

**STORAGE NAME:** h2419.ted

**DATE:** April 25, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS  
ANALYSIS**

**BILL #:** HB 2419

**RELATING TO:** Workers' Compensation Division (RAB)

**SPONSOR(S):** Melvin

**TIED BILL(S):**

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

- (1) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

The bill authorizes the Division of Workers' Compensation within the Department of Labor and Employment Security to establish the amount of qualifying security deposit and the amount of net worth required for an employer to become self-insured. It also grants the Division statutory authority to define what is good cause for revocation of the authority to self-insure.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

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

B. PRESENT SITUATION:

**Rulemaking Authority**

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA) to require executive branch agencies to adhere to statutory authority when adopting rules. The 1996 amendments created a new section, s. 120.536(1), F.S., requiring existing and proposed rules to "implement or interpret the specific powers and duties granted by the enabling statute."

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agencies under the previous standard. Rather than immediately invalidate these rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments, in light of the new standard, and report to the Joint Administrative Procedures Committee (JAPC) the list of rules which exceeded the new standard.

Rules identified by the agencies were temporarily shielded from legal challenges on the grounds that they exceeded rulemaking authority under the new standard. This shield left these rules in place during the 1998 legislative session, allowing the Legislature to determine which policies established by these rules should be codified. If legislation enacted during the 1998 session provided statutory support for the rule, it remained in effect. If no such legislation was enacted, agencies were directed to initiate repeal of these rules by January 1, 1999.

In 1999, the Legislature again amended the APA standard authorizing an agency to adopt only rules that implement or interpret "specific powers and duties" granted by statute. The Legislature again recognized that revising the standard might invalidate rules which had been adopted or reviewed under a different interpretation of the 1996 standard.

The 1999 Legislature provided for another round of rule review and authorization. Agencies were directed to submit to the JAPC a list of rules adopted before June 18, 1999, which exceeded the new standards for rulemaking authority. The Legislature is required to consider in the 2000 Regular Session whether specific legislation authorizing the identified rules, or portions of these rules, should be enacted. For any rule not authorized, the

agency must initiate proceedings by January 1, 2001, to repeal the rule. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

### **Regulation of Self-Insurance by the Division of Workers' Compensation**

Florida's workers' compensation act requires employers to secure the payment of medical and indemnity benefits to injured employees either by purchasing insurance or by meeting the requirements of self-insurance.<sup>1</sup> One of the forms of self-insurance is individual self-insurance. Individually self-insured employers are typically very large employers with substantial financial resources. The Division of Workers' Compensation is responsible for regulatory oversight of individually self-insured employers. In order to self-insure, the Division requires an employer to submit a security deposit, to provide competent personnel for the delivery of benefits, and to carry sufficient levels of reinsurance. If an employer violates the law, the Division has the authority to suspend or revoke an employer's authority to self-insure.

### **Rules Identified by the Division as Lacking Statutory Authority**

Under the new rulemaking standards enacted by the Legislature in 1999, the Division identified the following rules, relating to the regulation of self-insurers, as lacking the requisite statutory authority:

Rule 38F-5.115, F.A.C. - relating to the definition of "good cause"

Rule 38F-5.103, F.A.C. - relating to minimum security deposits to be authorized to self-insure

Rule 38F-5.106, F.A.C. - requiring a minimum net worth to qualify as a self-insurer

### **EFFECT OF PROPOSED CHANGES**

Specific statutory authority would be granted to the Division for Rule 38F-5.115, F.A.C., relating to the Division's ability to suspend or revoke an employer's authority to self-insure. Specific statutory authority would also be granted for Rule 38F-5.103, F.A.C., relating to the amount of the security deposit which must be submitted to the Division in order to self-insure and for Rule 38F-5.106, F.A.C., relating to the amount of net worth that must be shown by a self-insurer in order to avoid revocation of its authorization.

#### **C. EFFECT OF PROPOSED CHANGES:**

N/A

#### **D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends section 440.38, F.S., by authorizing the Division to establish the amount of qualifying security deposit and the amount of net worth required for an employer to become self-insured. It also grants the Division statutory authority to define what is good cause for revocation of the authority to self-insure.

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<sup>1</sup> Section 440.38(1)(a) and (b), F.S.

**Section 2:** Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:

Staff Director:

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