

# 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/CS/SB 2340

**SPONSOR:** Commerce and Economic Opportunities Committee, Banking and Insurance Committee, and Senator Clary

**SUBJECT:** Transferring and Reassigning Divisions, Functions, and Responsibilities of the Department of Labor and Employment Security

**DATE:** March 14, 2002                      **REVISED:**

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

**I. Summary:**

Committee Substitute for Committee Substitute for Senate Bill 2340 abolishes the Department of Labor and Employment Security and transfers the department’s divisions, functions, and responsibilities to other executive branch agencies. The committee substitute transfers the Division of Workers’ Compensation to the Department of Insurance, effective July 1, 2002, by a Type II transfer. The Department of Insurance is authorized to reassign, reclassify, and reorganize the transferred positions. The committee substitute transfers the remaining units and functions from the Department of Labor and Employment and Security, which are summarized as follows:

- Positions and funding for the rehabilitation and reemployment of injured workers within the Division of Workers’ Compensation are transferred to the Department of Education by a Type II transfer;
- Positions and funding for the oversight of medical services within the Division of Workers’ Compensation are transferred to the Agency for Health Care Administration by a Type II transfer;
- Positions and funding for the regulation of child labor, farm labor, and migrant labor are transferred to the Department of Business and Professional Regulation by a Type II transfer;
- Positions and funding for the Unemployment Appeals Commission are transferred to the Agency for Workforce Innovation by a Type II transfer;
- The Office of Information Systems, which provides support for the Division of Workers’ Compensation, is transferred to the State Technology Office within the Department of Management Services by a Type II transfer; and

- Oversight of the Florida Self-Insurers Guaranty Association, Inc., is transferred from the Department of Labor and Employment Security to the Department of Insurance.

The committee substitute reorganizes the responsibilities of the offices within the Agency For Workforce Innovation. The committee substitute also provides certain other substantive changes affecting the administration of the Workers' Compensation Law. The Department of Insurance is: 1) authorized to share confidential medical records with the Agency for Health Care Administration and the Department of Education to assist them in fulfilling their responsibilities, which are both required to maintain the confidentiality of the information; 2) required to develop reporting requirements for health care providers in consultation with the agency; and 3) authorized to monitor and audit workers' compensation carriers and to fine or discipline a carrier under the provisions of the Florida Insurance Code. Certain reporting and administrative functions are revised or eliminated, and the Workers' Compensation Oversight Board is abolished (which was not funded during fiscal year 2000-2001).

This committee substitute substantially amends the following sections of the Florida Statutes: 20.13, 20.50, 110.205, 112.19, 112.191, 121.125, 122.03, 238.06, 440.015, 440.02, 440.021, 440.05, 440.09, 440.10, 440.102, 440.103, 440.104, 440.105, 440.106, 440.107, 440.108, 440.12, 440.125, 440.13, 440.134, 440.14, 440.15, 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, 440.45, 440.49, 440.491, 440.50, 440.51, 440.52, 440.525, 440.572, 440.59, 440.591, 440.593, 443.012, 443.036, 447.02, 447.305, 450.012, 450.191, 450.28, 624.3161, 626.88, 626.989, 627.0915, and 627.914. The committee substitute also repeals ss. 20.171 and 440.4416, F.S.

## **II. Present Situation:**

### **Reorganization of the Department of Labor and Employment Security**

Beginning in 1999, the Legislature began the process of reorganizing the Department of Labor and Employment Security, which evolved into the transfer of sizeable portions of the department to other executive branch agencies. This evolution continued when the Legislature enacted the Workforce Innovation Act of 2000 (ch. 2000-165, L.O.F.), which, among other things, created the Agency for Workforce Innovation and transferred the Division of Unemployment Compensation from the Department of Labor and Employment Security to the newly created agency. This process was perpetuated in 2001 with the transfers of the Public Employees Relations Commission to the Department of Management Services and the Office of the Judges of Compensation Claims to the Division of Administrative Hearings. The following summarizes the milestones of the reorganization:

- The brain and spinal cord injury program and the Office of Disability Determinations were transferred by a Type II transfer to the Department of Health, effective January 1, 2000 (s. 15, ch. 99-240, L.O.F.).
- The Division of Safety was repealed, effective July 1, 2000 (s., 2, ch. 99-240, L.O.F.).
- The Division of Blind Services was transferred by a Type II transfer to the Department of Education, effective January 1, 2001 (s. 39, ch. 99-240, L.O.F.).

- The powers, duties, and functions of the Division of Vocational Rehabilitation relating to occupational access and opportunities for persons with disabilities were transferred as directed by the state plan for vocational rehabilitation adopted by the Occupational Access and Opportunity Commission within the Department of Education (s. 33, ch. 99-240, L.O.F.). Beginning with the General Appropriations Act for fiscal year 2000-2001, positions and funding for the Division of Vocational Rehabilitation were transferred to the Department of Education (ch. 2000-166, L.O.F.).
- The Bureau of Apprenticeship within the Division of Jobs and Benefits was transferred by a Type II transfer to the Division of Workforce Development in the Department of Education, effective July 1, 2000 (s. 11(2), ch. 2000-165, L.O.F.).
- The Division of Workforce and Employment Opportunities and the Office of Labor Market Statistics were transferred by a Type II transfer to the Agency for Workforce Innovation, effective October 1, 2000 (s. 11(4)(a), ch. 2000-165, L.O.F.).
- The Division of Unemployment Compensation was transferred by a Type II transfer to the Agency for Workforce Innovation, effective October 1, 2000 (s. 11(4)(f), ch. 2000-165, L.O.F.).
- The Public Employees Relations Commission was transferred by a Type I transfer to the Department of Management Services, effective July 1, 2001 (s. 41, ch. 2001-43, L.O.F.).
- The Office of the Judges of Compensation Claims was transferred by a Type II transfer to the Division of Administrative Hearings within the Department of Management Services, effective October 1, 2001 (s. 37, ch. 2001-91, L.O.F.).

The Department of Labor and Employment Security is established in current law under s. 20.171, F.S. The head of the department is the Secretary of Labor and Employment Security, who is appointed by the Governor, subject to confirmation by the Senate, and who serves at the pleasure of the Governor. The department has two assistant secretaries, who are appointed by and serve at the pleasure of the secretary: an Assistant Secretary for Finance and Administration and an Assistant Secretary for Programs and Operations. The department has an Office of Administration, an Office of Management and Budget, and an Office of Information Systems (s. 20.171(3)(c), F.S.). Each office is supervised by a manager who is responsible to the Assistant Secretary for Finance and Administration. The department also has an Office of General Counsel and an Office of Inspector General, which are headed by managers who are appointed by and serve at the pleasure of the secretary (s. 20.171(2)(a), F.S.). To provide for the collocation of its key programs, the department has five regional field offices, which are each headed by a manager (s. 20.171(6), F.S.).

Although the Division of Unemployment Compensation was transferred to the Agency for Workforce Innovation in 2000, the Unemployment Appeals Commission remains within the Department of Labor and Employment Security (s. 20.171(7), F.S.). The Division of Workers' Compensation is also established within the department (s. 20.171(5)(b), F.S.).

Under current law, the managers of all divisions and offices specifically named in s. 20.171, F.S., and the directors of the five field offices are included in the Senior Management Service and are exempt from the Career Service System (ss. 20.171(2)(c) and 110.205(2)(m), F.S.).

## **Methods for Reorganization of the Executive Branch**

Under current law, there are two methods defined for the reorganization of executive branch agencies: a Type I transfer and a Type II transfer (s. 20.06, F.S.). In a Type I transfer, an existing agency or department is *transferred intact* to another agency or department *by becoming a unit* of the agency or department to which it is transferred. A Type II transfer is the *merging into another agency or department* of an existing agency or department, or a program, activity, or function of an agency or department. For those instances in which certain identifiable units or subunits, programs, activities, or functions are removed from an existing agency or department, or are abolished, a Type II transfer is the merging into an agency or department of the existing agency or department with those identifiable units or subunits, programs, activities, or functions removed from the agency or department or abolished.

