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 2304

SPONSOR: Banking and Insurance Committee and Senator Latvala

SUBJECT: Workers' Compensation

DATE: March 12, 2002 REVISED: _____ _____ _____ _____

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

I. Summary:

The committee substitute provides changes to the workers' compensation system that are designed to expedite the dispute resolution process, provide greater enforcement authority for the Division of Workers' Compensation to enforce exemption and coverage requirements of ch. 440, F.S., and reduce costs for the overall administration of the workers' compensation system. The following is a summary of the significant provisions of the bill:

Informal Dispute Resolution

1. Eliminates the request for assistance process in order to expedite the resolution process.
2. Authorizes the Division of Workers' Compensation to contact the injured worker or the workers' representative directly upon receipt of the notice of injury or death to provide information and facilitate resolution.

Formal Dispute Resolution

1. Revises the statutory dispute resolution time line in order to expedite the process. For example, a mediation conference would be required to be held within 40 days after the receipt of the petition for benefits. Currently, the average number of days between the receipt of the petition of benefits and the scheduled mediation conference is 124 days. The bill would also require that *all* final hearings be held within 210 days after receipt of the petition. Last year, the final hearing was generally held, *on average*, within 222 days after receipt of the petition for benefits.
2. Authorizes the use of private mediation prior, at the carrier's expense, prior to the date of mandatory mediation in order to expedite the resolution process.
3. Requires use of expedited hearing for claims relating to determination of pay or claims for $5,000 or less for medical benefits only.

4. Limits the conditions in which a continuance for a mediation conference may be granted by a judge of compensation claims to circumstances beyond the party's control and requires that any order granting a continuance must set forth the date of the rescheduled mediation. Provides that a mediation conference cannot be used solely for the purpose of mediating attorney's fees.
5. Authorizes the judge of compensation claims to dismiss claims that have been inactive for the previous 12 months unless good cause is shown.
6. Establishes mandatory appellate mediation. Parties would be required to hold a mediation conference, at the carrier's expense, within 60 days after the filing of the notice of appeal of a final order of a judge of compensation claims. The mediation must be held within 90 days of the filing of the appeal.

Exemptions From Workers' Compensation Coverage

1. Revises the exemption criteria for businesses primarily engaged in the construction industry by eliminating exemptions for persons engaged in commercial construction. For any commercial construction job-site estimated to be valued at $250,000 or greater, a person who is actively engaged in the construction industry would not be considered an independent contractor and would be either an employer or employee and would not be exempt from the coverage requirements of chapter 440, F.S. Exemptions would continue to be available to persons primarily engaged in residential construction.
2. Provides greater enforcement tools for the Division of Workers' Compensation. Persons claiming an exemption would be required to maintain certain business records and to provide such records to the division upon request. If such records were not produced within three business days, the division would be authorized to issue a stop-work order. The division would be required to issue a stop-work order within 72 hours of making a determination that a person failed to secure compensation coverage, as required by law. The division would be required, rather than allowed, to assess a penalty in the amount of the premium evaded or up to twice the amount of the premium evaded, or $1,000, whichever is greater, against employers that failed to secure compensation, as required by ch. 440, F.S.

Compliance and Enforcement Provisions

The bill revises reward eligibility requirements for the Anti-Fraud Reward Program of the Department of Insurance in order to encourage greater participation in the program. The department would be authorized to provide a reward of up to $25,000 to persons providing information to the department which leads to the arrest and conviction of persons committing insurance fraud. An employer would be required to post a notice informing employees of the Anti-Fraud Reward Program, for information leading to the arrest and conviction of persons committing insurance fraud, including employers who illegally fail to obtain workers' compensation coverage.

The committee substitute also revises disclosures on the insurance application form and revises auditing provisions for carriers. The committee substitute provides that an insurance carriers that fail to comply with current auditing requirements, including mandatory annual audits for construction employers above a certain premium, would be considered a violation of the Insurance Code and subject to a mandatory fine of at least $1,000 for each instance of

noncompliance. The committee substitute also requires that an application for coverage contain a sworn statement from the agent attesting that the agent explained to the employer or officer the classification codes that are used.

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.05, 440.10, 440.103, 440.107, 440.191, 440.25, 440.271, 440.381, 440.40, 440.45, 489.114, 489.510, and 626.9892.

