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 Budget Committee

BILL: SB 2132 (SPB 7144)

INTRODUCER: Budget Committee

SUBJECT: Department of Financial Services

DATE: April 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick	Meyer, C.		**SPB 7144 Favorable**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill provides cost-saving measures for the state's self-insurance program, administered by the Division of Risk Management (division) within the Department of Financial Services (department). The bill includes provisions to increase agency participation in the return-to-work program. Under the bill, the division is required to: monitor and evaluate state agencies' loss prevention programs; make recommendations for improvement to the programs; provide reports to agency heads; and use the results as criteria for calculating risk management premium assessments in order to incentivize loss prevention activities with the agencies.

The bill revises requirements for determining the reimbursement amount for repackaged or relabeled prescription medications for workers' compensation claimants, regardless of the dispensing location or provider.

The bill requires that all unencumbered and undisbursed funds, transferred from the Workers' Compensation Administration Trust Fund within the department to other state agencies for program activities, revert to the fund at the end of each year.

The bill eliminates the Chief Financial Officer's authority to operate a check cashing service at the state capitol.

The department estimates that, for Fiscal Year 2011-2012, a cost savings of $500,000 to the State Risk Management Trust Fund within the department will be realized, as a result of implementing the return-to-work provisions, additional loss prevention measures, and the new reimbursment methodology for prescription drugs for workers' compensation claimants, as provided in the bill.

Additionally, elimination of the check cashing service in the Capitol will provide a recurring cost savings of $129,022, which includes a reduction of three full-time equivalent positions.

This bill substantially amends the following sections of the Florida Statutes: 20.121, 284.01, 284.36, 284.42, 284.50, 440.13, and 440.50.

The bill repeals sections 17.53 and 17.556, Florida Statutes.

II. Present Situation:

State Risk Management Program

The Division of Risk Management is responsible for ensuring that state agencies and universities participating in the state's self-insurance program receive quality coverage for workers' compensation, general liability, federal civil rights, auto liability, and property insurance at reasonable rates. The division's operations and the state's insurance coverage are funded by annual agency assessments, which are deposited into the State Risk Management Trust Fund. Agency premiums are based on loss experience, exposure, and a prorated share of the division's operating budget. Projected costs are derived from actuarial studies of the division's cash flow needs for claims and program expenses.

The Bureau of Loss Prevention within the division is charged with providing professional safety training, quality evaluation tools, and other loss prevention and cost control programs for agencies participating in the state's self-insurance program. In recent years, the division has seen a rapid increase in the cost of workers' compensation. In Fiscal Year 2004-2005, workers' compensation expenditures from the State Risk Management Trust Fund were $91.3 million.[1] In Fiscal Year 2008-2009, workers' compensation expenditures totaled $116.1 million, representing a 27 percent increase in four years. The March 1, 2010, Risk Management Estimating Conference projected that workers' compensation costs would grow to $139.2 million by Fiscal Year 2011-2012, which is a nearly 20 percent increase over two years.[2]

While lost-time workers' compensation claims account for only ten percent of the self-insurance program, these claims account for 80 percent of workers' compensation claims cost. Current law does not provide agencies with incentives to reduce workers' compensation claims costs or return injured workers to work.[3] 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. Section 216.251(2)(b) 2., F.S., allows but does not require agencies and state universities to maintain return-to-work programs. In addition, agency participants in the self-insurance program are not required to engage in loss prevention activities, including the return-to-work program. While some state agencies have return-to-work programs in place, there is no accountability or

[1] Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Committee.
[2] Risk Management Revenue Estimating Conference – March 1, 2010.
[3] 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.

evaluation of these programs. The department reports that other states, such as Texas and Georgia, have required all state agencies to maintain return-to-work programs.[4]

Workers' Compensation Programs

The Division of Workers' Compensation within the department administers the workers' compensation program in Florida. The Workers' Compensation Administration Trust Fund (WCATF) is used for the payment of expenses related to the administration of the program.[5] Total WCATF expenses are approximately $95 to $98 million annually. Operating expenses for the division are $25 to $27 million annually, or about 27 percent of the total expenses.

