~fiscal year, together with a report explaining the basis for the~~
137 ~~estimate.~~
138
139 In addition to the powers and duties specified in this
140 subsection, the commission shall exercise all other powers and
141 perform any other duties prescribed by the Legislature.
142 (7) The commission shall review information resources
143 management needs identified in agency long-range program plans
144 for consistency with the State Annual Report on Enterprise
145 Resource Planning and Management and statewide policies adopted

146 by the State Technology Office. The commission shall also review
147 proposed budget amendments associated with information technology
148 that involve more than one agency, that have an outcome that
149 impacts another agency, or that exceed $500,000 in total cost
150 over a 1-year period.
151 Section 2. Section 11.91, Florida Statutes, is created to
152 read:
153 11.91 Government Efficiency Task Force.--
154 (1) There is created the Government Efficiency Task Force.
155 The task force shall convene no later than January 2007, and each
156 4th year thereafter. The task force shall be composed of 15
157 members. Five members shall be appointed by the President of the
158 Senate, five members shall be appointed by the Speaker of the
159 House of Representatives, and five members shall be appointed by
160 the Governor. Members of the task force may include
161 representatives from the private sector, as designated by the
162 President of the Senate, the Speaker of the House of
163 Representatives, and the Governor. Each member shall serve at the
164 pleasure of the officer who appointed the member. A vacancy on
165 the task force shall be filled in the same manner as the original
166 appointment. The terms of the members shall be for 1 year.
167 (2) The task force shall elect a chair from among its
168 members.
169 (3) The task force shall meet as necessary, but at least
170 quarterly, at the call of the chair and at the time and place
171 designated by him or her. The task force may conduct its meetings
172 through teleconferences or other similar means.
173 (4) Members of the task force are entitled to receive
174 reimbursement for per diem and travel expenses pursuant to s.

175 112.061.
176 (5) The task force shall develop recommendations for
177 improving governmental operations and reducing costs. Staff to
178 assist the task force in performing its duties shall be assigned
179 by the President of the Senate, the Speaker of the House of
180 Representatives, and the Governor. The task force shall consider
181 reports issued by the Auditor General, the Office of Program
182 Policy Analysis and Government Accountability, and agency
183 inspectors general in developing its recommendations.
184 (6) The task force shall complete its work within 1 year
185 and submit its recommendations to the chairperson and vice
186 chairperson of the Legislative Budget Commission, the Governor,
187 and the Chief Justice of the Supreme Court. The task force may
188 submit all or part of its recommendations at any time during the
189 year, but a final report summarizing its recommendations must be
190 submitted at the completion of its work.
191 Section 3. Subsection (4) of section 29.0095, Florida
192 Statutes, is amended to read:
193 29.0095 Budget expenditure reports.--
194 (4) The appropriations committees of the Senate and the
195 House of Representatives ~~Legislative Budget Commission~~ shall
196 prescribe the format of the report required by this section in
197 consultation with the Chief Justice and the Justice
198 Administrative Commission.
199 Section 4. Subsection (5) of section 100.371, Florida
200 Statutes, as amended by section 28 of chapter 2005-278, Laws of
201 Florida, is amended to read:
202 100.371 Initiatives; procedure for placement on ballot.--

203 (5)(a) Within 45 days after receipt of a proposed revision
204 or amendment to the State Constitution by initiative petition
205 from the Secretary of State, the Financial Impact Estimating
206 Conference shall complete an analysis and financial impact
207 statement to be placed on the ballot of the estimated increase or
208 decrease in any revenues or costs to state or local governments
209 resulting from the proposed initiative. The Financial Impact
210 Estimating Conference shall submit the financial impact statement
211 to the Attorney General and Secretary of State.
212 (b)~~1.~~ The Financial Impact Estimating Conference shall
213 provide an opportunity for any proponents or opponents of the
214 initiative to submit information and may solicit information or
215 analysis from any other entities or agencies, including the
216 Office of Economic and Demographic Research.
217 (c) All meetings of the Financial Impact Estimating
218 Conference shall be open to the public ~~as provided in chapter~~
219 ~~286~~. The President of the Senate and the Speaker of the House of
220 Representatives, jointly, shall be the sole judge for the
221 interpretation, implementation, and enforcement of this
222 subsection.
223 1.~~2.~~ The Financial Impact Estimating Conference is
224 established to review, analyze, and estimate the financial impact
225 of amendments to or revisions of the State Constitution proposed
226 by initiative. The Financial Impact Estimating Conference shall
227 consist of four principals: one person from the Executive Office
228 of the Governor; the coordinator of the Office of Economic and
229 Demographic Research, or his or her designee; one person from the
230 professional staff of the Senate; and one person from the
231 professional staff of the House of Representatives. Each

