

STORAGE NAME: h1655.sgc.doc
DATE: April 18, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: HB 1655
RELATING TO: Labor & Employment Security Department
SPONSOR(S): Representative(s) Clarke
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

Currently, s. 20.171, F.S., creates the Department of Labor and Employment Security (DLES) which contains the following divisions: the Division of Unemployment Compensation, the Division of Workers' Compensation, the Division of Blind Services, and the Division of Vocational Rehabilitation. In addition, the Public Employees Relations Commission and the Unemployment Appeals Commission are within the DLES.

HB 1655 repeals the DLES, and transfers all its powers, duties, functions, rules, records, property, and unexpended balances of appropriations, allocation, and other funds to certain other departments or agencies as follows:

- The Division of Workers' Compensation and the Office of the Judges of Compensation Claims are transferred to the Department of Insurance. However, 29 FTE's are transferred to the Agency for Health Care Administration, 113 FTE's are transferred to the Department of Education, and 11 FTE's are transferred to the Department of Business and Professional Regulation;
- The Office of the Secretary and the Office of Administrative Services relating to the regulation of labor organizations and the administration of migrant labor and farm labor laws are transferred to the Department of Business and Professional Regulation;
- Any other powers, duties, functions, rules, records, property, and unexpended balances relating to workplace regulation and enforcement are transferred to the Department of Business and Professional Regulation;
- The Unemployment Appeals Commission is transferred to the Agency for Workforce Innovation;
- The Public Employees Relations Commission is transferred to the Department of Management Services;
- The Office of Information Systems is transferred to the State Technology Office; and
- Any unexpended balances are transferred to the Department of Management Services.

All transfers are type-two transfers.

HB 1655 provides for all departments and agencies named in this legislation to be exempt from the competitive bidding process and certain leasing requirements when acting on provisions contained in this legislation. Additionally, all such departments and agencies are authorized to adopt emergency rules to implement such provisions.

This bill does not appear to have a fiscal impact on state or local governments. However, see "fiscal comments" section for explanation on a potential conflict with the General Appropriations Act of 2001-2002.

The Committee on State Administration adopted six amendments which are traveling with the bill.

The Council for Smarter Government adopted a strike-all amendment which is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 20, F.S.

Section 20.171, F.S., creates the Department of Labor and Employment Security (DLES). The head of the DLES is the Secretary of Labor and Employment Security. There are two assistant secretaries, the Assistant Secretary for Finance and Administration and the Assistant Secretary for Programs and Operations. The former is responsible for developing and enforcing policy and managing major technical problems; the latter is responsible for managing major technical problems as well as supervising the Bureau of Appeals of the Division of Unemployment Compensation. The DLES has five field offices which are headed by managers.

Section 20.171(3)(c), F.S., creates the Office of Administration, the Office of Management and Budget, and the Office of Information Services. These offices are headed by managers who are supervised by and responsible to the Assistant Secretary for Finance and Administration.

Section 20.171(5), F.S., establishes the following divisions within the DLES: Division of Unemployment Compensation, the Division of Workers' Compensation, the Division of Blind Services, and the Division of Vocational Rehabilitation. These four divisions are supervised by and responsible to the Assistant Secretary for Programs and Operations. Section 20.171(7), F.S., establishes the following commissions within the DLES: The Public Employees Relations Commission and the Unemployment Appeals Commission.

Section 110.205, F.S.,¹ provides that the positions described in Chapter 20, F.S., are exempt positions and therefore not classified as career service.

Chapter 440, F.S.

Chapter 440, F.S., is the "Workers' Compensation Law." This chapter specifies that the DLES and the Division of Workers' Compensation of the DLES are the primary entities involved in the application of the "Workers' Compensation Law." The Division of Workers' Compensation is given significant authority in the areas of medical records and reports, provider eligibility, independent medical examinations, patterns or practices of overutilization, utilization of expert medical advisors,

¹ Chapter 110, F.S., deals with public officers, employees, and records. More specifically, ss. 110.201-110.235, F.S., deals with the career service system.

auditing, removal of physicians, determination of permanent impairment and wage-loss benefits, and the education of persons through the workers' compensation system guide.

Section 440.385, F.S., creates the "Florida Self-Insurers Guaranty Association" (Association). The Association is a nonprofit corporation composed of all individual self-insurers, other than individual self-insurers which are public utilities or governmental entities, who join the Association as a condition of their authority to individually self-insure in this state. The powers and duties of the Association are exercised through a board of directors with directors appointed by the Secretary of Labor and Employment Security. The Association is granted special powers and duties over the self-insurers in order for the self-insurers to secure funds for the payment of covered claims and also to pay the reasonable costs to administer such claims. The Association also manages the insolvency fund which is created for purposes of meeting the obligations of insolvent members incurred while members of the Association.

