

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2224

SPONSOR: Banking & Insurance Committee and Senator Clary

SUBJECT: Workers' Compensation

DATE: April 12, 2001

REVISED: 04/17/01 04/19/01

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	Rhea	Wilson	GO	Fav/11 amendments
3.			AGG	
4.			AP	
5.				
6.				

## I. Summary:

The committee substitute (the "CS") makes a Type II transfer of programs and functions administered by the Division of Workers' Compensation (the "division") of the Department of Labor and Employment Security (DLES): (1) data functions, resources, records, property, and unexpended balances of funds, but not personnel, are transferred to the Department of Insurance (DOI); (2) three senior attorney positions and one administrative support position and related resources are transferred to the DOI; (3) the Office of the Judges of Compensation Claims is transferred to the Division of Administrative Hearings; (4) twenty-nine positions are transferred to the Agency for Health Care Administration (AHCA), though claims review functions and a three-member panel are retained within the DOI; (5) 98 positions, related to re-employment, training, and education, obligation to rehire, and preferred worker requirements, are transferred to the Department of Education (DOE); and (6) resources of the Office of the Secretary and the Office of Administrative Services of the DLES are transferred to the DOI, AHCA, and the DOE, respectively.

The CS also makes changes to the administration of the workers' compensation law: (1) DOI is authorized to share confidential medical records with AHCA to assist the agency in fulfilling its responsibilities and AHCA is required to maintain the confidentiality of the information; (2) DOI is required to develop reporting requirements for health care providers in consultation with AHCA; (3) DOI is authorized to monitor and audit workers' compensation carriers and to fine or discipline a carrier; and (4) reporting and administrative functions are revised or eliminated.

This bill substantially amends the following sections of the Florida Statutes: 20.13, 20.171, 440.015, 440.02, 440.021, 440.05, 440.09, 440.10, 440.102, 440.103, 440.105, 440.106, 440.107, 440.108, 440.125, 440.13, 440.134, 440.14, 440.15, 440.17, 440.185, 440.191, 440.192, 440.1925, 440.20, 440.207, 440.211, 440.24, 440.25, 440.271, 440.345, 440.35, 440.38, 440.381,

440.385, 440.40, 440.41, 440.42, 440.44, 440.49, 440.491, 440.50, 440.51, 440.52, 440.525, 440.572, 440.59, 440.591, 440.593, 468.529, 626.88, 626.989, 627.0915, 627.914, and 624.3161.

## **II. Present Situation:**

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

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

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

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

An employee may not file a petition for benefits unless the employee has exhausted this informal dispute resolution process. If resolution is not made in 30 days, EAO may assist the employee in drafting a petition for benefits. Under the provisions of s. 440.192, F.S., the employee is required to serve the petition upon the employer, the employer's carrier, and the division. The division refers the petition to the Office of the Judges of Compensation Claims for ultimate disposition. Within 14 days of receipt of a petition for benefits, the carrier must either pay the requested benefits without prejudice to its right to deny within 120 days of receipt of the petition or file a notice of denial with the division.

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

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

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

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

Legislation was enacted last session that significantly reorganized the Department of Labor and Employment Security by eliminating many programs and functions or transferring the programs or functions to other agencies.<sup>1</sup> See Section V of the analysis regarding the functions and positions remaining at the department at this time.

**Type I and Type II Transfers** – Section 20.06, F.S., provides the method by which reorganization of the executive branch is to occur. The section provides for two methods of transfer:

**Type I Transfer** – In this type of 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. For example, if the Public Service Commission were transferred to the Department of Environmental Protection and the entire agency was made a division of that department, a Type I Transfer would be the appropriate method of transfer. When an agency or department is transferred intact to another agency or department, the transferred agency or department exercises its powers, duties, and functions 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.

Under a Type I Transfer, the transferred agency or department which becomes a unit of another agency or department, has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the agency or department to which it is transferred. When segregated funds are transferred, the transfer must be completed in such a fashion that the relation between the program and the revenue source as is provided by law is retained.

Additionally, under a Type I Transfer, the Administrative rules of the agency or department that is transferred remain in effect until specifically changed under the procedures provided in ch. 120, F.S., the Administrative Procedure Act.

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<sup>1</sup> Ch. 2000-165, L.O.F.

**Type II Transfer**— This type of transfer applies not only to agencies and departments that are transferred, but to the transfer of specific programs, activities, functions, units or subunits within an agency or department. Under a Type II transfer, an agency, a department, program, activity, function, identifiable unit or subunit is merged into another agency or department.

The merged agency, department, program, activity, function, unit or subunit retains all its statutory powers, duties, and functions under a Type II Transfer. Its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds are transferred to the agency with which it is merged, except those transferred elsewhere or abolished. The transfer of segregated funds must be made in such a manner that the relation between the program and revenue source that is provided by law is retained.

