HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Workers' Compensation
SPONSOR(S): Insurance & Banking Subcommittee and O'Toole
TIED BILLS: **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 3 N, As CS	Reilly	Cooper
2) Economic Affairs Committee	14 Y, 1 N	Reilly	Tinker

SUMMARY ANALYSIS

Chapter 440, F.S., is Florida's Workers' Compensation Law. If an employer fails to comply with workers' compensation coverage requirements (does not secure the payment of workers' compensation), the Department of Financial Services (DFS) is required to issue a Stop-Work Order (SWO) within 72 hours of learning of the non-compliance. SWOs require the employer to cease all business operations. Additionally, such employers are assessed penalties for non-compliance equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide 3 years of payroll records. SWOs remain in effect until released by the DFS upon finding that the employer has come into compliance with coverage requirements and has paid any penalty assessed. The DFS informs that employers often are unable to quickly provide all records required to calculate the penalty.

The bill reduces the look-back period for calculating the penalty for failure to comply with workers' compensation coverage requirements from 3 years to 1 year, thus requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the penalty multiplier based on the length of time an employer has been in violation of coverage requirements as follows: 1.5 times the amount of unpaid premiums for employers in violation of coverage requirements for less than 30 days in total; 1.75 times the amount of unpaid premiums for employers in violation of coverage requirements for at least 30 days but less than 1 year in total; 2 times the amount of unpaid premiums for employers in violation of coverage requirements for 1 year. The changes in the penalty calculation formula will likely result in increased fines in some cases and decreased fines in other cases.

The DFS informs that the 1-year look-back period will streamline the penalty calculation process, enabling employers to obtain a determination of their penalty amount more quickly, and to pay the amount due to obtain a release from the SWO.

The decreased reporting of payroll records provided by the bill will likely result in a small, but indeterminate savings in DFS staff hours in reviewing such records and calculating penalties.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees. Construction industry employers with 1 or more employees are required to have workers' compensation insurance.[1] Non-construction industry employers with 4 or more employees are required to have workers' compensation insurance. Agricultural employers with more than 5 regular employees and 12 or more seasonal employees who work more than 30 days are required to have workers' compensation insurance.[2]

Failure to Comply with Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of knowledge of non-compliance. SWOs require the employer to cease business operations and remain in effect until the DFS issues an Order Releasing the Stop-Work Order. Additionally, employers are assessed penalties equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. SWOs are issued for the following violations: failure to obtain workers' compensation insurance; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records in a timely manner. For fiscal year 2010-2011, 2,174 SWOs were issued.[3]

Effect of the Bill

The bill amends the statutory formula for calculating the penalty for employers that fail to comply with workers' compensation coverage requirements. The bill reduces the look-back period from 3 years to 1 year; requiring employers to produce only 1 year of payroll records. In conjunction with this change, the bill increases the penalty multiplier based on the length of time an employer has been in violation of coverage requirements as follows: 1.5 times the amount of unpaid premiums for employers in violation of coverage requirements for less than 30 days in total; 1.75 the amount of unpaid premiums for employers in violation of coverage requirements for at least 30 days but less than 1 year in total; 2 times the amount of unpaid premiums for employers in violation of coverage requirements for 1 year.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.107, F.S., to revise a penalty calculation formula.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[1] Section 440.02(17) (b)2, F.S.
[2] Section 440.02(17)(c)2, F.S.
[3] "2011 Division of Workers' Compensation Annual Report." Available at: http://www.myfloridacfo.com/sitePages/agency/sections/WorkersComp.aspx (Last accessed January 20, 2012).

To the extent that the penalty calculation process is streamlined by the 1-year look-back period, DFS will realize a reduction in costs associated with calculating penalties for non-compliance. It is unknown what effect the decreased penalty period together with the increased penalty multiplier will have on penalty amounts.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The extent to which the amended penalty calculation formula will change the amount for penalties assessed is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring employers to whom stop-work orders have been issued to supply 1 year of payroll records (rather than 3 years) for penalty calculation purposes decreases the regulatory burden on such employers and provides the opportunity to more promptly obtain a release from the stop-work order. Also, the decreased look-back period, together with a penalty multiplier that increases based on the length of non-compliance, may decrease the amount of some fines assessed. In other cases, the amended penalty calculation formula will increase the penalty assessed.

D. FISCAL COMMENTS:

The bill will allow employers the opportunity to be released from a stop-work order more expeditiously, thus allowing them to resume business operations.

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:

DFS informs that several rule sections will need to be amended to align themselves with the new penalty calculation methodology.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Insurance & Banking Subcommittee adopted one amendment to HB 789. The amendment increased the penalty multiplier used to calculate fines in workers' compensation based on the length of time an employer has been in violation of coverage requirements as follows:

- 1.5 times the amount of unpaid premiums for employers in violation of coverage requirements for less than 30 days in total.
- 1.75 times the amount of unpaid premiums for employers in violation of coverage requirements for at least 30 days but less than 1 year in total.
- 2 times the amount of unpaid premiums for employers in violation of coverage requirements for 1 year.

The bill analysis has been updated to reflect changes made by the amendment.