HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5603 PCB GOA 10-02 Department of Financial Services
SPONSOR(S): Government Operations Appropriations Committee and Hays
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Government Operations Appropriations Committee	13 Y, 0 N	Fox	Topp
1)	Full Appropriations Council on Education & Economic Development		Fox	Voyles
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Department of Financial Services (DFS) manages and oversees several major functions of state government which include the Treasury, State Fire Marshall, Insurance Fraud, Insurance Agent and Agencies Services, State Accounting and Auditing, Workers' Compensation, Risk Management and Funeral, Cemetery and Consumer Services.

This bill amends the statutes related to Risk Management, Accounting and Auditing, Insurance Fraud and Workers' Compensation to achieve a number of efficiencies and cost savings measures included in the proposed House of Representatives' General Appropriations Act for FY 2010-2011.

Specifically, the bill includes the following provisions:

Amends section 17.04, F.S. and section 20.121, F.S., by transferring (within DFS) the Office of Fiscal Integrity (OFI) from the Division of Accounting and Auditing to the Division of Insurance Fraud. OFI's mission and statutory responsibilities will remain unchanged. However, OFI would be located within a division where it will be subject to law enforcement supervision and training unlike its current supervision in State Accounting and Auditing. The transfer of the OFI will provide a cost savings of $717,132 to the General Revenue Fund by fund-shifting the OFI from the General Revenue Fund to the Insurance Regulatory Trust Fund.

Amends s. 284.50, F.S., by requiring all state agencies and state universities with more than 6,000 employees that are provided insurance coverage from the Division of Risk Management (Division) to establish and maintain a return-to-work program for injured state workers. Presently, each of the impacted agencies and state universities that have more than 6,000 employees has some form of a return to work program or are in the process of beginning and/or implementing such a program. The proposed House General Appropriations Act includes $298,478 and three positions to implement the return to work program with the goal of reducing workers' compensation costs. Additionally, the proposed budget contains a $39.0 million appropriation in the Administered Funds Section of the bill to address the State Risk Management Trust Fund's projected deficit for FY 2010-2011, which is primarily attributable to the rising cost of workers' compensation.

The bill amends s. 440.50, F.S., to require that funds that are transferred from the Workers' Compensation Administration Trust Fund (WCATF) to other agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert back to the Workers' Compensation Administration Trust Fund. This change in statute is necessary to insure that sufficient cash balance will be available in the WCATF to fund the various appropriations made by the Legislature in support of the administration of the workers' compensation statues and to avoid increases in the assessment on workers' compensation premiums.

The bill will take effect on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Office of Fiscal Integrity: Section 20.121, Florida Statutes, provides that the Office of Fiscal Integrity is a law enforcement agency. The OFI is organizationally housed in the Division of Accounting and Auditing within the Department of Financial Services. OFI was created in 1992 to investigate allegations of fraud, waste and abuse of state monies and resources. OFI conducts investigations jointly with local, state, and federal law enforcement and prosecutorial agencies. Currently OFI operates without the benefit of adequate law enforcement supervision, training, and policy and procedures. Further, according to the department this undermines effectiveness as well as potentially creating liability issues[1].

Division of Risk Management: The State of Florida through the Division of Risk Management provides insurance coverage to 48 state agencies and state universities. Specifically, the Division of Risk Management provides insurance coverage in the areas of workers' compensation, general liability, federal civil rights, automobile liability, and property insurance. The Division is funded with premiums paid by each agency and state university based on their respective loss history. The premiums are deposited in to the State Risk Management Trust Fund.

The Division's mission is three-fold: 1) provide agencies and state universities with cost-effective insurance coverage either through the state's self insurance program or purchasing commercial insurance; 2) to administer claims; and 3) provide loss prevention program assistance and training.

Within the organizational structure of the Division of Risk Management is the Bureau of Loss Prevention, which provides professional safety training, quality evaluation tools along with other loss prevention and cost control programs for the agencies and state universities. Section 216.251(2)(b)(2), Florida Statutes authorizes agencies and state universities to maintain return-to-work programs. However, the statute does not require them to do so.

[1] Department of Financial Services – Office of Fiscal Integrity Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Committee.

Currently, state agency participants in the state's self insurance program have no responsibility to engage in loss prevention activities, including return-to-work programs. Some state agencies have return-to-work programs in place but there is no accountability or evaluation of the programs. While lost time workers' compensation claims account for only 10% of the states self insurance program, those claims account for 80% of workers' compensation claims cost. Current law provides agencies no incentive to reduce claims cost or return injured workers to work[2]. The primary goal of a return to work program is to enable injured workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

In recent years, the Division has seen a rapid increase in the cost of workers' compensation. In FY 2004-05, the workers' compensation expenditures to the State Risk Management Trust Fund were $91.3 million[3]. Last year, in FY 2008-09, the workers' compensation expenditures totaled $116.1 million – a 27% increase in four years. The March 1, 2010 Risk Management Estimating Conference projected that workers' compensation costs will grow to 139.2 million by 2011-12 – a nearly 20% increase over two years.[4]

The department reports that other states such as Texas and Georgia have actively required all state agencies to maintain return-to-work programs. In fact, Georgia mandates that an agency loses the position of an injured worker, if they do not provide alternative or modified duties for injured workers to return to work[5].