Unless otherwise provided by law, the head of the agency or department to which an existing agency, department, program, activity, function or unit is transferred is authorized to establish units or subunits to which the agency or department is assigned. Further the head of the receiving agency may assign administrative authority for identifiable programs, activities, or functions, to the extent authorized by ch. 20, F.S.

Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed pursuant to ch. 120, F.S.

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

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

The department is authorized to reassign, reorganize, or otherwise transfer those positions within the department. The department is authorized to contract with public and private entities to administer its duties related to the transfer of the division. All existing contracts of the division are transferred to the department and are subject to cancellation or renewal upon review by the department.

Four senior positions and related resources are transferred from the Office of the General Counsel of the Department of Labor and Employment Security to the Department of Insurance by a Type Two Transfer.

The Office of the Judges of Compensation Claims is transferred to the Division of Administrative Hearings within the Department of Labor and Employment Security by a Type Two Transfer.

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

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

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

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

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

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

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

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

**Section 16.** Amends s. 440.125, F.S., to authorize the Department of Insurance to share any confidential and exempt information received pursuant to s. 440.13, F.S., with the Agency for Health Care Administration in furtherance of the agencies duties under ss. 440.13 and 440.14, F.S. The agency would be required to maintain the confidentiality and exempt status of such information.

**Section 17.** Amends s. 440.13, F.S., to also require the Department of Insurance to develop reporting requirements for health care providers relating to the reporting of medical or surgical treatment and medical reports and bills in consultation with the Agency for Health Care Administration. The section is also amended to authorize the Department of Insurance to monitor and audit workers' compensation carriers to determine whether medical bills are paid in

accordance with this section and the provisions of s. 624.3161, F.S., which relates to market conduct examinations of insurers. The department would also be authorized to impose a fine or otherwise discipline an employer or carrier, pursuant to ch. 440, F.S., the insurance code, or rules adopted by the department, if an employer or carrier does not comply with these provisions.

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

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

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

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

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

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

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

**Section 35.** Amends s. 440.381, F.S., to eliminate the requirement that the Department of Insurance notify a carrier of the name of any injured worker who has not reported as earning wages on the last quarterly earnings report. Carriers have not historically requested this information.

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

**Section 46.** Amends s. 440.525, F.S., to eliminate the requirement that each carrier must be examined no less frequently than once every 3 years and authorize the department to examine a

carrier as often as is warranted to ensure that carriers are complying with the statutory provisions.

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

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

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

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

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

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

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

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

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

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

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

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

- Division of Administrative Services - 24  
(15 of the 24 are career service positions, ultimate location of all of these positions is unknown at this time)
- Public Employees Relations Commission - 40  
(to be transferred to the Department of Management Services)
- Unemployment Appeals Commission - 28  
(to be transferred to the Department of Management Services)



- Office of the Judges of Compensation Claims - 179  
(to be transferred to the Department of Management Services)
- Farm Labor - 30  
(to be transferred to the Department of Business and Professional Regulation)

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

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

## **VI. Technical Deficiencies:**

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

## **VII. Related Issues:**

None.

## **VIII. Amendments:**

Amendment #1 by Governmental Oversight and Productivity:

Places provision back in bill to complete Type Two Transfer and include transfer of personnel.

Amendment #2 by Governmental Oversight and Productivity:

Transfers 11 FTEs from the Division of Workers' Compensation to the Department of Business and Professional Regulation; 30 FTEs from the Compliance and Enforcement Program in the Office of the Secretary and Administrative Services and one senior attorney and one administrative secretary from the Office of the General Counsel.

Amendment #3 Governmental Oversight and Productivity:

Transfers powers, duties and funds of the Department of Labor and Employment Security related to regulation of labor organizations and the administration of migrant labor and farm labor laws to the Department of Business and Professional Regulation.

Amendment #4 by Governmental Oversight and Productivity:

Repeals s. 20.171, F.S., which establishes the Department of Labor and Employment Security.

Amendment #5 by Governmental Oversight and Productivity:

Eliminates required form; authorizes filing in format and manner authorized by the department.

Amendment #6 by Governmental Oversight and Productivity:

Eliminates required form; authorizes filing in format and manner authorized by the department.

Amendment #7 by Governmental Oversight and Productivity:

Authorizes the department to suspend or revoke any authorization given an employer to become a self-insurer, and authorizes the Florida Self-Insurer's Guaranty Association to sell such of the securities deposited by the self-insurer with the association.

Amendment #8 by Governmental Oversight and Productivity:

Places the Preferred Worker Program in the Department of Education.

Amendment #9 by Governmental Oversight and Productivity:

Modifies composition of the Workers' Compensation Oversight Board, selection of chair, and powers and duties.

Amendment #10 by Governmental Oversight and Productivity:

Authorizes the department to audit carriers as defined in s. 440.02, F.S.

Amendment #11 by Governmental Oversight and Productivity:

Creates the Unemployment Appeals Commission in the Agency for Workforce Innovation.