

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5505 PCB GOAS 12-03 Department of Financial Services

**SPONSOR(S):** Government Operations Appropriations Subcommittee, Hooper

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
1) Appropriations Committee	23 Y, 0 N	Keith	Leznoff

### SUMMARY ANALYSIS

The Department of Financial Services (DFS) manages and oversees several major functions of state government including the Treasury, State Fire Marshal, Insurance Fraud, State Accounting and Auditing, Workers' Compensation, Risk Management, Funeral & Cemetery Regulation as well as providing the licensing oversight functions of the Insurance Industry. Specifically, HB 5505 amends the statutes related to Workers' Compensation to achieve efficiencies and cost savings measures linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2012-13.

The bill amends the statute to allow for the electronic submission of workers' compensation exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes, and are not eligible to receive workers' compensation benefits.

Under the bill, the DFS will require applicants for workers' compensation exemptions to report their date of birth, Florida driver's license number or Florida identification card number. Applicants for a construction industry exemption will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the DFS is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS. The bill also provides that all certificates of election to be exempt issued on or after January 1, 2013 are valid for 2 years from the effective date stated on the certificate.

The bill repeals s. 440.59, F.S., which requires the DFS to prepare an annual report on the administration of the workers' compensation laws for the preceding calendar year. The statute currently requires DFS to submit the annual report by September 15 of each year to the Legislature and the Governor. DFS indicates that information contained in the Workers' Compensation Annual Report will continue to be available on the department's website.

The provisions of this bill will allow for a reduction of 9.00 FTE positions and an annual cost savings of \$348,289 from the Workers' Compensation Administration Trust Fund. The cost savings have been included in the proposed House of Representatives' General Appropriations Act for FY 2012-13. The cost of providing and implementing the electronic web-based application for exemption to workers' compensation will be covered from within existing DFS budget authority.

Except as otherwise expressly provided, the bill takes effect July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Workers' Compensation Exemptions<sup>1</sup>**

Section 440.05, F.S., "Election of exemption; revocation of election; notice, certification," permits corporate officers to elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined in s. 440.02(9), F.S., to include members of limited liability companies (LLCs) in the construction industry who own at least 10% of the LLC.

##### **Construction Industry and Non-Construction Exemptions**

The Division of Workers' Compensation (DWC) processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) with a minimum 10% ownership interest in the corporation or LLC, respectively, may elect to be exempt. There is no ownership requirement associated with non-construction industry exemptions. However, as non-construction LLC members are not considered corporate officers, they are not eligible for an exemption. The total number of exemption applications has been in decline for the past four years. In FY 2010-11, 62,293 construction industry exemption applications were processed, representing a 9% decrease from the previous year. Non-Construction industry exemption applications also fell in FY 2010-11 to 11,448, representing a 9.6% decrease from the previous year. As of June 30, 2011, there were 1,123,275 active exemptions.<sup>2</sup>

##### **Applications for Exemption<sup>3</sup>**

Currently, applicants for exemption complete a "Notice of Election to be Exempt" form (DWC-250). The application must be notarized, and submitted to the Division of Workers' Compensation. Construction industry applications must also be accompanied by a \$50 application fee and proof of requisite ownership (a copy of the stock certificate or documentation of 10% ownership of the LLC). A construction industry exemption is valid for 2 years, while there is no time limit on non-construction exemptions.

##### **Workers' Compensation Annual Report**

Section 440.59, F.S., requires the DFS to prepare an annual report of the administration of ch. 440, F.S., for the preceding calendar year. The report is to include a detailed statement of the receipts of and expenditures from the Workers' Compensation Administration Trust Fund and a statement of the causes of the accidents leading to the injuries for which the awards were made. On or before September 15 of each year, the DFS is required to submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation.

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<sup>1</sup>For an overview of the exemption process and eligibility requirements, see the Department of Financial Services website: <http://www.myfloridacfo.com/wc/employer/exemption.html> (last accessed November 9, 2011).

<sup>2</sup> Information can be found here: [www.myfloridacfo.com/wc/pdf/DWC-Annual-Report-2011.pdf](http://www.myfloridacfo.com/wc/pdf/DWC-Annual-Report-2011.pdf)

<sup>3</sup> The application fee for a construction industry exemption is \$50. There is no application fee for a non-construction industry exemption application. Pursuant to s. 440.05(8)(b), F.S., monies collected by the Division of Workers' Compensation are used to fund the division's investigative efforts, most of which relate to the construction industry.

The 2011 Annual Report of the Florida Division of Workers' Compensations contains narrative, as well as charts and graphs depicting the activities of the division. In addition, the report includes information regarding claims, such as the nature of the injury, cause of the injury, body location of workplace injuries, and medical data.