II. Present Situation:

In recent years, many stakeholders in the workers' compensation system have contended that Florida has the highest premiums rates for workers' compensation insurance in the country, while its benefits are among the lowest. In the last 2 years, Florida has been recognized by independent studies as having the highest or second highest rates (2001) countrywide. Florida was noted as having the highest workers' compensation premium rates of all 50 states in the Oregon Workers' Compensation Premium Rate Ranking Calendar Year 2000 published by the State of Oregon Department of Consumer and Business Services.

Administration of the Workers' Compensation System In Florida

Pursuant to s. 440.015, F.S., the Division of Workers' Compensation, within the Department of Labor and Employment Security, is charged with administering the Workers' Compensation Law in a manner that facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

The Division of Workers= Compensation is primarily funded through assessments on insurance companies, self-insurance funds, assessable mutual companies, the Workers= Compensation Joint Underwriting Association, and self-insurers. The assessments are deposited into the Workers= Compensation Administration Trust Fund. Entities are also subject to a 4.52 percent assessment that is used to finance the Special Disability Trust Fund. The Workers' Compensation Administration Trust Fund assessment on net premiums collected, or net premiums imputed for self-insurers, may not exceed 4 percent, under the provisions of s. 440.51, F.S.

The Formal Dispute Resolution Process—Office of the Judges of Compensation Claims

The Office of the Judges of Compensation Claims is responsible for hearing and resolving disputed workers' compensation issues under the authority of ch. 440, F.S. In 2001, legislation was enacted that transferred the workers' compensation hearings function, as a separate budget entity, from the Department of Labor and Employment Security to the Division of Administrative Hearings within the Department of Management Services, effective October 1, 2001 (ch. 2001-91, L.O.F.).

Once an employee has exhausted the informal dispute resolution process, the employee may file a petition for benefits with the Office of the Judges of Compensation Claims in Tallahassee, the employer and the employer's carrier. [s. 440.192, F.S.] If the petition is not dismissed, it is referred to the appropriate district office. Presently, there are 17 district offices. Section 440.25, F.S., requires a mediation conference to be held within 21 days after a petition for benefits is

filed with the division. If the issues are not resolved within 10 days following the commencement of the mediation, the judge is required to hold a pretrial hearing.

At the pretrial hearing, the judge sets a date for the final hearing that allows the parties at least 30 days to conduct discovery, unless the parties consent to an earlier hearing date. The final hearing is required to be held and concluded within 45 days after the pretrial, unless the judge of compensation claims grants a continuance. According to the Office of the Judges of Compensation Claims, the average number of days from the date of receipt of the petition to the final disposition (final merit, settlement, or stipulation) is 245 days.

Medical Cost Containment and the Regulation of Managed Care Arrangements

The Agency for Health Care Administration is responsible for authorizing carriers to offer or utilize a worker's compensation managed care arrangement, if the carrier meets the conditions of s. 440.134, F.S., and regulates workers' compensation managed care arrangements. As part of the 1993 Act, workers' compensation managed care arrangements were authorized for the delivery of medical benefits, and mandated in 1997. However, employers are allowed to "opt-out" from managed care, effective October 1, 2001.

The three-member panel, consisting of the Insurance Commissioner or his designee, and two members appointed by the Governor is charged with the responsibility for determining statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians and hospitals. The maximum percentage of increase in the individual reimbursement schedule is capped at the percentage of increase in the Consumer Price Index for the prior year. Reimbursements for all fees and other charges for medical treatment cannot exceed the amounts provided by the maximum reimbursement allowance approved by the three-member panel and developed and adopted by rule by the Division of Workers' Compensation. [s. 440.13 (12), F.S.] Individual physicians are required to be reimbursed at the usual and customary charge, the agreed-upon contractual amount, or the maximum reimbursement allowance, whichever is less. Inpatient hospital care is reimbursed on a per diem basis and outpatient hospital care is reimbursed at 75 percent of the usual and customary rate.