The major revenue source for the WCATF (other than fines imposed by the division) is assessments on workers' compensation insurance premiums, as provided in s. 440.51(1), F.S. By July 1 of each year, the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the administration of ch. 440, F.S. The assessment rate is effective the following January 1st.

Each fiscal year, funds are appropriated from the WCATF as a transfer to other agencies to support workers' compensation related programs. These include the Department of Education, the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Division of Administrative Hearings (housed within the Department of Management Services), the First District Court of Appeal, and the Justice Administration Commission. Currently, there is no statutory requirement or mechanism by which agencies must return to the WCATF cash that has been transferred and which remains unobligated and unspent at the end of a fiscal year. For example, at the conclusion of the 2008-2009 fiscal year, it was estimated that more than $2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

Balances in the WCATF from 2006 through 2009 were substantial. During this period, the division was involved in several assessment-related lawsuits, which would have obligated a significant expenditure from the WCATF if the division had not prevailed. After the lawsuits were concluded in the division's favor, there was no longer a need to maintain the WCATF balance at an elevated level. Consequently, assessment rates were set lower than what was required to fully fund the expenses of the workers' compensation, in order to gradually drawn down the fund balance to an appropriate level. However, the phased reduction of the balance was unexpectedly accelerated due to a dramatic reduction in the premium base, which resulted from a reduction in payroll growth and workers' compensation rates.

In recent years, the cash balance of the WCATF has declined considerably as expenditures have exceeded revenues. Expenditures exceeded revenues by $41.1 million in Fiscal Year 2008-2009 and $57.7 million in Fiscal Year 2009-2010. The revenue forecast for Fiscal Year 2010-2011 indicates expenditures will exceed revenues by $35.0 million.[6] In June, 2009, the Chief Financial Officer increased the assessment on workers' compensation insurers and self-insurers

[4] Division of Risk Management Presentation to the Florida House of Representatives Government Appropriations Committee, dated February 10, 2010.
[5] Section 440.50, Florida Statutes.
[6] Department of Financial Services, Schedule I of the Workers' Compensation Administration Trust Fund - submitted with the Amended Legislative Budget Request dated March 3, 2010.

premiums from 0.25 percent to 0.80 percent, in order to ensure that sufficient cash would be available to support continued program appropriations.[7] For the current calendar year, the assessment rate is 0.98 percent. The statutory cap is set at 2.75 percent.

In a January 2010 report to the Legislature, the division identified the major cost driver attributed to increasing costs in the state's self-insurance program as "increasing workers' compensation medical costs, including the escalating costs of prescription drugs." According to a study of prescription drugs performed by the Workers' Compensation Research Institute, Inc., (WCRI), the average payment per claim for prescription drugs in Florida is 38 percent higher than the median of the other 16 states in its study. The study further indicated that the dispensing of repackaged medications by physicians is the primary cause for the increased costs for prescription drugs and has become a common practice in Florida. Physician dispensing is also on the rise in other states, and several of those states have recently enacted laws or are in the process of revising their laws to address this issue.

Currently, prescription drugs are reimbursed at the average wholesale price plus a $4.18 dispensing fee, or a contract rate, whichever is lower. Average wholesale price ("AWP") is not defined by Florida law, nor is there a customary national definition. Mechanically, the AWP of a drug is set by its original manufacturer. Manufacturers obtain a National Drug Code for each drug produced, and then sell the drug directly to a physician, pharmacy, or repackager or relabeler. Repackagers and relabelers do not alter a drug; rather, they sell the drug in different quantities.[8] As part of that process, a repackager or relabeler obtains a new National Drug Code, which allows it to then assign a new, and often different, AWP. In the 2009-2010 fiscal year, there were 22 licensed prescription drug repackagers in Florida.[9]

Check Cashing Services

The Chief Financial Officer has the authority under ss. 17.53 and 17.556, F.S., to "operate a personal check-cashing service or a remote financial service unit at the capitol for the benefit of state employees or other responsible persons who properly identify themselves."[10] Presently, the check cashing service located in the state capitol is assigned three full-time employee positions. The recurring cost to provide this service is $129,022 from the State Treasury Administrative and Investment Trust Fund within the department. Due to the increase in the use of debit and credit cards, the need for a check cashing service has diminished.

