The Florida Senate

VETO MESSAGE BILL ANALYSIS

(This document is based on the enrolled bill, as presented to the Governor.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: HB 5603

INTRODUCER: Government Operations Appropriations Committee and Rep. Hays

SUBJECT: Department of Financial Services

DATE: May 28, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick	DeLoach	WPSC	**Withdrawn**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill amends the statutes related to State Risk Management and Safety Programs and Workers' Compensation in the Department of Financial Services (department) to achieve a number of efficiencies and cost saving measures designed to reduce program costs in the state's self-insurance program.

The bill requires participating agencies with 6,000 or more employees to establish and maintain return-to-work programs for injured employees, in order to reduce lost time costs and return employees to work sooner in jobs matched to their recovery level. The bill also authorizes the Division of Risk Management (division) within the department to monitor and evaluate state agencies' loss prevention programs and to use the results, in addition to claims history, as criteria for calculating risk management premium assessments. The bill revises the requirements for determining the reimbursement amount for repackaged or relabeled prescription medications for worker's compensation claimants regardless of the dispensing location or provider. The revised reimbursement methodology is projected to significantly reduce workers' compensation prescription medication costs.

The bill requires that unencumbered and undisbursed funds transferred from the Workers' Compensation Administration Trust Fund (WCATF) to other agencies revert to the fund each year. The responsibilities of the Division of Consumer Services within the department are revised in this bill to reflect organizational changes related to the Office of Insurance Regulation and the Office of Financial Regulation.

The bill provides an effective date of July 1, 2010.

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

II. Present Situation:

State Risk Management and Safety Programs

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

The Bureau of Loss Prevention within the division is charged with providing professional safety training, quality evaluation tools, and other loss prevention and cost control programs for participating agencies. Section 216.251(2)(b) 2., F.S., allows agencies and state universities to maintain return-to-work programs. However, the statute does not presently require them to do so.

Currently, agency participants in the state's self insurance program are not required to engage in loss prevention activities, including return-to-work programs. Some state agencies have return-to-work programs in place but there is no accountability or evaluation of these programs. While lost time workers' compensation claims account for only ten percent of the state's self insurance program, those claims account for 80 percent of workers' compensation claims cost. Current law does not provide agencies with incentives to reduce claims cost or return injured workers to work.[1] The primary goal of a return-to-work program is to enable injured workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

In recent years, the division has seen a rapid increase in the cost of workers' compensation. In Fiscal Year 2004-2005, workers' compensation expenditures from the State Risk Management Trust Fund were $91.3 million.[2] In Fiscal Year 2008-2009, workers' compensation expenditures totaled $116.1 million, representing a 27 percent increase in four years. The March 1, 2010, Risk Management Estimating Conference projected that workers' compensation costs would grow to $139.2 million by Fiscal Year 2011-2012, which is a nearly 20 percent increase over two years.[3]

The department reports that other states, such as Texas and Georgia, have actively required all state agencies to maintain return-to-work programs. Georgia mandates that an agency loses the

[1] Department of Financial Services - Division of Risk Management Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Committee.
[2] Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Committee.
[3] Risk Management Revenue Estimating Conference – March 1, 2010.

position of an injured worker if it does not provide alternative or modified duties for injured workers to return to work.[4]

Workers' Compensation Programs

The Workers' Compensation Administration Trust Fund within the department is used for the payment of expenses related to the administration of the workers' compensation program in Florida.[5] Each fiscal year, funds are appropriated from the WCATF as a transfer to other agencies to support other workers' compensation related programs. These include the Department of Education, the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Division of Administrative Hearings (housed within the Department of Management Services), the First District Court of Appeal, and the Justice Administration Commission.

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

Currently, there is no statutory requirement or mechanism by which agencies must return to the WCATF cash that has been transferred and which remains unobligated and unspent at the end of a fiscal year. For example, at the conclusion of the 2008-2009 fiscal year, it was estimated that more than $2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

In recent years, the cash balance of the WCATF has declined considerably with expenditures exceeding revenues. In Fiscal Year 2008-2009, expenditures exceeded revenues by $41.1 million. In Fiscal Year 2009-2010, revenues are estimated to fall short of expenditures by $57.7 million. The revenue forecast for Fiscal Year 2010-2011 indicates expenditures will exceed revenues by $35.0 million.[6] In June, 2009, the Chief Financial Officer increased the assessment on workers' compensation insurers and self-insurers premiums from one-quarter of one percent (0.25) to eight-tenths of one percent (0.80), in order to ensure that sufficient cash would be available to support continued program appropriations.[7]

In a January 2010 report to the Legislature, the division identified the number one cost driver attributed to increasing program costs to the state's self insurance program as "increasing workers' compensation medical costs, including the escalating costs of prescription drugs." According to a study of prescription drugs performed by the Workers' Compensation Research Institute, Inc., (WCRI), the average payment per claim for prescription drugs in Florida is 38 percent higher than the median of the other 16 states in its study. The study further indicated that physician dispensing of repackaged medications is the primary cause for the increased costs for prescription drugs and has become a common practice in Florida. Physician dispensing is also

[4] Division of Risk Management Presentation to the House Government Appropriations Committee, dated February 10, 2010.
[5] Section 440.50, Florida Statutes.
[6] Department of Financial Services, Schedule I of the Workers' Compensation Administration Trust Fund - submitted with the Amended Legislative Budget Request dated March 3, 2010.
[7] Assessment Rate Order for Worker's Compensation Administration Trust Fund, June 26, 2009 (Case No. 105011-09-WC).

on the rise in other states and several of those states have recently enacted laws or are in the process of revising their laws to address this issue.