Recently, the Workers' Compensation Research Institute (WCRI) released a report entitled, *Benchmarking Florida's Workers' Compensation Medical Fee Schedules* (September 2001) that compared Florida's fee schedule to other large states and southern states, the Medicare fee schedule in Florida, and the Florida fee schedule implemented September 30, 2001. The report also benchmarked hospital reimbursements in Florida with other states. Florida's medical fees were compared with California, Connecticut, Georgia, Louisiana, Massachusetts, Minnesota, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, and Texas. The following major findings were noted by WCRI:

1. The Florida fee schedule that was in effect prior to September 30, 2001, was significantly lower than neighboring states and large states evaluated. The fee schedule amounts (overall and for each major medical service group) are either the lowest or among the lowest in the United States.
2. The new fee schedule, which became effective September 30, 2001, will lower fees overall by 2 percent on average. Florida had the second lowest fee schedule among the

eight larger states (California, Connecticut, Massachusetts, Minnesota, New York, Pennsylvania, and Texas) evaluated. Massachusetts had the lowest fee schedule of the eight states primarily due to the relatively low surgery reimbursement rates.

3. On average, Florida's fee schedule is equal to those prescribed by the Medicare fee schedule (2000 edition). The report noted that Florida reimbursements for certain categories, such as evaluation and management (-37 percent) and radiology (-19 percent) are significantly lower than the Medicare fee schedule. In contrast, surgery fees were 14 percent above the Medicare fee schedule.
4. The average payments per service paid to Florida hospitals were generally the highest of the eight large states and as much as five times higher than the Florida fee schedule amounts authorized for non-hospital providers for similar services. The average fees paid to hospitals also increased by 13 percent per year for injuries incurred during the period of 1996-98.

The Florida Legislature recently enacted legislation (2001-91, L.O.F.) that allows employers to opt-out of managed care arrangements for the delivery of medical care and services. The legislation also allows injured workers one change in physician during the course of treatment for one accident. The "opt-out" provision was driven by concerns regarding additional administrative costs, litigation expense, and delays in providing care that were attributed to delivering medical care through managed care arrangements.

General Overview of Workers' Compensation Benefits in Florida

Chapter 440, F.S., generally requires that employers/carriers provide benefits (medical and indemnity) to a worker who is injured due to an accident arising out of and during the course of employment. The types of injury include: first aid, medical only, lost time, and death. Medical-only injuries require medical treatment only and the loss of time from work is less than 7 days. Lost time cases are the result of an employee missing 7 or more days of work.

Medical Benefits

The delivery of medical benefits can be provided to employees through a managed care or non-managed care system, at the option of the employer, effective October 1, 2001. Both delivery systems allow for one change in physician. [ss. 440.13(2) and 440.134(10), F.S.] The Agency for Health Care Administration recently determined that the "opt-out" provision "…effected a prospective only substantive amendment" to the law. The agency also stated that the determination of whether the "opt-out" provision for employers is a substantive change in law that applies only to dates of accident after October 1, 2001, or a procedural change which would apply to all persons, regardless of the date of injury, would be determined by a judge of compensation claims by evaluating the insurance policy/contract in effect at the time of the injury. The agency also stated, "If the policy/contract in effect at the time of injury specifies that managed care shall be used…then…the JCC must so hold true." Therefore, employers may not be allowed to "opt-out" of managed care for employees injured prior to October 1, 2001, which may require employers to maintain two different methods for the delivery of medical benefits.

Indemnity Benefits

Florida provides the following types of indemnity benefits: permanent total, temporary total, temporary partial, impairment income benefits, and death benefits. Benefits are contingent upon

the date of the accident, the employee's wages for the previous 13 weeks (which determines the average weekly wage), and the compensation rate (which is calculated at 66 2/3 percent of the average weekly wage and subject to a maximum rate of 100 percent of the statewide average weekly wage).

Permanent Total Disability Benefits
Only a catastrophic injury, in the absence of conclusive proof of a substantial earning capacity, constitutes permanent total disability. Permanent total disability is determined at maximum medical improvement, based upon reasonable medical probability that no further medical improvement can reasonably be anticipated. It is a lifetime benefit calculated at 66 2/3 percent of the average weekly wage, subject to a maximum compensation rate. In addition, a person will receive an annual supplemental income benefit equal to 5 percent per year of the disability payment.

Temporary Total Disability Benefits
Temporary total benefits are paid at 66 2/3 percent of the average weekly wage and cease at 104 weeks or upon maximum medical improvement, whichever occurs first. Permanent impairment benefits are determined upon the cessation of temporary total benefits.