Section 440.385(6), F.S., provides powers and duties of the DLES in regards to the Association. The DLES must notify the Association of the existence of any insolvent employer and provide the Association with a statement of the annual normal premiums of each member employer. The Association is subject to examination and regulation by the DLES.

Section 440.4416, F.S., creates the Workers' Compensation Oversight Board within the DLES. This board consists of six members selected by the Governor, two employee representatives, three members selected by the President of the Senate, and three members selected by the Speaker of the House. Each member must have knowledge of, or experience with, the workers' compensation system. The Insurance Commissioner and the Secretary of the Department of Labor and Employment Security are nonvoting, ex officio members of the board.

Section 440.45, F.S., creates the Office of the Judges of Compensation Claims within the DLES. The DLES provides administrative support as requested by the Chief Judge, but does not supervise or control the office. Section 440.49, F.S., creates the Special Disability Trust Fund. The DLES is responsible for reporting annually on the status of the Special Disability Trust Fund.

Section 440.491, F.S., deals with the reemployment of injured workers. The Division of Workers' Compensation of the DLES is involved in the reemployment of injured workers through reemployment assessments, medical care coordination, reemployment services, training and education, rehabilitation provider qualifications, and carrier practices. Section 440.59, F.S., establishes particular reporting requirements for both the DLES and the Division of Workers' Compensation as a result of their roles in the "Worker's Compensation Law."

Chapter 443, F.S.

Chapter 443, F.S., deals with unemployment compensation. Section 443.012, F.S., creates the "Unemployment Appeals Commission" within the DLES. This commission consists of a chair and two other members to be appointed by the Governor, subject to confirmation by the Senate. The property, personnel, and appropriations relating to the specified authority, powers, duties, and responsibilities of the commission are provided by the DLES. However, the commission is not subject to control or supervision by the DLES.

Chapter 447, F.S./Public Employees Relation Commission

Chapter 447, F.S., deals with labor organizations. Section 447.205, F.S., creates the Public Employees Relations Commission (PERC) within the DLES. This commission is composed of a chair and two full-time members appointed by the Governor and confirmed by the Senate. The Public Employees Relations Commission is not subject to control, supervision, or direction by the DLES. The property, personnel, and appropriations relating to the specified authority, powers, duties, and responsibilities of the commission are provided by the DLES.

Section 447.305, F.S., deals with registration of employee organizations. Notification of registrations and renewals of registration must be furnished at regular intervals by the Public Employees Relations Commission to the DLES. When an employee organization is selected by a majority of the employees voting in an election, the Public Employees Relations Commission will certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.²

Section 447.501, F.S., specifies behaviors that are considered unfair labor practices. Section 447.503, F.S., describes the process by which unfair labor practice charges are handled. Chapter 447, F.S., also sets forth many other PERC responsibilities such as those dealing with bargaining impasse and certification and revocation of certification of employee organizations.

Chapter 450, F.S.

Chapter 450, F.S., deals with minority labor groups. Section 450.191, F.S., specifies the powers and duties of the Executive Office of the Governor in its relation to migrant laborers. The Executive Office of the Governor is authorized to cooperate with the farm labor office of the DLES in the recruitment and referral of migrant laborers.

Chapter 627, F.S.

Chapter 627, F.S., deals with insurance rates and contracts. Section 627.0915, F.S., references rate filings, workers' compensation, drug-free workplace, and safe employers. The Department of Insurance must approve rating plans for workers' compensation insurance. These plans must give specific identifiable consideration in the setting of rates to employers that either implement a drug-free workplace program pursuant to rules adopted by the Division of Workers' Compensation of the DLES, or implement a safety program approved by the Division of Safety pursuant to rules adopted by the Division of Safety of the DLES, or implement both a drug-free workplace program and a safety program.

C. EFFECT OF PROPOSED CHANGES:

HB 1655 repeals s. 20.171, F.S., which repeals the Department of Labor and Employment Security (DLES), and transfers all its powers, duties, functions, rules, records, property, and unexpended balances of appropriations, allocation, and other funds to certain other departments or agencies. All transfers are **type-two transfers**³.

² Section 447.307(3)(b), F.S.

³ Section 20.06(2), F.S., defines a Type Two Transfer as "the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefore or abolished."

