

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 676

INTRODUCER: Banking and Insurance Committee

SUBJECT: Workers' Compensation Certificate-of-Exemption Process

DATE: December 19, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Chapter 440, F.S., establishes workers' compensation coverage requirements for Florida employers. Corporate officers are included in the definition of an employee for workers' compensation purposes.¹ Sole proprietors or partners may elect to be considered employees.² However under s. 440.05, F.S., any officer of a corporation or a member of a construction industry limited liability company (LCC) may elect to be exempt from consideration as an employee and not eligible for workers' compensation benefits. Under current law members of non-construction LLCs are considered employees and may not elect for exemption.

Senate Bill 676 changes the definition of an "employee" by requiring members of non-construction LLC's to elect to be considered an employee for workers' compensation purposes. Otherwise, if no election is made the LLC members will not be considered an employee and will be exempt from workers' compensation coverage requirements. The bill also revises the requirements for submitting a Notice of Election of Exemption. The Department of Financial Services duties relating to the expiration of construction industry and non-construction industry certificates of exemption are changed by this bill.

This bill substantially amends sections 440.02 and 440.05 of the Florida Statutes.

¹ Section 440.02(15)(b), F.S.

² Section 440.02(15)(c)(1), F.S.

II. Present Situation:

Under chapter 440, F.S., employers within Florida are required to maintain workers' compensation coverage for employees. For workers' compensation purposes the term "employee" is defined to include corporate officers. A corporate officer is any person who fills a position provided for in the articles of incorporation filed with the Division of Corporations of the Department of State.³ Under 440.05 F.S., any officer of a corporation may elect to be exempt (opt-out) from consideration as an employee for premium calculation purposes and forego eligibility for workers' compensation benefits. For corporations engaged in the construction industry, no more than three officers may elect for exemption and each officer is required to own at least 10 percent of the corporation or LLC.⁴

Sole proprietors or partners not engaged in the construction industry may be included in the definition of "employee" for workers' compensation by filing notice of election (opt-in) as provided in s. 440.05, F.S. Therefore, if no notice is made, the sole proprietor or partner shall not be considered an employee and not eligible for workers' compensation benefits.

Under current law members of non-construction LLCs are considered employees and may not elect for an exemption from coverage. The Florida Limited Liability Companies Act defines a LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."⁵

Workers' Compensation Certificate-of-Exemption Process

In order for an officer of a corporation to elect for exemption a written DWC Form 250 "Notice of Election to be Exempt" (Notice) must be notarized under oath and filed with the Department of Financial Services Division of Workers' Compensation (Department).⁶ To claim an exemption the following information must be included in the notice: federal tax identification number, social security number, copy of relevant documentation as to employment status filed with the Internal Revenue Service, copy of relevant occupational license in the primary jurisdiction of the business, and the registration number of the corporation filed with the Division of Corporations of the Department of State. Officers for corporations or LLCs engaged in the construction industry must also provide a copy of the stock certificate showing the required 10 percent of ownership.⁷

For officers engaged in the construction industry there is a \$50 filing fee for the notice of exemption. Upon receipt of the notice of exemption, the Department has 30 days to determine if the officer is eligible for exemption. If the requirements are met, the Department will issue a

³ Section 440.02(9), F.S.

⁴ Section 440.02(15)(b)(2), F.S.

⁵ Section 608.402(21), F.S.

⁶ Section 440.05(3), F.S.

⁷ Section 440.05(3), F.S.

Certificate of Election to be Exempt. During fiscal year 2010-2011, the Department issued 73,741 exemptions.⁸ Construction industry exemptions are valid for 2 years unless revoked by the applicant or the Department. Non-construction industry exemptions are valid until revoked by the applicant or the Department. The Department shall revoke the exemption if at any time the officer named no longer meets the requirements.⁹

III. Effect of Proposed Changes:

The bill will allow a member of a non-construction LLC that devotes full time to the LLC to elect to be included in the definition of employee for the purposes of workers' compensation. If no election is made, the member would not be considered an employee for premium calculation purposes and would not be eligible for workers' compensation benefits.

This bill requires non-construction LLC members to elect (opt-in) to be considered employees in order to be eligible for workers' compensation benefits. However, construction LLCs will still be required to elect for exemption (opt-out) for consideration as an employee. Under this bill there is no limit to the number of non-construction LLC members that can choose to not be considered an employee. However, only three construction LLC members can choose to be exempt from consideration as an employee for workers compensation purposes.

This bill revises the required documentation and method for submitting Notices of Elections to be Exempt. The bill requires electronic submission of notices and eliminates the notary requirement. This will allow for electronic edits to reduce submission errors or incomplete applications and the need for resubmission of information.

The applicant's date of birth, driver's license number or Florida identification card number are added to the list of information that must be included in the notice for election of exemption. This will enable the Department to check the name of the applicant and driver's license number with the Florida Department of Highway Safety and Motor Vehicles' database to verify the identity of the applicant. Social security numbers, copy of relevant documentation as to employment status filed with the Internal Revenue Service, and copy of relevant occupational license in the primary jurisdiction of the business are removed from the list of required information to be submitted when filing notices. For officers of a corporation or LLC engaged in the construction industry the bill retains the requirement of submitting evidence showing the officer's ownership of 10 percent. However a copy of the stock certificate is deleted from the required document list for notices. These changes would make it easier for applicants to complete and submit notices for exemptions.

The bill standardizes the expiration of certificates of election to be exempt for officers of construction and non-construction companies. Any certificate issued on or after January 1, 2013 will be valid for 2 years after the effective date on the certificate. Therefore, every 2 years construction and non-construction industry officers will have to re-apply for exemption. Under the bill, the certificates continue to be revocable by the officer or the Department if the officer no longer meets the requirements or the information contained in the notice becomes invalid. This

⁸ Department of Financial Services Staff Review, November 16, 2011.

⁹ Section 440.05(13), F.S.

bill requires the Department to send notice 60 days before the expiration date of the certificates of exemption to the address on the certificate or to the e-mail address on file with the Department.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under current law, members of construction LLCs are able to avoid the expense of workers' compensation coverage. Allowing members of non-construction LLCs the choice on whether to elect to be included in the definition of employee for the purposes of workers' compensation will allow these LLCs to avoid the expense of workers' compensation coverage as well.

The regulatory steps and cost of submitting notices is reduced for employers with the elimination of the notary requirement. The Department of Financial Services will continue to provide walk-in assistance in all district offices and will provide computers in its District offices for exemption applicants who may not have access to a computer.

C. Government Sector Impact:

The Department indicates allowing non-construction LLC's to elect to be considered employees would result in less governmental regulation of similarly situated LLCs and eliminate the time and resources the Department spends on administrative challenges to denials of non-construction certificates of exemption.

According to the Department, requiring an electronic application process for notices of election for exemption would eliminate the need for eight positions who review and process exemptions. This is a 23 percent reduction of exemption processing staff and a

savings of \$287,816 in salaries and \$14,000 in benefits for a total of \$301,816 for the FY 2012-2013 budget.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ Department of Financial Services Staff Review, November 16, 2011.