232 principal shall have appropriate fiscal expertise in the subject
233 matter of the initiative. A Financial Impact Estimating
234 Conference may be appointed for each initiative.
235 2.~~3.~~ Principals of the Financial Impact Estimating
236 Conference shall reach a consensus or majority concurrence on a
237 clear and unambiguous financial impact statement, no more than 75
238 words in length, and immediately submit the statement to the
239 Attorney General. Nothing in this subsection prohibits the
240 Financial Impact Estimating Conference from setting forth a range
241 of potential impacts in the financial impact statement. Any
242 financial impact statement that a court finds not to be in
243 accordance with this section shall be remanded solely to the
244 Financial Impact Estimating Conference for redrafting. The
245 Financial Impact Estimating Conference shall redraft the
246 financial impact statement within 15 days.
247 3.~~4.~~ If the members of the Financial Impact Estimating
248 Conference are unable to agree on the statement required by this
249 subsection, or if the Supreme Court has rejected the initial
250 submission by the Financial Impact Estimating Conference and no
251 redraft has been approved by the Supreme Court by 5 p.m. on the
252 75th day before the election, the following statement shall
253 appear on the ballot pursuant to s. 101.161(1): "The financial
254 impact of this measure, if any, cannot be reasonably determined
255 at this time."
256 (d)~~(c)~~ The financial impact statement must be separately
257 contained and be set forth after the ballot summary as required
258 in s. 101.161(1).
259 (e)~~(d)~~1. Any financial impact statement that the Supreme
260 Court finds not to be in accordance with this subsection shall be

261 remanded solely to the Financial Impact Estimating Conference for
262 redrafting, provided the court's advisory opinion is rendered at
263 least 75 days before the election at which the question of
264 ratifying the amendment will be presented. The Financial Impact
265 Estimating Conference shall prepare and adopt a revised financial
266 impact statement no later than 5 p.m. on the 15th day after the
267 date of the court's opinion.
268 2. If, by 5 p.m. on the 75th day before the election, the
269 Supreme Court has not issued an advisory opinion on the initial
270 financial impact statement prepared by the Financial Impact
271 Estimating Conference for an initiative amendment that otherwise
272 meets the legal requirements for ballot placement, the financial
273 impact statement shall be deemed approved for placement on the
274 ballot.
275 3. In addition to the financial impact statement required
276 by this subsection, the Financial Impact Estimating Conference
277 shall draft an initiative financial information statement. The
278 initiative financial information statement should describe in
279 greater detail than the financial impact statement any projected
280 increase or decrease in revenues or costs that the state or local
281 governments would likely experience if the ballot measure were
282 approved. If appropriate, the initiative financial information
283 statement may include both estimated dollar amounts and a
284 description placing the estimated dollar amounts into context.
285 The initiative financial information statement must include both
286 a summary of not more than 500 words and additional detailed
287 information that includes the assumptions that were made to
288 develop the financial impacts, workpapers, and any other

289 information deemed relevant by the Financial Impact Estimating
290 Conference.
291 4. The Department of State shall have printed, and shall
292 furnish to each supervisor of elections, a copy of the summary
293 from the initiative financial information statements. The
294 supervisors shall have the summary from the initiative financial
295 information statements available at each polling place and at the
296 main office of the supervisor of elections upon request.
297 5. The Secretary of State and the Office of Economic and
298 Demographic Research shall make available on the Internet each
299 initiative financial information statement in its entirety. In
300 addition, each supervisor of elections whose office has a website
301 shall post the summary from each initiative financial information
302 statement on the website. Each supervisor shall include the
303 Internet addresses for the information statements on the
304 Secretary of State's and the Office of Economic and Demographic
305 Research's websites in the publication or mailing required by s.
306 101.20.
307 Section 5. Paragraph (h) of subsection (1) of section
308 216.011, Florida Statutes, is amended, and paragraph (tt) is
309 added to that subsection, to read:
310 216.011 Definitions.--
311 (1) For the purpose of fiscal affairs of the state,
312 appropriations acts, legislative budgets, and approved budgets,
313 each of the following terms has the meaning indicated:
314 (h) "Consultation" means communication to allow government
315 officials and agencies to deliberate and to seek and provide
316 advice in an open and forthright manner ~~with the full committee,~~
317 ~~a subcommittee thereof, the chair, or the staff as deemed~~