Permanent Impairment Disability Benefits
Impairment income benefits occur at maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier and continues until the earlier of the expiration of a period computed at a rate of 3 percent for each percentage point of impairment or the death of the employee. Determination of permanent impairment is based on a physician's objective findings and is paid at 50 percent of the compensation rate (or approximately 33 percent of the average weekly wage). Supplemental benefits provide a second tier of benefits for employees with impairment ratings in excess of 20 percent who have not returned to work or are earning less than 80 percent of the employee's pre-injury average weekly wage as a result of the employee's impairment, and where the employee has not returned to work, the employee has in good faith attempted to return to work. Supplemental benefits are payable at the rate of 80 percent of the difference between 80 percent of the employee's pre-injury average weekly wages and the weekly wages the employee has earned during the specified reporting period.
[s. 440.15(3), F.S.]

Temporary Partial Disability Benefits
Temporary partial compensation is equal to 80 percent of the difference between 80 percent of the average weekly wage and the salary or wages the employee is able to earn; however, the payment is capped at 66 2/3 percent of the employee's average weekly wage at the time of the injury. Benefits cease after 104 weeks.

Attorney's Fees and Litigation Expense

In Florida, the judges of compensation claims use a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees must equal 20 percent of the first $5,000 of the benefits secured, 15 percent of the next $5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured and to be provided during the first 10 years, and 5 percent of the benefits secured after 10 years.

However, the judge of compensation claims does have the discretion to increase or decrease the attorney's fees, without any dollar limitation, based on the following factors: 1) time and labor involved; 2) fee customarily charged in the locality for similar services; 3) amount involved in controversy and the benefits resulting; 4) time limitation imposed by claimant or circumstances; 5) experience, reputation, and the ability of the lawyer; and 6) contingency or certainty of a fee. Generally, a claimant is responsible for the payment of his or her attorney's fees, except in the following situations: 1) claimant successfully asserts a claim for medical only; 2) claimant's attorney successfully prosecutes a claim previously denied by the employer/carrier; 3) claimant prevails on the issue of compensability previously denied by the employer/carrier; and 4) claimant successfully prevails in proceedings related to the enforcement of an order or modification of an order.

Although attorney fees were reduced in 1993, Florida has seen a significant growth in litigation rates. Defense attorney involvement in Florida has almost doubled during the period of 1994 - 1998, according to WCRI's *Multistate Comparisons, 1994-1999.* In recent years, the Division of Workers' Compensation has noted that attorneys are involved in filing over 95 percent of the request for assistance (informal dispute resolution process). In the WCRI comparison with eight other states, Florida had the highest litigation rates, measured by the percent of claims with defense attorney involvement of the eight states and had defense attorney involvement rate of 30 percent, versus 19 percent or less in the other eight states.

Election of Exemption from Workers' Compensation Coverage

Employers are generally required to provide workers' compensation coverage, unless they obtain an exemption from coverage. Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure.

Corporate officers, partners, and sole proprietors actively engaged in the construction industry may elect to be exempt from the workers compensation system by filing a notice of election to be exempt and providing certain information to the Division of Workers Compensation along with a $50 filing fee. No more than three corporate officers of a corporation and three partners in a partnership actively engaged in the construction industry may elect to be exempt.

Upon determining that the requirements for exemption are met, the Division of Workers Compensation issues a certificate of election of exemption that is valid for a 2-year period. For the prior 3 fiscal years, the division has received, on average, 97,383 exemption applications per year. As of September 11, 2001, the division had issued approximately 134,000 construction exemptions. Approximately 56 percent of these exemptions were issued to sole proprietorships, 5 percent to partnerships, and the remaining 39 percent to corporations. However, the Division of Workers' Compensation has the authority to revoke the exemption if the applicant does not meet the requirements for an exemption or if the information is invalid. For fiscal years 1998-99 and 1999-00, the division revoked on average, 1,700 construction exemptions per year.

Cost Drivers in Florida

In response to staff inquiries, the National Council on Compensation Insurers (NCCI) and WCRI have released reports addressing cost drivers in the Florida's workers' compensation system. The WCRI issued two reports, one comparing the Florida medical fee schedule with other states and another report comparing Florida's permanent impairment benefits with other states. In addition, WCRI has released several multistate comparisons and Florida specific studies in the last few years.

In September 2001, NCCI issued a report entitled, *Florida Workers' Compensation-Cost Drivers Overview*. One of the striking features of the current Florida system is the fact that medical costs constitute 64.9 percent of the total losses in Florida (indemnity costs represents the remaining 35.1 percent). In contrast, medical costs constitute only 55.8 percent of the countrywide average costs and indemnity represents the remaining 44.2 percent.

The NCCI report identified three significant cost drivers: 1) high frequency of permanent total claims 27 per 100,000 workers - three times higher than countrywide, which results in the total costs for Florida's permanent total claims being more than 2.5 times the countrywide average; 2) high medical costs for permanent partial claims - two times higher than countrywide and increasing at an annual rate of 6.5 percent, and, 3) high medical costs for temporary total claims - 60 percent higher than countrywide and increasing at an annual rate of 11.2 percent. The WCRI also noted similar and additional findings related to cost drivers in Florida. The NCCI report noted the following cost drivers:

1. **Hospital costs.** Hospital costs are relatively high in Florida according to WCRI studies. Hospital costs represent almost 50 percent of medical expenditures and "…this is a significant reason for high medical costs."
2. **Physician costs.** Although the fee schedule in Florida is relatively low in comparison to other states, NCCI suggested that a high utilization of physician services was occurring or a relatively expensive mix of procedures were being provided. According to NCCI, "Florida does not have unusual types of injuries that would explain the higher costs."
3. **Attorney involvement.** If attorneys are not involved, the difference in claim costs between Florida and countrywide was minimal; however, if attorneys are involved, the difference in claim size in Florida and countrywide is nearly 40 percent. The report suggested that attorneys might contribute to the frequency of permanent total claims and to the increased medical services.

The Task Force on Workers' Compensation Administration

During the 2000 Session, the Legislature enacted legislation creating the Task Force on Workers' Compensation Administration "for the purpose of examining the way in which the workers' compensation system is funded and administered." The Legislature directed the task force to submit recommendations concerning the source of system funding, the cost-effective use of funds, services and functions meriting funding, services and functions housed within the Division of Workers' Compensation, potential cost savings in system administration, and organizational changes to make the administration of the system more efficient. The task force provided many recommendations, including the following major recommendations:

1. Continue to fund the system through assessments on premium.
2. Eliminate the Workers' Compensation Oversight Board.
3. Transfer the Division to the Department of Insurance.
4. Transfer the judges of compensation claims to the Division of Administrative Hearings within the Department of Management Services.
5. Eliminate construction exemptions and require all persons in the construction industry to be covered by workers' compensation insurance.
6. Eliminate the request for assistance.
7. Repeal mandatory managed care.
8. Allow only one independent medical exam per accident.
9. Eliminate the judge of compensation claims' discretion to award attorney's fees that exceed the statutory contingency fee schedule.
10. Prohibit attorney's fees for average weekly wage and medical mileage disputes.
11. Require documentation to be submitted with petitions.
12. Eliminate the judges of compensation claims' jurisdiction over medical bill disputes.

III. Effect of Proposed Changes:

Section 1. Amends s. 440.02, F.S., to revise the exemption eligibility requirements, by eliminating exemptions for persons engaging in commercial construction estimated to be valued at $250,000 or greater. Exemptions for persons engaged in residential construction would continue to exist.

The definition of the term, "employee," is revised to provide that notwithstanding the provisions of chapter 440, F.S., with respect to any commercial construction job-site estimated to be valued at $250,000 or greater, a person who is actively engaged in the construction industry is not an independent contractor and is either an employer or employee who may not be exempt from the coverage requirements of this chapter. Any such employee could not elect to be exempt, and any exemption obtained is not applicable, with respect to the work performed at such a commercial job site.

The term, "commercial building," is defined to mean any building or structure intended for commercial or industrial use, or any building intended for multifamily use of more than four dwelling units, as well as any accessory use structures constructed in conjunction with the principle structure. Commercial building does not include the conversion of any existing residential building to a commercial building. The term, "residential building," is defined to mean any building or structure intended for residential use containing four or fewer dwelling units any structures intended as an accessory use to the residential structure.

Section 2. Amends s. 440.05, F.S., to require corporate officers, sole proprietors, and partners engaged in the construction industry and claiming an exemption to maintain certain records for a minimum of three years. A corporate officer, sole proprietor or partner claiming an exemption would be required to produce, upon request by the division, a copy of those documents together with a sworn statement that the tax records are true and accurate copies of what was filed with the Internal Revenue Service. The division would be authorized to issue a

stop-work order to any person who fails or refuses to produce such information to the division within three business days of such a request.

