



Commerce Committee

Tuesday, November 14, 2017

1:00 PM – 3:00 PM

Webster Hall (212 Knott)

Meeting Packet



The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jim Boyd
Chair

Meeting Agenda

Tuesday, November 14, 2017

1:00 pm – 3:00 pm

Webster Hall (212 Knott)

- I. Call to Order
- II. Roll Call
- III. Welcome and Opening Remarks
- IV. Consideration of the following bill(s):
 - HB 3 Economic Development and Tourism Promotion Accountability by M. Grant
- V. Consideration of the following proposed committee bill(s):
 - PCB COM 18-01 -- Workers' Compensation
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Economic Development and Tourism Promotion Accountability
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Willson MW	Hamon <i>K.W.H.</i>
2) Ways & Means Committee			

SUMMARY ANALYSIS

To the extent authorized by state law, local governments have the authority to promote economic and tourism development within their jurisdictions. Many counties have both economic development agencies and tourist development agencies.

Tourist development agencies are primarily funded through county tourist development taxes, the proceeds of which may generally be used to promote and advertise tourism. For the 2016-17 fiscal year, the 62 counties levying a tourist development tax are estimated to collect approximately \$867 million in revenue.

Current law allows local jurisdictions to expend public funds to attract and retain business enterprises, and indicates that the use of public funds toward the achievement of such economic development goals constitutes a public purpose.

The bill defines:

- an "economic development agency" as any entity that receives public funds and is engaged in economic development activities on behalf of one or more local governmental entities.
- a "tourism promotion agency" as any entity that receives public funds to promote tourism development on behalf of one or more local governments.

The bill imposes transparency and accountability requirements relating to the operation of the agencies defined above, including:

- Limiting travel and per diem expenses.
- Limiting public compensation and prohibiting publically funded bonuses unless authorized by law.
- Providing that employees are subject to the Code of Ethics for Public Officers and Employees.
- Prohibiting an agency from spending funds on food, beverages, lodging, entertainment, or gifts for employees or board members, unless authorized pursuant to s. 112.061, F.S. or the bill.
- Prohibiting employees or board members from receiving food, beverages, lodging, entertainment or gifts paid for with agency funds or other specified sources.
- Requiring annual disclosure of certain information, including a detailed operating budget.
- Requiring contracts to contain performance standards, operating budgets and salary information.
- Requiring contracts valued over \$250,000 be submitted to the county 14-days prior to execution.
- Providing that certain agency records are public record and not confidential or exempt.
- Providing that agencies which fail to comply with certain transparency and accountability requirements may not receive or expend public funds until regaining compliance.
- Requiring the Auditor General to audit certain agencies under certain circumstances.
- Providing criminal penalties for knowingly and willfully taking actions to avoid these requirements.
- Limiting the extent to which a private entity must comply with the bill, under certain circumstances.

The fiscal impact of the bill is indeterminate.

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0003.COM.DOCX

DATE: 11/9/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Tourism and Economic Development

To the extent authorized by state law, local governments have the authority to promote economic and tourism development within their jurisdictions.¹

In order to promote tourism development in the state, the Legislature has authorized counties to levy a number of tourist development taxes, the proceeds of which may generally be used to:²

- Promote and advertise tourism in the State of Florida, nationally and internationally;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency;
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, aquariums, or museums within the boundaries of the county or subcounty special taxing district in which the tax is levied;³
- Promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
- Pay the debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers; and
- Finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.

In order to promote economic development in the state, current law allows for the expenditure of “public funds to attract and retain business enterprises ...”⁴ The Legislature also provides explicit authority for counties and municipalities to “enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; to enhance and preserve purchasing power and employment opportunities for the residents of this state; and to improve the welfare and competitive position of the state.”⁵

¹ Florida counties and municipalities are granted broad home rule authority. *See* Article VIII, sections 1 and 2 of the Florida Constitution; and s. 125.001(3), F.S., which provides a general law grant of expansive home rule authority to all Florida counties. Statutory preemptions and charter limitations impose limitations on this expansive authority. Additionally, article VII, section 1 of the Florida Constitution preempts all taxing authority (with the exception of ad valorem taxes) to the state.

² s. 125.0104(5)(a), F.S.; 125.0104(3)(l) and (n), F.S.

³ Also included in this category: publicly owned auditoriums operated by nonprofit organizations, and aquariums or museums owned and operated by nonprofit organizations.

⁴ s. 125.045, F.S., and s. 166.021(8), F.S.

⁵ The Florida Legislature’s Office of Economic and Demographic Research (EDR), Florida County & Municipal Economic Development Incentives: LFY 2014-15 Report (December 2016) available at <http://edr.state.fl.us/Content/local-government/reports/index.cfm#incentives-report>

Local Tourism Development

Florida law permits counties to impose local option taxes on rentals or leases of accommodations for a term of six months or less.⁶

The authorization for counties to tax contained in s. 125.0104, F.S., are collectively referred to as “tourist development taxes” or “bed taxes,” and consist of five separate, but related taxes, as follows:

1. Original 1 or 2 Percent Tax⁷
2. Additional 1 Percent Tax⁸
3. Professional Sports Franchise Facility/Convention Center Tax (up to 1% rate)⁹
4. Additional Professional Sports Franchise Facility Tax (up to 1% rate)¹⁰
5. High Tourism Impact Tax (1% rate)¹¹

(Each of the above taxes is explained in more detail below and numbered accordingly.)

A limited number of counties are also eligible to levy other similar taxes:

6. A convention development tax (2% or 3% rate); or
7. A tourist impact tax (1% rate), subject to certain conditions.¹²

(These taxes are also explained more fully below and numbered accordingly.)

The tourist development tax is charged by the person receiving the consideration for rent or lease at the time of payment, and this person is responsible for receiving, accounting for, and remitting any applicable tax to the DOR. The DOR keeps records showing the amount of taxes collected, including records disclosing the amount of taxes collected from each county in which a tax is levied and promulgates rules and publishes forms as necessary to enforce these taxes.¹³ Counties are also allowed to collect and administer the tax locally, and may retain up to 3 percent of collections to cover administrative costs. Local administration of the tax requires adoption of an ordinance, electing either to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes or to delegate such authority to the DOR.¹⁴

Depending on a county’s eligibility to levy, the tourist development tax rate applied to transient rental transactions varies from 3 percent to a maximum of 6 percent. While all counties are eligible to levy at least a 3 percent tourist development tax, not all counties exercise this option. The levies by counties related to tourist development range anywhere from 0% to 6%. At least 43 counties do not currently impose the maximum tourist development tax rate available. For example, Orange County and Miami-

⁶ Section 125.0104(3)(a) provides that “every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, condominium or timeshare resort for a term of six months or less is exercising a taxable privilege, unless such person rents, leases, or lets for consideration any living quarters or accommodations that are exempt according to the provisions of ch. 212, F.S.

⁷ All 67 counties are eligible to levy this tax. In FY 2016-17, 62 counties levied it for an estimated \$352 million in revenue. EDR, 2016 Local Government Financial Information Handbook, p. 251.

⁸ 59 counties are eligible to levy this tax. In FY 2016-17, 48 counties levied it for an estimated \$146 million in revenue. *Id.* at 253.

⁹ All 67 counties are eligible to levy this tax. In FY 2016-17, 39 counties levied it for an estimated \$165 million in revenue. *Id.* at 257.

¹⁰ 65 counties are eligible to levy this tax. In FY 2016-17, 24 counties levied it for an estimated \$121 million in revenue. *Id.* at 263.

¹¹ Monroe, Orange, Osceola, Palm Beach, and Pinellas counties currently levy this tax, and will realize an estimated \$75 million in revenue during the 2016-17 local fiscal year. *Id.* at 259.

¹² See ss. 125.0108, F.S. and 212.0305, F.S.

¹³ s. 125.0104(3), F.S.

¹⁴ s. 125.0104(10), F.S.

Dade County each levy 6% in tourist development taxes; and Calhoun County and Liberty County each levy 0% in tourist development taxes.¹⁵

During the 2016-17 fiscal year, the 62 counties¹⁶ levying a tourist development tax will collectively realize approximately \$867 million in revenue. For example, Hillsborough County levies a 5% tourist development tax and is estimated to collect approximately \$29.6 million in revenue; whereas Glades County levies a 2% tourist development tax and is estimated to collect approximately \$26,000 in revenue.

1. Original 1 or 2 Percent Tax Pursuant to s. 125.0104(3)(c), F.S.

All counties are eligible to levy the original 1 or 2 percent tax. The tax must be levied pursuant to an ordinance that also contains the enacted county tourist development plan, and the ordinance must be approved in a countywide referendum election or by a majority of voters in the subcounty special tax district affected by the tax.¹⁷ The initial levy of the tax is allowed only after a countywide referendum. However, after this initial referendum, certain increases are allowed upon the vote of the county's governing body.¹⁸

At least 60 days prior to the enactment of the ordinance levying the tax, the county's governing body must adopt a resolution establishing and appointing the members of the county tourist development council and indicating the county's intention to consider the enactment of an ordinance levying and imposing the tax.¹⁹

The tourist development council, prior the enactment of the ordinance, must prepare and submit to the county's governing body for its approval a plan for tourist development.²⁰ These provisions regarding the establishment of a county tourist development council and the submission of a tourist development plan apply only to the original 1 or 2 percent tax pursuant to s. 125.0104(3)(c), F.S., the other additional levies are exempted from these requirements.

The plan for tourist development must set forth the anticipated net tax revenue to be derived by the county for the two years following the tax levy as well as indicate the tax district in which the tourist development tax is proposed. In addition, the plan provides a list, in order of priority, of the proposed uses of the tax revenue by specific project or use as well as the approximate cost or expense allocation for each specific project or use. The governing body must adopt the county plan for tourist development as part of the ordinance levying the tax. Any changes to the plan after the levy has been enacted must be approved by the county's governing board.²¹

The Original 1 or 2 Percent Tax pursuant to s. 125.0104, F.S., includes the following requirements and authorizations:

- County tourism promotion agencies are authorized to represent themselves to the public as "convention and visitors bureaus", "visitors bureaus", "tourist development councils", "vacation bureaus", or any other name or names specifically designated by ordinance.²²
- Make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the head of the agency, in connection with the performance of promotional and other duties of the agency.