318 ~~appropriate by the chair of the respective appropriations~~
319 ~~committee~~.
320 (tt) "Long-range financial outlook" means a document issued
321 by the Legislative Budget Commission based on a 3-year forecast
322 of revenues and expenditures.
323 Section 6. Section 216.012, Florida Statutes, is created to
324 read:
325 216.012 Long-range financial outlook.--
326 (1) The commission shall develop a long-range 3-year
327 financial outlook and shall update that outlook each year.
328 (2) Each state agency shall provide information to the
329 commission, based on the commission's direction, which supports
330 the commission's development and updates of the long-range
331 financial outlook. The commission has the authority to accept,
332 modify, or direct the agency to modify any information received
333 from an agency.
334 (3) By September 15 of each year, the commission shall
335 complete the long-range financial outlook. The commission may
336 subsequently provide any additions or adjustments to the outlook
337 based on information not previously available.
338 Section 7. Subsection (12) of section 216.023, Florida
339 Statutes, is amended to read:
340 216.023 Legislative budget requests to be furnished to
341 Legislature by agencies.--
342 (12) In order to ensure an integrated state planning and
343 budgeting process, the agency long-range plan should be reviewed
344 by the Legislature. The legislative budget request instructions
345 must provide for consistency between the agency's long-range plan
346 and the agency's legislative budget request.

347 Section 8. Section 216.065, Florida Statutes, is amended to
348 read:
349 216.065 Fiscal impact statements on actions affecting the
350 budget.--In addition to the applicable requirements of chapter
351 120, before the Governor, or Governor and Cabinet as a body,
352 performing any constitutional or statutory duty, or before any
353 state agency or statutorily authorized entity takes any final
354 action that will affect revenues, require a request for an
355 increased or new appropriation in the following 3 fiscal years
356 ~~year~~, or transfer current year funds, it shall first provide the
357 joint Legislative Budget Commission and the legislative
358 appropriations committees with a fiscal impact statement that
359 details the effects of such action on the budget. The fiscal
360 impact statement must specify the estimated budget and revenue
361 impacts for the current year and the 2 subsequent fiscal years at
362 the same level of detail required to support a legislative budget
363 request, including amounts by appropriation category and fund.
364 Section 9. Subsection (1) of section 216.162, Florida
365 Statutes, is amended to read:
366 216.162 Governor's recommended budget to be furnished
367 Legislature; copies to members.--
368 (1) At least 30 days before the scheduled annual
369 legislative session, or at a later date if requested by the
370 Governor and approved in writing by the President of the Senate
371 and the Speaker of the House of Representatives, the Governor
372 shall furnish each senator and representative a copy of his or
373 her recommended balanced budget for the state, based on the
374 Governor's own conclusions and judgment~~; however, in his or her~~
375 ~~first year in office a new Governor may request, subject to~~

376 ~~approval of the President of the Senate and the Speaker of the~~
377 ~~House of Representatives, that his or her recommended balanced~~
378 ~~budget be submitted at a later time prior to the Governor's first~~
379 ~~regular legislative session~~.
380 Section 10. Subsection (2) of section 216.178, Florida
381 Statutes, is amended to read:
382 216.178 General Appropriations Act; format; procedure.--
383 (2) The Office of Planning and Budgeting shall develop a
384 final budget report that reflects the net appropriations for each
385 budget item. The report shall reflect actual expenditures for
386 each of the 2 preceding fiscal years and the estimated
387 expenditures for the current fiscal year. In addition, the report
388 must contain the actual revenues and cash balances for the
389 preceding 2 fiscal years and the estimated revenues and cash
390 balances for the current fiscal year. The report may also contain
391 expenditure data, program objectives, and program measures for
392 each state agency program. The report must be produced by the
393 120th day of ~~October 15~~ each fiscal year. A copy of the report
394 must be made available to each member of the Legislature, to the
395 head of each state agency, to the Auditor General, to the
396 director of the Office of Program Policy Analysis and Government
397 Accountability, and to the public.
398 Section 11. This act shall take effect upon the effective
399 date of the amendment to the State Constitution contained in 2005
400 Senate Joint Resolution No. 2144, or a similar constitutional
401 amendment, relating to the state budgeting, planning, and
402 appropriations processes.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB STA 06-02 PCB STA 06-02 State Planning & Budgeting
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee		Belcher	Belcher
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Last year the Legislature adopted Senate Joint Resolution 2144 which proposes to amend Section 19 of Article III of the State Constitution relating to state planning and budgeting. The SJR establishes the Joint Legislative Budget Commission the Florida Constitution, directs the commission to issue a long-range financial outlook setting out fiscal strategies for the state, and creates the Government Efficiency Task Force.