Unless otherwise provided by law, an agency or department transferred to another agency or department by a Type I transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made. Unless otherwise provided by law, the head of the agency or department to which an existing agency or department or a program, activity, or function is transferred by a Type II transfer is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions.

An agency or department, or a program, activity, or function, transferred by either a Type I or Type II transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds (except those transferred elsewhere or abolished in a Type II transfer) transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in such manner that the relation between program and revenue source as provided by law is retained. Unless otherwise provided by law, the administrative rules of an agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

## **Administration of the Workers' Compensation Law**

The Workers' Compensation Law (ch. 440, F.S.) is currently administered by the Division of Workers' Compensation within the Department of Labor and Employment Security. The division is organized into the following programmatic or functional areas: Bureau of Monitoring and Audit, Bureau of Employee Assistance and Ombudsman Office, Bureau of Rehabilitation and Medical Services, Bureau of Operations Support (including the Special Disability Trust Fund), Bureau of Compliance, Bureau of Research and Education, Bureau of 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 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 before 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 the Workers' Compensation Law. The EAO is also directed to "take all steps necessary to educate and disseminate information to employees and employers" (s. 440.191(1)(c), F.S.).

In order to effect the self-executing features of the Workers' Compensation Law, the current law provides that the Workers' Compensation Law is construed to permit injured workers, employers, and carriers to resolve disputes "without undue expense, costly litigation, or delay in the provisions of benefits" (s. 440.191(1)(a), F.S.). Consequently, the EAO investigates disputes and attempts to resolve disputes between injured workers and the carrier or employer in an informal manner through the Request for Assistance process.

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, the employee may file a petition for benefits. Under current law, the employee is required to serve the petition upon the employer, the employer's carrier, and the Office of the Judges of Compensation Claims (s. 440.192, F.S.). 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 Office of the Judges of Compensation Claims.

The Bureau of Rehabilitation and Medical Services certifies and decertifies health care providers, publishes 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 maintain 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 Administration 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, an assistant director, and administrative support for the office. The Division of Workers' Compensation maintains district offices throughout the state, which is divided into seven districts.

## **Organization of the Agency for Workforce Innovation**

The Agency for Workforce Innovation was created by the Legislature in the Workforce Innovation Act of 2000 (ch. 2000-165, L.O.F.), which also created Workforce Florida, Inc., and revised the duties of the 24 regional workforce boards. The act directs the Agency for Workforce Innovation to ensure that the state appropriately administers federal and state workforce funding by administering the plans and policies of Workforce Florida, Inc., under contract with Workforce Florida (s. 20.50(1), F.S.). Workforce services are delivered to citizens by the regional workforce boards through the one-stop delivery system. These workforce services include a variety of employment and training programs, including among others:

- Employment and training services for adult, youth, and dislocated workers supported by the federal Workforce Investment Act block grant;
- Welfare transition services supported by the federal Temporary Assistance for Needy Families block grant;
- Job search, referral, and placement assistance authorized under the federal Wagner-Peyser Act;
- Education or training supported by federal welfare-to-work grants administered by the United States Department of Labor;
- Job counseling, training, and placement for veterans;
- Employment and training supported by the federal Community Services block grant;
- Food Stamp Employment and Training Program; and
- Quick-Response Training Program (ss. 20.50(3) and 445.004(5)(b), F.S.).

The Agency for Workforce Innovation also administers the state's unemployment compensation program, which was transferred to the agency from the Department of Labor and Employment Security. In 2001, in the Florida Education Governance Reorganization Implementation Act (ch. 2001-170, L.O.F.), the Legislature transferred the school readiness programs from the Executive Office of the Governor to the Agency for Workforce Innovation for administrative purposes (s. 411.01(4)(a), F.S.). The agency is responsible for administering the federal and state school readiness funds, plans, and policies under contract with the Florida Partnership for School Readiness (s. 411.01(9)(b), F.S.), which involves the administration of funds distributed through 57 local school readiness coalitions.

