

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 2340

SPONSOR: Banking and Insurance Committee and Senator Clary

SUBJECT: Dissolution of the Department of Labor and Employment Security

DATE: March 5, 2002

REVISED: _____

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

I. Summary:

The committee substitute abolishes the Department of Labor and Employment Security and transfers the Division of Workers' Compensation within the Department of Labor and Employment Security to the Department of Insurance, effective July 1, 2002, by a type-two transfer, with exceptions. The Department of Insurance (department) is authorized to reassign, reclassify, and reorganize transferred positions, as it deems necessary. Other transfers from the Department of Labor and Employment and Security and exceptions to the transfer of the entire division to the Department of Insurance are delineated below:

- Positions and funding responsible for rehabilitation and reemployment services within the Division of Workers' Compensation are transferred to the Division of Vocational Rehabilitation in the Department of Education by a type-two transfer;
- Positions and funding responsible for medical care services within the Division of Workers' Compensation are transferred to the Agency for Health Care Administration by a type-two transfer;
- Positions and funding responsible for the regulation of child labor, farm labor, and migrant labor programs are transferred to the Department of Business and Professional Regulation by a type-two transfer;
- Positions and funding associated with the Unemployment Appeals Commission are transferred to the Agency for Workforce Innovation by a type-two transfer;
- The Office of Information Systems, which provides support for the Division of Workers' Compensation, is transferred to the State Technology Office in the Department of Management Services by a type-two transfer; and
- Oversight of the Florida Workers' Compensation Self-Insurers Association is transferred from the Department of Labor and Employment Security to the Department of Insurance.

The bill also provides changes to 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 to assist the agency in fulfilling its responsibilities and the agency is 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 for FY 2000-01).

This bill 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, 440.49, 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 bill also repeals the following sections of the Florida Statutes: 20.171 and 440.4416.

II. Present Situation:

The Department of Labor and Employment Security

Section 20.171, F.S., creates the Department of Labor and Employment Security. The head of the department is the Secretary of Labor and Employment Security. There are two assistant secretaries, the Assistant Secretary for Finance and Administration and the Assistant Secretary for Programs and Operations. The DLES has five field offices which are headed by managers.

Section 20.171(3)(c), F.S., creates the Office of Administration, the Office of Management and Budget, and the Office of Information Services. Managers who are supervised by and responsible to the Assistant Secretary for Finance and Administration head these offices.

Section 20.171(7), F.S., establishes the Unemployment Appeals Commission.

Section 110.205, F.S.,¹ provides that the positions described in ch. 20, F.S., are exempt positions and therefore not classified as career service.

Legislation was enacted during the 2000 Legislative 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.² See Section V of the analysis regarding the functions and positions remaining at the department at this time.

¹ Chapter 110, F.S., deals with public officers, employees, and records. More specifically, ss. 110.201-110.235, F.S., addresses the career service system.

² Ch. 2000-165, L.O.F.

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^{3/4} 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 was 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 transferred remain in effect until specifically changed under the procedures provided in ch. 120, F.S., the Administrative Procedure Act.

Type II Transfer^{3/4} This type of transfer applies not only to agencies and departments that are transferred, but also 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.

Administration of the Workers' Compensation System in Florida

Chapter 440, F.S., is the "Workers' Compensation Law." 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 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.

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 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 Office of the Judges of Compensation Claims. 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, 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 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, assistant director, and administrative support for the office.

III. Effect of Proposed Changes:

Section 1. Transfers all powers, duties, functions, rules, personnel, property, and unexpended balances of funds of 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. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security, which support these activities, are also transferred by a type-two transfer to the department. To the extent possible, 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 is authorized to establish the number of positions necessary to administer the provisions of ch. 440, F.S.; 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 prior to the transfer. The Department of Insurance is authorized to reassign, reclassify, reorganize, or otherwise transfer those positions within the department. 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.

The regulation of child labor, under the provisions of ch. 450, F.S., are transferred, by a type-two transfer from the Division of Workers' Compensation to the Department of Business and Professional Regulation. The farm labor and migrant labor programs, under ch. 450, F.S., are transferred by a type-two transfer from the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security to the Department of Business and Professional Regulation. Any other functions and resources not otherwise transferred in this act relating to workplace regulation and enforcement, including those under ch. 448, F.S., are transferred from the Department of Labor and Employment Security to the Department of Business and Professional Regulation by a type two transfer.

The Department of Business and Professional would be authorized to reassign, reorganize, reclassify, or otherwise transfer positions within the department to accomplish its workplace regulation responsibilities. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the Department of Business and Professional Regulation. The department would be authorized to transfer resources between services and make revisions to the budget, as necessary to reduce costs and increase efficiencies.