The bill implements the SJR by revising statutes relating to the Legislative Budget Commission. The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chair of the commission will be appointed in alternate years by the President of the Senate and the vice chair appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees serving as chair and vice chair); in alternate years, appointing authority is reversed.

The bill directs the commission to develop a long-range 3-year financial outlook which will be updated each year with the assistance of each state agency providing information to support the commission's development and updates of the long-range financial outlook. The bill prescribes a plan to ensure an integrated state planning and budget process to assure consistency between the agency's long-range plan and the agency's legislative budget request.

The bill also creates a Government Efficiency Task Force in 2007, and every 4 years thereafter, composed of legislators and private sector appointees, to make recommendations to improve government and reduce costs.

The bill clarifies that the Financial Estimating Conference is subject to the legislative rules of notice and openness to the public.

The bill takes effect upon the effective date of the amendment to the State Constitution contained in Senate Joint Resolution 2144, or a similar constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill implements the SJR which creates the Joint Legislative Budget Commission and the Government Efficiency Task Force.

B. EFFECT OF PROPOSED CHANGES:

The Legislative Budget Commission (commission) was created in 2000 primarily to consider budget amendments proposed by the Governor and to conduct zero-based budget reviews of state agencies. Its authority has been expanded since then to encompass a number of actions that require legislative review during the interim between sessions. The most significant expansion of the commission's authority occurred in 2001 when it was required to consider more budget amendments, including those amendments increasing or transferring trust fund budget authority in excess of $1 million.

Currently, the commission is not charged with the responsibility or duty to issue a long-range financial outlook setting out fiscal strategies for the state and its departments and agencies to assist the legislature in making policy and budget decisions.

This bill conforms current statutes concerning the commission to the provisions of Senate Joint Resolution 2144.

The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chairperson of the commission will be appointed by the President of the Senate and the vice chairperson appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees); in alternate years, the chairperson of the commission will be appointed by the Speaker of the House of Representatives and the vice chairperson appointed by the President of the Senate. The commission will convene at the call of the presiding officers (instead of the chair and vice chair). A quorum will continue to be a majority of the members from each house plus one additional member of either house. The commission will be staffed by legislative staff (instead of appropriations committee staff).

The commission will have the power and duty to:

- review and approve budget amendments proposed by the Governor or the Chief Justice of the Supreme Court as provided in Chapter 216, F.S.;
- develop the long-range financial outlook required by the Senate Joint Resolution; and
- exercise all other powers and perform any other duties prescribed by the Legislature.

The bill creates the Government Efficiency Task Force. The task force will convene no later than January of 2007, and each fourth year thereafter. The task force will be composed of 15 members. Five members each will be appointed by the President of the Senate, Speaker of the House of Representatives, and Governor. Members of the task force may include private sector representatives. The joint task force will elect a chair from among its members. The joint task force will meet at least quarterly at the call of the chair and may conduct its meetings through teleconferences or other similar means. Task force staff will be assigned by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force will develop recommendations for improving governmental operations and reducing costs and complete its work within one year. The task force may submit all or part of its recommendations at any time during the year but a final report summarizing its recommendations must be submitted at the completion of its work to the chair and vice-chair of the Legislative Budget Commission, the Governor, and the Chief Justice of the Supreme Court.

The bill amends s. 29.0095, F.S., to require the legislative appropriations committees, instead of the commission, to set the format for budget expenditure reports.

The bill amends s. 100.371, F.S., to clarify that the Financial Estimating Conference is a part of the legislative branch and, as such, is subject to the legislative rules of notice and openness to the public.

The bill amends s. 216.011, F.S., to narrow the definition of "consultation" with the Governor to include only fiscal matters. In addition "long-range financial outlook" is defined consistent with the requirements of the Senate Joint Resolution as a document issued by the commission based on a 3-year forecast of revenues and expenditures.

The bill amends s. 216.012, F.S., to require the commission to develop the long-range financial outlook and update the outlook each year. The commission will issue the final financial outlook by September 15 but may provide any additions or adjustments based on information not previously available.

The bill amends s. 216.023, F.S., to require that the legislative budget instructions provide for consistency between agency long-range plans and agency legislative budget requests.

The bill amends s. 216.065, F.S., to require that the commission and legislative appropriations committees be provided a fiscal impact statement that details the effect of any action taken by the Governor, Governor and Cabinet, state agency, or statutorily authorized entity, that will affect revenues, require a request for an increased or new appropriation in the following 3 fiscal years, or transfer current years funds, before such action is taken

The bill amends s. 216.162, F.S., to require that the Governor's recommended budget be furnished to the Legislature at least 30 days before the scheduled annual legislative session or such later date as is requested by the Governor and approved in writing by the President of the Senate and the Speaker of the House of Representatives.

The bill amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year. The final budget report reflects net appropriations for each budget item, as well as expenditures, revenues, and cash balances for the prior two years and estimated expenditures, revenues, and cash balances for the current year.

C. SECTION DIRECTORY:

Section 1: Amends s. 11.90, F.S., membership, rules, powers, and duties of the Legislative Budget Commission.

Section 2: Creates s. 11.91, F.S., creating the Government Efficiency Task Force.

Section 3: Amends s. 2.0095, F.S., to provide the appropriations committees of the Senate and the House shall prescribe the format of the report required by the section instead of the LBC.

Section 4: Amends s. 100.371, F.S., as amended by s. 28 of ch. 2005-278, Laws of Florida, to clarify that the Financial Estimating Conference is a part of the legislative branch.

Section 5: Amends s. 216.011, F.S., to amend the definition of "consultation" and to provide the definition of "long-range financial outlook."

Section 6: Creates s. 216.012, F.S., to provide the duties of the LBC and the agencies in creating the long-range financial outlook.

Section 7: Amends s. 216.023, F.S., to provide requirements for legislative budget requests and legislative budget request instructions.

Section 8: Amends s. 216.065, F.S., to provide requirements for fiscal impact statements on actions affecting the budget.

Section 9: Amends s. 216.162, F.S., to provide the time the Governor's recommended balanced budget for the state shall be submitted to the legislature.

Section 10: Amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year

Section 11: Provides that the bill will take effect on the effective date of Senate Joint Resolution 2005-2144.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

There will be indeterminate costs associated with meetings of the government efficiency task force for member travel and per diem.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

PCB STA 06-03

1 A bill to be entitled
2 An act relating to governmental operations; creating s.
3 216.0236, F.S.; providing legislative intent that the fees
4 charged by state agencies for providing a regulatory
5 service or regulating a profession or business cover the
6 costs of the regulatory service or oversight; requiring
7 that each state agency review its fees; providing criteria
8 for the review; requiring that each agency, as part of its
9 legislative budget request, provide to the Governor and
10 Legislature alternatives to make a regulatory service or
11 program self-sufficient or provide justification for a
12 subsidy from other state funds; requiring periodic review
13 of regulatory fees by the Legislature; providing an
14 effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 216.0236, Florida Statutes, is created
19 to read:
20 216.0236 Agency fees for regulatory services or oversight;
21 criteria.--
22 (1) It is the intent of the Legislature that all costs of
23 providing a regulatory service or regulating a profession or
24 business be borne solely by those who receive the service or who
25 are subject to regulation. It is also the intent of the
26 Legislature that the fees charged for providing a regulatory
27 service or regulating a profession or business be reasonable and
28 take into account the differences between the types of
29 professions or businesses being regulated. Moreover, it is the

30 intent of the Legislature that state agencies operate as
31 efficiently as possible and regularly report to the Legislature
32 additional methods by which to streamline their operational
33 costs.
34 (2) In accordance with the instructions for legislative
35 budget requests, each state agency shall examine the fees it
36 charges for providing regulatory services and oversight to
37 businesses or professions. The annual examination shall determine
38 whether operational efficiencies can be achieved in the
39 underlying program, whether the regulatory activity is an
40 appropriate function that the agency should continue at its
41 current level, and whether the fees charged for each regulatory
42 program are:
43 (a) Based on revenue projections that are prepared using
44 generally accepted governmental accounting procedures or official
45 estimates by the Revenue Estimating Conference, if applicable;
46 (b) Adequate to cover both the direct and indirect costs of
47 providing the regulatory service or oversight; and
48 (c) Reasonable and take into account differences between
49 the types of professions or businesses that are regulated.
50 (3) If the agency determines that the fees charged for
51 regulatory services or oversight to businesses or professions are
52 not adequate to cover program costs and that an appropriation
53 from other state funds is necessary to supplement the direct or
54 indirect costs of providing a regulatory service or regulating a
55 program, the agency shall present to the Governor and the
56 Legislature as part of its legislative budget information
57 regarding alternatives for realigning revenues and/or costs to
58 make the regulatory service or program totally self-sufficient or

59 shall demonstrate that the service or program provides
60 substantial benefits to the public which justify a partial
61 subsidy from other state funds. The Legislature shall review the
62 alternatives during the next regular session.
63 (4) The Legislature shall review the regulatory fee
64 structure for all businesses and professions at least once every
65 5 years. The schedule for such review may be included in the
66 legislative budget instructions developed pursuant to the
67 requirements of s.216.023.
68 Section 2. This act shall take effect July 1, 2006.
69

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB STA 06-03 Govermental Operations/Regulatory Fees
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee		Belcher	Belcher
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates section 216.036, F.S., to require that state agencies review the fees charged for providing regulatory services or regulating businesses and professions. The bill also requires each agency, as part of its legislative budget request, to provide to the Governor and Legislature alternatives for realigning revenues and/or costs to make the regulatory service or program totally self-sufficient or provide justification for a subsidy from other state funds. The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least once every 5 years.

The bill has no fiscal impact; however, mandated reviews could result in cost savings or fee adjustments at a future date which could impact state regulatory fee revenues and program costs. Fee adjustments as a result of the review process would impact state-regulated businesses and professions.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED FUNDING:

BACKGROUND

To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards.

Regulatory Program Funding

In December 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 05-57, *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*. The report noted that currently, Florida administers 190 regulatory programs. Of the $677 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided $29 million. The report provided the following background information:

- Funding for regulatory programs is derived from three major sources—user charges, federal funds, and general revenue.
- Several factors should be considered in determining how regulatory programs should be funded, including the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities.
- In general, user charges should be the primary source of funding for the state's regulatory programs and should be sufficient to cover all of the associated direct and indirect costs, as it helps reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability because regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective.

OPPAGA's findings included:

- There is no overall policy for determining appropriate regulatory program funding sources and that most regulatory programs [in Florida] are not currently required to be self-supporting. Less than half (81, or 43%) of the state's 190 regulatory programs are statutorily required to be supported solely by user fees and/or federal funds and, in some cases, programs that are required to be self-supporting nonetheless receive general revenue.
- Current state accounting methods hinder determining appropriate funding levels for regulatory programs as the state's accounting system does not identify the total direct costs for all regulatory programs and agencies are using different methodologies to calculate the indirect costs of these programs.

OPPAGA's report identified several policy options for consideration by the legislature, including:

- Establishing a uniform policy governing regulatory program funding.
- Eliminating statutory caps on the amount of regulatory fees as these limits can become outdated if not updated over time to reflect inflation.

- Revising the legislative budget request instructions to require agencies to provide written justification when requesting general revenue for a regulatory program, which would assist in the determination as to whether the program provides sufficient broad public benefits to justify general revenue funding.
- Revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs.

Regulatory Fee Structure

In December 2002, Senate Interim Project Report No. 2003-139, titled *Fee Equity – Examining the Fairness of Florida's Regulatory Fee Structure* was issued. The report noted that within the State annual budget of over $50 billion, along with separate fiduciary accounts of almost another $120 billion, are scores of separate revenue raising and spending streams. The report provided the following background issues:

- Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
- Fees charged for services and for regulation of businesses and professions are set in statute either as a flat fee, a fee cap, or authorization is given to an agency or board to charge a fee to "cover the cost of such service."
- Many fees are capped and require legislation to change the cap.
- Recently some fees charged have been inadequate to cover the true cost of regulation.
- Concerns have been raised when the fees collected do not completely cover the cost of the benefits provided and with the seemingly disparate treatment among those regulated.

The Interim Project report included the following key findings:

- The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
- Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Because of policy considerations, the fees may not entirely cover the cost of regulating the profession or providing the service.
- Prescribing that all costs of providing a service or of regulating professions be covered requires that all costs be defined and allocated.
- The language for cost recovery varies in the statutes between agencies.
- State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

- Fee structures should be reviewed to insure consistency with stated policy. Further, with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
- Any review should be tied to an existing systematic and periodic review process. The review should consider all costs of providing a service for which a fee is charged and of regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.

CHANGES PROPOSED BY THE BILL

The bill creates section 216.0236, Florida Statutes, to require each state agency to examine fees charged to regulate and oversee businesses or professions. It also requires that if an agency

determines that the fees charged are not adequate to cover program costs and that an appropriation from other state funds is necessary to supplement the direct or indirect costs for providing regulation and oversight, the agency will present alternatives for realigning revenues and/or costs to make the regulatory service or programs totally self-sufficient or demonstrate that the service or programs provides substantial benefits to the public which justify a subsidy from state funds. The bill requires the agency to present the alternatives to the Governor and the Legislature during the annual submission of their Legislative Budget Request. The bill requires the Legislature to review the alternatives during the next regular session after submission.