Transfers

The Division of Workers' Compensation and the Office of the Judges of Compensation Claims are transferred from the DLES to the Department of Insurance **except** for the following positions:⁴

- 29 full-time equivalent positions, and the associated salaries, related to oversight of medical services in workers' compensation provider relations, dispute and complaint resolution, program evaluation, data management, and carrier compliance and review, are transferred from the DLES to the Agency for Health Care Administration.
- 113 full-time equivalent positions, and the associated salaries, related to the rehabilitation and reemployment of injured workers are transferred from the DLES to the Department of Education.
- 11 full-time equivalent positions, and the associated salaries, related to the administration of child labor laws are transferred from the DLES to the Department of Business and Professional Regulation.

The Office of the Secretary and the Office of Administrative Services of the DLES relating to the regulation of labor organizations and the administration of migrant labor and farm labor laws are transferred from the DLES to the Department of Business and Professional Regulation. In addition, any other powers, duties, functions, rules, records, property, and unexpended balances relating to workplace regulation and enforcement, including those under Chapter 448, F.S.⁵, are transferred from the DLES to the Department of Business and Professional Regulation.

The Unemployment Appeals Commission is transferred from the DLES to the Agency for Workforce Innovation.

The Public Employees Relations Commission is transferred from the DLES to the Department of Management Services.

The Office of Information Systems is transferred from the DLES to the State Technology Office.

The transfer of any programs, activities, and functions in HB 1655 include the transfer of any records and unexpended balances of appropriations, allocations, or other funds related to such programs, activities, and functions. Any surplus records and unexpended balances are to be transferred to the Department of Management Services for proper disposition. The Department of Management Services is the custodian of any property of the DLES that is not otherwise transferred, and may authorize the use of such property to implement the provisions of this legislation.

The Department of Banking and Finance, in conjunction with the Office of the Attorney General, may use any unexpended balances of the DLES to settle any claims or leases, pay out personnel annual leave or sick live, or close out other costs owed by the DLES. Any remaining balances of the DLES are transferred as directed by this legislation or by budget amendment.

Any binding contract of interagency agreement existing on or before July 1, 2001, between the DLES and any agency, entity, or person will continue as a binding contract or agreement for the remainder of the term with the successor department, agency, or entity. Accordingly, this legislation

⁴ The Division of Workers' Compensation currently has 609 authorized full-time equivalent positions.

⁵ Chapter 448, F.S., outlines general labor regulations.

does not affect any pending judicial or administrative proceeding involving the DLES. The successor department, agency, or entity, is substituted for the DLES in such proceeding.

Exemptions

In order to expedite the acquisition of goods and services, the leasing of facilities, and the implementation of this legislation, the Department of Insurance, the Agency for Health Care Administration, the Department of Education, the Department of Business and Professional Regulation, the Agency for Workforce Innovation, the Department of Management Services, and the State Technology Office, are exempt from the provisions of Chapter 287, F.S.,⁶ and from s. 255.25, F.S.⁷ This exemption only applies to provisions necessary for the implementation of this legislation, and therefore the exemption expires on January 1, 2002.

Severability Clause

HB 1655 states that if any provision of this legislation or its application to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of the legislation which can be given effect without the invalid provision or application.

Any other provisions in HB 1655 make conforming changes.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. 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.

⁶ Chapter 287, F.S., provides that unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services for the purchase of commodities must be awarded by competitive sealed bidding.

⁷ Section 255.25, F.S., provides that no state agency may construct a building for state use or lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the Department of Management Services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The number of full-time positions transferred in this bill may not comport with the number of positions in the same programs available for transfer in the 2001-2002 General Appropriations Act.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Authorizes the Department of Insurance, the Agency for Health Care Administration, the Department of Education, the Department of Business and Professional Regulation, the Agency for Workforce Innovation, the Department of Management Services, and the State Technology Office to develop emergency rules relating to and in furtherance of this legislation.

C. OTHER COMMENTS:

The Agency for Health Care Administration supports HB 1655.⁸

On April 12, 2001, Marilyn Lenard, President of the Florida AFL-CIO, spoke against HB 1655. The Florida AFL-CIO does not support the elimination of the Department of Labor and Employment Security.

On April 12, 2001, Hayden Dempsey, Deputy General Counsel in the Office of the Governor, waived his time to speak in favor of HB 1655.

⁸ Pursuant to telephone conversation with staff of the Agency for Health Care Administration's Office of Legislative Affairs on April 3, 2001.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001, the Committee on State Administration heard HB 1655 and adopted six amendments. The first amendment adds language allowing the sharing of confidential information by the Division of Workers' Compensation with the Agency for Health Care Administration (AHCA) in order for AHCA to perform the transferred functions specified in this bill. The second amendment provides for the continued submission of medical claims information to the Division of Workers' Compensation and providing for consultation with AHCA in developing related rules. The third amendment restores existing statutory language relating to the auditing of carriers. The fourth amendment gives AHCA rulemaking authority in order to perform the functions transferred to AHCA by this bill. The fifth amendment adds language transferring all Division of Workers' Compensation rules related to medical services to AHCA. The sixth amendment is a technical-type amendment that removes conflicting language. The bill, as amended, was reported out favorably.

On April 18, 2001, the Council for Smarter Government heard HB 1655, as amended by the Committee on State Administration, and adopted a strike-all amendment, which incorporates nine amendments that were made to the strike-all. The strike-all amendment, as amended, **differs substantially** from the original bill with respect to the following provisions:

| HB 1655 | Strike-All Amendment |
|--|--|
| The original bill transfers the Division of Workers' Compensation to the Department of Insurance by a type-two transfer, which includes the transfer of personnel positions. | The strike-all amendment transfers all resources, data, records, property, and unexpended balances of appropriations, allocations, or other funds from the Division of Workers' Compensation to the Department of Insurance. However, no personnel are transferred. The employees of the Department of Labor and Employment Security's (DLES) Division of Workers' Compensation, Office of the Secretary, Office of Administrative Services, and Office of General Counsel may be given hiring priority by the Department of Insurance, and at least 300 of these employee must be offered employment by the Department of Insurance by August 15, 2001. Job placement assistance is provided for the remaining employees by DLES and the Agency for Workforce Innovation. The Department of Insurance is further authorized to transfer positions to appropriate subdivisions, to enter into contracts with public or private entities, and to review and cancel existing contracts. |
| The original bill transfers 113 FTE's to the Department of Education from DLES. | The strike-all amendment transfers 98 FTE's to the Department of Education from DLES. |
| The original bill transfers by a type-two transfer the Office of the Judges of Compensation Claims to the Department of Insurance. | The strike-all amendment transfers by a type-two transfer the Office of the Judges of Compensation Claims to the Division of Administration Hearings of the Department of Management Services. |
| The original bill retains the Workers' Compensation Oversight Board in the Department of Insurance. | The strike-all amendment repeals the Workers' Compensation Oversight Board. |

| HB 1655 | Strike-All Amendment |
|--|--|
| The original bill transfers by a type-two transfer any unexpended balances not specifically addressed in the legislation to the Department of Management balances. | The strike-all amendment transfers by a type-two transfer any unexpended balances not specifically addressed in the legislation to the respective departments or agencies. |
| The original bill has an effective date of July 1, 2001, for the transfer of both the Division of Workers' Compensation and the Office of the Judges of Compensation Claims. | The strike-all amendment has an effective date of October 1, 2001, for the transfer of both the Division of Workers' Compensation and the Office of the Judges of Compensation Claims. |

The strike-all amendment contains the following provisions that are **not included** in the original bill:

- Conforming language to the Senate version;
- Language contained in CS/SB 1140 relating to self-insurers; CS/SB 1140 transfers the regulatory function for self-insurers to the Department of Insurance and transfers other administrative components to the Florida Self-Insurer's Guaranty Association, Incorporated;
- Three senior attorney positions and one administrative assistant III position are transferred from the Office of the General Counsel of the Department of Labor and Employment Security (DLES) to the Department of Insurance;
- Four positions within the Division of Workers' Compensation responsible for coding or entering data contained within final order issued by the judges of the compensation claims are transferred to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services;
- Ten positions within the Division of Workers' Compensation responsible for receiving and preparing docketing orders for the petitions for benefits and for receiving and entering data related to the petitions for benefits are transferred to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services;
- Four positions within the Division of Workers' Compensation responsible for financial management, accounting, and budgeting are transferred to the Office of the Judges of Compensation Claims within the Division of Administrative Hearings of the Department of Management Services; and
- Language which states that if the provisions contained in HB 1655 come in conflict with SB 1926 or similar legislation, the language in SB 1926 or similar legislation prevails.

The strike-all amendment **removes** the following provisions that were included in the original bill:

- The agencies and departments named in this legislation are exempt from the provisions of Chapter 287, F.S., pertaining to the competitive bidding process, and exempt from Chapter 255, F.S., pertaining to leasing requirements, when acting on provisions contained in this legislation; and
- The agencies and departments named in this legislation are authorized to adopt emergency rules to implement provisions contained in this legislation.

The bill, as amended, was reported favorably.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Lauren Cyran

Staff Director:

Don Rubottom