The funding and resources, including personnel, related to medical services are transferred by a type-two transfer from the Division of Workers' Compensation to the Agency for Health Care Administration. All records, property, and unexpended balances of the Office of the Secretary

and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the Agency for Health Care Administration.

The section also transfers the funding and resources, including personnel, responsible for re-employment and rehabilitation, from the Division of Workers' Compensation to the Department of Education by a type-two transfer. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the Department of Education.

Except as otherwise provided in this section, the records, property, and unexpended balances of appropriations, allocations, and other funds of the Office of the Secretary and the Office of the Administrative Services of the Department of Labor and Employment Security are transferred by a type-two transfer to the Department of Insurance.

The Unemployment Appeals Commission is transferred by a type two transfer to the Agency for Workforce Innovation. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the Agency for Workforce Innovation.

The Office of Information Systems of the Department of Labor and Employment Security is transferred by a type two transfer to the State Technology Office. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the State Technology Office. Upon completion of this transfer, the State Technology Office and the Department of Insurance would 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 would submit a transfer plan and budget amendment to the Legislative Budget Commission. The transfer plan and budget amendment must be approved by the Legislative Budget Commission. All records, property, and unexpended balances of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support these activities are transferred by a type-two transfer to the State Technology Office.

The Department of Management Services would be designated 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 provisions of this act.

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, would continue for the

remainder of the term of the contract or agreement with the successor department, agency, or entity responsible for the program.

The section 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. The successor agency, department, or entity responsible for the transferred program, activity, or function relative to the proceeding would be substituted, as of the effective date of the applicable transfer under this act, for the Department of Labor and Employment Security.

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

Section 3. Amends s. 20.50, F.S., relating to the Agency for Workforce Innovation, to specify the duties of the director of Workforce Innovation, as well as the responsibilities of the Office of Workforce Services, the Office of Program Support, and the Office of Agency Support.

Sections 4–92. Amends these sections to conform to the transfers made by this act. Substantive changes to these sections are summarized below.

Section 24. 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 (AHCA) and Department of Education (DOE) in furtherance of such agencies' duties under ss. 440.13 and 440.14, F.S. ACHA and DOE would be required to maintain the confidentiality and exempt status of such information. Presently, such 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 Art. I of the State Constitution. The bill transfers duties and responsibilities relating to medical records to the Department of Insurance, ACHA, and DOE.

Section 25. Amends s. 440.13, F.S., to require the Department of Insurance, in consultation with AHCA, to develop reporting requirements for health care providers relating to the reporting of medical treatment, medical reports, and bills. 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. If the department determines the 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, pursuant to ch. 440, F.S., the Florida Insurance Code, or rules adopted by the department, if an employer or carrier does not comply with these provisions. Currently, the division is authorized to fine an employer or carrier, pursuant to 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 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 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 pursuant to s. 624.4211, F.S., which authorizes administrative fines, in lieu of suspension or revocation. Presently, 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 as provided in s. 624.310(5), F.S., to ensure compliance. If the department finds questionable techniques, patterns, patterns or practices or repeated unreasonably controverted claims, the department would be authorized to impose penalties pursuant to s. 624.4211, F.S., which authorizes administrative fines, in lieu of suspension or revocation. Presently, the division 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 has 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 bill 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 3 years and to authorize the department to examine a carrier as often as is warranted to ensure that carriers are complying with the statutory provisions. Presently, 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 ch. 440, F.S., by deleting the annual closed claim report and all claims report for which employees have lost more than 7 days from

work. The department would continue to prepare the annual report regarding the administration of ch. 440, F.S.

Section 71. Repeals ss. 20.171 and 440.4416, F.S., which eliminate the Department of Labor and Employment Security and the Workers' Compensation Oversight Board. The board no longer convenes, since it was not funded for the current fiscal year.

Section 72. 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 73. Provides that unless otherwise provided in this act, this act will take effect July 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:

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 of 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 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 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 bill does not address the number of positions transferred from the Department of Labor and Employment Security to the various agencies and departments and the positions anticipated to be addressed through the General Appropriations Act.

According to the Department of Labor and Employment Security, there are presently 791 authorized positions (680.5 positions are filled.) and 576 of these positions are within the Division of Workers' Compensation. (503.50 positions are filled.). Currently, 11 of these authorized positions are 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/27 filled
(To be transferred to the Agency for Workforce Innovation)
- Office of Information Systems - 140 authorized/111.25 filled
(To be transferred to the State Technology Office)
- Migrant and Farm Labor - 29 authorized/27 filled
(To be transferred to the Department of Business and Professional Regulation)
- Office of the Secretary - 18 authorized/12 filled
(Seven of these positions would be transferred to the State Technology Office)

VI. Technical Deficiencies:

None.

VII. Related Issues:

An amendment to the Florida Constitution approved by the voters in November of 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 expected 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.

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