The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least every 5 year. The schedule for such review may be included in the legislative budget instructions that are developed pursuant to the requirements of s. 216.023, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 216.0236, F.S., to provide Legislative intent for funding the regulation of businesses and professions; to require agencies to review regulatory fees and costs annually and provide change alternatives to the Governor and Legislature if fees are not adequate to cover program costs; to require to Legislature to review the regulatory fee structure of all businesses and professions at least once every 5 years.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See D. Fiscal Comments

2. Expenditures:

   See D. Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in fee increases that will affect some consumers of the various goods or services provided by regulatory programs that are not currently self-supporting.

D. FISCAL COMMENTS:

It is expected that the review of regulatory fees and costs could impact both state revenues and expenditures at a future date. This is dependent on the results of the reviews and the actions taken by future Legislatures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to state agency planning and
3 accountability; creating s. 216.1771, F.S.; providing
4 budgetary disincentives to state agency's for failure to
5 comply with legislative mandates; creating s. 216.242,
6 F.S.; providing legislative intent related to planning and
7 analyzing outsourcing options; requiring legislative
8 notification of certain contract violations; providing
9 budget disincentives to the state agencies; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 216.1771, Florida Statutes, is created
15 to read:
16 216.1771 Appropriations acts, proviso compliance. -
17 (1) Any state agency in noncompliance with the
18 requirements of proviso contained within the General
19 Appropriations Act shall have all unexpended appropriations
20 addressed by the proviso placed in mandatory reserve by the
21 Executive Office of the Governor and shall be subject to the
22 immediate loss of delegated budget transfer flexibility as
23 authorized in section 216.292 (2).
24 (2) The agency must appear before the Legislative Budget
25 Commission to address their compliance with proviso before
26 release of the funds in reserve may be requested and before
27 delegated budget transfer flexibility may be restored to the
28 agency.
29

30 Section 2. Section 216.242, Florida Statutes, is created to
31 read:
32 216.242 Outsourcing state programs and functions. -
33 (1) To ensure the appropriate and efficient use of state
34 funds, it is the intent of the Legislature that prior to any
35 initiative by a state agency to outsource a program or function,
36 that agency must take appropriate steps to plan and analyze the
37 proposed service delivery option prior to the obligation of any
38 state funds.
39 (2) The agency shall develop a business case, including,
40 but not limited to, baseline costs, a cost-benefit analysis,
41 performance measures, end-of-term transition plan and strategy,
42 risk analysis, and contingency plans in the event of provider's
43 non-performance.
44 (3) During the term of any outsourcing agreement greater
45 than $10 million, annually, if the provider is in violation or
46 suspected violation of the terms of the agreement, the
47 contracting state agency must immediately report to the
48 appropriate House and Senate jurisdictional appropriations
49 committees the facts surrounding the violation or suspected
50 violation.
51 (4) Any state agency that does not comply with the
52 requirements of this section will be subject to the immediate
53 loss of delegated budget transfer flexibility as authorized in
54 section 216.292 (2).
55 (5) The agency must appear before the Legislative Budget
56 Commission to address their noncompliance with this section
57 before delegated budget transfer flexibility may be restored to
58 the agency.

59

60 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB STA 06-04 Agency Planning and Accountability
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee		Belcher	Belcher
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates s. 216.242, F.S., to require state agencies, prior to the obligation of state funds for outsourcing initiatives, to develop a business case, including, but not limited to, baseline cost, a cost-benefit analysis, performance measures, end-of-term transition plan and strategy, risk analysis, and contingency plans in the event of vendor non-performance. The bill also requires a contracting state agency to immediately report, to specific legislative appropriations committees, vendor violations, or suspected violations, of the terms of any outsourcing agreement greater than $10 million, annually. The bill provides a budgetary disincentive to any state agency that violates this provision through a suspension of the agency's delegated budget transfer flexibility as authorized in section 216.292 (2), F.S., until such delegation is restored by the Legislative Budget Commission.

The bill creates s. 216.1771, F.S., to provide a budgetary disincentive to state agencies that fail to comply with the mandates contained in proviso language in General Appropriations Acts. All unexpended appropriations addressed by the proviso would be placed in budget reserve status by the Executive Office of the Governor and the state agency would be subject to the immediate loss of delegated budget transfer flexibility as authorized in section 216.292 (2), F.S., until such budget and / or transfer delegation is restored by the Legislative Budget Commission.

The bill has no measurable fiscal impact; however, improved planning methods by state agencies should have a favorable cost impact on state financial resources.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Outsourcing State Programs and Functions

As the state has increasingly shifted to external provision of services, it has occasionally experienced challenges in ensuring that the desired results are achieved. Recent studies and audits have suggested that the state's planning of large, complex initiatives could be improved.