Workers' Compensation Administration Trust Fund: The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services has the purpose of providing for the payment of expenses in respect to the administration of the workers' compensation program in the state[6]. Additionally, each fiscal year, funds are appropriated from the Workers' Compensation Administration Trust Fund to be transferred to other agencies to support related programs. Specifically, funds from the WCATF are transferred annually to the following agencies: the Department of Education, the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Management Services/Division of Administrative Hearings, the First District Court of Appeal, and the Justice Administration Commission.

The major revenue source (other than fines imposed by the Division of Workers' Compensation) for the WCATF are assessment on workers' compensation insurance premiums as provided for in section 440.51(1), F.S. Each year, by July 1st the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the enforcement of Chapter 440, F.S. The assessment rate is effective the following January 1st.

Presently, at the conclusion of each fiscal year there is no statutory requirement or mechanism by which the agencies to which WCATF cash has been transferred and which remains unobligated and unspent must be returned to the WCATF. At the conclusion of the most recent prior fiscal year, FY 2008-09, an estimated $2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

In recent years, the cash balance of the WCATF has declined considerably with expenditures exceeding revenues. In FY 2008-09, expenditures exceeded revenues by $41.1 million. In FY 2009-10, revenues are estimated to fall short of expenditures by $57.7 million. The forecast for FY 2010-11, indicates yet another year where expenditures will exceed revenues by $35.0 million[7]. With the decline

[2] Department of Financial Services - Division of Risk Management Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Committee.
[3] Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Committee.
[4] Risk Management Revenue Estimating Conference – March 1, 2010.
[5] Division of Risk Management Presentation to the House Government Appropriations Committee, dated February 10, 2010.
[6] Section 440.50, Florida Statutes.
[7] Department of Financial Services, Schedule I of the Workers' Compensation Administration Trust Fund - submitted with the Amended Legislative Budget Request dated March 3, 2010.

in revenues and the need to fund the programs that had been appropriated -- the Chief Financial Officer on June 26, 2009, ordered an increase in the assessment on worker's compensation insurers and self-insurers premiums from one-quarter of one percent (0.25) to eight-tenths of one percent (0.80%) to insure that sufficient cash would be available to fund the appropriations set by the Legislature in the FY 2009-10 General Appropriations Act[8].

Effects of Proposed Changes

Office of Fiscal Integrity: The bill amends s. 17.04, F.S. and s. 20.121, F.S., by transferring (within the department) the Office of Fiscal Integrity from the Division of Accounting and Auditing to the Division of Insurance Fraud. OFI's mission and statutory responsibilities will remain unchanged. However, OFI would be located within a division where it will be subject to law enforcement supervision and training. Within the Division of Accounting and Auditing the budget for the OFI and 10 associated positions is funded by General Revenue Fund. The Division of Insurance Fraud is funded entirely from the Insurance Regulatory Trust Fund. The transfer of the OFI will conform to the House of Representatives' proposed General Appropriations Act as this transfer will provide a cost savings of $717,132 in the General Revenue Fund by fund-shifting the OFI from the General Revenue Fund to the Insurance Regulatory Trust Fund.

Division of Risk Management: The bill amends s. 284.50, F.S., by requiring all state agencies and state universities with 6,000 or more employees that are provided insurance coverage from the Division to establish and maintain a return-to-work program for injured state workers. Presently, each of the impacted agencies and state universities has some form of a return to work program or are in the process of beginning and/or implementing such a program. The impacted agencies and state universities include: the Department of Corrections, the University of Florida, the Department of Health, the Department of Children and Families, the Florida State University, the University of South Florida, the Department of Transportation, the University of Central Florida, and the Department of Highway Safety and Motor Vehicles.

The return to work program will have the primary goal of enabling injured state workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

The bill also provides that the Division will evaluate each agency's return to work and loss prevention program at least once every 5 years. The Division's evaluation report on any recommended corrective action of an agency's return to work or loss prevention program will be submitted to the agency head, the Chief Financial Officer, and the Director of the Division of Risk Management. The affected agency head must provide a response to the Division within 45 days with a plan to implement corrective action. If the agency disagrees with the Division's final report recommendations or fails to take corrective action, the Division's final report recommendations will be submitted to the chairs of the legislative appropriations committees.

The bill amends section 284.42, F.S., to clarify that the Division's annual report will be due each year (based on the prior fiscal year) on or before January 1st to the Governor, President of the Senate, and Speaker of the House of Representatives. Additionally, the annual report must include, beginning January 1, 2012, an analysis of return to work efforts by agency. The return to work analysis must include specific benchmarks to indicate the measureable outcomes and change from year to year by agency of return to work efforts.