III. Effect of Proposed Changes:

State Risk Management and Safety Programs

The bill amends s. 284.50, F.S., to require all agencies participating in the state's self insurance program with more than 6,000 employees to establish and maintain a return-to-work program for injured state workers. These agencies and state universities include: the Department of Corrections, the University of Florida, the Department of Health, the Department of Children and Families, the Florida State University, the University of South Florida, the Department of Transportation, the University of Central Florida, and the Department of Highway Safety and Motor Vehicles. The primary goal of the state's return-to-work program is to enable injured state workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

The bill also requires the Division of Risk Management to evaluate each agency's return-to-work and loss prevention program at least once every five years and to produce reports recommending improvements to be submitted to the agency head, the Chief Financial Officer, and the director of the division. The affected agency head must provide a response to the division within 45 days with a plan to implement corrective action. If the agency disagrees with the division's final report recommendations or fails to take corrective action, the division's final report recommendations will be submitted to the chairs of the legislative appropriations committees.

The bill amends s. 284.42, F.S., to clarify that the division's annual report is due on or before January 1st to the Governor, President of the Senate, and Speaker of the House of Representatives. Additionally, the annual report must include, beginning January 1, 2012, an analysis of return-to-work efforts by agency. The return-to-work analysis must include specific benchmarks to indicate the measureable outcomes and change from year to year by agency of return-to-work efforts.

The bill amends sections 284.01 and 284.36, F.S., to require that agency risk management premiums be calculated and charged based on loss prevention results in addition to claims history and actual losses as they currently are calculated and charged.

The department indicates that a return-to-work program has the potential to reduce costs and return injured state workers to the workplace faster and keep them at work. Further, the department projects an indirect cost savings to the agencies through increased productivity and reduced hiring and training costs resulting from decreased turnover over an extended period of time.

Workers' Compensation Programs

The bill amends s. 440.50, F.S., to require that funds that were transferred from the WCATF to the various agencies (that by statute are to be funded from the WCATF) and that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert to the WCATF.

The bill amends s. 440.13, F.S., to revise the requirements for determining the reimbursement amount for repackaged or relabeled prescription medications for workers' compensation claimants regardless of the dispensing location or provider. The repackaging provision will continue to allow physicians to dispense medication, but the reimbursement amount will be limited to the average wholesale price of the original manufacturer of the medication plus a $4.18 dispensing fee. According to the Division of Workers' Compensation, this is consistent with currently authorized dispensing reimbursement rates for pharmacies. The National Council on Compensation Insurance, Inc., (NCCI) estimated that the proposed reimbursement methodology for repackaged drugs will reduce total workers' compensation costs by 1.1 percent, which equates to $34 million in savings to Florida employers in the first year.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires agencies that receive funding from the Workers' Compensation Administration Trust Fund to return the unobligated and unspent cash at the end of the fiscal year. This will increase cash flow (with the reverted cash being returned) in the WCATF and may reduce future assessment rates on insurance carriers.

Medical groups, including the Florida Orthopaedic Society, contend that the provision in the bill reducing the reimbursement amount for repackaged or relabeled prescription medications for worker's compensation claimants would create a significant, but undetermined, financial impact on physicians in Florida currently dispensing repackaged medications in their offices. According to the Florida Medical Association, many physicians would stop dispensing medications to injured workers.

C. Government Sector Impact:

The division estimates that by implementing program efficiencies, a cost savings of over $18 million to the state's self-insurance program is obtainable over the next five years. This is attributable to the anticipated decrease in claims from injured workers for time lost from work, which reduces salary loss and medical costs of claims, and a reduction in the cost of repackaged medications for injured workers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Veto:

A. Governor's Stated Reason for Veto:

"House Bill 5603 contains several provisions that I support that would help control the state's risk management and workers' compensation costs. However, the bill was amended during the budget conference process to include a provision that limits the amount that may be charged for repackaged drugs provided to workers' compensation claimants. While limiting reimbursement rates for relabeled and repackaged prescription drugs sounds like a reasonable way to control costs, this is a complicated issue that was not fully vetted during the legislative process. I am concerned that implementing this bill without additional review could result in numerous unintended consequences that could ultimately adversely impact injured workers."

B. Professional Staff Comments:

The bill passed the Senate with a vote of 38-0 and the House with a vote of 120-0.

The provision in the bill which limits the amount that may be charged for repackaged drugs provided to workers' compensation claimants was intended to address the increasing practice of repackaging drugs to obtain a higher price per unit, which increases pharmacy costs. According to the Division of Workers' Compensation, this provision would not have limited the injured worker's ability to obtain prescription drugs nor would the provision have required injured workers to pay out of pocket for medications. The repackaging provision simply requires that the reimbursement rate for medications dispensed by physicians not exceed currently authorized pharmacy dispensing rates.

The Fiscal Year 2010-2011 General Appropriations Act provided $17.1 million to cover the Risk Management Trust Fund deficit for the 2009-2010 fiscal year. An additional $39.1 million was provided for increased program costs for the 2010-2011 year. Without the cost saving initiatives included in this bill, the State Risk Management Trust Fund is estimated to have a $1.1 million deficit in the 2011-2012 fiscal year.