¹⁵ EDR, 2016 Local Government Financial Information Handbook, p. 246-247 (November 2016).

¹⁶ Calhoun, Hardee, Lafayette, Liberty, and Union Counties do not levy a tourist development tax.

¹⁷ s. 125.0104(6), F.S.

¹⁸ s. 125.0104(3)(c), F.S.

¹⁹ ss. 125.0104(3)(l)4., 125.0104(3)(n)2., F.S., and 125.0104(3)(b), F.S.

²⁰ s. 125.0104(4), F.S.

²¹ See s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

²² s. 125.0104(9)(e), F.S.

- Pay entertainment expenses only when authorized for meetings with travel writers, tour brokers, or other persons connected with the tourist industry.
- Ensure all travel and entertainment related expenditures in excess of \$10 are made pursuant to this subsection and are substantiated by paid bills; and complete detailed justification for all travel and entertainment-related expenditures made pursuant to this subsection are shown on the travel expense voucher or attached thereto.
- Ensure transportation and other incidental expenses, other than those provided in s. 112.061, F.S. only be authorized for officers and employees of the agency, other authorized persons, travel writers, tour brokers, or other persons connected with the tourist industry when authorized.
- Ensure that all other transportation and incidental expenses are as provided in s. 112.061, F.S.
- Ensure that operational or promotional advancements, as defined in s. 288.35(4), F.S., obtained pursuant to this subsection, shall not be commingled with any other funds.
- Ensure that foreign travel, the costs of per diem and incidental expenses of officers and employees of the agency and other authorized persons, is paid at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)."
- Ensure that only the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of officers and employees of the agency and other authorized persons are paid when meeting with travel writers, tour brokers, or other persons connected with the tourist industry, and while attending or traveling in connection with travel or trade shows; and that with the exception of provisions concerning rates of payment, the provisions of s. 112.061, F.S. are applied to this type of travel.
- Undertake marketing research and advertising research studies and provide reservations services and convention and meetings booking services consistent with the authorized uses of revenue as set forth in s. 125.0104(5), F.S.
- Each county that levies a tourist development tax is required to have a Tourist Development Council, which is composed of nine members and appointed by the county governing board.²³ The Tourist Development Council must be composed as follows:
 - one member of the governing board of the county, designated by the chair of the governing board.
 - two elected municipal officials, at least one of whom shall be from the most populous municipality in the county or special taxing district in which the tax is levied.
 - six persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax.
- The Tourist Development Council has the following duties:
 - Meet at least once each quarter;
 - From time to time, make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue;
 - Perform such other duties as may be prescribed by county ordinance or resolution;
 - Continuously review expenditures of revenues from the tourist development trust fund;
 - Receive quarterly expenditure reports from the county governing board or its designee; and
 - Report unauthorized expenditures to the county governing board and the Department of Revenue.
 - The governing board of the county and DOR are required to review the findings of the council and take appropriate administrative or judicial action to ensure compliance with the law.

2. Additional 1 Percent Tax Pursuant to Section 125.0104(3)(d), F.S.²⁴

In addition to the 1 or 2 percent tax authorized in s. 125.0104(3)(c), F.S., the county's governing body may levy an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by an extraordinary vote of the governing body for the purposes set forth in s. 125.0104(5), F.S., or referendum approval by the registered voters within the county or subcounty special district.

The provisions in s. 125.0104(4)(a)-(d), F.S., regarding the preparation of the county tourist development plan are not be applicable to this tax. No county can levy this additional tax unless the county has imposed the 1 or 2 percent tax for a minimum of three years prior to the effective date of the levy and imposition of this additional tax. If the 1 or 2 percent tax is levied within a subcounty special district, then this additional tax can only be levied within the district.

Generally, the tax proceeds are used for capital construction of tourist related facilities, tourist promotion, and beach and shoreline maintenance.

During the 2016-17 local fiscal year, 48 of the eligible 59 counties currently levying this tax will realize an estimated \$146 million in revenue.

3. Professional Sports Franchise Facility/Convention Center Tax Pursuant to s. 125.0104(3)(l), F.S.²⁵

In addition to any other tourist development tax imposed, a county may levy up to an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by a majority vote of the county's governing body. The tax proceeds are used to pay the debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. In addition, these proceeds can be used to promote tourism in the State of Florida, nationally and internationally.

The provisions in s. 125.0104(4)(a)-(d), F.S., regarding the preparation of the county tourist development plan, are not be applicable to this tax. In addition, the provision in s. 125.0104(3)(b), F.S., that prohibits any county authorized to levy a convention development tax from levying more than the 2 percent tourist development tax is not applicable to this tax.

During the 2016-17 local fiscal year, 39 of the eligible 67 counties currently levying this tax will realize an estimated \$165 million in revenue.

4. Additional Professional Sports Franchise Facility Tax Pursuant to s. 125.0104(3)(n), F.S.²⁶

In addition to any other tourist development tax imposed, a county that has levied the Professional Sports Franchise Facility Tax pursuant to s. 125.0104(3)(l), F.S., may levy an additional tax that is no greater than 1 percent on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by a majority plus one vote of the county's governing body. The tax proceeds are used to pay the debt service on bonds issued to finance professional sports franchise facilities or retained spring training franchise facilities and promote tourism.

The provisions in s. 125.0104(4), F.S., regarding the preparation of the county tourist development plan are not applicable to this tax. In addition, the provision in s. 125.0104(3)(b), F.S., that prohibits any county authorized to levy a convention development tax from levying this tax applies only to Miami-Dade and Volusia counties. Any county authorized to levy the Consolidated County Convention

²⁴ EDR, 2016 Local Government Financial Information Handbook, p. 253-255 (November 2016).

²⁵ *Id.* at 257.

²⁶ *Id.* at 263-264.

Development Tax (i.e., Duval County) pursuant to s. 212.0305(4)(a), F.S., may levy this tax. With the exception of Miami-Dade and Volusia counties, any county that has levied the Professional Sports Franchise Facility Tax pursuant to s. 125.0104(3)(l), F.S., is eligible to levy this tax.

During the 2016-17 local fiscal year, 24 of the eligible 65 counties currently levying this tax will realize an estimated \$121 million in revenue.

5. *High Tourism Impact Tax Pursuant to s. 125.0104(3)(m), F.S.*²⁷

In addition to any other tourist development tax imposed, a high tourism impact county may levy an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by an extraordinary vote of the county's governing body. The tax proceeds are used for one or more of the authorized uses pursuant to s. 125.0104(5), F.S. The provisions in s. 125.0104(4)(a)-(d), F.S., regarding the preparation of the county tourist development plan are not applicable to this tax.

A county is considered to be a high tourism impact county after the Department of Revenue has certified to the county that its sales subject to the tax exceeded \$600 million during the previous calendar year or were at least 18 percent of the county's total taxable sales under ch. 212, F.S., where the sales subject to the tax were a minimum of \$200 million. No county authorized to levy a convention development tax (i.e., Duval, Miami-Dade, and Volusia) is considered a high tourism impact county. Once a county receives this high tourism impact designation, it retains it for the period of time of the tax levy.

Monroe, Orange, Osceola, Palm Beach, and Pinellas counties currently levy this tax, and these counties will realize an estimated \$75 million in revenue during the 2016-17 local fiscal year. According to the Department, three additional counties (i.e., Broward, Lee, and Walton) are currently eligible or potentially eligible to levy the tax in 2016. Counties Eligible to Levy: Monroe, Orange, Osceola, Palm Beach, and Pinellas counties levy this tax, and each county retains this designation until its tax levy ends. According to the Department, Broward, Lee, and Walton appear to be eligible to levy the tax in 2016 due to sufficient sales in calendar year 2015. Broward County was certified by the Department in June 2015 but has not been subsequently certified. Lee and Walton counties have not been formally certified by the Department.

6. *Tourist Impact Tax Pursuant to s. 125.0108, F.S.*²⁸

Any county creating a land authority pursuant to s. 380.0663(1), F.S., may levy a 1 percent tax subject to referendum approval on transient rental facilities within the county area designated as an area of critical state concern pursuant to ch. 380, F.S. If the area(s) of critical state concern are greater than 50 percent of the county's total land area, the tax may be levied countywide. The tax proceeds are used to purchase property in the area of critical state concern and offset the loss of ad valorem taxes due to those land purchases. During the 2016-17 local fiscal year, Monroe County will realize an estimated \$8.3 million in revenue.

Areas Eligible to Levy: Areas that have been statutorily designated as areas of critical state concern include the Big Cypress Area, primarily in Collier County; the Green Swamp Area, in central Florida; the Florida Keys Area, in south Florida; and the Apalachicola Bay Area, in Franklin County. Only Monroe County has created the land authority pursuant to s. 380.0663(1), F.S., and is therefore authorized to levy by ordinance the tax in the area or areas within the county designated as an area of critical state concern.

²⁷ *Id.* at 259-260.

²⁸ *Id.* at 265-266.

7. Convention Development Taxes Pursuant to s. 212.0305, F.S.²⁹

Duval, Miami-Dade, and Volusia counties are authorized to levy convention development taxes on transient rental transactions. Three of the five available levies are applicable to separate taxing districts in Volusia County. The levies may be authorized pursuant to an ordinance enacted by the county's governing body, and the tax rates are either 2 or 3 percent depending on the particular levy. Generally, the revenues may be used for capital construction of convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary by levy.

During the 2016-17 local fiscal year, the three counties levying a convention development tax will realize an estimated \$80 million in revenue.

Public records

In accordance with s. 125.0104(9)(d), F.S., "information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution."

In addition, the following information held by a county tourism promotion agency, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Booking business records.³⁰
- Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.
- A trade secret, as defined in s. 812.081, held by a county tourism promotion agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Use of state trade secret laws by businesses that contract with state and local tourist development agencies has recently come to the attention of Florida House of Representatives and House Speaker Richard Corcoran after requests for various contracts from state and local tourist development agencies were not fully answered because the contracts were being redacted based on trade secrets contained in the contracts. In 2016, House Speaker Richard Corcoran filed suit for the release of details of a contract that Visit Florida, the state's tourism promotion agency, had with the Miami rapper Pitbull to promote tourism in Florida.³¹ Visit Florida claimed that it was prohibited from releasing the details of the contract, including the amount Pitbull was paid, his official duties, the requirements for the state and even the name of his agent because they were declared "trade secrets."³²

²⁹ *Id.* at 123-124.

³⁰ Section 255.047(1)(a), F.S., provides that "Booking business records" means client calendars, client lists, exhibitor lists, and marketing files. The term does not include contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event.

³¹ Gray Rohrer, *House Speaker sues over Pitbull contract*, ORLANDO SENTINEL (Dec. 13, 2016),

<http://www.orlandosentinel.com/news/politics/political-pulse/os-house-speaker-sues-pitbull-contract-story.html>

³² *Id.*

Local Economic Development³³

To the extent granted or unrestricted by state law, local governments have the authority to promote economic development within their jurisdictions. Section 125.045, F.S., titled, "County economic development powers," finds that there is a "need to enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; to enhance and preserve purchasing power and employment opportunities for the residents of this state; and to improve the welfare and competitive position of the state."

Current law allows the governing body of a county to expend public funds to attract and retain business enterprises, and indicates that the use of public funds toward the achievement of such economic development goals constitutes a public purpose. A public purpose includes expending "public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community."

Florida law requires that a "contract between the governing body of a county or other entity engaged in economic development activities on behalf of the county and an economic development agency must require the agency or entity receiving county funds to submit a report to the governing body of the county detailing how county funds were spent and detailing the results of the economic development agency's or entity's efforts on behalf of the county."³⁴ This report must be submitted annually to the governing body of the county, and the county must file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the county's website.

Types of Incentives for Economic Development

Counties and municipalities typically use the following types of economic development incentives:

*1. Direct Financial Incentives*³⁵

Direct financial incentives provide monetary assistance to a business from the local government or through a local government-funded economic development organization. This assistance is provided through grants, loans, equity investments, loan insurance, and loan guarantees. These programs generally address business financing needs but also may provide funding for workforce training, market development, modernization, and technology commercialization activities. Direct financial incentives are generally project specific, contingent on pre-award review and evaluation, and typically performance based. Direct financial incentives also include contributions in combination with state economic development incentives negotiated by the Florida Department of Economic Opportunity, such as Qualified Target Industry Tax Refund (QTI) or Quick Action Closing Fund (QACF), or in combination with other local governments.

*2. Indirect Financial Incentives*³⁶

Indirect financial incentives include grants and loans to local government entities, nonprofits, and organizations that are used to spur business investment or development. The recipients include communities, financial institutions, universities, community colleges, training providers, venture capital

³³ EDR, Florida County & Municipal Economic Development Incentives: LFY 2014-15 Report (December 2016).

³⁴ s. 125.045, F.S.

³⁵ *Supra*, note 39.

³⁶ *Id.*

investors, and business incubators. In many cases, the funds are tied to one or more specific business locations or expansion projects. Other programs are used to address the general needs of the business community, including infrastructure, technical training, new and improved highway access, airport expansions, and other facilities. Funds are provided to the intermediaries in the form of grants, loans, and loan guarantees.

This type of incentive may also be used to leverage private investment in economic development. An example is linked deposit programs, in which local government funds are deposited in a financial institution in exchange for providing capital access or subsidized interest rates to qualified business borrowers. Indirect financial incentives are generally contingent on pre-award review and evaluation, and such incentives may be performance-based.

While many jurisdictions do business marketing and recruitment "in-house," some contract with a private Economic Development Organization (EDO) or contribute dues to a regional EDO that provides these services to local governments across a defined region.

3. *Tax-Based and Fee-Based Incentives*³⁷

Tax-based incentives use the tax code as the source of direct or indirect subsidy to qualified businesses. They tend to have longer lifespans and be less visible than direct financial or indirect financial incentives because they do not require an annual appropriation. In most instances, tax-based incentives are awarded upon verification of eligibility and may not be subject to pre-award review and evaluation like direct financial incentives.³⁸

Florida's counties and municipalities are limited in their ability to offer tax-based incentives, either for economic development or other purposes. With the exception of ad valorem taxes, Florida's Constitution preempts all taxing authority to the state. Local taxes authorized by the constitution or by the Legislature may only be levied pursuant to the specifications of the governing statute. Unless specifically authorized, relief from these local taxes (credits, exemptions, or refunds) may not be granted.

Of all the local taxes, only the following three taxes provide authority for county or municipal governments to offer relief³⁹ (i.e., tax exemptions) at the option of the respective local government:

- Economic Development Ad Valorem Tax Exemption: Article VII, Section 3 of the State Constitution and section 196.1995, F.S., authorize counties and municipalities to grant, after referendum approval and passage of an ordinance, ad valorem tax relief from its respective levy to new or expanding businesses that meet certain job-creation and other requirements. The exemption is limited to ten years and may be restricted to businesses located in an enterprise zone or brownfield area. In addition, the exemption is contingent on pre-award review and evaluation and approval by ordinance.
- Local Business Tax: Section 205.054, F.S., authorizes counties and municipalities to grant a general exemption of 50 percent for "any business, profession or occupation" with a permanent business location in an Enterprise Zone. However, this exemption essentially terminated on December 31, 2015, with the expiration of the Florida Enterprise Zone Act. Therefore, new exemptions are not authorized for any period beginning on or after December 31, 2015.⁴⁰

³⁷ *Id.*

³⁸ The constitutional Economic Development Ad Valorem Tax Exemption is the most prominent exception.

³⁹ Exemptions provide freedom from payment of taxes normally applied to specific business activities. Exemptions are technically distinguishable from credits (which provide a reduction in taxes due after verification that statutory or contractual terms have been met) and refunds (which typically provide a return of taxes paid after verification that statutory or contractual terms have been met).

⁴⁰ s. 205.054(6), F.S.

- Public Service Tax: Sections 166.231–.234, F.S., authorize municipalities and charter counties to grant exemptions from the tax on certain utilities or products in specific situations.

Fee-based incentives use “Home-Rule” revenues as the source of direct or indirect subsidy to qualified businesses. Unless limited by law, county and municipal governments have broad authority to levy proprietary fees, regulatory fees, and special assessments within their jurisdictions. Unless restricted by law or contract (e.g., bond provisions), local governments may also grant exemptions or waivers or provide refunds or credits from these levies, either as an economic development incentive or for any other purpose. Proprietary Fees may include admissions fees, franchise fees, user fees, and utility fees. Regulatory Fees may include building permit fees, impact fees, inspection fees, and stormwater fees. While they may be collected like property taxes, special assessments are “based on the special benefit accruing to such property from such improvements when the improvements funded by the special assessment provide a benefit which is different in type or degree from benefits provided to the community as a whole.”⁴¹

4. *Below Market Leases or Deeds for Real Property*⁴²

Below market leases or deeds may be awarded to businesses as an incentive to remain, expand, or locate in a jurisdiction. These can be provided either directly by the local government or indirectly through an organization authorized by the local government.

Auditing

Auditor General

Section 11.45, F.S., defines the types of audits the Auditor General may conduct. That section requires certain state and local governmental audits to be conducted and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits determined to be appropriate.

Florida Single Audit Act

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit. Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive

⁴¹ s. 170.01(2), F.S.

⁴² *Supra*, note 39.

Office of the Governor, DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.⁴³

Annual Financial Audit Reports

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, an entity meeting certain requirements must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant.⁴⁴ Section 218.39, F.S., specifies the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and take certain steps to determine whether the entity should be subject to further state action.⁴⁵

Local Governmental Entity Annual Financial Reports

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to the Department of Financial Services (DFS) within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, DFS is required to file a verified report with the Governor, Legislature, Auditor General, and Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.⁴⁶

Per Diem and Travel Expenses

Section 112.061, F.S., establishes standard travel reimbursement rates applicable to all public officers, public employees, and other individuals whose travel is authorized and paid for by a public agency.⁴⁷ All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid. In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency. Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.

⁴³ s. 215.97(2)(a), F.S.

⁴⁴ s. 218.39(1), F.S.

⁴⁵ s. 11.40(2), F.S.

⁴⁶ s. 218.32(2), F.S.

⁴⁷ s. 112.061(1), F.S. The term “public agency” is defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law. Section 112.061(2)(a), F.S.

Currently, Florida allows \$80 per diem for Class A and B travel. If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills. Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.

The 2016-17 budget implementing bill created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit was also included in the 2017-18 budget implementing bill, which further specified that a "meeting" for purposes of the limit does not include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or emergency response. This limit is in effect until July 1, 2018.

Agency - Definition

Section 119.011, F.S., provides that "agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Counties and Municipalities⁴⁸

Online Posting of Governmental Budgets

Counties⁴⁹ and municipalities⁵⁰ are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.⁵¹ Current law does not specify how long these documents must remain available on the website.

Reporting Requirements

An agency or entity that contracts with and receives county or municipal government funds for economic development purposes is required to submit a report to the local government concerning the usage of the local funds, and the local government in turn is required to post a copy of the report on its own website.

Local governments are also required to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of \$25,000 granted during the previous fiscal year.⁵² EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the

⁴⁸ *Supra*, note 39.

⁴⁹ s. 129.03, F.S.

⁵⁰ s. 166.241, F.S.

⁵¹ ss. 129.06(2)(f)2.; 166.241(5); and 189.016(7), F.S.

⁵² *Id.*

report to the President of the Senate, Speaker of the House of Representatives, and the Department of Economic Opportunity.

House Bill 1A (2017)

The Florida Tourism Industry Marketing Corporation dba VISIT Florida (VF) is a nonprofit corporation established by the Florida Legislature to execute tourism promotion and marketing services, functions, and programs for the state. Enterprise Florida, Inc. (EFI) is a nonprofit corporation established by the Legislature to serve as the state's main economic development organization.

During the 2017 Special Session, the House passed transparency and accountability provisions for Visit Florida and Enterprise Florida in HB 1A (2017) that went into effect July 1, 2017. The bill requires that all contracts with VF and EFI contain certain information, performance standards, budgets, and travel and entertainment expenses. It also limits travel expenditures, lodging expenses, public compensation and bonuses of employees, and limiting expenditures on employees and board members for food, beverages, lodging, entertainment or gifts.

Specifically, the bill requires any entity that partnered with VF or EFI that receives more than 50 percent of their revenue from VF or EFI, or tourist development taxes, including ss. 125.0104, 125.0108, or 212.0305, F.S., to report additional financial data, including the salaries of employees and board members, the operating budget of the partner entity, funds expended by the partner entity on EFI or VF's behalf, and travel and entertainment expenditures. It also limits expenditures on, and gifts from, employees of local tourist or economic development agencies that receive revenue from tourist development taxes.

In addition, the bill requires VF and EFI to submit proposed contracts worth \$750,000 or more for 14-day legislative notice and review under s. 216.177, F.S., and upon objection by the chair and vice chair of the Legislative Budget Commission or Speaker and Senate President, the contract may not be executed, and to post the following information online:

- A plain language version of any contract that is estimated to exceed \$35,000;
- Any agreement entered into between VF or EFI and any other entity, including a local government, private entity, or nonprofit entity, that receives public funds or funds from a tax imposed pursuant to ss. 125.0104, 125.0108, or 212.0305, F.S.;
- Contracts, financial data, and other information;
- Video recordings of each board meeting;
- A detailed report of expenditures following each marketing event paid for with VF or EFI's funds, within 10 business days after the event;
- An annual itemized accounting of the total amount of funds spent by any third party on behalf of VF or EFI, any board member, or employee; and
- An annual itemized accounting of the total amount of travel and entertainment expenditures.

After the passage of HB 1A, the transparency and accountability of local economic and tourist development agencies drew the attention of the Florida House of Representatives and House Speaker Richard Corcoran.⁵³ News reports indicated that many tourist development agencies across the state cut ties with VF and had refused to renew their collective marketing agreements with VF.⁵⁴ Upon learning of this, Speaker Corcoran wrote to twelve such agencies⁵⁵ and stated, "Rather than following Visit Florida's lead and embrace the financial transparency and accountability measures currently in

⁵³ Gray Rohrer, *House Speaker sues over Pitbull contract*, ORLANDO SENTINEL (Dec. 13, 2016),

<http://www.orlandosentinel.com/news/politics/political-pulse/os-house-speaker-sues-pitbull-contract-story.html>

⁵⁴ Jennifer Sorentroue, *Tourism group backed VisitFlorida, now cuts ties with state agency*, PALM BEACH POST, (Sept.2, 2017),

<http://www.mypalmbeachpost.com/business/tourism-group-backed-visitflorida-now-cuts-ties-with-state-agency/9cLnr0COrrv9DCL6huD2rL/>

⁵⁵ Arek Sarkissian, *House leader wants answers from local tourism agencies on spending*, TALLAHASSEE DEMOCRAT (Aug. 25, 2017),

<http://www.tallahassee.com/story/news/politics/2017/08/25/house-leader-wants-answers-local-tourism-agencies-spending/599158001/>

use by Visit Florida, local tourism agencies have instead opted to remove themselves from partnership agreements with Visit Florida in a vain effort to hide taxpayer-financed activities from the public. The fact that these tourist development agencies are so concerned about what this financial information would reveal is further evidence that immediate oversight is necessary.”⁵⁶

Other Recent Transparency and Accountability Issues

Over the past year, the Florida House has made numerous requests for information to state and local tourist development agencies asking for more transparency regarding their spending of tax dollars.⁵⁷ In their responses, some tourist development agencies indicated that contracts were either being redacted based on trade secrets contained in the contracts or that the contracts were not readily available because the contracts were not directly entered into by local county officials, but were entered into between non-profit or private organizations acting on behalf of local government entities.

In 2017, certain news organizations made requests for information related to certain expenditures and possible conflicts of interests on tourist development boards that did not receive a prompt response. Although they ultimately responded to the Florida House, the contracts raised concerns about possible conflicts of interest related to contracts with companies or organizations who also serve on the tourist development boards.⁵⁸

Effect of the Proposed Changes

The bill duplicates many of the accountability and transparency requirements put in place by HB 1A for Visit Florida and Enterprise Florida, and imposes those same requirements on local economic and tourist development agencies.

The bill creates s. 288.0751, F.S., defining an “economic development agency” as any entity that receives public funds and is engaged in economic development activities on behalf of one or more local governmental entities.

The bill creates s. 288.12261, F.S., defining a “tourism promotion agency” as any that receives public funds to promote tourism development on behalf of one or more local governments.

