

# 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: SB 2084

SPONSOR: Senator King

SUBJECT: Rulemaking Authority of the Division of Workers' Compensation (RAB)

DATE: March 20, 2000                      REVISED: \_\_\_\_\_

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

## I. Summary:

Section 120.536(2), F.S., requires the Legislature to determine whether specific legislation should be enacted authorizing rules, or portions thereof, identified by an agency as exceeding statutory authority but deemed necessary by the agency for the administration of a program. The Division of Workers' Compensation of the Department of Labor and Employment Security reported such rules to the Joint Administrative Procedures Committee. The bill addresses the division's rulemaking authority relating to:

- ◆ the assessment of penalties on employers and carriers who fail to timely file wage statements or other statutorily required forms or reports; and
- ◆ the financial requirements for self-insured employers and the authority to suspend or revoke authorization for self-insured employers for good cause, as defined by rule.

This bill amends the following sections of the Florida Statutes: 440.13 and 440.38.

## II. Present Situation:

During the 1996 legislative session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority, if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted, pursuant to s. 120.536, F.S.

Rules not included on the list submitted by the agency, along with rules adopted after October 1, 1996, could be challenged on grounds of exceeding the agencies rulemaking authority after November 1, 1997. Rules included on the submitted list may not be challenged on such grounds until July 1, 1999. Thus, while the statutes direct the 1998 Legislature to consider whether legislation authorizing identified rules should be enacted and while agencies must begin the rule repeal process for identified rules before January 1, 1999, rules identified as exceeding the new rulemaking authority are not subject to challenge on such grounds until July 1, 1999, after the 1999 legislative session.

The following rules identified by the Division of Workers' Compensation as exceeding statutory and deemed by the division as necessary are addressed in the bill in the sections referenced:

**Section 1:**

38F-24.0231(1)(b) and (c), F.A.C., relating to insurers' standards and practices and penalties for improper filing practices, authorizes the division to assess penalties for the late filing of the First Report of Injury or Illness, Wage Statement, and other forms and reports. Contingent upon the number of days the report is overdue, an employer or carrier could be assessed a penalty for a late filing of the First Report of Injury or Illness in the range of \$100 - \$500.

**Section 2:**

38F-5.103, F.A.C., relating to qualifications for self-insurers, requires a self-insured employer to provide a minimum initial security deposit of \$100,000.

38F-5.106, F.A.C., relating to financial requirements for self-insurers, requires a self-insurer to maintain a net worth of at least \$1 million.

38F-5.115, F.A.C., relating to self-insurers, servicing companies and withdrawal of authorization, provides that the failure to comply with the rules is considered good cause for withdrawal of the certificate of approval for a servicing company. The specific authority for this rule is cited as s. 440.38(3), F.S. However, this section does not provide specific authority or define the term, good cause.

**III. Effect of Proposed Changes:**

**Section 1.** Amends subsection (11) of s. 440.13(11), F.S., relating to medical services and audits by the division, to authorize the division to provide by rule for the assessment of penalties against any employer or carrier that fails to timely file wage statements or other forms or reports that are required to be filed with the division pursuant to rule.

**Section 2.** Amends subsections (1) and (3) of s. 440.38(1), F.S., relating to self-insured employers, to authorize the division to specify by rule the amount of the qualifying security

deposit required prior to authorizing an employer to self-insure and the amount of net worth required for an employer to qualify for authorization to self-insure. The section also authorizes the division to suspend or revoke any authorization to a self-insurer for good cause, as defined by rule of the division.

**Section 3.** Provides that this act shall take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides express authority to the division to impose net worth and security deposit requirements for self-insurers and imposes penalties on carriers and employers for the late filing of forms and reports.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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