**STORAGE NAME**: h1149.ted
**DATE**: April 10, 2000

**HOUSE OF REPRESENTATIVES**
**AS FURTHER REVISED BY THE COMMITTEE ON**
**TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS**
**ANALYSIS**

**BILL #**: HB 1149 (PCB IN 00-01)

**RELATING TO**: Workers' Compensation

**SPONSOR(S)**: Committee on Insurance, Representative Bainter and others

**TIED BILL(S)**: None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:

(1) INSURANCE YEAS 15 NAYS 0
(2) JUDICIARY YEAS 6 NAYS 0
(3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
(4)
(5)

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I. SUMMARY:

In 1993, the Legislature significantly reformed Florida's workers' compensation act. The stated goals of the reforms were to reduce system costs, primarily medical costs, and to create a system which was efficient and self-executing. In the seven years since the 1993 reform, few changes have been made to the workers' compensation system.

This bill would make a variety of dispute resolution, program administration, and procedural changes including: updating the monetary amount signifying "casual" labor; clarifying that county prisoners are not eligible for workers' compensation; precluding workers' compensation for employees covered by the federal Defense Base Act; authorizing electronic transfer of benefit payments; requiring carriers to submit medical bills only upon request of the Division; granting rehabilitation providers access to medical records; revising the definition of grievance to require medical care be requested before filing a grievance; requiring carriers to respond to requests for medical care within 30 days; limiting the grievance process to 30 days; allowing self-insured employers to opt-out of managed care; authorizing the Division of Workers' Compensation to contract with a private entity to perform its data collection function; requiring petitions for benefits to be filed directly with the local judge of compensation claims; allowing judges of compensation claims to dismiss portions of petitions for benefits; requiring judges of compensation claims to dismiss without prejudice any petition which does not meet specificity requirements; modifying the 120-day requirement for lump sum settlements; excluding child support and alimony from the general exemption of workers' compensation benefits from claims of creditors; requiring the First District Court of Appeal to hear workers' compensation cases in a specialized division; limiting the types of security deposits which can be filed by self-insured employers; directing the judicial nominating commission to consider certain statutory requirements in reviewing the performance of judges of compensation claims; authorizing the Governor to appoint a judge of compensation claims pro hac vice; requiring the Office of the Judges of Compensation Claims to submit draft rules to the Legislature by November 1, 2000; resolving a conflict in the law regarding the prerequisites for obtaining a contractor's license and a workers' compensation exemption; authorizing the Workers' Compensation Joint Underwriting Association to use policyholder surplus from any year to eliminate deficits; revising carrier reporting requirements to the Department of Insurance; and eliminating docketing review.

The bill appropriates $1,400,000 from the Workers' Compensation Administration Trust Fund to hire additional mediators.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

| | | | | |
|---|---|---|---|---|
| 1. | Less Government | Yes [x] | No [] | N/A [] |
| 2. | Lower Taxes | Yes [] | No [] | N/A [x] |
| 3. | Individual Freedom | Yes [] | No [] | N/A [x] |
| 4. | Personal Responsibility | Yes [] | No [] | N/A [x] |
| 5. | Family Empowerment | Yes [] | No [] | N/A [x] |

B. PRESENT SITUATION:

**Basis for Workers' Compensation**

Workers' compensation statutes represent a basic compromise between labor and management. Under this compromise, employees injured on the job receive medical care and a portion of their lost wages (called indemnity or disability benefits) regardless of who was at fault for their injury. In exchange for these no-fault benefits, employees give up the right to sue their employers in tort and, as a result, give up the right to be compensated for pain and suffering associated with the workplace injury. In the United States, workers' compensation statutes date back to the beginnings of the Industrial Revolution -- a period when both the frequency and severity of injuries were expected to increase because of increased mechanization in the workplace.

**Legislative Intent**

It is the stated intent of Florida's workers' compensation act "to ensure the prompt delivery of benefits to injured workers" and "facilitate the employee's return to gainful employment at a reasonable cost to the employer." It is also the intent of the Legislature that the workers' compensation system be an efficient and self-executing system which is not an administrative or economic burden.

**Agency Jurisdiction**

*Department of Labor and Employment Security*

The Department of Labor and Employment Security, Division of Workers' Compensation (Division) is responsible for the administration of Florida's workers' compensation system. Its functions include:

- enforcing employer compliance with workers' compensation coverage requirements;
- overseeing reemployment of injured employees;
- monitoring and auditing the delivery of benefits;
- operating the Employee Assistance Office; and
- administering the Special Disability Trust Fund.

The Office of the Judges of Compensation Claims, within the Department of Labor and Employment Security, oversees 31 judges of compensation claims located throughout the

state. These judges of compensation claims preside over the formal dispute resolution process.

*Agency for Health Care Administration*

The Agency for Health Care Administration (AHCA) is responsible for regulation concerning workers' compensation managed care arrangements. Since January 1, 1997, all workers' compensation medical benefits have been required to be provided through workers' compensation managed care arrangements.