If a sole proprietor or partner had not been in business long enough to provide the information required of an established business, such as federal tax returns with attachments relating to business activities, the division would require the sole proprietor or partner to submit copies of the most recently filed Federal income tax return. The division would be required to establish by rule such other criteria to establish that the sole proprietor or partner intends to engage in a legitimate enterprise within the construction industry.

Section 3. Amends s. 440.10, F.S., to remove the requirement that the division prove that an employer "willfully" failed to secure compensation, prior to assessing such an employer a penalty for classifying a person as an independent contractor when such a person did not meet the criteria. The division is authorized to adopt rules to administer this provision.

Section 4. Amends s. 440.103, F.S., to require every employer, as a condition of receiving a building permit, to provide proof of compensation coverage or an exemption. The employer would be required to provide a copy of the certificate of insurance, rather than the certificate of coverage. Each certificate of insurance must indicate the states for which coverage applies.

Section 5. Amends s. 440.107, F.S., to revise the division's enforcements powers and duties. The division would be required to issue a stop-work order within 72 hours of making a determination that a person failed to secure compensation coverage. Currently, the statutes do not specify any specific time frame in which the division must issue such a stop-work order. According to the division, its current practice is that if a person fails to secure compensation, the division immediately issues a stop-work order.

The division would be required, rather than allowed, to assess a penalty in the amount of the premium evaded or up to twice the amount of the premium evaded, or $1,000, whichever is greater against employers that failed to secure compensation, as required by ch. 440, F.S. Currently, the division may assess a penalty in the amount of twice the premium evaded or $1,000, whichever is greater. The division is authorized to adopt rules to administer these provisions.

The section also provides that, if the division finds that an employer who is certified or registered under parts I or II of chapter 489, F.S., and who is required to secure compensation and has failed to do, the division is required to notify the Department of Business and Professional Regulation.

Section 6. Amends s. 440.191, F.S., relating to the informal dispute resolution, to revise resolution procedures and broaden the scope of individuals or entities the Employee Assistance Office assists or informs to include managed care arrangements.

The Employee Assistance Office (EAO) would be authorized to contact an injured worker or the injured worker's representative upon receiving a notice of injury or death to discuss rights and responsibilities of the employee under ch. 440, F.S., and the services available through EAO.

This provision would codify the division's early intervention program. The specific duties and responsibilities of EAO relating to dispute resolution would be eliminated.

An injured worker would no longer be required to exhaust the procedures for informal dispute resolution as a prerequisite to filing a petition for benefits. An employee would no longer be required to contact the EAO to request assistance in resolving disputes. The 30-day period for resolving a dispute, prior to filing a petition, is eliminated.

Section 7. Amends s. 440.25, F.S., to revise procedures for mediation and hearings. A mediation conference would be required to be held within 90 days, rather 21 days, within the receipt of the petition. Currently, a mediation conference is scheduled, on average, within 124 days after the receipt of the petition. Within 40 days of the receipt of the petition, rather 7 days after the receipt of the petition by the judge of compensation claims, the judge of compensation claims would be required to notify the parties, by order, of the date and time for the scheduled mediation, unless the parties had notified the Office of the Judges of Compensation Claims that a mediation had been held. Continuances would be granted only if the requesting party was able to demonstrate to the judge of compensation claims that the reason for the request for continuance was due to circumstances beyond the party's control. Any order granting a continuance would be required to set forth the date of the rescheduled mediation. A mediation conference could not be used solely for the purpose of mediating attorney fees.

With respect to any mediation occurring on or after January 1, 2003, if the parties agree to use a private mediator or no public mediator is available to conduct the mediation within the period specified in this section, the parties would be required to hold a mediation conference at the carrier's expense within the 90-day period for mediation. If the parties could not agree upon a mediator within 10 days after the order, the claimant would be required to notify the judge in writing and the judge would be required to appoint a private mediator within 7 days.

If the claims, except for attorney's fees and costs, were not resolved at the mediation conference, the parties would be required to complete the pretrial stipulation before the conclusion of the mediation conference. The judge of compensation claims would be authorized to sanction a party or both parties for failure to complete the pretrial stipulation before the conclusion of the mediation conference.

In the event the parties failed to submit a pretrial stipulation at the mediation conference, the judge of compensation claims would be required to order a pretrial hearing to occur within 14 days after the date the mediation was ordered by the judge of compensation claims. Presently, if the issues are not resolved within 10 days following the commencement of the mediation, the judge of compensation claims is required to hold a pretrial hearing.