DFS indicates that a total of 2,223 work hours by the Division of Workers' Compensation employees is devoted each year to producing the annual report.

## **Effects of the Bill**

### **Paperless Exemption Application Process**

The bill allows for the electronic submission of workers' compensation exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants electronically are date of birth, Florida driver's license number or Florida identification card number. Construction industry applicants will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

The bill provides that all certificates of exemption issued by the Division of Workers' Compensation on or after January 1, 2013 are valid for 2 years.

### **Repeal of the Workers' Compensation Annual Report**

The bill repeals section 440.59, F.S., which requires the DFS to prepare an annual report on the administration of the workers' compensation laws of the prior year.

The Division of Workers' Compensation maintains a website that provides much of the information currently contained in the annual report. In addition, the division's website contains forms, publications, and other information to assist injured workers, employers, insurance carriers, health care providers, and other interested parties

The bill will allow for the reduction of 1.00 FTE position and a cost savings annually of \$46,473 from the Workers' Compensation Administration Trust Fund. DFS indicates that a total of 2,223 work hours by DFS employees is devoted each year to producing the annual report. Based on the number of hours devoted to producing the workers' compensation annual report the enactment of this bill would allow for a reduction of 1.00 FTE (Insurance Analyst II) and a cost saving annually of \$46,473.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 440.02, F.S., to eliminate the requirement of filing "written" notice of election to be exempt.

**Section 2.** Amends s. 440.05, F.S., providing for the electronic submission of workers' compensation exemption applications.

**Section 3.** Amends s. 440.05(6), F.S., providing a 2-year expiration period for all certificates of election to be exempt issued on or after January 1, 2013.

**Section 4.** Repeals s. 440.59, F.S., which requires DFS to prepare an annual report on the administration of the Workers' Compensation laws.

**Section 5:** Except as otherwise expressly provided, the bill takes effect July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

No Impact.

2. Expenditures:

The DFS indicates that providing for an electronic application process for workers' compensation exemptions in addition to repealing annual report requirements in section 440.59, F.S., will eliminate the need for 9.00 FTE staff (8.00 FTE who review and process the exemptions; 1.00 FTE who prepares the annual report). The potential reduction in staff represents a total annual cost savings of \$348,289 from the Workers' Compensation Administration Trust Fund, which has been incorporated into the proposed House of Representatives' General Appropriations Act for FY 2012-13. The cost savings of \$348,289 will be from two appropriation categories: \$333,998 from Salaries and Benefits and \$14,291 from Expenses.

The cost of providing and implementing the electronic web-based application for exemption to workers' compensation will be covered from within existing DFS budget authority.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The changes will streamline the exemption process and make it easier for applicants to complete and submit an exemption. The elimination of the requirement to notarize the exemption application will reduce a regulatory step for applicants and eliminate the cost associated with using a notary.

With an established expiration period for all exemptions, persons with non-construction industry exemptions will have to apply for an exemption every 2 years. Presently, non-construction industry exemptions do not have an expiration date. The bill, however, will not result in new fees, as there continues to be no application fee for non-construction industry exemptions.

#### D. FISCAL COMMENTS:

The streamlining of the exemption reporting process with an electronic submission process (which allows for a reduction of 8.00 positions and an annual cost savings of \$301,816) is part of the DFS' Legislative Budget Request and Schedule VIII-B-2 submission for FY 2012-2013. DFS indicates that costs associated with modifying its exemption technology to provide for electronic submissions will be minimal and completed within current budget authority.

DFS indicates that a total of 2,223 work hours by the Division of Workers' Compensation (DWC) employees is devoted each year to producing the annual report. Based on the number of hours devoted to producing the workers' compensation annual report the enactment of this bill would allow for a reduction of 1.00 FTE (Insurance Analyst II) and a cost saving annually of \$46,473 from the Workers' Compensation Administration Trust Fund.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The Division of Workers' Compensation would have to amend Rule 69L-6.012 "Notice of Election to be Exempt" to reflect the new statutory requirements.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Workers' Compensation presently provides walk-in assistance in all Compliance District Offices and will continue to provide assistance. Computers will be available in the District Offices for exemption applicants who may not have access to a computer.

Non-construction industry exemptions do not have an expiration date. The bill provides for a 2-year expiration date for all exemptions. While this will require non-construction industry exemption holders to re-apply for exemption every 2 years, it will assist in ensuring that the information on which each exemption is based remains timely during the exemption period. For example, currently a corporate officer with a construction industry exemption who leaves the corporation remains in possession of a "certificate of election to be exempt" that does not have an expiration date.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES