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HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: HB 1803 (PCB IN 01-01)

RELATING TO: Workers' Compensation

SPONSOR(S): Committee on Insurance & Representative Waters & others

TIED BILL(S): None

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

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I. SUMMARY:

In 1993, the Legislature approved numerous reforms to the workers' compensation act. The stated goals were to reduce system costs, primarily medical costs, and to create an efficient and self-executing system. Few revisions have been approved since 1993. Changes proposed in this proposed committee bill include the following:

System administration

- authorize the electronic transfer of benefits.
- revise or repeal various reporting requirements.
- update the threshold qualifying labor as "casual."
- provide for recovery of child support arrearages.
- authorize gubernatorial appointment of judges on an interim basis.
- establish specific criteria against which judges are evaluated.
- eliminate a one time five-hour education requirement for physicians.
- end Division participation in indigency petitions for appeals of adverse determinations.

Procedure

- grant "qualified rehabilitation providers" access to claimant medical records.
- revise procedures for lump sum settlements; and
- exclude wages from concurrent employment until wage information is provided to carrier.

Dispute resolution

- eliminate docketing review.
- require petitions for benefits to be filed directly with the local judge of compensation claims.
- authorize partial dismissal of petitions by judges of compensation claims.
- require the First District Court of Appeal to hear workers' compensation cases in a specialized division.

The bill provides rule-making authority to implement certain provisions of the bill. The overall fiscal impact of the bill is indeterminate; however, it is expected to result in system cost savings through greater efficiencies. Specific recurring savings could include a reduction of 15 FTEs and $792,043.

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]

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Basis for Workers’ Compensation

Workers’ compensation laws reflect a basic compromise between labor and management: employers agree to provide injured employees with certain medical and indemnity (i.e., lost wages) benefits without regard to fault in exchange for injured employees giving up their right to sue their employers in tort. 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 and 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.
- 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 is responsible for regulating workers' compensation managed care arrangements. Workers' compensation medical benefits must be delivered through approved workers' compensation managed care arrangements.

Department of Insurance

The Department of Insurance has regulatory authority over insurance companies and group self-insurance funds. The Department of Insurance regulates insurance rates for workers' compensation insurers and the Workers' Compensation Joint Underwriting Association. The Department of Insurance 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 response, the Legislature re-wrote much of workers' compensation act to create a more efficient and self-executing act "which is not an economic or administrative burden." Chapter 93-415, Section 2. It mandated managed care for the delivery of medical benefits, created the Employee Assistance and Ombudsman Office, tightened the eligibility standards for permanent total disability benefits, and created 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.

An Insurance Committee staff report [1] examining the dispute resolution process found:

[1]Committee on Insurance, House of Representatives, State of Florida, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration," (October 1999). This report is available on Online Sunshine, the Florida Legislature's web site (www.leg.state.fl.us).

- dispute resolution took an average of 268 days -- more than twice the 120 days allowed in statute.

- presiding judges of compensation claims did not receive petitions until 25 days after they were filed (which is 4 days after the statutory time for holding mediation).

- mediation occurred, on average, 138 days after the filing of the petition for benefits (117 days longer than the statute contemplates).

- approximately 85 percent of employees exited 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 remained stable, yet the number of petitions for benefits filed annually more than doubled from 1993.

- numerous statutory requirements relevant to the dispute resolution process were not met or implemented as presumably intended by the Legislature.

(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:

The proposed committee bill would effect the following changes to the workers' compensation act in the areas of system administration, procedure, and dispute resolution:

<u>System administration</u>

- the monetary amount signifying "casual" labor would be increased from $100 to $500.

- certain interscholastic "sports officials," as defined in the bill, would not be considered "employees" for purposes of workers' compensation coverage requirements.

- county inmates would be made expressly ineligible for workers' compensation benefits as is now the case for state prisoners.

- employees covered by the federal Defense Base Act would be ineligible for workers' compensation as employees covered under other federal compensation acts are now ineligible.

- carriers would be authorized to make benefit payments to injured workers electronically.

- carriers would be required to submit medical bills to the Division only if requested.

- physicians would be relieved of the 5-hour workers' compensation education requirement.

- the Division would be authorized to contract with a private entity for data collection.

- "gross income" under child support guidelines would be revised to include all workers' compensation benefits and settlements.

- the Division would no longer be a party to indigency petitions for appellate actions.

- self-insured employers could no longer use certificates of deposit, U.S. Treasury Notes, and direct obligations of the state government as security deposits with the Division.

- the Division would be authorized to require carriers or vendors submitting certain data electronically to be certified by the Division and meet certain performance standards, subject to a civil penalty of up to $500.

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

- certain carrier reports submitted to the Department of Insurance would be revised or repealed.

- Division-compiled quarterly injury reports would be repealed.

- the Special Disability Trust Fund Privatization Commission would be repealed January 1, 2002.

Procedure

- "qualified rehabilitation providers" would be granted access to medical records.

- earnings from concurrent employment (i.e., second job) would not be included in the average weekly wage calculation until provided by the injured employee; employees not providing this information would be deemed to have waived any right to interest, penalties, and attorney's fees during the period in which the information is not provided, and carriers and employers would not be subject to penalties by the Division for untimely payment of indemnity benefits associated with incomplete concurrent employment information.

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

- claimants, and the adjuster for the employer or carrier, would be permitted to attend mediation conferences by telephone.

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

- the statewide nominating commission would be directed to consider compliance with certain statutory requirements in evaluating judges' performance and request legislative review of statutory requirement 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 commission to conduct its review of judges.

- when vacancies occur, the Governor would be authorized to appoint judges of compensation claims on an interim basis for a period not exceeding 120 days.

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

Dispute resolution

- claimants would be required to file petitions directly with the local judge of compensation claims.

- the Division would be required to adopt by rule a standardized petition for benefits form.

- judges of compensation claims would be allowed to dismiss portions of petitions for benefits.
- claimants would be required to provide in the petition for benefits the date(s) of accident, the classification of compensation, and additional information regarding medical mileage requests.
- the "response to petition" would replace the term "notice of denial" when answering claimant petitions.
- the 120-day requirement for lump sum settlements would begin with the date the employer is notified of the injury. If an attorney represents the claimant and all parties agree, hearings to approve these settlements would not be required. Judges would be required to consider the interests of the claimant and the claimant's dependents when approving these settlements. Lump sum settlements would have to provide for appropriate recovery of child support arrearages.
- docketing review would be eliminated.

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 and 2: Amends ss. 61.14(8) and 61.30(2)(a), F.S., to require judges of compensation claims to consider the interests of the claimant and the claimant's dependents when approving lump sum settlements. The settlement must provide for recovery of child support arrearages. Amends the child support guidelines to include all workers' compensation benefits and settlements as "gross income" for purposes of child support determinations.

Section 3: 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 that 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 was 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 inmates 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).

Generally, school employees must be covered by workers' compensation. "Independent contractors" and certain other types of workers are specifically excluded from workers' compensation coverage. When a regular school employee is separately employed as a "sports official," it may not be clear whether or not these persons are "independent contractors."

EFFECT OF SECTION -- *This section raises the dollar amount of labor signifying when employment is "casual," from $100 to $500.*

This section redefines "employment" to exclude state prisoners and county inmates from workers' compensation coverage.

This section also excludes from workers' compensation requirements persons employed by schools as "sports officials" for interscholastic competitions. "Sports official" is defined as neutral participants such as umpires, referees, and judges. This provision would not apply to persons required by their regular employment with a school board to serve as a "sports official."

Section 4: 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 that, if applicable, preclude an employee's recovery under Florida's workers' compensation act. Employees covered by the Defense Base Act include employees of military installations.*

Section 5: Amends s. 440.12, F.S.

PRESENT SITUATION -- 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 10 of the bill, would authorize carriers, with the consent of the employee, to transfer workers' compensation benefit payments electronically to employees' accounts or to accounts set up for the employees.*

Section 6: Amends s. 440.13, F.S.

PRESENT SITUATION – Pursuant to s. 440.13(3)(a), F.S., physicians must provide proof of completion of a one-time 5-hour class on cost containment, utilization control, ergonomics, and practice parameters related to workers' compensation medical care. Physicians cite many reasons for a growing unwillingness to treat injured workers: low fees, too many forms and paperwork, and managed care. The 5-hour class requirement is another reason sometimes cited by physicians.

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. 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 that is then sent to the Three-Member Panel for purposes of establishing reimbursement schedules.

Section 440.13(4)(c), F.S., also requires 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 identifies those with access to employee medical information, including the employer, the carrier, and the attorney for either of them.

EFFECT OF SECTION -- *This section would remove the one time 5-hour education requirement for physicians. Also, the section would modify the medical bill reporting requirement so that medical information would be provided only upon the request of the Division. Finally, this section would add "qualified rehabilitation providers" as defined in s. 440.491(1)(c), F.S., to the list of persons who would have access to an employee's medical information.*

Section 7: Creating s. 440.14(5), F.S.

PRESENT SITUATION -- The calculation of the claimant's average weekly wage is the determining factor in setting the claimant's indemnity benefits. The claimant's average weekly wage is established by averaging the claimant's wages over the thirteen weeks preceding the date of injury. The employer or carrier providing coverage must provide pay history within 14 days of filing or pay an award of attorney's fees. Presently, the First District Court of Appeals interprets "average weekly wage" to include all concurrent employment (i.e., second jobs). The employer or carrier may not have access to wage information for the second job unless supplied by the employee.

EFFECT OF SECTION -- *Lost wages from concurrent employment (e.g., second jobs) could not be included in the calculation of the average weekly wage unless the employee furnished this information to the carrier. Employees not providing this information would be deemed to have waived any right to interest, penalties, and attorney's fees during the period in which the information is not provided, and carriers would not be subject to late payment penalties related to earnings from the second job during the period in which the information is not provided.*

Section 8: 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. Pursuant to ss. 440.185(7) and 440.42(2), F.S., carriers are also required to file all notices of policy cancellation and expiration with the Division. Carriers meet these statutory requirements by making a paper filing of this information. In addition to this paper filing, however, carriers 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, along with section 17 of the bill, would authorize the Division to contract with a private entity to collect the policy information and receive the notices of cancellation and expiration. This would allow the outsourcing of the proof of coverage function of the Division.*

Section 9: Amends s. 440.192, F.S.

PRESENT SITUATION -- Employees must file petitions with the Division, which records certain information. The Division then sends the petition to a docketing judge, where it is reviewed before being forwarded to the judge of compensation claims presiding over the dispute. There is no standard petition form. According to the October 1999 Insurance Committee staff report,[2] this process took an average of 25 days -- 4 days longer than the statutory time for holding mediation.

[2] Id.

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.

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.

Under current law, an employer or carrier answers the claimant's petition for benefits with a "notice of denial." However, the employer or carrier does not necessarily deny all of the benefits requested in the petition.

EFFECT OF SECTION -- *This section of the bill modifies the process for filing a petition. 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 the Division. This section requires the Division to inform employees of the location of the appropriate judge of compensation claims' office. Additionally, the Division would be required to adopt by rule a standardized petition form.*

This section, in combination with section 25 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 requires additional specific information to be provided in the petition. Petitions would be required to also contain the date of accident, the classification of compensation, and certain additional medical mileage information.

In combination with portions of sections 10 and 14, the "notice of denial" would be renamed "response to petition" in those instances where a petition has been filed. The "notice of denial" would remain in use to address requests for benefits prior to the filing of a petition.

Section 10: Amends s. 440.20, F.S., relating to time for payment of compensation.

PRESENT SITUATION -- See section 5 of the section-by-section analysis for a discussion of the electronic transfer of benefit payments. See section 9 of the section-by-section analysis for a discussion of the "notice of denial" and "response to petition."

Carriers may enter into lump sum settlements with injured employees. These settlements can encompass all future medical and indemnity benefits. A lump sum settlement is not allowed unless the employer files a notice of denial within 120 days from the date of injury. Prior to approving or disapproving a lump sum settlement, judges of compensation claims must hold a hearing.

EFFECT OF SECTION -- *This section would change the 120-day requirement for lump sum settlements so that the 120-day period would begin to run when the employer receives notice of the injury, rather than from the date of the injury. Also, when the claimant is represented by an attorney and when all parties agree to forego a hearing, judges would no longer have to hold a hearing on lump sum settlements. However, when reviewing lump sum settlements, judges would be required to consider the interests of the claimant and the claimant's dependents. The settlement would be required to make provision for recovery of child support arrearages.*

Section 11: 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.[3]

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

Section 12: Amends s. 440.25, F.S.

PRESENT SITUATION -- Section 440.25, F.S., establishes timelines and procedures for the conduct of statutorily required mediation conferences. The October 1999 House Committee on Insurance staff report[4] identified mediation as the stage of dispute resolution where the greatest delays occur. Cancellation and rescheduling of mediation conferences contribute to the delay of dispute resolution and increase costs to the parties and the system. Mediation conferences are held at the district office of the judge of compensation claims. This may require participants to travel some distance to attend, incur costs, and lose time from work.

Insolvent claimants may avoid filing fees and certain costs associated with appealing adverse determinations by filing a verified indigency petition. These petitions are served on "all interested parties," including the Division. Any interested party may oppose the indigency petition. The Division rarely succeeds in challenging these indigency petitions.

EFFECT OF SECTION – *The claimant, and the adjuster of the employer or carrier, would be permitted to attend the mediation conference by telephone, or other electronic means, upon agreement of the parties.*

This section also would remove the Division as a party to indigency petitions.

Section 13: 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. In recent years, the First District Court of Appeal, 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 District Court of Appeal discontinued the practice of hearing cases in divisions. As a result, rotating panels drawn from any of the court's 15 judges may hear workers' compensation cases.

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 14: Amends s. 44.34, F.S.

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[3] Bryant v. Bryant, 621 So.2d 574 (Fla. 2d DCA 1993).
[4] Committee on Insurance, House of Representatives, State of Florida, "Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration," (October 1999). This report is available on Online Sunshine, the Florida Legislature's web site (www.leg.state.fl.us).

PRESENT SITUATION -- An employer or carrier answers the claimant's petition for benefits with a "notice of denial," even though the employer or carrier does not necessarily deny all of the benefits requested in the petition.

EFFECT OF SECTION -- *In combination with portions of sections 9 and 10, the "notice of denial" would be renamed "response to petition" in those instances where a petition has been filed. The "notice of denial" would remain in use to address requests for benefits prior to the filing of a petition.*

Section 15: 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. See s. 440.38(1)(b), F.S. This deposit can 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 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 16: 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. 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 also evaluates judges up for reappointment and reports its findings to the Governor. The nominating commission is not provided with any specific statutory criteria for measuring the performance of judges of compensation claims.

The October 1999 House Insurance Committee staff report[5] found that judges of compensation claims were not meeting many of the statutory time requirements contained in Chapter 440, F.S.

EFFECT OF SECTION -- *This section requires the statewide 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,*

[5] Id.

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 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 Statewide Conduct). However, the commission must ask the Legislature to 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 for gathering the data necessary for the statewide nominating commission to conduct its review of judges' performance. Finally, this section would also authorize the Governor to appoint judges of compensation claims on interim basis. The temporary appointment could not last more than 120 days.

Section 17: Amends s. 440.593, 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. Pursuant to ss. 440.185(7) and 440.42(2), F.S., carriers are also required to file all notices of policy cancellation and expiration with the Division. Carriers meet these statutory requirements by making a paper filing of this information. In addition to this paper filing, however, carriers 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.

The Division has rulemaking authority to establish forms and set deadlines for the submission of electronic information. According to the Division, it does not have the ability to assure the integrity of data and lacks the authority to enforce compliance with forms and deadlines for submission of electronic information.

EFFECT OF SECTION -- *The Division would be authorized to require carriers or vendors submitting certain data electronically to be certified by the Division and meet certain performance standards, subject to a civil penalty of up to $500.*

Sections 18, 19, 20, and 21: 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 not meet simultaneously 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 30 days after the license is issued.*

Section 22: Amends s. 627.311, F.S.

PRESENT SITUATION -- 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 is an inadvertent drafting error.

EFFECT OF SECTION -- *This section 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 where the board member reasonably believed his or her conduct was not criminal.*

Section 23: 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. The Legislature established this requirement in 1978, when the Department used this information to evaluate rates. Since then, statistical agents and rating organizations have collected calendar year-accident data, which has been used in ratemaking since the early 1980's. The Department 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, 2001, this section eliminates the requirement that workers' compensation insurers 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. Self-insurance funds would also be required to transmit the required information. According to the Department, this would conform statute to current practice since self-insurance funds presently transmit similar information. This section also would delete an obsolete statutory reference to a report required to be submitted by the Department in 1986.*

Section 24: Amends s. 440.49(2)(e), F.S., effective January 1, 2002, to conform to the repeal of the Special Disability Trust Fund Privatization Commission that would be accomplished by section 26 of the bill.

Section 25: Repeals s. 440.45(3) and s. 440.59(2), F.S.

PRESENT SITUATION -- Petitions must be filed with the Division, which then sends the petitions 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 arguments.

The Division is required to compile and distribute quarterly injury reports pursuant to s. 440.59(2), F.S. This information is now available through other sources such as the National Council on Compensation Insurance.

EFFECT OF SECTION -- *This section would repeal subsection (3) of s. 440.45, F.S. and, as a result, would eliminate the requirement for the Chief Judge to designate docketing judges. This section would also repeal subsection (2) of s. 440.59, F.S. Consequently, the Division would no longer be required to compile and distribute quarterly injury reports.*

Section 26: Repeals paragraphs (f) and (g) of subsection (2) and subsection (13) of s. 440.49, F.S., on January 1, 2002.

PRESENT SITUATION -- The Legislature created the Special Disability Trust Fund Privatization Commission to evaluate and determine the feasibility of privatizing the Special Disability Trust Fund. While the Privatization Commission has substantially completed its work, there are a few outstanding responses to the commission's request for proposals. The remaining work is expected to be completed by Fall 2001.

EFFECT OF SECTION -- *Effective January 1, 2002, the subsection authorizing the Special Disability Trust Fund Privatization Commission would be repealed.*

Section 27: Except as otherwise provided in the bill, this section provides an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Recurring:	FY 2001-02	FY 2002-03
Department of Labor and Employment Security Division of Workers' Compensation		
Workers Compensation Administration Trust Fund		
Privatize proof of coverage, (14) FTEs	($661,429)	($881,906)
Eliminate Division involvement in insolvency petitions, (1) FTE	($130,614)	($174,152)
Total -- (15) FTEs	($792,043)	($1,056,058)

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

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; revising and eliminating certain duplicative reporting requirements; 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 could reduce expenses for all private litigants.

D. FISCAL COMMENTS:

Relevant to the $792,043 in recurring savings identified in Section III A. 2. above, the Division indicates that the privatization of the proof of coverage function would allow the elimination of 14 FTEs. Also, the Division indicates that the elimination of the Division's involvement in insolvency petitions would result in the elimination of 1 FTE. The Division states that they anticipate that there would be little or no costs associated with the privatization of proof of coverage. According to the Division, any incidental costs that occur can be handled within present appropriations. Please see section 8 of the section-by-section analysis for a discussion of the privatization of proof of coverage.

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. Net decreases in the cost of system administration would result in a proportionate decrease in assessments on carriers. However, as a whole, the exact amount of savings attributable to the bill could not be determined.

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 that 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 that 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 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 statewide 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 requires the Division of Workers' Compensation to prescribe by rule a standardized petition for benefits for the purposes of s. 440.192, F.S.

The bill authorizes the Division to prescribe penalties of up to $500 for violations of reporting deadlines and standards for data submitted electronically.

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, the Office of State Court's Administrator 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:
Eric Lloyd	Stephen Hogge