The final hearing would be required to be held and concluded within 90 days after the mediation conference, rather than 45 days after the pretrial hearing. Currently, the final hearings are scheduled within 90 days after the date of the mediation conference. Continuances would only be granted if the requesting party could demonstrate to the judge of compensation claims that the reason for the continuance arises from circumstances beyond the party's control. If a judge of compensation claims grants two or more continuances to a requesting party, the judge of compensation claims would be required to report such continuances to the Deputy Chief Judge.

The final hearing would be required to be held within 210 days after the receipt of the petition for benefits. According to the Office of the Judges of Compensation Claims, currently, the average number of days between receipt of the petition for benefits and the final hearing is 214 days. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing would be waived.

Unless the judge of compensation claims orders a hearing, claims related to the determination of pay would be resolved by the resolution of appropriate motions by judges of compensation claims without oral hearing upon submission of brief written statements in support and opposition, and for expedited discovery and docketing. Claims for medical-only benefits of $5,000 or less or medical mileage reimbursement would be required to be resolved through the expedited resolution process, in the absence of compelling evidence to the contrary.

A judge of compensation claims would be authorized to dismiss a petition for lack of prosecution if no petitions, responses, motions, orders, requests for hearings, or notices of depositions have been filed for a period of 12 months, unless good cause is shown. Such dismissals would be without prejudice and would not require a hearing.

A judge of compensation claims would not be allowed to award interest on unpaid medical bills, nor use the amount of such bills to calculate the amount of interest awarded.

Attorney fees would not attach until 30 days from the date the carrier or self-insured employer receives the petition, and regardless of the date benefits were initially requested.

Section 8. Amends s. 440.271, F.S., to require mediation, at the carrier's expense, within 60 days of the filing of a notice of appeal of a judge of compensation claims' final order. The mediation must be held within 90 days of the filing of the appeal.

Section 9. Amends s. 440.381, F.S., to revise required disclosures and statements in the insurance application form and auditing provisions. The application would be required to contain a sworn statement by the agent attesting that the agent had explained to the employer or officer of the corporation the classification codes that are used for premium classifications.

If a carrier failed to conduct annual on-site audits of employers engaged in construction, the carrier would be considered to be in violation of the Insurance Code, as provided in s. 624.4211, F.S., and would be assessed a fine in the amount of $1,000 for each instance of noncompliance. Presently, there is no penalty on the carrier for not conducting such annual audits. At the completion of an audit, the employer or officer of the corporation would be required print and sign their names on the audit document and attach proof of identification to the audit document.

Section 10. Amends s. 440.40, F.S., to require every employer to post a notice relating to the Department of Insurance Anti-Fraud Program at his or her place of business. This notice would state,

> "Rewards of up to $25,000 may be paid to persons providing information to the Department of Insurance leading to the arrest and conviction of persons committing

insurance fraud, including employers who illegally fail to obtain workers' compensation coverage. persons may report suspected fraud to the department at (Phone no.). A person is not subject to civil liability for furnishing such information, if such persons act without malice, fraud, or bad faith."

Section 11. Amends s. 440.45, F.S., to provide that the Director of the Division of Administrative Hearings is the agency head of the Office of the Judges of Compensation Claims for all purposes, including, but not limited to, rulemaking pursuant to subsection (4) and establishing agency policies and procedures.

Section 12. Amends s. 489.114, F.S., to require the Department of Business and Professional Regulation to impose an administrative fine in the amount of $500 on a contractor for failure to maintain workers' compensation coverage. Currently, persons are subject to a $100 citation.

Section 13. Amends s. 489.510, F.S., to require the Department of Business and Professional Regulation to impose an administrative fine in the amount of $500 on a electrical or alarm system contractor for failure to maintain workers' compensation coverage. Currently, persons are subject to a $100 citation.

Section 14. Amends 626.9892, F.S., relating to the Anti-Fraud Reward Program, to revise the eligibility requirements for persons seeking a reward from the program. The section would allow the Department of Insurance to pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes, rather than "complex or organized crimes," investigated by the department.

Section 15. Requires the Department of Insurance, in consultation with the board of governors of the Florida Workers' Compensation Joint Underwriting Association, to conduct a study to evaluate the availability and affordability of workers' compensation coverage for person engaged primarily in the construction industry. The scope of the study would include a review of workers' compensation coverage currently provided or required in other states and possible alternative coverage. The department would be required to submit a report with recommendations to the Legislature on or before February 1, 2003.

Section 16. Except as otherwise expressly provided in this act, this act would take effect October 1, 2002.

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:

Indeterminate. Persons engaged in commercial construction that presently elect to be exempt from coverage would no longer be eligible for an exemption and, therefore, would no longer pay a $50 biennial fee to the division.

B. Private Sector Impact:

By eliminating the request for assistance process, injured workers will be able to resolve disputes in a more effective and timely manner. Due to the revisions in the statutory dispute resolution process, injured workers and carriers will be able to resolve disputes in a more expeditious manner.

Start-up business as (engaged in residential construction) would be eligible to obtain an exemption from coverage immediately, since they would no longer be required as provided in current division rules, to provide federal tax returns documenting that they had no business payroll or employees subject to coverage requirements. Subsequently, upon renewal of the exemption, the business would be required to submit federal income tax returns with the accompanying schedules documenting business activities.

Persons primarily engaged in commercial construction would no longer be eligible for exemptions from workers' compensation coverage and would be required to obtain coverage.

If a person failed to obtain coverage, the division would be required to impose a penalty for the amount of the premium evaded and up to twice premium evaded, or $1,000, whichever is greater. Presently, the division has the discretion as to imposing this penalty provision in the amount of twice the premium evaded or $1,000, whichever is greater.

It is indeterminate what impact the changes in the exemption law will have upon workers' compensation insurance rates. The bill continues exemptions for persons primarily engaged in residential construction; however, the bill eliminates exemptions for persons engaged primarily in commercial construction.

NCCI's Estimated Rate Impact of CS/SB 2304
The National Council on Compensation Insurers (NCCI) provided the following estimated impact of the provisions of the bill on workers' compensation insurance premiums.

Sections 1, 2, 3, 4, 5 – Amendments to Section 440.02, 440.05, 440.10, 440.13, 440.107
All changes related to exemptions and fraud will require further study.

Section 6 – Amendments to Section 440.191
No significant impact.

Section 7 – Amendments to Section 440.25

- Stipulates criteria for judge to dismiss petition for lack of prosecution; interest on unpaid medical bills shall not be awarded, nor be used to calculate interest awarded; attorney's fees do not attach until 30 days from date petition is received.
- Eliminates large number of petitions filed otherwise. Slight reduction in costs due to cases where physician does not request treatment. May eliminate claims not otherwise properly raised by petition/have not undergone mediation.
- Will decrease mediation conferences solely to mediate attorney's fees. Mediator is more likely to be independent. May delay final hearing date but no more than 210 days after receipt of petition.
- Prevents raising a ripe issue after hearing, may prevent litigation costs and decrease settlement timeliness. Adds back language for expedited dispute resolution for med-only benefits of $5,000 or less and medical mileage reimbursements. May slightly decrease costs.
- Decreases awards due to effect of unpaid medical bills; decreases attorney's fees; closes court cases faster.
- Estimated impact of changes proposed in Section 7: Potentially up to 1% savings.

Section 8 – Amendments to Section 440.271

- Introduces a mediation procedure before an appeal can be heard.
- Estimated impact of this section: Negligible/uncertain.

Sections 9, 10 – Amendments to Section 440.381, 440.40

- Adds language to strengthen compliance and auditing process.
- Adds requirement for employers to post an anti-fraud reward notice.
- All changes related to compliance and fraud will require further study.

Remaining sections of the bill are mostly administrative changes that are not expected to significantly impact costs.

C. Government Sector Impact:

Presently, exemptions are issued to a person. The bill would effectively limit construction exemptions to a residential construction job-site only. The division would still be required to determine whether an exemption at a residential job-site was valid; however, enforcement efforts at commercial job sites would be streamlined, since all persons at the job site would be required to obtain coverage.

The Division of Workers' Compensation would be required to issue stop-work orders within 72 hours of a determination of noncompliance. According to the division this provision would not have any fiscal impact, since stop-work orders are issued immediately upon such a determination.

Since exemptions would no longer be available for persons engaged in commercial construction, the division would experience an indeterminate loss of revenues associated with the biennial exemption-filing fee of $50 for such persons.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.