

# 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's 14E & 16E

SPONSOR: Banking and Insurance Committee and Senators Saunders, Cowin, Lynn, and Alexander

SUBJECT: Workers' Compensation

DATE: October 22, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

During Special Session A in 2003, the Legislature enacted SB 50A (ch. 2003-412, L.O.F.) which eliminates exemptions from workers' compensation coverage in the construction industry for sole proprietors and partners in a partnership and limits such exemptions to three corporate officers each having at least a 10 percent stock ownership effective January 1, 2003. A sole proprietor or partner engaged in the construction industry and licensed under ch. 489, F.S., who obtains an exemption as a corporate officer will be required to change their business structure from a sole proprietor or partnership to a corporation.

As required by ch. 489, F.S., a licensed contractor must apply to the Construction Industry Licensing Board of the Department of Business and Professional Regulation to change the licensure status from an individual or partner to reflect the appropriate corporate name on the contractor's license and apply for a qualified business organization license or certificate of authority. Pursuant to s. 489.129, F.S., a person performing contracting under a name that does not appear on the license is subject to disciplinary action including fines, possible suspension or revocation of the license for repeat violations.

This committee substitute provides an extended time period for contractors licensed under ch. 489, F.S., who incorporate in order to become eligible for an exemption, to comply with the change of status and qualified business licensure requirements. Such persons would not be required to obtain approval for a change of status and a qualified business organization license until July 1, 2004. These licensees would not be in violation of any provision of chapters 440, 489, or 553, F.S., or denied a building permit solely because a change of status or qualified business license is not approved before July 1, 2004. The bill reiterates that applications from these licensees are subject to the requirements of s. 120.60, F.S., which requires every application to be approved or denied within 90 days after the receipt of a completed application.

This bill creates an undesignated section of law.

## II. **Present Situation:**

In recent years, Florida has been ranked as having the highest or second highest workers' compensation premiums in the nation. This has caused affordability and availability problems for many employers, especially small employers. An estimated \$1.2 - \$2.8 billion in workers' compensation premiums is lost, on an annual basis, due to employer premium and exemption fraud in the construction industry alone.

Senate Bill 50A, which was approved by the Governor on July 15, 2003, provides significant changes to the workers' compensation law. Some of the key provisions relate to exemption and coverage requirements, compliance, and enforcement, and are designed to provide greater authority for the Division of Workers' Compensation of the Department of Financial Services to combat fraud.

### **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.<sup>1</sup> In 2002, the Legislature revised exemption criteria for businesses primarily engaged in the construction industry by eliminating exemptions for persons engaged in commercial construction estimated to be valued at \$250,000, or greater. The 2002 legislation continued exemptions for sole proprietors and up to three corporate officers and three partners for persons engaged in residential construction, as well as commercial construction projects valued at less than \$250,000. Such persons could 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.

Effective upon becoming law (July 15, 2003), section 1 of SB 50A eliminated the 2002 exemption law change. As a result, sole proprietors, no more than three partners, and three corporate officers of a corporation engaged in residential or commercial construction could elect to be exempt until January 1, 2004. Effective January 1, 2004, sections 2, 3, and 5 of SB 50A eliminate exemptions in the construction industry for sole proprietors and partners and limits exemptions to no more than three corporate officers each owning at least 10 percent stock ownership.

According to the Division of Workers' Compensation, as of July 16, 2003, there were 132,876 exemptions. These exemption holders were comprised, by employer type, of 61,078 sole proprietors, 4,537 partners, 65,878 corporations, and 681 limited liability partnerships and companies. The remaining exemptions are comprised of other types of employers, such as joint ventures, trusts or estates, associations, and religious organizations.

Beginning September 25, 2003, and ending October 7, 2003, the division mailed reissuance packets to all exemption holders. The packet contains a form, entitled, "Re-issuance of Notice of

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<sup>1</sup> Section 440.38, F.S.

Election to be Exempt" that is used for applying for the continuance of a current exemption. A reissued exemption will be effective for the remaining period of the current exemption. For example, if an exemption holder has an exemption that expires on July 31, 2004, and the exemption is reissued, the reissued exemption will also expire on July 31, 2004. There is no application fee or charge for the reissuance of exemption. As of October 17, 2003, the division has received 3,020 reissuance applications. The division has indicated that if a completed reissuance application is received by November 30, 2003, the division will be able to issue an exemption by the January 1, 2004, deadline.

Effective January 1, 2004, sole proprietors and partners in the construction industry, as well as non-stock owning corporate officers, who currently hold exemptions must either obtain workers' compensation coverage or obtain a reissued exemption under the new criteria. Each employer must evaluate the financial and legal ramifications of changing their business structure from a sole proprietor or partnership to a corporation. To meet the requirements for reissuance of an exemption, a person must be listed as a corporate officer with the Division of Corporations of the Department of State.

As required by ch. 489, F.S., a licensed contractor must apply with the Construction Industry Licensing Board of the Department of Business and Professional Regulation to change the licensure status from an individual or partner to reflect the appropriate corporate name on the contractor's license. Entities operating as corporations are also required to apply for a qualified business organization license or certificate of authority. Section 120.60, F.S., requires every application for a license to be approved or denied within 90 days after receipt of a completed application by an agency.

For those sole proprietors electing to obtain workers' compensation coverage, it is reportedly very difficult for them to obtain coverage in the current market. As a last resort, coverage can be obtained from the Florida Workers' Compensation Joint Underwriting Association (FWCJUA). SB 50A amended the FWCJUA law to limit premiums for employers with 15 or fewer employees and an experience modification factor of 1.10 or less (with 1.0 representing an average loss history, and 1.10 being slightly higher than average) to a premium capped at 125 percent of the standard rate. However, the policies in this subplan are assessable, so if the premium is inadequate, policyholders will be assessed an additional premium.

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

**Section 1** of the bill provides an extended time period for contractors licensed under ch. 489, F.S., who incorporate in order to become eligible for an exemption, to comply with the change of status and qualified business licensure requirements. Such persons would not be required to obtain approval for a change of status and a qualified business organization license until July 1, 2004. These licensees would not be in violation of any provision of chapters 440, 489, or 553, F.S., or denied a building permit solely because a change of status or qualified business license is not approved before July 1, 2004. Chapter 553, F.S., governs building construction standards.

The bill also provides that section 1 does not limit the authority of the Department of Business and Professional Regulation to prosecute or sanction such a licensee for a violation of ch. 489, F.S., other than for failing to obtain approval of a change of status or obtaining a qualified

business organization license by July 1, 2004. The bill also provides that the license status does not affect a person's right of recovery from the Construction Industries Recovery Fund pursuant to s. 489.140, F.S.

The bill reiterates that applications from these licensees are subject to the requirements of s. 120.60, F.S., which requires every application to be approved or denied within 90 days after the receipt of a completed application.

**Section 2** provides that the act becomes effective upon becoming a law.

#### **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:

Contractors licensed under ch. 489, F.S., will have additional time, until July 1, 2004, to obtain approval for a change of status and a qualified business organization. This deadline will address concerns regarding the potential inability of the Department of Business and Professional Regulation to process the anticipated large volume of applications for change of status and the qualified business organization license by January 1, 2004. By extending the approval deadline, contractors that incorporate and obtain exemptions (which still must be done by January 1, 2004) can continue to work uninterrupted and obtain building permits under their individual contractor's license, until July 1, 2004.

C. Government Sector Impact:

Indeterminate.

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

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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