Under current law, the head of the Agency for Workforce Innovation is the Director of Workforce Innovation, who is appointed by the Governor. The agency also includes three program offices, which are each headed by a deputy director who is appointed by and serves at the pleasure of the director: Office of Workforce Services, Office of Workforce Investment and Accountability, and Office of Workforce Information Services.

The Office of Workforce Services administers the agency's state merit system program staff within the workforce service delivery system, under policies of Workforce Florida, Inc. The office is responsible for delivering services through the one-stop delivery system and for ensuring that participants in welfare transition programs receive case management services, diversion assistance, support services, including subsidized child care and transportation

services, Medicaid services, and transition assistance. The head of the office is the Deputy Director for Workforce Services (s. 20.50(2)(a), F.S.).

The Office of Workforce Investment and Accountability is responsible for procurement, contracting, financial management, accounting, audits, and verification. The head of the office is the Deputy Director for Workforce Investment and Accountability (s. 20.50(2)(b), F.S.).

The Office of Workforce Information Services is responsible for providing information on labor markets, employment, occupations, and performance. The office also implements and maintains information systems for support of the one-stop delivery system. The head of the office is the Deputy Director for Workforce Information Services (s. 20.50(2)(c), F.S.).

### III. **Effect of Proposed Changes:**

The committee substitute abolishes the Department of Labor and Employment Security and transfers the department's remaining divisions, functions, and responsibilities to other executive branch agencies. The committee substitute also makes technical and conforming changes throughout chapters of the Florida Statutes affected by the transfers and makes certain other substantive changes.

#### **Transfer and Reassignment of Divisions, Functions, and Responsibilities**

**Section 1** provides for the transfer, by a Type II transfer as defined in s. 20.06(2), F.S., of all powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of various divisions, functions, and responsibilities of the Department of Labor and Employment Security. (*See* Figure 1 on page 9 of this analysis.) For each transfer, the committee substitute also transfers to each respective agency or department all records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services within the Department of Labor and Employment Security that support the activities and functions that are transferred to each respective agency or department. These transfers are made to each of the following agencies or departments and are summarized as follows:

***Department of Insurance:*** Except for certain functions removed from the division and transferred to other agencies or departments, the Division of Workers' Compensation is transferred to the Department of Insurance. To the extent feasible, the positions transferred to the department will be reclassified to pay grades comparable to the positions established by the Department of Labor and Employment Security. The Department of Insurance is authorized to establish the number of positions necessary to administer the Workers' Compensation Law; however, the number of positions and associated salaries may not exceed the number of positions and salaries that were previously authorized for the Division of Workers' Compensation before the transfer. The Department of Insurance is authorized to reassign, reclassify, reorganize, or otherwise transfer those positions within the department and to establish regional offices as are necessary to administer the Workers' Compensation Law. The department is authorized to enter into contracts with public or private entities to administer its duties associated with the transfer of the Division of Workers' Compensation.

***Agency for Health Care Administration:*** The positions and funding for oversight of medical services in workers' compensation provider relations, dispute and complaint resolution, program evaluation, data management, and review of carrier medical bills are removed from the Division of Workers' Compensation and transferred to the Agency for Health Care Administration.

***Department of Education:*** The positions and funding related to the rehabilitation and reemployment of injured workers are removed from the Division of Workers' Compensation and transferred to the Department of Education.