*Department of Insurance*

The Department of Insurance (DOI) has regulatory authority over insurance companies and group self-insurance funds. The DOI regulates insurance rates for workers' compensation insurers and the Workers' Compensation Joint Underwriting Association. The DOI also investigates (and refers for prosecution) criminal insurance fraud, including workers' compensation fraud.

**Securing Worker's Compensation Coverage**

Florida's workers' compensation act requires employers to secure the payment of medical and indemnity benefits to injured employees either by purchasing insurance or by meeting the requirements of self-insurance. Self-insurance can take two basic forms: individual self-insurance and group self-insurance funds. Individually self-insured employers are typically very large employers with substantial financial resources. Self-insurance funds are associations of employers that pool their money together in order to pay workers' compensation claims.

**1993 Reforms**

In 1993, the Legislature found that employers were experiencing dramatic increases in their worker's compensation costs and that the cost of workers' compensation medical care was rising at a greater rate than the rate of inflation. As a result, the Legislature found that there was a "financial crisis in the workers' compensation industry, causing severe economic problems for Florida's business community and adversely impacting Florida's ability to attract new business development to the state." In order to address these issues, the Legislature significantly reformed Florida's workers' compensation act in order to create a more efficient and self-executing act, "which is not an economic or administrative burden." Chapter 93-415, Section 2.

In order to respond to this financial crisis, the Legislature enacted numerous reforms, including establishing managed care as a means for providing medical care, creating the Employee Assistance and Ombudsman Office, tightening the eligibility standards for PTD benefits, and creating a self-funding joint underwriting association.

**Dispute Resolution**

Despite the Legislature's intent, the workers' compensation system is not always self-executing and does not always deliver benefits in a quick and efficient manner. Disputes frequently arise between employees and employers or carriers. The workers' compensation system has several mechanisms designed to deal with disputes, including an informal process through the Division's Employee Assistance Office, managed care grievance procedures, and a formal

dispute resolution process before a judge of compensation claims. Florida law sets out specific time frames for resolving disputes through these mechanisms.

**Committee on Insurance Staff Report -- "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration"**

In October of 1999, the staff of the Committee on Insurance released a report, entitled "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration." This report examines the workers' compensation dispute resolution system to determine the extent to which statutory time frames for workers' compensation cases were being met and raises various policy options for Members to consider. In this report, staff found:

- From beginning to end, dispute resolution takes an average of 268 days -- more than twice the 120 days allowed in statute;
- Presiding judges of compensation claims do not even receive petitions for benefits until 25 days after the petition is filed (which is 4 days after the statutory time for holding mediation);
- Mediation occurs, on average, 138 days after the filing of the petition for benefits (117 days longer than the statute contemplates);
- Approximately 85 percent of employees exit the dispute resolution process within 163 days by settling their cases prior to or during state mediation;
- The number of employees filing petitions for benefits has remained stable, yet the number of petitions for benefits filed annually has more than doubled since 1993; and
- Numerous statutory requirements relevant to the dispute resolution process have not been met or implemented as presumably intended by the Legislature.

This staff report is available on the Committee on Insurance's page on Online Sunshine, the Florida Legislature's web site (www.leg.state.fl.us).

(For the Present Situation relating to the specific changes proposed in the bill, refer to the Section-By-Section Analysis)

C. EFFECT OF PROPOSED CHANGES:

As a result of this bill:

- the monetary amount signifying "casual" labor would be increased from $100 to $1,000;
- Florida law would specifically state that all state and county prisoners are not eligible for workers' compensation;
- employees covered by the federal Defense Base Act would be ineligible for workers' compensation;
- carriers would be authorized to electronically transfer benefit payments to injured workers;
- carriers would be required to submit medical bills to the Division of Workers' Compensation (Division) only upon request of the Division;
- rehabilitation providers would be granted access to medical records;

- individually self-insured employers would be authorized to provide medical care either through managed care arrangements or without managed care arrangements;

- injured workers would be required to request medical care and give the carrier 30 days to respond before filing a grievance;

- the grievance process would be considered exhausted if the carrier does not notify the injured worker of the outcome within 30 days;

- the Division would be authorized to contract with a private entity to perform its data collection function;

- petitions for benefits would be filed directly with the local judge of compensation claims;

- judges of compensation claims would be allowed to dismiss portions of petitions for benefits;

- the 120-day requirement for lump sum settlements would be revised so that it begins the date the employer is notified of the injury;

- child support and alimony claims would be excluded from the general exemption of workers' compensation benefits from claims of creditors;

- the First District Court of Appeal would be required to hear workers' compensation cases in a specialized division;

- certificates of deposit and U.S. Treasury Notes could no longer be used by self-insured employers as security deposits with the Division;

- the judicial nominating commission would be directed to consider certain statutory requirements (including time line and reporting requirements) in evaluating judges' performance;

- the judicial nominating commission would be directed to request that the Legislature review any statutory requirement that judges are generally unable to meet for reasons beyond their control;

- the Office of the Judges of Compensation Claims would be required to gather the information necessary for the judicial nominating commission to conduct its review of judges pursuant to s. 440.45(2)(c), F.S.;

- the Governor would be authorized to appoint a judge of compensation claims pro hac vice for a period not exceeding 60 days;

- the Office of the Judges of Compensation Claims would be required to submit draft rules of procedure and uniform criteria to the Legislature and Governor by November 1, 2000;

- a conflict of law relating to the prerequisites for obtaining a contractor's license and a workers' compensation exemption would be resolved;

- the Workers' Compensation Joint Underwriting Association would be authorized to use policyholder surplus from any year to eliminate deficits;

- certain carrier reports required to be filed with the Department of Insurance would be revised to eliminate unnecessary information and avoid duplication;

- $1,400,000 would be appropriated from the Workers' Compensation Administration Trust Fund to the Department of Labor and Employment Security for the purpose of hiring additional mediators to carry out the functions set forth in s. 440.25(3), F.S.; and

- docketing review would be eliminated.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Amends s. 440.02, F.S., the definitions section of the workers' compensation law.

PRESENT SITUATION -- Under Florida law, the term "employee" does not include a person whose employment is "both casual and not in the course of the trade, business, profession, or occupation of the employer." See section 440.02(14)(d)5., F.S. The term "casual" is defined as employment which is contemplated to be completed in no more than 10 working days, without regard to the number of persons employed, "and when the total labor cost of such work *is less than $100*." See section 440.02(4), F.S. (emphasis added). The definition of "casual," including the reference to $100, was created in 1935. Based on the change in the Consumer Price Index, $100 in the year 1935 is worth $1,254 in the year 2000. Noting this anachronism, the First District Court of Appeal, in Summers v. Blanton, 712 So.2d 411 (Fla. 1st DCA 1998), recommended the Legislature update this figure.

Under current law, state prisoners are specifically excluded from coverage under workers' compensation. See s. 946.002(5), F.S. Although numerous court cases have held that it is the policy of the state that no prisoners of any kind are eligible for workers' compensation benefits, the statute does not expressly exclude county prisoners from worker's compensation. See e.g., Metropolitan Dade County v. Sikes, IRC Order 2-3169 (May 27, 1977); Dep't of Health and Rehabilitative Services v. O'Neal, 400 So.2d 28 (Fla. 1st DCA 1981).

*EFFECT OF SECTION -- This section raises the dollar amount of labor, which signifies when employment is "casual," from $100 to $1,000.*

*This section also redefines "employment" so that it specifically excludes work performed by state or county prisoners.*

**Section 2:** Amends s. 440.09, F.S.

PRESENT SITUATION -- Under current law, employees whose workplace injuries are covered by federal compensation acts such as the Longshoremen's and Harbor Worker's Act, the Jones Act, or the Federal Employer's Liability Act are precluded from recovering benefits under Florida's workers' compensation act.

*EFFECT OF SECTION -- This section would add the federal Defense Base Act to this list of federal compensation acts which, if applicable, preclude an employee's recovery under Florida's workers' compensation act. Employees who are covered by the Defense Base Act include employees of military installations.*

**Section 3:** Amends s. 440.12, F.S.

PRESENT SITUATION -- Currently, Florida law requires carriers to pay workers' compensation benefits to employees by check, which is then mailed to the employee or the employee's

attorney, if the employee is represented by counsel. This process can result in delayed payments to employees as a result of incorrect mailing addresses and in the assessment of penalties against carriers for late payments.

In recent years, it has become common for many types of bank transactions and payments to be made electronically. For example, many employers, including the State of Florida, electronically deposit paychecks into employees' bank accounts. This not only reduces administrative costs associated with writing checks, it gives employees access to their money more quickly.

*EFFECT OF SECTION -- This section, along with a portion of section 8 of the bill, would authorize carriers, with the consent of the employee, to electronically transfer workers' compensation benefit payments to employees' bank accounts or to bank accounts set up for the employees.*

**Section 4:** Amends s. 440.13, F.S.

PRESENT SITUATION -- Currently, under s. 440.13(4)(b), F.S., all medical bills or reports obtained or received by the employer, carrier, or employee, relating to the remedial treatment or care of the injured employee, including any report of an examination, diagnosis, or disability evaluation, are required to be filed with the Division of Workers' Compensation. By rule, the Division requires this information to be sent to the Division within 30 days after each medical bill is paid. See Rule 38F-7.602(3)(b), Florida Administrative Code. This information is compiled by the Division into a report which is then sent to the Three-Member Panel for purposes of establishing reimbursement schedules.

Section 440.13(4)(c), F.S., also currently provides that it is the policy of the administration of the workers' compensation system that there be reasonable access to all medical information by all parties to facilitate the self-executing features of the workers' compensation law. Section 440.13(4)(c), F.S., specifically lists the persons who are to have access to the employee's medical information, including the employer, the carrier, and the attorney for either of them.

*EFFECT OF SECTION -- This section would modify the medical bill reporting requirement so that medical information would be provided only upon the request of the Division.*

*This section would also add rehabilitation providers to the list of persons who would have access to an employee's medical information.*

**Section 5:** Amends s. 440.134, F.S.

PRESENT SITUATION

Section 440.134, F.S., is the workers' compensation managed care statute. Since January 1, 1997, all employers have been required to provide workers' compensation medical treatment to their injured employees through a workers' compensation managed care arrangement (MCA) approved by the Agency for Health Care Administration (AHCA). The purpose behind workers' compensation managed care was to control the escalating cost of medical expenses in the workers' compensation system. An MCA is a contractual arrangement between an insurer and a health care provider designed to provide medical care to injured employees under workers' compensation. In order for AHCA to approve an insurer's MCA, the insurer must file a plan of operation which meet the requirements of s. 440.134(5) and (6), F.S. These sections require the plan of operation to contain evidence that:

- Medical services can be provided with reasonable promptness with respect to geographic location, hours of operation, and after-hour care.
- The number of providers in the MCA service area are sufficient;
- There are written agreements with providers describing specific responsibilities.
- Emergency care is available 24 hours a day and 7 days a week.
- There are written agreements with providers prohibiting such providers from billing or otherwise seeking reimbursement from any injured worker.

The plan of operation must also include:

- A statement or map providing a clear description of the service area.
- A description of the grievance procedure to be used.
- A description of the "quality assurance program" which assures that health care providers render quality care;
- Written procedures to provide the insurer with timely medical records and information.
- Written procedures and methods to prevent inappropriate or excessive treatment.
- Written procedures and methods for the management of care by a medical care coordinator.
- Evidence that appropriate health care providers and administrative staff of the insurer's MCA have received training and education regarding workers' compensation;
- A description of the use of workers' compensation practice parameters for health care services when adopted by the agency.

Section 440.134(15)(g), F.S., also requires insurers to report to AHCA regarding its grievance procedure activities for the year.

AHCA may suspend the authority of an insurer to offer an MCA, if it finds: the insurer is in substantial violation of its contracts; the insurer knowingly utilizes a provider who does not have an existing license or other authority to furnish health care services; the insurer no longer meets the requirements for the authorization as originally issued; or the insurer has violated any lawful AHCA rule or order or statute.

Florida law presently allows individual employers, who can demonstrate the financial ability, to insure themselves for workers' compensation coverage. These employers are typically very large employers. Individually self-insured employers, unlike employers who are covered by an insurance company, pay medical and indemnity benefits to employees directly from their own funds. As such, individually self-insured employers may have more of an incentive than insured employers to closely manage workers' compensation medical costs.

Under current law, the term "grievance" is defined as "dissatisfaction with the medical care provided by an insurer's workers' compensation managed care arrangement health care providers, expressed in writing by an injured worker." See s. 440.134(1)(d), F.S.

There are no time frames in statute relating to the resolution of grievances. There is, however, an administrative rule which limits grievances to 60 days. Rule 59A-23.006, F.A.C.

In the report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration," staff found that many grievances were being filed regarding medical care that had never been requested of the insurer. In other words, the first time an insurer became aware that an injured worker desired a particular provider or treatment was in a filed grievance.

*EFFECT OF SECTION*

*This section would allow self-insured employers to furnish workers' compensation medical care either through managed care arrangements or without managed care arrangements. This section, in effect, would permit individually self-insured employers to "opt out" of the managed care requirements.*

*This section also revises the definition of "grievance" to clarify that an injured worker must first request medical care from the insurer prior to filing a grievance.*

*This section also requires insurers to respond to injured workers' requests for medical care within 30 days of the date of the request. Then, if the request for medical care is denied, the injured worker may initiate the grievance process, which is presumed to be exhausted if the insurer does not notify the injured worker of the outcome of the grievance within 30 days from the date the grievance is filed.*

**Section 6:** Amends s. 440.185, F.S.

PRESENT SITUATION -- Presently, s. 440.185(7), F.S., requires carriers to file policy information (sometimes referred to as "proof of coverage" data) with the Division of Workers' Compensation. Pursuant to ss. 440.185(7) and 440.42(2), F.S., carriers are also required to file all notices of cancellation and expiration of policies with the Division. These statutory requirements are currently met by carriers by making a paper filing of this information with the Division. In addition to this paper filing, however, carriers also report this same information to rating organizations, such as the National Council on Compensation Insurance, for ratemaking purposes. Due to the more advanced technology of the rating organizations, this latter filing is usually made electronically.

*EFFECT OF SECTION -- This section would authorize the Division of Workers' Compensation to contract with a private entity to collect the policy information and receive the notices of cancellation and expiration.*

**Section 7:** Amends s. 440.192, F.S.

PRESENT SITUATION -- This statutory section currently directs employees to file petitions for benefits (petitions) with the Division of Workers' Compensation, which records certain information and then sends the petition on to a docketing judge, where it is reviewed before finally being forwarded to the judge of compensation claims who will preside over the dispute. According to the Committee on Insurance staff report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration," this process takes an average of 25 days -- 4 days longer than the statutory time for holding mediation.

Section 440.192(2), F.S., sets forth the specific information that must be contained in a petition for it to be considered. This section requires the Office of the Judges of Compensation Claims to dismiss any petition that does not contain all of the required information (presumably, this is carried out by docketing judges).

Section 440.192(5), F.S., relating to motions to dismiss, requires all motions to state with particularity the basis for the motion. This section, however, does not specifically permit judges of compensation claims to dismiss discrete portions of a petition.

*EFFECT OF SECTION -- This section of the bill modifies the process for filing a petition so that the employee would file the petition directly with the appropriate local Office of the Judges of Compensation Claims and provide copies to the employer, carrier, and Division of Workers'*

*Compensation. This section requires the Division to inform employees of the locations of the appropriate local Offices of the Judges of Compensation Claims.*

*This section, in combination with section 20 of the bill (which repeals the section of law relating to docketing judges), requires judges of compensation claims to, in essence, act as their own docketing judge and review each petition to ensure it meets the specificity requirements of the statute. This section also requires each judge of compensation claims to dismiss, without prejudice and without a hearing, each petition, or any portion thereof, which does not meet the specificity requirements. This section permits a judge of compensation claims to dismiss a portion of a petition without dismissing the entire petition.*

*The changes in this section of the bill were raised as options in the House Committee on Insurance staff report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration."*

**Section 8:** Amends s. 440.20, F.S., relating to time for payment of compensation.

PRESENT SITUATION -- See section 3 of the section-by-section analysis for a discussion of the electronic transfer of benefit payments.

Under current law carriers are authorized to settle the entire case with an injured employee, which includes all future medical and indemnity payments owed to the employee. These are referred to as "lump sum" settlements. Section 440.20(11)(a), F.S., states that a lump sum settlement is not allowed unless the employer files a notice of denial within 120 days of the date of injury. Section 440.20(11)(a), F.S., also requires the judge of compensation claims to hold a hearing to determine whether there is a justiciable controversy and to approve the lump sum settlement.

*EFFECT OF SECTION -- This section would change the 120 day requirement for lump sum settlements so that the 120 day period begins to run when the employer receives notice of the injury, rather than from the date of the injury. Also, this section would remove the requirement that there be a hearing on lump sum settlements under 440.20(11)(a), F.S., where the claimant is represented by an attorney and where all parties agree to forego a hearing.*

**Section 9:** Amends s. 440.22, F.S.

PRESENT SITUATION -- Currently, s. 440.22, F.S., exempts workers' compensation benefits from the claims of creditors and prevents creditors from seeking any remedy for the collection of a debt out of workers' compensation benefits. Although, not provided for in statute, a few courts have created an exception to s. 440.22, F.S., for child support and alimony debt.

In Bryant v. Bryant, 621 So.2d 574 (Fla. 2d DCA 1993), for example, the Second District Court of Appeal noted that many courts in other states support this position based on a few principles, including that a child support obligation is not a debt or a claim of a creditor and that the purpose of the worker's compensation law is not only to protect the worker but also to protect the worker's dependents. The court also based its decision on the fact that worker's compensation benefits are included as income when a court determines the amount of a child support award.

*EFFECT OF SECTION -- This section conforms the statute to the decision in the Bryant case and creates a statutory exception to s. 440.22, F.S., for claims of child support and alimony.*

**Section 10:** Amends s. 440.271, F.S.

PRESENT SITUATION

Under current law, orders of judges of compensation claims are appealable to the First District Court of Appeal (DCA). In recent years, the First DCA, by local rule approved by the Supreme Court, heard cases in three divisions. One of these divisions was an administrative division, which heard all administrative appeals, including workers' compensation cases. Beginning in January, 1999, the First DCA discontinued the practice of hearing cases in divisions. As a result, workers' compensation cases may be heard by rotating panels drawn from any of the court's 15 judges.

*EFFECT OF SECTION*

*This section would require the First District Court of Appeal to hear workers' compensation cases in a specialized division, either alone or in combination with other cases.*

**Section 11:** Amends s. 440.38, F.S.

PRESENT SITUATION

To be authorized to self-insure for workers' compensation, employers are required by law to post a deposit with the Division of Workers' Compensation. See s. 440.38(1)(b), F.S. This deposit can currently take the form of surety bonds, certificates of deposit, irrevocable letters of credit, direct obligations of the United States Treasury, and securities issued by the State of Florida. The purpose of the deposit is to provide assurance that the self-insured employer has the financial ability to pay compensation benefits to its employees.

Under federal bankruptcy law, monies held as security by the Division of Workers' Compensation in the form of certificates of deposit and securities backed by the federal government and the State of Florida are deemed to be part of the bankrupt estate. Often, the certificates of deposit and direct obligations of the federal and state governments are settled for much less than the face value of the instrument. This precludes the Division from using 100 percent of the face value of the deposit to assist in the payment of workers' compensation claims when a self-insured employer declares bankruptcy. Irrevocable letters of credit and surety bonds, on the other hand, are agreements between a third party and the division and therefore are not a part of the bankruptcy process.

*EFFECT OF SECTION*

*This section would limit the types of security deposits that self-insured employers are authorized to use. This section would eliminate the use of certificates of deposit, U.S. Treasury Notes and Bonds, and securities issued by the State of Florida and backed by the full faith and credit of the state as types of qualifying security deposits.*

**Section 12:** Amends s. 440.45, F.S.

PRESENT SITUATION -- According to Florida law, judges of compensation claims are appointed by the Governor from a list of candidates submitted by the statewide nominating commission. See s. 440.45(1), F.S. The statewide nominating commission is comprised of five members appointed by the Board of Governors of the Florida Bar, five members appointed by the Governor, and five members selected and appointed by a majority vote of the other 10 members. The nominating commission is also involved in the reappointment of judges of compensation claims in that it is responsible for determining whether a judge of compensation claims's performance is satisfactory and reporting its findings to the Governor. The statute

does not set forth any criteria for the nominating commission to measure the performance of judges of compensation claims.

The Committee on Insurance staff report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration," found that judges of compensation claims are not meeting many of the statutory time requirements contained in Chapter 440, F.S.

Section 440.45(5), F.S. (enacted in 1993), requires the Office of the Judges of Compensation Claims to develop rules relating to dispute resolution and uniform criteria for measuring the performance of the judges. These criteria are supposed to measure, among other things, the age of pending cases and the timeliness of decisionmaking. The Office of the Judges of Compensation Claims has not developed the required rules.

In July of 1999, a JCC from District F (Lakeland) left her position to become a circuit court judge. A replacement has not yet been appointed by the Governor. As a result, a large backlog in cases has developed causing considerable delay. There are also 2 JCC vacancies in West Palm Beach.

*EFFECT OF SECTION -- This section requires the nominating commission, in determining whether a judge of compensation claims has performed satisfactorily, to consider the extent to which the judge of compensation claims has met the requirements of Chapter 440, including, but not limited to, the requirements of: s. 440.192(2) (reviewing petitions for specificity); s. 440.25(1) (holding mediation within 21 days of the filing of the petition); s. 440.25(4)(a) (holding the pretrial hearing within 10 days of the conclusion of mediation); s. 440.25(4)(b) (holding and concluding the final hearing within 45 days of the pretrial hearing); s. 440.25(4)(c) (giving parties notice 7 days notice of the final hearing); s. 440.25(4)(d) and (e) (issuing final orders within 14 days setting forth the ultimate findings of fact and the mandate); s. 440.25(4)(f) (submitting special reports to the Chief Judge when final orders are not issued within 14 days); s. 440.34(2) (listing the amount, statutory basis, and type of benefits obtained on all attorney's fees awarded); and s. 440.442 (meeting the Code of Judicial Conduct). However, the commission is required to request that the Legislature review any statutory requirement that judges generally do not meet for reasons beyond their control.*

*In addition, this section would direct the Office of the Judges of Compensation Claims to develop rules to gather the data necessary for the judicial nominating commission to conduct its review of judges' performance. This was raised as an option in the House Committee on Insurance staff report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration."*

*Finally, this section would also authorize the Governor to appoint a judge of compensation claims pro hac vice, or temporarily. The temporary appointment cannot last more than 60 days.*

**Sections 13, 14, 15, and 16:** Amends ss. 489.114, 489.115, 489.510, and 489.515, F.S.

PRESENT SITUATION -- Under Florida law, one of the prerequisites for obtaining a contractor's license under Chapter 489 is to have proof of workers' compensation coverage or proof of a workers' compensation exemption granted under s. 440.105, F.S. Under Florida law, one of the prerequisites for obtaining a workers' compensation exemption is to show proof of a contractor's license. Thus, based on a strict reading of the law, a person could never meet the prerequisites for a contractor's license or a workers' compensation exemption.

*EFFECT OF SECTION -- These sections would resolve this conflict by allowing an applicant for a contractor's license to present an affidavit attesting that the applicant meets the requirements for an exemption pursuant to s. 440.105, F.S., and that he or she will obtain an exemption within 10 days after the license is issued.*

**Section 17:** Amends s. 627.311, F.S.

PRESENT SITUATION -- The Florida Workers' Compensation Joint Underwriting Association (FWCJUA) is the residual market for workers' compensation insurance. The FWCJUA provides insurance coverage to those employers who cannot find coverage in the voluntary workers' compensation insurance market. Employers in the FWCJUA are typically higher risk employers -- i.e., very small employers and employers who have a high incidence of workplace injuries. The FWCJUA is funded by policyholder premiums and policyholder assessments and does not assess insurers to eliminate its deficits.

Under current law, board members of the FWCJUA are insulated from liability for monetary damages for any vote, decision, or failure to act regarding the management or policies of the plan, unless the member's breach or failure to perform constitutes a violation of criminal law. The law goes further to provide that even where a board member's breach or failure to perform constitutes a violation of criminal law, the board member is not liable for monetary damages if the member "had reasonable cause to believe her or his conduct **was** unlawful." As a result, current law appears to grant civil immunity to a FWCJUA board member if the board member reasonably believed he or she was committing a crime.

*EFFECT OF SECTION -- This section permits the FWCJUA to eliminate deficits through the use of policyholder surplus attributable to any year.*

*This section would also correct the inadvertent error by inserting the word "not" before the word "unlawful." As a result, under this section a board member of the FWCJUA would receive immunity from civil liability only where the board member reasonably believed his or her conduct was **not criminal**.*

**Section 18:** Amends s. 627.914, F.S.

PRESENT SITUATION -- Section 627.914, F.S., requires workers' compensation insurers and self-insurance funds to file certain premium, dividend, and loss data to the Department of Insurance by April 1st of each year. This requirement was established in 1978, when the Department used this information to evaluate rates. Since then, statistical agents and rating organizations have collected calendar-accident data, which has been used in ratemaking since the early 1980's. The Department states that it no longer uses the information provided by insurers because the validity of the data is questionable and the same information is available from statistical agents and rating organizations. Therefore, the collection of this data from insurers is duplicative.

*EFFECT OF SECTION -- Effective July 1, 2000, this section eliminates the requirement that workers' compensation insurers and self-insurance funds report premium and loss data to the Department of Insurance. Other than changing the reporting date from April 1st to July 1st, this section would not affect the requirement that insurers, through their statistical agent or rating organization, report payroll, manual premiums, losses by classification, and expenses. This section would also delete an obsolete reference in statute to a report required to be submitted by the Department in 1986.*

**Section 19:** Provides an appropriation of $1,400,000 from the Workers' Compensation Administration Trust Fund to the Department of Labor and Employment Security for the purpose of hiring additional mediators to perform the functions set forth in s. 440.25(3), F.S.

The Office of the Judges of Compensation Claims currently employs 31 mediators throughout the state (one mediator for each judge of compensation claims) and spends approximately $4.4 million annually for these mediators, their staff, and their expenses. Mediators are housed in the same facilities as the judges of compensation claims and in some cases share support staff with other mediators.

The proposed appropriation amount is based on a recommendation from the Chief Judge. The Chief Judge has requested that 9 additional mediators be hired to address backlogs in 8 different districts (Miami, Sarasota, Gainesville, Daytona, Orlando, Jacksonville, Ft. Myers and West Palm Beach). According to the Chief Judge, the approximate cost of the request (including 9 mediators, 9 secretaries, expenses, and office space) is $1.4 million.

This issue was raised as an option in the House Committee on Insurance staff report, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration."

**Section 20:** Repeals s. 440.45(3), F.S.

PRESENT SITUATION -- Under current law, petitions for benefits are filed with the Division of Workers' Compensation, which then sends the petitions for benefits to docketing judges, who review them before they are sent to the judges of compensation claims. According to s. 440.45(3), F.S., docketing judges review the petitions for benefits to determine whether they contain all of the necessary statutory elements and whether they comport with procedural rules. Docketing judges can dismiss petitions that do not meet the requirements of law or procedure, however, dismissals are without prejudice unless the docketing judge offers the parties an opportunity to appear and present argument.

*EFFECT OF SECTION -- This section repeals subsection (3) of s. 440.45, F.S., and, as a result, deletes docketing judges from the statute. This section would also result in the judges of compensation claims receiving the petitions for benefits directly from the employee, as prescribed in section 6 of this bill, and performing the docketing review function themselves.*

**Section 21:** Except as otherwise provided in the bill, this section provides an effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates $1,400,000 to the Department of Labor and Employment Security from the Workers' Compensation Administration Trust Fund for the purpose of hiring additional mediators to carry out the functions set forth in s. 440.25(3), F.S.

The bill could also result in the expenditure of funds from the Workers' Compensation Administration Trust Fund of an indeterminate amount to pay for temporary judges of compensation claims. See Fiscal Comments.

The bill could, however, result in reduced expenditures of an indeterminate amount. See Fiscal Comments.

The Office of State Court's Administrator states that the fiscal impact of the bill is indeterminate, as it does not prescribe how the specialized division would operate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could result in reduced expenditures of an indeterminate amount. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could result in lower costs to private carriers and, consequently, could translate into lower premiums for private employers. The bill makes several efficiency-type changes such as: authorizing carriers to pay benefits electronically; revising and authorizing the privatization of certain reporting requirements to the Division of Workers' Compensation; revising and eliminating certain duplicative reporting requirements to the Department of Insurance; and authorizing the Governor to appoint temporary judges of compensation claims where vacancies and backlogs occur. These changes could result in carriers becoming more efficient and expending fewer funds in complying with reporting requirements. Authorizing temporary judges of compensation claims could also prevent delays in litigation, which saves money for all private litigants.

The bill also allows self-insured employers the option of providing medical care without managed care arrangements. This would enable self-insured employers to reduce expenditures involved in complying with the Agency for Health Care Administration's filing and reporting requirements for managed care arrangements.

D. FISCAL COMMENTS:

The $1.4 million provided for additional mediators equates to an increase in the assessment rate of approximately 0.05 percentage points provided the current premium assessment base remains constant.

The bill could result in the expenditure of an indeterminate amount of funds from the Workers' Compensation Administration Trust Fund to pay for temporary judges of compensation claims when vacancies occur. The amount is indeterminate because it is unknown how many vacancies will occur, thereby necessitating the appointment of a temporary judge of compensation claims. It is possible, however, that the cost of a temporary judge of compensation claims could be offset by the benefit of preventing large backlogs of cases which occurs when a judge's position remains vacant.

The bill could also result in reduced expenditures for state and local government of an indeterminate amount. The bill makes several efficiency-type changes to the workers' compensation law which could result in lower costs to: the State of Florida (Department of Insurance, Division of Risk Management) as an employer; local government entities as employers; and to the Division of Workers' Compensation as the administrator of the workers' compensation system. For example, authorizing the electronic payment of benefits to injured workers and reducing the volume of medical bills required to be filed could lower the Division of Risk Management's (and local government employer's) expenses in handling workers' compensation cases involving injured state (and local government) workers. In addition,

authorizing the Division of Workers' Compensation to contract with a private entity to collect coverage data would presumably enable the Division to perform this function at a lower cost. However, the exact amount of savings attributable to the bill is impossible to accurately predict.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 440.271, F.S., directs all appeals of the orders of judges of compensation claims to the First District Court of Appeal in Tallahassee. This law has the effect of directing all appeals that may be filed -- on a statewide basis -- to a single court.

The bill creates a specialized division within the First District Court of Appeal for workers' compensation cases. Because it creates a division within a single court, the bill may raise a question about whether it is a general law, general law of local application, or special law.

A general law operates uniformly throughout the state. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879 (Fla. 1983). It applies equally to a category of person or entities which have a reasonable relationship to the subject matter of the law. Catogas v. Southern Federal Savings and Loan Assoc., 369 So. 2d 922 (Fla. 1979). A general law of local application applies to a distinct region within the state and uses a classification scheme based on population or some other reasonable characteristic that distinguishes one region from another. Miami Beach v. Frankel, 363 So. 2d 555 (Fla. 1978). However, even laws which distinguish on the basis of population may be classified as special laws if their objectives bear no reasonable relationship to population differences. State ex rel Utilities Operating Co. v. Mason, 172 So. 2d 225 (Fla. 1964). A special law operates only upon designated persons or discrete regions and bears no reasonable relationship to differences in population or other legitimate criteria. See Housing Authority v. City of St. Petersburg, 287 So. 2d 307, 310 (Fla. 1973)(defining a special law). Article III, Section 10 of the Florida Constitution states that special laws require published notice or a referendum. Article III, Section 11 of the Florida Constitution prohibits 21 categories of special laws and general laws of local application.

Because the bill creates what amounts to a statewide process for hearing workers' compensation appeals, it likely meets the definition of a general law because it applies equally

to a category of persons (workers) or entities (carriers) that have a reasonable relationship to the subject matter of the law (workers' compensation).

B. RULE-MAKING AUTHORITY:

Section 440.45(5), F.S., currently directs the Office of the Judges of Compensation Claims to promulgate rules relating to dispute resolution and uniform criteria for measuring the performance of the office, including, but not limited to, the number of cases assigned and disposed, the age of pending cases, and the timeliness of decisionmaking. The Office of the Judges of Compensation Claims has not yet enacted rules pursuant to this authority.

The bill amends s. 440.45(5), F.S., by adding to this rulemaking authority, the requirement that the Office of the Judges of Compensation Claims gather the data necessary for the judicial nominating commission to conduct its review of judges as required in s. 440.45(2)(c), F.S. (which is also amended in the bill).

The bill also requires the Office of the Judges of Compensation Claims to submit a draft of the rules required in s. 440.45(5), F.S., to the Legislature and the Governor by November 1, 2000.

C. OTHER COMMENTS:

The First District Court of Appeal terminated its workers' compensation division in 1999. The Office of State Court's Administrator states that the fiscal impact of the bill is indeterminate, as it does not prescribe how the specialized division would operate. However, OSCA reports that parties in workers' compensation cases might benefit if the division speeds up the resolution of workers' compensation appeals.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

| Prepared by: | Staff Director: |
|---|---|
| Robert E. Wolfe, Jr. | Stephen Hogge |

AS REVISED BY THE COMMITTEE ON JUDICIARY:

| Prepared by: | Staff Director: |
|---|---|
| Michael W. Carlson, J.D. | P.K. Jameson, J.D. |

AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

| Prepared by: | Staff Director: |
|---|---|
| Loretta J. Darity | Eliza Hawkins |