Various reports by the Auditor General identified problems. For example:

- In the MyFloridaAlliance initiative of the State Technology Office (STO) involving outsourcing multiple functions, the STO had not conducted full feasibility studies, cost analyses, or risk assessments to determine if the outsourcing of these functions would provide the best value to the state. Additionally, the information provided in the solicitation documents did not provide sufficient detail about STO operations, services, and needs to allow for a responsible vendor to adequately respond to the listed key initiatives. The contracts with Accenture and BearingPoint lacked certain provisions to adequately protect state resources. The STO subsequently cancelled the contracts.
- In the Department of Management Services' procurement of the MyFloridaMarketplace electronic procurement system, the department planning process did not include timely completion of a cost-benefit or risk analysis.
- In the Department of Business and Professional Regulation's On-line Licensing and Call Center Services procurement, the department did not perform a feasibility study for the procurement's Application Management Services component. Additionally, the contract, which is funded through a shared-savings model, failed to provide specifics about how to define and share savings.

The bill creates s. 216.242, F.S., to require state agencies, prior to the obligation of state funds for outsourcing initiatives, to develop a business case, including, but not limited to, baseline cost, a cost-benefit analysis, performance measures, end-of-term transition plan and strategy, risk analysis, and contingency plans in the event of vendor non-performance. The bill also requires a contracting state agency to immediately report, to specific legislative appropriations committees, vendor violations, or suspected violations, of the terms of any outsourcing agreement greater than $10 million, annually. The bill provides a budgetary disincentive to any state agency that violates this provision through a suspension of the agency's delegated budget transfer flexibility as authorized in section 216.292 (2), F.S., until such delegation is restored by the Legislative Budget Commission.

Appropriations Acts, Proviso Compliance

The General Appropriations Act contains proviso mandating agencies to take certain actions associated with the funds provided in specific appropriations of the act. Occasionally, an agency does not adhere to the provisions of the language. For example, in the current fiscal year, the Department of Management Services was directed to adhere to the following proviso in specific appropriation 2085A, Chapter 2005-70, Laws of Florida, General Appropriations Act.

2085A LUMP SUM
STATE BUILDING RENTAL INCREASE
FROM GENERAL REVENUE FUND 3,152,114
FROM TRUST FUNDS 3,152,115

Funds in Specific Appropriation 2085A are provided to implement increases in the state office-space rental rates in the Florida Facilities Pool. Implementation of the rate increases and distribution of funds to user agencies are contingent upon the completion of a detailed report, by the Department of Management Services, on the facilities pool and the department's Workspace Management Initiative. At a minimum, the report must: (1) provide an overview of the facilities pool assets and debt, capital deficiencies, rental revenues, and operations and maintenance costs; (2) address any proposed actions or recommendations to increase the occupancy rate in the pool, to reduce operation and maintenance costs, and to restructure or reduce bonded debt; and (3) address the anticipated impact the workspace initiative will have on the facilities pool, state agencies, and state funding. The department must submit the report to the Executive Office of the Governor, the chair of the Senate Ways and Means Committee, and the chair of the House Fiscal Council by August 15, 2005, and subsequently provide quarterly updates on both the facilities pool and the workspace initiative.

The department did not file the required report timely and did not fully comply with provision (3) of the proviso. Also related to that Act, the same agency failed to timely comply with proviso immediately proceeding specific appropriation 2747, requiring the submission of a data center rate report with specific criteria to the Executive Office of the Governor, the Senate Ways and Means Committee, and the House Fiscal Council.

The bill creates s. 216.1771, F.S., to provide a budgetary disincentive to state agencies that fail to comply with the mandates contained in proviso language in General Appropriations Acts. All unexpended appropriations addressed by the proviso would be placed in budget reserve status by the Executive Office of the Governor and the state agency would be subject to the immediate loss of delegated budget transfer flexibility as authorized in section 216.292 (2), F.S., until such budget and / or transfer delegation is restored by the Legislative Budget Commission.

C. SECTION DIRECTORY:

Section 1: Creates s. 216.1771, F.S., providing budgetary disincentives to state agencies for failure to comply with proviso mandates contained in a General Appropriations Act.

Section 2: Creates s. 216.242, F.S., providing legislative intent; requiring state agencies to develop business cases prior to obligating state funds; requiring state agencies to report certain contracting violations to the Legislature; and providing budgetary disincentives to state agencies for failure to comply with the section.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has no measurable fiscal impact; however, improved planning methods by state agencies should have a favorable cost impact on state financial resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES