

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2224

SPONSOR: Banking and Insurance and Senator Clary

SUBJECT: Workers' Compensation

DATE: April 9, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute provides the following transfers, by a type two transfer, of programs and functions presently administered by the Division of Workers' Compensation within the Department of Labor and Employment Security to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education, respectively, with exceptions:

1. The functions within the Division of Workers' Compensation are transferred by a type two transfer, as defined in s. 20.06(2), F.S., to the Department of Insurance, except as otherwise provided in this section. The transfer includes all resources, data, records, property, and unexpended balances of appropriations, allocations, and other funds. No personnel are transferred to the Department of Insurance. The department is authorized to determine the number of positions needed to administer the provisions of ch. 440, F.S.; however, the number of positions may not exceed the number of positions, salary and benefits that were previously authorized for the Division of Workers' Compensation within the Department of Labor and Employment Security prior to the transfer.
2. Three senior attorney positions and one administrative support position and the related resources are transferred from the Office of the General Counsel of the Department of Labor and Employment Security to the Department of Insurance by a type two transfer.
3. The Office of the Judges of Compensation Claims is transferred to the Division of Administrative Hearings within the Department of Labor and Employment Security by a type two transfer.
4. Twenty-nine positions are transferred from the division by a type two transfer to the Agency for Health Care Administration, relating to provider eligibility and authorization,

utilization review, reimbursement disputes, audits of health care providers, and the reporting of medical bills and reports other information. However, the claims review function and the three-member panel would not be transferred to the agency and would be retained within the Department of Insurance.

5. The committee substitute also transfers 98 positions, related to re-employment, training, and education, obligation to rehire, and preferred worker requirements, from the Division of Workers' Compensation to the Department of Education by a type two transfer.

6. Resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and the functions of the Division of Workers' Compensation are also transferred by a type two transfer to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education, respectively.

The committee substitute also provides the following changes regarding the administration of the workers' compensation law:

1. The Department of Insurance is authorized to share confidential medical records with the agency for Health Care Administration to assist the agency in fulfilling its responsibilities under ss. 440.13 and 440.134, F.S., and the agency would be required to maintain the confidentiality of such information.

2. The Department of Insurance is required to develop reporting requirements for health care providers relating to the reporting of medical or surgical treatment and medical reports and bills in consultation with the Agency for Health Care Administration. The department is also authorized to specify by rule the reporting requirements for certain medical information relating to maximum medical improvement.

3. The Department of Insurance is authorized to monitor and audit workers' compensation carriers in accordance with the provisions of s. 624.3161, F.S., which relates to market conduct examinations of insurers. The department is also authorized to fine or otherwise discipline a carrier, pursuant to ch. 440, F.S., the insurance code, or rules adopted by the department. The reimbursement hospital treatment at the per diem rate for hospital inpatient stay.

4. Certain reporting and administrative functions required within ch. 440, F.S., are revised or eliminated. The committee substitute eliminates the requirements that the department review and determine, at the carrier or employer's request, whether the carrier has performed its duty with respect to whether any extended unemployment of an employee is a direct result of an employee's impairment. The department would no longer be required to notify a carrier of the name of any injured worker who not reported as earning wages on the last quarterly earnings report. Carriers have not historically requested this information. The annual report by the Department of Insurance regarding the promptness of first payment of compensation of each carrier or self-insurer is eliminated. Finally, other required reports to the Legislature and the Governor concerning the administration of the workers' compensation are revised to provide flexibility in the information reported, thereby increasing the relevancy and timeliness of the information provided to the stakeholders of the workers' compensation system.

The bill also provides that to the extent there is any conflict between provisions of this bill and the provisions of SB 1140, which authorizes the Florida Self-Insurers Guaranty Association to perform certain duties, the provisions of SB 1140 or similar legislation would control.

The bill also provides that to the extent there is any conflict between provisions of this bill and the provisions of SB 1926, which transfers the Office of the Judges of Compensation Claims to the Division of Administrative Hearings, the provisions of SB 1926 or similar legislation would control.

This bill substantially amends the following sections of the Florida Statutes: 20.13, 20.171, 440.015, 440.02, 440.021, 440.05, 440.09, 440.10, 440.102, 440.103, 440.105, 440.106, 440.107, 440.108, 440.125, 440.13, 440.134, 440.14, 440.15, 440.17, 440.185, 440.191, 440.192, 440.1925, 440.20, 440.207, 440.211, 440.24, 440.25, 440.271, 440.345, 440.35, 440.38, 440.381, 440.385, 440.40, 440.41, 440.42, 440.44, 440.49, 440.491, 440.50, 440.51, 440.52, 440.525, 440.572, 440.59, 440.591, 440.593, 468.529, 626.88, 626.989, 627.0915, 627.914, and 624.3161.

II. Present Situation:

Presently, the Division of Workers' Compensation in the Department of Labor and Employment Security is organized into the following program/function areas: Monitoring and Audit, Employee Assistance and Ombudsman Office, Rehabilitation and Medical Services, Operations Support (including the Special Disability Trust Fund), Compliance, Research and Education, Information Management, and the Director's Office.

The Bureau of Monitoring and Audit is primarily responsible for monitoring the accuracy and timeliness of benefit payments, assessing penalties for late payments or reporting, and auditing carriers and individual, self-insurers (or their servicing company, if applicable) to determine compliance with statutory requirements for timeliness and accuracy of payment. The bureau is also responsible for administering the permanent total supplemental benefits provided to workers injured prior to July 1, 1984.

The Bureau of Employee Assistance and Ombudsman Office (EAO) is charged with the responsibility of informing and assisting employers/carriers, injured workers, and health care providers in fulfilling their respective responsibilities under ch. 440, F.S., the Workers= Compensation Law. Section 440.191, F.S., also directs EAO to take all steps necessary to educate and disseminate information to employees and employers.@

To effect the self-executing features of the law, s. 440.191, F.S., provides that ch. 440, F.S., is construed to permit injured workers and employers/carriers to resolve disputes A. . . without undue expense, costly litigation, or delay in the provisions of benefits.@ As a result, EAO investigates disputes and attempts to resolve disputes between injured workers and the carrier/employer in an informal manner through the Request for Assistance process. Rules 38F-26.002 and 26.004, F.A.C., require such a request to be submitted on a division Request for Assistance form.

An employee may not file a petition for benefits unless the employee has exhausted this informal dispute resolution process. If resolution is not made in 30 days, EAO may assist the employee in

drafting a petition for benefits. Under the provisions of s. 440.192, F.S., the employee is required to serve the petition upon the employer, the employer's carrier, and the division. The division refers the petition to the Office of the Judges of Compensation Claims for ultimate disposition. Within 14 days of receipt of a petition for benefits, the carrier must either pay the requested benefits without prejudice to its right to deny within 120 days of receipt of the petition or file a notice of denial with the division.

The Bureau of Rehabilitation and Medical Services certifies and decertifies health care providers, promulgates reimbursement manuals, resolves reimbursement disputes, monitors carriers' compliance with reimbursement policies, evaluates carrier-provided re-employment services and training, and provides screening, re-employment, and training for injured workers.

The Bureau of Compliance is charged with the responsibility of ensuring that employers, subject to the Workers' Compensation Law, maintain workers' compensation coverage for their employees and maintains records relating to proof of coverage and exemption from coverage.

The Bureau of Operations Support administers the Special Disability Trust Fund, calculates and collects the assessments for the Workers' Compensation Administrative Trust Fund and the Special Disability Trust Fund, regulates individual self-insurers, and provides administrative support to the division.

The Bureau of Research and Education provides training and educational materials on the Workers' Compensation Law, responds to internal and external data requests, and administers the electronic data interchange for the bureau. The Bureau of Information Management provides and maintains information systems technology for the division. The Director's Office includes: the director, assistant director, budget personnel, policy coordinator, and administrative support for the office.

Legislation (ch. 2000-165, L.O.F.) was enacted last session that significantly reorganized the Department of Labor and Employment Security by eliminating many programs and functions or transferring the programs or functions to other agencies. See Section V of the analysis regarding the functions and positions remaining at the department at this time.

III. Effect of Proposed Changes:

Section 1. Transfers the Division of Workers' Compensation by a type two transfer, as defined in s. 20.06(2), F.S., to the Department of Insurance, except as otherwise provided in this section. The transfer includes all resources, data, records, property, and unexpended balances of appropriations, allocations, and other funds. No personnel are transferred to the Department of Insurance. The department is authorized to determine the number of positions needed to administer the provisions of ch. 440, F.S.; however, the number of positions may not exceed the number of positions and salary and benefits that were previously authorized for the Division of Workers' Compensation within the Department of Labor and Employment Security prior to the transfer.

The department is authorized to reassign, reorganize, or otherwise transfer those positions within the department. The department is authorized to contract with public and private entities to

administer its duties related to the transfer of the division. All existing contracts of the division are transferred to the department and are subject to cancellation or renewal upon review by the department.

Four senior positions and related resources are transferred from the Office of the General Counsel of the Department of Labor and Employment Security to the Department of Insurance by a type two transfer.

The Office of the Judges of Compensation Claims is transferred to the Division of Administrative Hearings within the Department of Labor and Employment Security by a type two transfer.

In addition, 31 positions are transferred from the division by a type two transfer to the Agency for Health Care Administration. However, the claims review function and the three-member panel would not be transferred to the agency and would be retained within the Department of Insurance.

The section also transfers 93 positions, related to re-employment, training, and education, obligation to rehire, and preferred worker requirements, from the Division of Workers' Compensation to the Department of Education by a type two transfer.

Resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and the functions of the Division of Workers' Compensation are also transferred by a type two transfer to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education, respectively.

Section 2. Amends s. 20.13, F.S., to create the Division of Workers' Compensation within the Department of Insurance.

Section 3. Amends s. 20.171, F.S., to eliminate the workers' compensation function and the division within the Department of Labor and Employment Security.

Section 4. Amends s. 440.015, F.S., to amend legislative intent to reflect the transfer of responsibilities of the Division of Workers' Compensation to the Department of Insurance, the Department of Education, and the Agency for Health Care Administration.

Section 5. Amends s. 440.02, F.S., to revise definitions to reflect the transfer of the responsibilities of the division to the Department of Insurance, the Department of Education, and the Agency for Health Care Administration.

Sections 6 – 55. Amends these sections to conform to the transfers made by this act. Substantive changes to these sections are summarized below.

Section 16. Amends s. 440.125, F.S., to authorize the Department of Insurance to share any confidential and exempt information received pursuant to s. 440.13, F.S., with the Agency for Health Care Administration in furtherance of the agencies duties under ss. 440.13 and 440.14,

F.S. The agency would be required to maintain the confidentiality and exempt status of such information.

Section 17. Amends s. 440.13, F.S., to also require the Department of Insurance is required to develop reporting requirements for health care providers relating to the reporting of medical or surgical treatment and medical reports and bills in consultation with the Agency for Health Care Administration. The section is also amended to authorize the Department of Insurance to monitor and audit workers' compensation carriers to determine whether medical bills are paid in accordance with this section and the provisions of s. 624.3161, F.S., which relates to market conduct examinations of insurers. The department would also be authorized to impose a fine or otherwise discipline an employer or carrier, pursuant to ch. 440, F.S., the insurance code, or rules adopted by the department, if an employer or carrier does not comply with these provisions.

The section also provides that physicians and hospitals would be authorized to be reimbursed at the per diem rate for hospital inpatient stay. Currently, reimbursement is authorized at either the usual and customary charge for treatment, care, and attendance, the agreed upon contract price, or the maximum reimbursement allowance in the fee schedule

Section 20. Amends s. 440.15, F.S., to authorize the Department of Insurance to specify by rule the form and information required to be reported by doctors certifying maximum medical improvement.

The section also eliminates the requirements that the Department of Insurance review and determine, at the carrier's or employer's request, whether the carrier has performed its duty with respect to whether any extended unemployment of an employee is a direct result of an employee's impairment.

Section 22. Amends s. 440.185, F.S., to authorize the agency and department, rather than the agency or department to adopt rules regarding medical record reporting requirements.

Section 26. Amends s. 440.20, F.S., to authorize the Department of Insurance to monitor and audit workers' compensation carriers in accordance to its market conduct examination and investigation process as provided in ss. 624.3161 and 624.317, respectively to ensure carrier compliance with the provisions of ch. 440, F.S., and the insurance code.

The department is also authorized to examine on an ongoing basis claims files of a carrier, as provided in ss. 624.3161 and 624.310, F.S. The department is authorized to impose fines or impose penalties as provided in s. 624.4211, F.S., to ensure compliance.

The section also eliminates an annual report by the Department of Insurance regarding the promptness of first payment of compensation of each carrier or self-insurer. It is anticipated that carrier compliance would be more effectively addressed through the market conduct examination process.

Section 35. Amends s. 440.381, F.S., to eliminates the requirement that the Department of Insurance notify a carrier of the name of any injured worker who has not reported as earning

wages on the last quarterly earnings report. Carriers have not historically requested this information.

Section 45. Amends s. 440.52, F.S., to eliminate the \$100 annual registration fee required to be paid to the Division of Workers' Compensation by each insurance carrier wanting to write workers' compensation coverage in Florida.

Section 46. Amends s. 440.525, F.S., to eliminate the requirement that each carrier must be examined no less frequently than once every 3 years and authorize the department to examine a carrier as often as is warranted to ensure that carriers are complying with the statutory provisions.

Section 47. Amends s. 440.572, F.S., to revise the reporting requirements of the department to the Legislature and the Governor relating to workers' compensation injuries to allow the department to report information deemed relevant to workers' compensation, rather than specifying in statute the specific reporting requirements.

Section 54. Amends s. 627.0915, F.S., to eliminate the discount carriers may offer employers for implementing a safety program approved by the Division of Safety (abolished in 2000) pursuant to rules adopted by the Division of Safety.

Section 56. Provides that this act does not affect the validity of any judicial or administrative proceeding involving the Department of Labor and Employment Security which is pending as of the effective date of any transfer under this act.

Section 57. Provides that if any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of the act, which can be given effect without the invalid provision, or application, and to this end the provisions of this act are severable.

Section 58. Amends s. 624.3161, F.S., to expand the scope of market conduct examinations to include examinations made pursuant to the provisions of ch. 440, F.S.

Section 59. Provides that this act will take effect October 1, 2001. The section also provides that to the extent there is any conflict between provisions of this bill and the provisions of SB 1140, which authorizes the Florida Self-Insurers Guaranty Association to perform certain duties, the provisions of SB 1140 or similar legislation would control.

The section also provides that to the extent there is any conflict between provisions of this bill and the provisions of SB 1926, which transfers the Office of the Judges of Compensation Claims to the Division of Administrative Hearings, the provisions of SB 1926 or similar legislation would control.

Section 60. Provides that the provisions of this act would take effect July 1, 2001, rather than October 1, 2001, if a memorandum of understanding regarding the responsibilities of the Division of Workers' Compensation has been executed between the Executive Office of the Governor and the Department of Insurance on or before May 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent certain functions within the Division of Workers' Compensation can be merged or consolidated with existing regulatory functions of the Department of Insurance due to the transfer of functions to the department, the overall administrative costs of the workers' compensation system could be reduced. By authorizing the Department of Insurance to audit workers' compensation carriers in accordance with the provisions of the insurance code, rather than ch. 440, F.S., the department would be able to streamline the examination of workers' compensation carriers into the examination process used for all other carriers.

The Division of Workers' Compensation has indicated that there are 453 positions within the division that would be authorized for the transfer to the Department of Insurance. In addition, four positions from the Office of General Counsel would be transferred by a type two transfer to the Department of Insurance. The remaining positions within the division are transferred or allocated as follows:

Division of Administrative Hearings for the
 Office of the Judges of Compensation Claims - 18
 Department of Education - 98
 Agency for Health Care Administration - 29
 Department of Business and Professional Regulation - 11
 (Child Labor, which is funded through the Division of Workers' Compensation)

In addition, the following programs within the department are to be transferred:

- Division of Administrative Services - 24
(15 of the 24 are career service positions, ultimate location of all of these positions is unknown at this time)
- Public Employees Relations Commission - 40
(to be transferred to the Department of Management Services)
- Unemployment Appeals Commission - 28
(to be transferred to the Department of Management Services)
- Office of the Judges of Compensation Claims - 179
(to be transferred to the Department of Management Services)
- Farm Labor - 30
(to be transferred to the Department of Business and Professional Regulation)

The bill provides an October 1, 2001, effective date for the transfer of the Division of Workers' Compensation and related positions from the Office of General Counsel, and Division of Administrative Services within the Department of Labor and Employment Security. Regardless of the date of the transfer, expenditures from the Workers' Compensation Administration Trust Fund would continue for salaries, expenses, and other capital outlay. However, the following additional costs, totaling \$1,062,632, would be incurred to maintain the administrative support functions of the Department of Labor and Employment Security until October 1, 2001, that are not funded by the Workers' Compensation Administrative Trust Fund:

Expenditures	Administrative Trust Fund	General Revenue
Salaries & Benefits (28 positions)	\$486,000	\$42,632
Other Personal Services	18,000	
Expenses	228,000	2,000
Data Processing	36,000	
Annual Leave Payout	250,000	
Total	\$1,018,000	\$44,632

VI. Technical Deficiencies:

The bill provides for the transfer and allocation of an unspecified number of support positions from within the Department of Labor and Employment Security to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education, respectively. Some of the positions may not be allocated to provide support for only one program area. There are 24 positions remaining within the Department of Labor and Employment Security. However, nine of these positions appear to be management positions, since they are not career service positions. It is unclear whether the transfer would include the management positions, also.

VII. Related Issues:

None.

VIII. Amendments:

None.

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