[8] Assessment Rate Order for Worker's Compensation Administration Trust Fund, June 26, 2009 (Case No. 105011-09-WC).

The bill also amends sections 284.01 and 284.36, F.S., to include that agency Risk Management premiums will be calculated and charged based on loss prevention results as well as actual losses as they currently are calculated and charged.

The department indicates that the benefits of a return-to-work program will have a positive impact by reducing costs and returning injured state workers to the workplace faster and keeping them at work. Further, the department projects that there will be an indirect cost savings to the agencies by having increased productivity from reducing the loss of workers over an extended period of time along with producing lower rehiring and training costs.

The House of Representatives' proposed FY 2010-2011, General Appropriations Act includes $298,478 and three positions to implement the return to work program with the goal of reducing workers' compensation costs. Additionally, the House of Representatives' proposed budget includes a $39.0 million appropriation in the Administered Funds Section of the bill to address the State Risk Management Trust Fund's projected deficit for FY 2010-2011, which is primarily attributable to the rising costs of workers' compensation. This bill conforms the statutes to the proposed FY 2010-11 House Appropriations Act by implementation of a return to work program towards the goal of reducing the state's workers' compensation expenditures[9].

Workers' Compensation Administration Trust Fund: The bill amends s. 440.50, F.S., to require that funds that were transferred from the WCATF to the various agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert to the Workers' Compensation Administration Trust Fund.

The language in this section of the bill conforms to the proposed House of Representatives' General Appropriations Act to insure that a sufficient cash balance will be available in the WCATF to fund the various appropriations made by the Legislature in support of the administration of the workers' compensation statutes contain in Chapter 440, F.S. – without an increase in the assessment on workers' compensation premiums.

B. SECTION DIRECTORY:

Section 1 Amends s. 17.04, F.S., to provide that the Office of Fiscal Integrity will retain the same investigative authority within the Division of Insurance Fraud as it currently has within the Division of Accounting and Auditing.

Section 2 Amends s. 20.121, F.S., to provide for the transfer of the Office of Fiscal Integrity from the Division of Accounting and Auditing to the Division of Insurance Fraud. The Office of Fiscal Integrity will continue to operate as a criminal justice agency for the purposes of ss. 943.045 - 943.08, F.S.

Section 3 Amends s. 284.01, F.S., to provide that the Division of Risk Management shall include loss prevention results in premium charges.

Section 4 Amends s. 284.36, F.S., provides that the Division of Risk Management will include loss prevention results in computing premiums charges for all agencies.

Section 5 Amends s. 284.42, F.S., to provide that the annual Risk Management Report is due on or before January 1 of each year. In addition, beginning January 1, 2012, the annual report shall include an analysis of return-to-work efforts by department.

[9] Division of Risk Management Presentation to the House Government Operations Appropriation Committee dated Feb. 10, 2010.

Section 6 Amends s. 284.50, F.S., to provide that all agencies employing more than 6,000 employees must have a return to work program for employees receiving workers' compensation benefits.

Section 7 Amends s. 440.50, F.S., to provide that funds appropriated from the Workers' Compensation Administration Trust Fund by operating or nonoperating transfer to other agencies remaining unencumbered on June 30 or undisbursed on September 30, shall revert to the Workers ' Compensation Administration Trust Fund.

Section 8 Provides the bill shall take effect on July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 7 of the bill may have a positive impact on the private sector. Section 7 requires agencies that receive funding from the Workers' Compensation Administration Trust Fund to return the cash, if remaining unobligated and unspent at the end of the fiscal year. With increased cash flow (with the reverted cash being returned) in the WCATF the Chief Financial Officer may be able to set lower assessment rates on insurance carriers as provided for in section 440.51(1), F.S. for the administration of the state's workers' compensation statutes contained in Chapter 440, F.S.

D. FISCAL COMMENTS:

The bill will likely have a positive fiscal impact on state government and the Department of Financial Services in three areas:

1. The transfer of the Office of Fiscal Integrity from the Division of Accounting and Auditing to the Division of Insurance Fraud will provide a cost savings to the General Revenue Fund of $717,132, by fund-shifting the budget to the Insurance Regulatory Trust Fund. The OFI fund-shift is included in the proposed House of Representatives' General Appropriation Act for FY 2010-2011.

2. The proposed House of Representatives' General Appropriations Act includes an appropriation of $298,478 and three positions to assist with the implementation of a return to work program in agencies employing more than 6,000 workers. The anticipated result will be a reduction in workers' compensation expenditures beyond the cost of the positions.

3. Section 7 of the bill requires that agencies that receive cash transfers from the Workers' Compensation Administration Trust Fund to fund related workers' compensation activities must return unobligated and unspent cash at the conclusion of each fiscal year. This provision may assist the Chief Financial Officer from issuing a rate assessment increase on insurance carriers as sufficient cash will remain in the trust fund to support the appropriations made by the Legislature for administration of the workers' compensation statutes.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES