

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1992

SPONSOR: Banking and Insurance Committee and Senator King

SUBJECT: Workers' Compensation

DATE: April 19, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute provides the following changes relating to workers' compensation:

- Authorizes self-insured employers to opt-out from providing medical care through a managed care arrangement;
- Specifies that carriers would only be required to submit medical bills to the division upon request by the division;
- Allows an authorized, qualified rehabilitation provider to have access to medical records of an injured worker;
- Authorizes the division to contract with a private entity to perform its policy information data collection function;
- Authorizes carriers to electronically transfer benefits to injured workers;
- Requires the Department of Business and Professional Regulation to issue initial licenses to individuals seeking to engage in the business of contracting in Florida if the applicant: 1) qualifies for an exemption from workers' compensation coverage under s. 440.05, F.S.; 2) submits an affidavit on a form provided by the applicable regulatory board attesting to the fact that the applicant will obtain such exemption within 30 days of initial licensure; and 3) meets all other requirements for licensure;
- Requires the judicial nominating commission for the judges of compensation claims to consider certain statutory requirements (including time limits and reporting requirements) in evaluating the performance of a judge, effective January 1, 2001;
- Requires the judicial nominating commission to request that the Legislature review any statutory requirements that judges are generally unable to meet for reasons beyond their control;
- Requires the Office of the Judges of Compensation Claims to gather information necessary for the judicial nominating commission to conduct its review of the judges' performance;
- Requires the Office of Judges of Compensation Claims to promulgate rules no later than November 1, 2000, and to submit the rules to the Legislature within 30 days prior to the next regular session. Such rules would not be subject to rule challenge under ch. 120, F.S. The

Office of the Judges of Compensation Claims would be required to conform the rules to legislation enacted by the Legislature, or, if no action was taken by the Legislature, the Office of Judges of Compensation Claims rules would become effective;

- Authorizes the Governor to appoint a judge of compensation claims, with 5 years of experience in the practice of law, for a period not exceeding 60 days, in the event of a vacancy;
- Authorizes the filing of petition for benefits with the local judge of compensation;
- Authorizes the judges of compensation claims to dismiss portions of petitions for benefits;
- Eliminates the docketing review by the Chief Judge of the Judges of Compensation Claims;
- Revises the 120-day requirement for lump sum settlements in order for the tolling of time to begin when the employer is notified of the injury;
- Requires the First District Court of Appeals to hear workers' compensation cases before a specialized division;
- Appropriates \$1.4 million from the Workers' Compensation Administration Trust Fund to the Department of Labor and Employment Security for the purpose of hiring more mediators to carry out the functions set forth in s. 440.25(3), F.S.;
- Excludes child support and alimony claims from the general exemption of workers' compensation benefits from claims of creditors and authorizes the Judges of Compensation Claims, when reviewing a workers' compensation lump-sum payment settlement, to consider the interests of the worker and the workers' family when approving the settlement;
- Requires an authorization or denial of medical treatment for the injured worker within 30 days after receipt of a request for medical services by the insurer or the insurer's managed care arrangement, whichever is earlier;
- Provides that the grievance process would be considered exhausted if the carrier does not notify the injured worker of the outcome within 30 days of receipt of the grievance;
- Revises the definition of casual labor to increase the monetary amount defining casual labor employment for purposes of workers' compensation coverage from \$100 in total labor costs to \$1,000;
- Specifies that state and county prisoners and employees covered by the Federal Defense Base Act would be ineligible for workers' compensation benefits;
- Authorizes the Workers' Compensation Joint Underwriting Association to use policyholder surplus from any year to eliminate deficits;
- Revises the workers' compensation security deposit requirements for individual self-insured employers by eliminating 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 and requires individual self-insured employers to comply with the revised, workers' compensation security deposit requirements on or before December 31, 2000, or upon maturity of the security deposits, whichever occurs later; and
- Deletes the requirement that insurers report certain workers' compensation data to the Department of Insurance, which is duplicative of data that is submitted to the department by statistical agents for the insurers.

This bill substantially amends the following sections of the Florida Statutes: 61.14, 61.30, 440.02, 440.09, 440.12, 440.13, 440.134, 440.185, 440.192, 440.20, 440.22, 440.271, 440.38, 440.45, 489.114, 489.510, 489.115, 489.515, 627.311, and 627.914. The bill repeals s. 440.45(3), Florida Statutes.

II. Present Situation:

Division of Workers' Compensation

Pursuant to s. 440.015, F.S., the Division of Workers' Compensation, within the Department of Labor and Employment Security, is charged with administering the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments. The legislation was intended to create “. . . an efficient and self-executing system . . . which is not an economic or administrative burden.”

The Division of Workers' Compensation is primarily funded through assessments on insurance companies, self-insurance funds, assessable mutual companies, the Workers' Compensation Joint Underwriting Association, and self-insurers. The assessments are deposited into the Workers' Compensation Administrative Trust Fund (WCATF). Entities are also subject to a 4.52 percent assessment that is used to finance the Special Disability Trust Fund. The WCATF assessment on net premiums collected, or net premiums imputed for self-insurers, may not exceed 4 percent, under the provisions of s. 440.51, F.S. The 1999 assessment for the WCATF is 2.75 percent.

Presently, the division is organized into the following program/function areas: Monitoring and Audit, Employee Assistance and Ombudsman Office, Rehabilitation and Medical Services, Operations Support (including the Special Disability Trust Fund), Compliance, Research and Education, Information Management, and the Director's Office.

The Bureau of Monitoring and Audit is primarily responsible for monitoring the accuracy and timeliness of benefit payments, assessing penalties for late payments or reporting, and auditing carriers and individual, self-insurers (or their servicing company, if applicable) to determine compliance with statutory requirements for timeliness and accuracy of payment. The bureau is also responsible for administering the permanent total supplemental benefits provided to workers injured prior to July 1, 1984.

The Bureau of Employee Assistance and Ombudsman Office (EAO) is charged with the responsibility of informing and assisting employers/carriers, injured workers, and health care providers in fulfilling their respective responsibilities under ch. 440, F.S., the Workers' Compensation Law. Section 440.191, F.S., also directs EAO to “take all steps necessary to educate and disseminate information to employees and employers.” To effect the self-executing features of the law, s. 440.191, F.S., provides that ch. 440, F.S., is construed to permit injured workers and employers/carriers to resolve disputes “. . . without undue expense, costly litigation, or delay in the provisions of benefits.” As a result, EAO investigates disputes and attempts to resolve disputes between injured workers and the carrier/employer in an informal manner through the Request for Assistance process. Rules 38F- 26.002 and 26.004, F.A.C., require such a request to be submitted on a division Request for Assistance form.

An employee may not file a petition for benefits unless the employee has exhausted this informal dispute resolution process. If resolution is not made in 30 days, EAO may assist the employee in drafting a petition for benefits. Under the provisions of s. 440.192, F.S., the employee is required to serve the petition upon the employer, the employer's carrier, and the division. The division refers the petition to the Office of the Judges of Compensation Claims for ultimate disposition. Within 14 days of receipt of a petition for benefits, the carrier must either pay the requested

benefits without prejudice to its right to deny within 120 days of receipt of the petition or file a notice of denial with the division.

The Bureau of Compliance is charged with the responsibility of ensuring that employers, subject to the Workers' Compensation Law, maintain workers' compensation coverage for their employees and maintains records relating to proof of coverage and exemption from coverage. Presently, the collection and processing of the proof of coverage documentation are very paper intensive and time-consuming procedures, since each proof of coverage form must be reviewed and entered into the computer system. The Bureau of Compliance has not implemented the electronic filing of proof of coverage information. Rating organizations, such as the NCCI also collect and maintain a database that provides information concerning proof of coverage.

The Bureau of Operations Support administers the Special Disability Trust Fund, calculates and collects the assessments for the Workers' Compensation Administrative Trust Fund and the Special Disability Trust Fund, regulates individual self-insurers, and provides administrative support to the division.

The Bureau of Rehabilitation and Medical Services certifies and decertifies health care providers, promulgates reimbursement manuals, resolves reimbursement disputes, monitors carriers' compliance with reimbursement policies, evaluates carrier-provided re-employment services and training, and provides screening, re-employment, and training for injured workers.

Workers' Compensation Managed Care

As a result of the 1993 reforms, workers' compensation managed care was authorized (on a voluntary basis) on January 1, 1994, and mandated, effective January 1, 1997. Section 440.13(11), F.S., authorizes the division to determine ". . . whether providers are complying with ch. 440, F.S., and with rules adopted by the division, whether the providers are engaging in over utilization, and whether providers are engaging in improper billing practices." Specifically, the division is provided with ". . . exclusive jurisdiction to decide any over utilization dispute under s. 440.13(7), F.S., and to decide any question concerning over utilization under subsection (8), which question or dispute arises after January 1, 1994." The division is also directed to monitor and audit carriers to determine if medical bills are being paid in accordance with s. 440.13, F.S., and rules promulgated by the division. Section 440.13, F.S. also requires health care providers are required to furnish medical records and discuss relevant medical facts with the employer, the carrier, or the attorney for either party. Rehabilitation providers are not expressly authorized as having this ability.

The Agency for Health Care Administration is responsible for authorizing carriers to offer or utilize a worker's compensation managed care arrangement, if the carrier meets the conditions of s. 440.134, F.S., and regulating workers' compensation managed care arrangements. Managed care arrangements are required to resolve the grievance in a "timely manner." Rules promulgated by the Agency for Health Care Administration require a determination of a grievance within 60 calendar days after receipt. Presently, the Division of Workers' Compensation has 30 days to resolve disputes. This timing difference may cause problems coordinating the resolution of medical and indemnity issues.

Election of Exemption from Workers' Compensation Coverage

Under the provisions of s. 440.38, F.S., employers are required to provide workers' compensation, unless they obtain an exemption from coverage. Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure.

Corporate officers, partners, and sole proprietors actively engaged in the construction industry may elect to be exempt from the workers' compensation system by filing a notice of election to be exempt and providing certain information to the Division of Workers' Compensation along with a \$50 filing fee. For each employer seeking an exemption, the division requires the following information to be submitted: (1) listing of the names of the individuals seeking an exemption, (2) federal identification number, (3) social security number, (4) all certified or registered licenses issued pursuant to ch. 489, F.S., held by the person(s) seeking the exemption, (5) a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the division, (6) a copy of the relevant occupational license in the primary jurisdiction of the business; and (7) for corporate officers and partners, the registration number of the corporation or partnership filed with the Division of Corporations of the Department of State.

Upon determining that the requirements for exemption are met, the Division of Workers' Compensation issues a certificate of election of exemption which is valid for a 2-year period. However, the Division of Workers' Compensation has the authority to revoke the exemption if the person does not meet the requirements for an exemption or if the information is invalid.

Under the provisions of s. 489.114, F.S., any person engaged in the business of construction contracting in Florida is required as a *precedent* to the issuance or renewal of a certification or registration to provide to the Construction Industry Licensing Board (of the Department of Business and Professional Regulation), evidence of workers' compensation coverage, pursuant to ch. 440, F.S. The failure to obtain and maintain workers' compensation coverage is grounds for the board to revoke, suspend, or deny the issuance or renewal of a certification or registration. Pursuant to s. 489.510, F.S., electrical contractors are required to provide evidence of workers' compensation coverage to the Electrical Contractors' Licensing Board. This creates a conflict, since the Division of Workers' Compensation requires a sole proprietor, partner, or officer in a corporation who is actively engaged in the construction business to submit a copy of the registration or certifications issued under ch. 489, F.S., as a *precedent* to issuing an exemption for workers' compensation coverage. This conflict prevents an individual from meeting the requirements of ch. 489 or 440, F.S.

In an attempt to address this issue, the Division of Workers' Compensation was issuing a 30-day, temporary election of exemption from workers' compensation coverage to individuals who had applied for, but not yet been issued, their contractors license from the Department of Business and Professional Regulation. However, the division recently ceased issuing temporary exemptions. According to the Department of Business and Professional Regulation, a contractor's certification generally is issued within 3 months from the date of application.

Financial Requirements for Self-Insured Employers

The division may authorize an employer to self-insure, if the employer provides satisfactory proof of its ability to pay workers' compensation claims. As a condition to such authorization, the division may require an employer to deposit an indemnity bond or securities in an amount determined by the division. The types of qualifying security deposits, at the option of the

employer, include: (1) surety bonds, (2) certificates of deposit, (3) irrevocable letters of credit, (4) U.S. Treasury bonds and notes, and (5) securities issued and backed by the full faith and credit of the State of Florida.

Under the provisions of Rule 38F-5.103, Florida Administrative Code, a minimum initial security deposit of \$100,000 is required. However, if the last 3 years' losses are not fully funded by insurance, reinsurance, or subject to reimbursement exceed \$100,000, a security deposit equal to those losses must be posted. In addition, a self-insured employer must maintain a net worth of at least \$1,000,000, pursuant to Rule 38F-5.106, Florida Administrative Code.

Under the provisions of s. 440.38, in the event a self-insured employer defaults, the division is authorized to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds to ensure prompt payment of compensation. If an individual self-insurer becomes insolvent, the bonds and securities are payable to the Florida Self-Insurers Guaranty Association. However, 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. Quite 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 transferring 100 percent of the face value of those assets to the Florida Self-Insurance Guaranty Association to assist in the payment of workers' compensation claims when a self-insured employer declares bankruptcy. Irrevocable letters of credit and surety bonds are agreements between a third party and the division and therefore are not a part of the bankruptcy process.

The Office of Judges of Compensation Claims

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. The average backlog for Daytona, Ft. Myers, Gainesville, Jacksonville, Palm Beach, and Orlando was over 600 cases per mediator. However, in Miami, the backlog was 1,110 cases per mediator. This case backlog translated into a time backlog of 5 months in Palm Beach and 12 months in Miami.

According to the Office of the Judges of Compensation Claims, 9 additional mediators and staff (9 executive secretaries) are necessary to alleviate the mediation backlog. If the 18 positions were funded, the Office of the Judges of Compensation Claims estimates that the average number of cases awaiting mediation in West Palm Beach would decrease from 646 mediators to 484 per mediator and the average backlog time would decrease to 3 months. In Miami, it was estimated that the backlog would decrease from 989 cases per mediator to 706 per mediator, and the backlog would decrease to 7 months.

Florida Workers' Compensation Joint Underwriting Association

Effective January 1, 1994, the Florida Workers' Compensation Joint Underwriting Association, Inc. (FWCJUA), was created to provide workers' compensation and employer's liability insurance to persons who are unable to purchase such insurance through the voluntary market. The FWCJUA replaced the Florida Workers' Compensation Insurance Plan, which was an assigned risk plan that previously provided such coverage.

Under the provisions of s. 627.311, F.S., the FWCJUA must have actuarially sound rates that assure that the plan is self-supporting. In the event a deficit occurs, the plan must provide the Department of Insurance with a program to eliminate the deficit within a reasonable time. The FWCJUA is authorized to fund deficits through increased premiums charged to insureds of the plan for subsequent years and through assessments on insureds in the plan, if the plan uses assessable policies. As of March 2000, no assessments have been made. Any premiums or assessments that exceed the amount necessary to fund the projected ultimate incurred losses and expenses of the plan that have not been paid to insureds in conjunction with loss prevention or dividends are required to be retained by the plan for future years.

During the last several years, the market share, premiums written, and policies issued by the FWCJUA have decreased dramatically, due to a stable economy and an increase in the number of carriers in the voluntary market. The total dollar amount of gross premium has declined from approximately \$78 million in 1995 to \$8.1 million, as of December 31, 1999. The amount of gross premium has been below \$30 million since 1997. For the same time period, the written premium has ranged from \$69 million to \$6.4 million. The market share of the FWCJUA has decreased from 8 percent in 1994 to less than 1 percent in 1999. The number of policies in effect for the same period has dropped from approximately 14,000 to 623.

For the period of 1994 - 1998, the FWCJUA had experienced a deficit in the range of approximately \$22 - 8.0 million, respectively. For 1999, the FWCJUA reported a surplus of \$1.3 million. The amount of general and administrative expenses of the FWCJUA for the period of 1995 - 1999 has ranged from \$1.7 million to \$1.2 million. As a percentage of gross premium, the administrative expenses represented approximately 15 percent of the gross written premium in 1999. Personnel (salaries, benefits, incentives, taxes, training) expenses as a percentage of the general and administrative expenses for 1999 and 1998 were 56 percent and 54 percent, respectively.

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.

Child Support and Workers' Compensation Settlements

Many of the Judges of Compensation Claims (JCCs) have initiated procedures for identifying through the local depository units or the Department of Revenue whether a claimant who is seeking approval of a settlement has a child support order and any arrearage of the child support. If child support arrearage exists, it is considered in the review and approval of the settlement package. A portion of the settlement, under certain conditions, is directed to be paid toward the arrearage, or an agreed upon amount that would satisfy the arrearage. Variations in this procedure have been implemented by most JCCs across the state and have provided a vehicle for including the workers' compensation settlement in the discussion relative to meeting child support obligations. Dade County reports that \$2 million in child support arrearage has been paid through

workers' compensation settlement agreements since October 1997. According to records with the Department of Revenue, there appears to be a substantial level of unpaid child support. Information on arrearages is not available; however, 45.7 percent of the child support due last year was not collected.

Support for assigning workers' compensation settlements to child support arrearage was provided by the Second District Court of Appeals in the case of *Bryant v Bryant*, 621 S.2d 574 (2nd DCA 1993). In that case, the court ruled in favor of a divorced wife who filed a petition requesting that the court order her former husband to pay child support arrearage out of his workers' compensation settlement. The district court of appeal found that the exemption of workers' compensation claims of creditors did not extend to an award of child support. The ruling explained that the court looked to the purpose of the workers' compensation law and determined that it was meant not only to protect the worker, but also the worker's dependents. It also noted that workers' compensation benefits are included as income when a court determines the amount of the child support award.

III. Effect of Proposed Changes:

Section 1. Amends s. 440.02, F.S., to specify that employment for purposes of workers' compensation coverage, the total labor cost for purposes of defining casual labor is increased from \$100 to \$1,000. Presently, 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.

The section also provides that state prisoners or *county* inmates except those performing services for private employers or those enumerated in s. 948.03(8)(a), are excluded from coverage under workers' compensation. Currently the law provides that only state prisoners are specifically excluded from coverage under workers' compensation.

Section 2. Amends s. 440.09, F.S., to exclude any employee covered under the Federal Defense Base Act from the provisions of ch. 440, F.S. This would include workers employed at military installations.

Section 3. Amends s. 440.12, F.S., to permit an employee to be paid compensation payments by direct deposit in an account established by the employee at a financial institution. The injured worker would be required to authorize the direct deposit. The first payment would still be required to be paid by check.

Section 4. Amends s. 440.13, F.S., to revise the reporting requirements related to medical reports or bills to require such reporting only upon the request of the Division of Workers' Compensation. Presently all medical reports and bills are required to be submitted to the division. The section also clarifies the types of such reports and bills would include attendance care for the injured employee.

The section permits an authorized, qualified rehabilitation provider to obtain medical records of the injured worker. Currently, health care providers are required to furnish medical records and

discuss relevant medical facts with the employer, the carrier, or the attorney for either party. Rehabilitation providers are not expressly authorized as having this ability.

Section 5. Amends s. 440.134, F.S., to define the term, “grievance,” to mean a written complaint filed by an injured worker expressing dissatisfaction with the insurer's workers' compensation managed care arrangement refusal to provide medical care.

An insurer is required to authorize or deny a request for medical care within 30 days after receipt of the request by insurer the managed care arrangement, whichever is earlier. In the event the insurer denies the request, the insurer is required to notify the injured worker in writing of his or her right to file a grievance.

If the insurer does not provide written notification to the injured worker regarding the outcome of grievance within 30 days of receipt, the request is presumed to be denied and the grievance procedures are presumed to be exhausted for purposes of 440.192(3), F.S.

An self-insured employer is authorized to provide medically necessary care through a managed care arrangement or through a non-managed care arrangement.

Section 6. Amends s. 440.185, F.S., to authorize the division to contract with a private entity for the collection of insurance policy information required to be filed by carriers. The submission of such information to the private entity is deemed to meet the filing requirements of s. 440.42(2), F.S.

Section 7. Amends s. 440.192, F.S., to require an injured worker to file a petition for benefits by certified mail or electronically with the employer, employer's carrier, the division, and the local office of the Judges of Compensation Claims. The division is required to inform the injured worker of the appropriate local office for purpose of filing the petition for benefits.

Upon receipt of the petition for benefits, the judge of compensation claims is authorized to dismiss each petition or any portion of such petition if the petition does not specifically identify or itemize certain information required by the section, including information regarding the employee, employer, the injury, employee's work responsibilities, benefits being requested, type of care being requested, and any other disputed issues. The dismissal of any petition or any portion of such petition under this section would be without prejudice and would not require a hearing. In the event a portion of the petition is dismissed, an employee would be allowed to file an amended petition within 20 days.

Section 8. Amends s. 440.20, F.S., to permit a carrier to direct deposit the payment of compensation or any additional installment of compensation, if authorized by the employee, to the employee's bank account. Compensation payments made by direct deposit would be deemed to be paid on the date the funds become available for withdrawal by the employee.

This section would also revise 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. Under current law, a lump-sum settlement is allowed at any time in any case in the employer or carrier has filed a written notice of denial within 120 days after the date of the

injury and the judge of compensation claims at a hearing finds a justiciable controversy as to the legal or medical compensability of the injury. Also, this section would remove the requirement for a hearing on lump sum settlements less than s. 440.20(11)(a), F.S., if the claimant is represented by an attorney and all parties agree to forego a hearing.

Section 9. Amends s. 440.22, F.S., to exclude child support and alimony claims from the general exemption of workers' compensation benefits from claims of creditors. Currently, if a claimant owes child support, the judges of compensation claims will typically divert all or a portion of the settlement proceeds toward the child support or alimony arrears. This change would codify the current practice of the judges of compensation claims.

Section 10. Amends s. 440.271, F.S., to require the First District Court of Appeals to establish a specialized division to hear all appeals of orders of judges of compensation claims.

Section 11. Amends s. 440.38, F.S., to revise the security deposit requirements for individual self-insured employers by eliminating the use of certificates of deposit and Treasury notes. Presently, under bankruptcy law, monies held as security by the division in the form of certificates of deposit and securities backed by the state or federal government are deemed to be part of the bankrupt estate. In the event an individual self-insured employer ceases or suspends payment of compensation to its employees, the division is authorized to call the qualifying security deposit to ensure payment of compensation.

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 are eliminated as types of qualifying security deposits due to the concern that these types of assets would be deemed general assets in the event of an employer's bankruptcy, which would prevent the division from having a priority claim to the assets and receiving less than face value from the proceeds of the bankruptcy. Other types of acceptable securities and bonds are delineated in the section. For example, surety bonds and irrevocable letters of credit issued by financial institutions located within Florida, the deposits of which are insured through the Federal Deposit Insurance Corporation would be acceptable.

Currently authorized self-insured employers must comply with the revised qualifying security deposit requirements on or before December 31, 2000, or upon maturity of existing security deposits, whichever occurs later.

Outdated references to self-insurance programs in ch. 440, F.S., are replaced with references to ss. 624.46225 and 624.4622, F.S., since the regulation of these funds was transferred from the Division of Workers' Compensation to the Department of Insurance.

Section 12. Amends s. 440.45, F.S., to revise provisions relating to the appointment and qualifications for judges of compensation claims. These changes include: 1) requiring the judicial nominating commission to consider certain statutory requirements (including time limits and reporting requirements) in evaluating judges' performance; 2) requiring the judicial nominating commission to request that the Legislature review any statutory requirements that the judges are generally unable to meet for reasons beyond their control; 3) requiring the Office of the Judges of Compensation Claims to gather information necessary for the judicial nominating commission to conduct its review of the judges' performance; 4) requiring the Office of the Judges of

Compensation Claims to promulgate rules by November 1, 2000, and to submit the rules to the Legislature at least 30 days prior to the next legislative session; and 5) authorizing the Governor to appoint a judge of compensation claims for a period not exceeding 60 days, in the event of a vacancy.

Sections 13 and 14. Amends ss. 61.14 and 61.30, F.S., to authorize the Office of Judges of Compensation Claims to specifically consider the interest of the worker and the worker's family when approving a workers' compensation lump-sum settlement, which must include recovery of any child support arrearage. The section also clarifies in the child support guidelines, that workers' compensation income which is considered in determining a person's child support obligation, includes all workers' compensation benefits and settlements.

Sections 15-18. Amends ss. 489.114, 489.115, 489.510, and 489.515, F.S., to address the conflict in requirements for obtaining a contractor's licensure and an exemption from workers compensation coverage by requiring the Department of Business and Professional Regulation to issue initial licenses to individuals seeking to engage in the business of contracting if the applicant qualifies for an exemption from coverage and submits an affidavit attesting to the fact that the exemption will be obtained within 30 days of initial licensure. This would provide an exception to the current law's requirement that proof of workers' compensation coverage or an exemption from coverage must be submitted prior to obtaining a contractor's license.

Under current law, any person engaged in the business of construction contracting in Florida is required as a *precedent* to the issuance of a certificate to provide to the department evidence of workers' compensation coverage. This creates a conflict since the Division of Workers' Compensation requires an individual engaged in the construction business to submit a copy of their contractor's certificate as a *precedent* to issuing an exemption from coverage.

Section 19. Amends s. 627.311, F.S., to authorize the Florida Workers' Compensation Joint Underwriting Association to fund any deficits through the use of policyholder surplus attributable to any year.

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. This provision would 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 in instances the board member reasonably believed his or her conduct was **not unlawful**.

Section 20. Amends s. 627.914, F.S., to require self-insurance funds to be subject to rules and statistical plans promulgated by the Department of Insurance in the recording and reporting of loss, expense, and claims experience. The section also deletes the requirement that insurers report certain workers' compensation data to the Department of Insurance, which is duplicative of data

that is submitted to the department by statistical agents for the insurers; and changes the date for a rating organization to submit an aggregate compilation of payrolls, premium, losses, and expense for all companies from April 1 to July 1 of each year, which will improve the quality and timeliness of the data.

Section 21. An appropriation to the Department of Labor and Employment Security from the Workers' Compensation Administrative Trust Fund in the amount of \$1.4 million is made for the purpose of hiring additional mediators for the Office of Judges Compensation Claims.

Section 22. Repeals subsection (3) of section 440.45, F.S., relating to the Office of the Judges of Compensation Claims and therefore eliminates the docketing review by the office.

Section 23. Except as otherwise provided in this act, this act will take effect October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There may be a separation of powers issue regarding the provision legislatively directing the First District Court of Appeals to create a special division to hear workers' compensation appeals. There may be another separation of power issue if the Legislature is given the authority to approve, modify, or deny rules of an executive agency.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should have a positive, although indeterminate, impact on individuals seeking to engage in the contracting business in Florida by allowing an applicant to obtain an initial contractors license, if the individual attests that an exemption from workers' compensation

coverage will be obtained and all other chapter 489, F.S., requirements are met by the applicant.

Insurers and individual self-insurance funds should experience some cost savings attributable to the elimination of certain Division of Workers' Compensation and Department of Insurance reporting requirements.

By authorizing the direct deposit of compensation payments, carriers should realize an indeterminate reduction in administrative costs.

According to NCCI, the provisions allowing an insurer 30 days to respond to a request for medical care and also providing that if the request is denied and a grievance is subsequently filed and not acted upon by the insurer within 30 days is deemed a denial could potentially affect costs in a couple of ways. By allowing 30 days for insurers to approve or deny medical care, some workers may not receive treatment in a timely manner, thereby potentially increasing the severity of a disability. In cases where treatment is ultimately denied and a grievance is filed, automatic resolution against the worker after 30 days could simply result from a delay in responding on the part of the insurer. This would seem to indicate the potential for increased attorney involvement, particularly if no additional information supporting the denial was provided to the injured worker. If this practice became prevalent, costs could increase significantly.

NCCI was unable to quantify the impact of allowing self-insured employers to opt-out of workers' compensation managed care arrangements, since self-insured employers would be expected to provide medical care to employees in the way that provides the most effective cost management.

NCCI also indicated that elimination of the mandatory hearing for a lump-sum settlement may result in some efficiencies that may reduce costs. The magnitude of the savings would be contingent upon the extent to which hearings are eliminated, and would be reflected in future experience.

NCCI also estimated that the establishment of a specialized division within the First District Court of Appeals could improve efficiency by centralizing the appeals process, but could also increase the cost of administering the system.

NCCI noted that the \$1.4 million appropriation for funding additional mediators may have some effect on improving the administration of the workers' compensation system; however, no significant overall cost impact would be expected.

C. Government Sector Impact:

The bill appropriates \$1.4 million to the Department of Labor and Employment Security from the Workers' Compensation Administration Trust Fund for the purpose of hiring an additional 9 mediators to carry out the functions set forth in s. 440.25(3), F.S.

The bill could also result in additional expenditure of funds from the Workers' Compensation Administration Trust Fund of an indeterminate amount to compensate temporary judges of compensation claims. However, 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.

By authorizing the Division of Workers' Compensation to contract with a private entity to collect coverage data, the division may be able to collect the data in a more cost-effective manner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