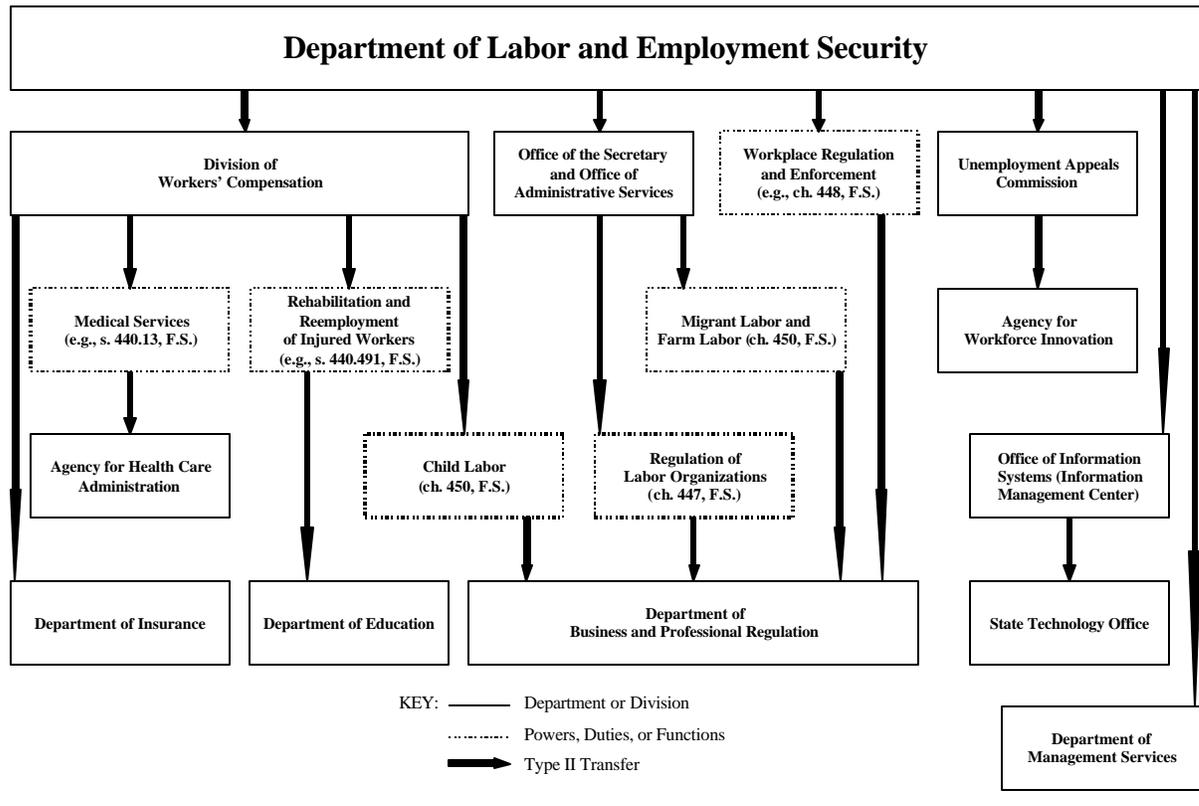
***Department of Business and Professional Regulation:*** The positions and funding for the administration of child labor laws under ch. 450, F.S., are removed from the Division of Workers' Compensation and transferred to the Department of Business and Professional Regulation. The committee substitute also transfers the regulation of labor organizations under ch. 447, F.S., and the administration of migrant labor and farm labor laws under ch. 450, F.S., from the Office of the Secretary and the Office of Administrative Services to the Department of Business and Professional Regulation. Additionally, unless otherwise transferred by the committee substitute, workplace regulation and enforcement (e.g., ch. 448, F.S.) are transferred to the Department of Business and Professional Regulation. The committee substitute authorizes the department to reassign, reorganize, reclassify, or otherwise transfer positions within the department to accomplish its workplace regulation responsibilities. To fully integrate the farm labor, child labor, and workplace regulation programs into the mission of the Department of Business and Professional Regulation in an effective manner, the committee substitute authorizes the department to transfer resources between services and make revisions to the authorized budget as necessary to reengineer business processes for the purpose of reducing costs and increasing program efficiencies. These actions are subject to the review and approval provisions in s. 216,177, F.S., which would allow the chair and vice chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives to void the department's actions.

***Agency for Workforce Innovation:*** The Unemployment Appeals Commission is transferred to the Agency for Workforce Innovation. The commission will not be subject to the control, supervision, or direction of the agency in the performance of the commission's power and duties, but the agency must provide any and all support and assistance that the commission requires to perform its duties. (*See* Section 3 of the committee substitute.)

***State Technology Office:*** The Office of Information Systems, cited as the Information Management Center, is transferred to the State Technology Office within the Department of Management Services. Upon completion of the transfer, the State Technology Office and the Department of Insurance are directed to enter into discussions to determine whether it would be technologically feasible and cost effective to separate the workers' compensation related systems and transfer ownership of these systems to the Department of Insurance. If the Department of Insurance ultimately determines that it is technologically feasible and cost effective to transfer ownership of these systems from the State Technology Office to the Department of Insurance, the department must submit a transfer plan and a budget amendment to the Legislative Budget Commission requesting the transfer. The transfer plan and budget amendment must be approved by the Legislative Budget Commission.

**Department of Management Services:** The committee substitute designates the Department of Management Services as the custodian of any property of the Department of Labor and Employment Security which is not otherwise transferred. The department would also be authorized to permit the use of such property by organizations, as necessary to implement the committee substitute.

**(Figure 1) Dissolution of the Department of Labor and Employment Security**



The committee substitute provides that any binding contract or agreement between the Department of Labor and Employment Security and another agency, entity, or person existing on or before July 1, 2002, continues as a binding contract or agreement for the remainder of the term of the contract or agreement, with the successor department, agency, or entity responsible for the contract or agreement. The committee substitute also specifies that it 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. The successor agency, department, or entity responsible for the transferred program, activity, or function relative to a proceeding would be substituted, as of the effective date of the applicable transfer, for the Department of Labor and Employment Security.

**Establishment of the Division of Workers' Compensation**

**Section 2** amends s. 20.13, F.S., which provides for the creation and organization of the Department of Insurance. The committee substitute establishes the Division of Workers' Compensation as a division within the Department of Insurance.

### **Agency for Workforce Innovation and the Unemployment Appeals Commission**

**Section 3** amends s. 20.50, F.S., which provides for the creation and organization of the Agency for Workforce Innovation. The committee substitute provides that the Office of Workforce Services will administer the unemployment compensation program, the Rapid Response program, the Work Opportunity Tax Credit Program, the Alien Labor Certification program, and any other program that is delivered directly by agency staff, rather than through the one-stop delivery system. Responsibility for administration of workforce services delivered through the one-stop delivery system is transferred to the redesignated Office of Program Support and Accountability (former Office of Workforce Investment and Accountability).

The committee substitute specifies that the redesignated Office of Program Support and Accountability will administer the agency's state merit system program staff within the workforce delivery system under the policies of Workforce Florida, Inc. The office will be responsible for delivering services through the one-stop delivery system and for ensuring that participants in welfare transition programs receive case management services, diversion assistance, support services (including subsidized child care and transportation services), Medicaid services, and transition assistance. Administration of the workforce delivery system was principally conducted by the Deputy Director for Workforce Services. The office will also be responsible for program quality assurance, grants and contract management, contracting, financial management, and reporting. The office's former responsibilities for procurement, accounting, audits, and verification are transferred to the director's office. The deputy director is redesignated as the Deputy Director for Program Support and Accountability.

The committee substitute redesignates the Office of Workforce Information Services as the Office of Agency Support Services. The committee substitute also assigns the office responsibility for procurement, human resource services, and information services for the school readiness services system. The deputy director is redesignated as the Deputy Director for Agency Support Services.

The committee substitute directs the Director of Workforce Innovation or his or her designee to administer the accounting and reporting functions of the agency. These functions include budget management, financial management, audit, performance management standard and controls, assessing outcomes of service delivery, and financial management of workforce programs. These accounting and reporting functions were principally administered by the Deputy Director for Workforce Investment and Accountability.

The committee substitute specifies that the Unemployment Appeals Commission, which is transferred to the Agency for Workforce Innovation, will not be subject to the control, supervision, or direction of the agency in the performance of the commission's power and duties, but that the agency must provide any and all support and assistance that the commission requires to perform its duties.

The committee substitute also clarifies that the Agency for Workforce Innovation has responsibility for the administration of the Unemployment Compensation program.

## **Technical, Conforming, and Other Substantive Changes**

**Sections 4–70** make technical and conforming changes in sections throughout the Florida Statutes affected by the transfers made in Section 1 of the committee substitute. The committee substitute also makes certain other substantive changes, which are summarized as follows:

**Section 24** amends s. 440.125, F.S., to authorize the Department of Insurance to share any confidential and exempt information received under s. 440.13, F.S., with the Agency for Health Care Administration and the Department of Education in furtherance of their duties under ss. 440.13 and 440.134, F.S. The Agency for Health Care Administration and the Department of Education would be required to maintain the confidentiality and exempt status of the information. Under current law, medical reports and medical bills provided to the Division of Workers' Compensation are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The committee substitute transfers duties and responsibilities relating to medical records to the Department of Insurance, the Agency for Health Care Administration, and the Department of Education.

**Section 25** amends s. 440.13, F.S., to require the Department of Insurance, in consultation with the Agency for Health Care Administration, to develop reporting requirements for health care providers relating to the reporting of medical treatment, medical reports, and bills. The committee substitute also authorizes the Department of Insurance to monitor and audit workers' compensation carriers to determine whether medical bills are paid in accordance with this section and s. 624.3161, F.S., which relates to market conduct examinations of insurers. If the department determines a carrier is not within 90 percent compliance as to the payment of medical bills, the department would be required to assess a fine not to exceed 1 percent of the prior year's assessment against such entity under s. 440.51, F.S. The department would also be authorized to impose a fine or otherwise discipline an employer or carrier, under the Workers' Compensation Law, the Florida Insurance Code, or rules adopted by the department, if an employer or carrier does not comply with these provisions. Under current law, the division is authorized to fine an employer or carrier under rules adopted by the division, for each late payment of compensation that is below the 90 percent performance standard. The section currently provides that any carrier that is found to be not in compliance in subsequent quarters must implement a medical bill review program, approved by the division, and the carrier is subject to disciplinary action by the Department of Insurance.

**Section 28** amends s. 440.15, F.S., to eliminate the requirement that the division (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. According to the Division of Workers' Compensation, requests for this type of information have not been made in years.

**Section 33** amends s. 440.20, F.S., to authorize the Department of Insurance to monitor and audit workers' compensation carriers in accordance with its market conduct examination and investigation process in ss. 624.3161 and 624.317, F.S., respectively, to ensure carrier compliance with the provisions of the Workers' Compensation Law and the Insurance Code. The Department of Insurance would be required to impose penalties of \$250 for each late payment of compensation. If the department finds patterns or practices of late payment, the department

would be authorized to impose penalties under s. 624.4211, F.S., which authorizes administrative fines in lieu of suspension or revocation. Under current law, workers' compensation carriers are subject to a fine of up to \$50 for each late payment that is below the 90 percent performance standard.

The department is also authorized to examine, on an ongoing basis, claims files of a carrier, as provided in s. 624.3161, F.S., and impose fines or penalties in s. 624.310(5), F.S., to ensure compliance. If the department finds questionable techniques, patterns, or practices or repeated unreasonably controverted claims, the department would be authorized to impose penalties under s. 624.4211, F.S., which authorizes administrative fines in lieu of suspension or revocation. Under current law, the Division of Workers' Compensation may certify its findings to the Department of Insurance or such other appropriate licensing agency.

**Section 42** amends s. 440.381, F.S., to eliminate the requirement that the Department of Insurance notify a carrier of the name of any injured worker who was not reported as earning wages on the last quarterly earnings report. Carriers have not historically requested this information.

**Section 43** amends s. 440.385, F.S., to require the Insurance Commissioner, rather than the Secretary of the Department of Labor and Employment Security, to appoint the nine-member board of directors of the Florida Self-Insurers Guaranty Association. The committee substitute provides that appointments made on or after July 1, 2002, would be made by the Insurance Commissioner. The plan of operation for the association in effect as of June 30, 2002, and approved by the Department of Labor and Employment Security would remain in effect until it was subsequently amended. Such amendments would require prior approval by the Department of Insurance.

**Section 54** amends s. 440.525, F.S., to eliminate the requirement that each carrier must be examined no less frequently than once every three years and to authorize the Department of Insurance to examine a carrier as often as is warranted to ensure that carriers are complying with the statutory provisions. Under current law, the department is authorized to examine carriers as often as it deems necessary, as provided in s. 624.3161, F.S.

**Section 56** amends s. 440.59, F.S., to revise annual reporting requirements for the Department of Insurance relating to the administration of the Workers' Compensation Law, by deleting the annual closed claim report and all claims report for which employees have lost more than seven days from work. The department would continue to prepare the annual report regarding the administration of the Workers' Compensation Law.

### **Repeals**

**Section 71** repeals ss. 20.171 and 440.4416, F.S., which has the effect of eliminating the Department of Labor and Employment Security and the Workers' Compensation Oversight Board. The board no longer convenes, and it was not funded in the General Appropriations Act for fiscal year 2001-2002.

### **Severability Clause**

**Section 72** provides that if any provision of the committee substitute or its application is held invalid, the invalidity does not affect other provisions or applications of the committee substitute, which can be given effect without the invalid provision or application.

### **Effective Date**

**Section 73** provides that the committee substitute takes effect July 1, 2002, except as otherwise provided in the committee substitute.

## **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:**

Workers' compensation carriers previously subject to regulation by the Department of Insurance and the Department of Labor and Employment Security could benefit from streamlining the regulation and examination process within one department.

### **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 the Workers' Compensation Law, the department would be able to streamline the examination of workers' compensation carriers into the examination process used for all other carriers.

The abolishment of the Department of Labor and Employment Security would result in an indeterminate amount of savings related to the elimination of administrative positions in the Office of the Secretary and the Office of Administrative Services, associated expenses, and other capital outlays not transferred to other departments or agencies.

The committee substitute does not specify the number of positions to be transferred from the Department of Labor and Employment Security to the various agencies and departments. It is anticipated the General Appropriations Act would provide for the transfer of the positions.

According to the Department of Labor and Employment Security, the department currently has 791 authorized positions, of which 680.5 positions are filled. Of the total authorized positions, 576 positions are currently assigned to the Division of Workers' Compensation, of which 503.50 positions are filled. Eleven of these authorized positions are currently assigned to the regulation of child labor and would be transferred to the Department of Business and Professional Regulation. It is anticipated that 322 positions would be transferred to the Department of Insurance, 82 positions to the Department of Education, and 20 positions to the Agency for Health Care Administration. The Department of Labor and Employment Security provided the following proposed breakout of the remaining authorized positions within the department:

- ***Unemployment Appeals Commission:*** 28 authorized positions, of which 27 positions are filled (to be transferred to the Agency for Workforce Innovation);
- ***Office of Information Systems:*** 140 authorized positions, of which 111.25 positions are filled (to be transferred to the State Technology Office);
- ***Migrant and Farm Labor:*** 29 authorized positions, of which 27 positions are filled (to be transferred to the Department of Business and Professional Regulation); and
- ***Office of the Secretary:*** 18 authorized positions, of which 12 positions are filled (seven of these positions would be transferred to the State Technology Office).

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

An amendment to the State Constitution approved by the electors in November 1998 modifies the Cabinet, effective January 7, 2003. Among other changes, the amendment merges the offices of the Treasurer and the Comptroller into one Chief Financial Officer. The new state Cabinet will consist of an Attorney General, a Commissioner of Agriculture, and a Chief Financial Officer. As the Comptroller heads the Department of Banking and Finance and the Treasurer heads the Department of Insurance, the status of these departments must be determined, which is the subject of legislation anticipated to be considered during the 2002 Regular Session. Positions and funding associated with the transfer of the Division of Workers' Compensation and the dissolution of the Department of Labor and Employment Security would be addressed in the General Appropriations Act.

**VIII. Amendments:**

None.

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

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