III. Effect of Proposed Changes:

State Risk Management Program

This bill requires participating state agencies with 3,000 or more employees to establish and maintain return-to-work programs for injured employees. Return-to-work programs are intended to reduce lost time costs and to return employees to work sooner in jobs that are matched to their

---

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

[8] United States Government Accountability Office, "Brand-Name Prescription Drug Pricing: Lack of Therapeutically Equivalent Drugs and Limited Competition May Contribute to Extraordinary Price Increases" (GAO-10-201, December 2009), pg. 5, available at: http://www.gao.gov/products/GAO-10-201 (last accessed March 4, 2011).

[9] Florida Department of Health, Resource Manual, A Compilation of the Department of Health's Offices and Programs, Fiscal Year 2009-2010, pg. 330.

[10] Section 17.53, Florida Statutes.

recovery level. The bill requires the Division of Risk Management to monitor and evaluate state agencies' loss prevention programs, make recommendations for improvement, provide reports to agency heads, and use the evaluation results as criteria for calculating risk management premium assessments.

Worker's Compensation

This bill requires all unencumbered and undisbursed funds transferred from the WCATF to other state agencies for program activities, to revert to the fund at the end of each fiscal year. This action will minimize the need to increase premium assessments to support workers compensation programs by returning unused balances to the fund.

The bill revises requirements for determining the reimbursement amount for repackaged or relabeled prescription medications for workers' compensation claimants, regardless of the dispensing location or provider. The proposal limits the reimbursement amount for a drug that has been repackaged or relabeled by multiplying the number of units dispensed by the per-unit average wholesale price set by the original manufacturer of the underlying drug, plus a $4.18 dispensing fee or the contracted rate negotiated by the Department of Management Services, whichever is lower.[11]

The $4.18 dispensing fee is the currently authorized maximum pharmacy dispensing rate for workers' compensation medications. The National Council on Compensation Insurance, Inc., (NCCI) estimates that the reimbursement methodology provided for repackaged drugs included in the bill will reduce total workers' compensation costs by 2.5 percent, which equates to more than $62 million in savings for Florida employers in the first year. If the lower of $4.18 or the contracted price is substituted for $4.18 across the board, it is likely that the projected cost savings will increase.

This bill does not inhibit the ability of any certified physician to dispense prescription drugs to workers' compensation claimants; rather, it only addresses the allowable cost of doing so. Physician dispensing authority is provided within s. 465.0276, F.S., which is not amended by this bill.

Check Cashing Services

The bill repeals ss. 17.53 and 17.556, F.S., to remove the Chief Financial Officer's authority to operate a personal check cashing unit within the state capitol and to employ additional staff to perform the service. This will eliminate three full-time employee positions and provided a recurring cost savings of $129,022 to the State TreasuryAdministrative and Investment Trust Fund.

[11] Pursuant to Section 110.12315(2)(c), Florida Statutes, the Department of Management Services administers the state employees' prescription drug program. Attendant to this requirement, the Department of Management Services establishes the reimbursement schedule for prescription pharmaceuticals dispensed under the program.

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:

The National Council on Compensation Insurance, Inc., ("NCCI") has issued cost estimates for repackaging/relabeling reforms. Their calculations are based on comparisons between the cost of repackaged drugs as compared to the cost of drugs dispensed in their original (manufacturer) packaging. On March 7, 2011, the NCCI found that assigning a $4.18 dispensing fee to repackaged/relabeled drugs would result in a 57 percent reduction in prescription drug costs. The total estimated reduction in Florida's workers' compensation costs, based on the AWP as set by the drug's original manufacturer, would be 2.5 percent, or $62 million.

C. Government Sector Impact:

The Department of Financial Services estimates that approximately $300,000 in cost savings to the State Risk Management Trust Fund in Fiscal Year 2011-2012 can be realized with the implementation of return-to-work and other loss prevention programs contained in the bill. The department estimates that the change in reimbursment methodology provided for repackaged and or relabeled drugs will reduce state workers' compensation costs by $200,000. Additionally, the elimination of the check cashing service in the capitol will result in the elimination of three full-time positions and provide a cost savings of $129,022.

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.