The bill imposes the following transparency and accountability measures on both tourism promotional agencies and economic development agencies:

- Requiring that officers and board members file an annual disclosure when they, or their interests, benefit from the expenditure of agency funds.
- Prohibiting compensation for board members.
- Limiting employee compensation and benefits from public funds to that what is authorized for the Governor (the Governor’s salary for Fiscal Year 2016-17 is \$130,273), and prohibiting bonuses or severance pay for employees from public funds unless authorized by law.
- Providing that agencies comply with the per diem and travel expenses imposed on state employees under s. 112.061, F.S.; and limiting lodging reimbursement to \$150, with certain exceptions.
- Providing that officers and employees are subject to the Code of Ethics for Public Officers and Employees standards under s. 112.313, F.S.
- Requiring that agencies avoid, neutralize, or mitigate significant potential organizational conflicts of interest before entering into certain contracts.
- Prohibiting agency from spending funds on food, beverages, lodging, entertainment, or gifts for employees or board members, unless authorized pursuant to s. 112.061, F.S., or the bill.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Gabrielle Russon, *Florida House Speaker demands information from Visit Orlando*, ORLANDO SENTINEL (Oct. 3, 2017), <http://www.orlandosentinel.com/news/politics/political-pulse/os-visit-orlando-letter-corcoran-20171003-story.html>

- Prohibiting agency employees or board members from accepting or receiving food, beverages, lodging, entertainment, or gifts from persons, vendors, or other entities doing business with the agency, unless such food, beverage, lodging, entertainment, or gift is available to similarly situated members of the general public.
- Requiring that all agency contracts contain certain information, including performance standards, a project budget, the value of services provided, and projected travel and entertainment expenses for employees and board members when applicable.
- Requiring that contracts valued at \$250,000 or more be submitted to the governing board of the county and published on the county's website at least 14 days before execution of the contract. If the contract is rejected by a majority vote, the agency may not execute any similar contract without first obtaining a majority vote in favor of such contract. An economic development agency may not enter into multiple related contracts to avoid this requirement.
- Requiring that an agency submit to the governing board of the county, within 10 days after the end of its fiscal year, a complete and detailed report setting forth all public and private financial data, and publish such report on its website, including:
 - The total amount of revenue received from public and private sources.
 - The operating budget.
 - The total amount of salary, benefits, and other compensation provided by the agency to its officers, employees, or agents, regardless of the funding source.
 - An itemized account of all expenditures, including all travel and entertainment expenditures.
- Requiring the agency to post the following information on their website:
 - All contracts valued at \$5,000 or more, within 5 business days after execution.
 - All contracts, information, and financial data that is submitted to the governing board of the county, within 5 business days after submission.
 - Video recordings of each board meeting, within 3 business days after the meeting.
 - A detailed report of expenditures following each marketing event paid for with agency funds, within 10 business days after the event.
 - An annual itemized account of the total amount of funds spent by a third party on behalf of the agency, its board members, or its employees.
 - An annual itemized account of the total amount of travel and entertainment expenditures.
- Providing that any record required by the bill, including, but not limited to, a contract or agreement, is a public record and is not confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and must be produced in full in accordance with the bill or upon request.
- Requiring that agencies maintain and provide online access to all of the information required under the bill, and that the Department of Economic Opportunity publish and maintain an online directory of the agencies and their websites.
- Providing that agencies which fail to comply with certain transparency and accountability requirements of the bill may not receive or expend public funds until regaining compliance.
- Requiring that the Auditor General:
 - Audit all tourism promotion agencies in counties that annually receive more than \$30 million in tourism development funds (Biennially).
 - Randomly select and audit two economic development agencies and two tourism promotion agencies in counties receiving less than \$30 million per year (Annually).
- Providing that it is a second degree misdemeanor to knowingly and willfully make a materially false or misleading statement, provide false or misleading information, fail to report certain information, or structure an organization or agreement to avoid the requirements of this section.
- Limiting the extent to which a private entity must comply with the bill, under certain circumstances.

The bill imposes the following transparency and accountability measures on tourism promotional agencies ONLY:

- Prohibits the expenditure of funds for the direct benefit of a single corporation or business entity.
- Authorizing the Governor or Chief Financial Officer to suspend or prohibit the distribution of tourist development taxes when an agency fails to comply with the transparency and accountability requirements of the bill.

The bill provides that certain reports and other information that is already required under s. 125.0104(4), F.S., also be published and made available online.

B. SECTION DIRECTORY:

- Section 1 Amends s. 11.45, F.S., authorizing the Auditor General to audit certain accounts and records.
- Section 2 Creates s. 288.0751, F.S., defining “economic development agency” and providing certain transparency and accountability requirements related to the operation of such an agency; requiring the Auditor General to conduct certain audits; and providing penalties.
- Section 3 Creates s. 288.12261, F.S., defining “tourism promotion agency” and providing certain transparency and accountability requirements related to the operation of such an agency; requiring the Auditor General to conduct certain audits; and providing penalties.
- Section 4 Amends s. 125.0104, F.S., requiring the governing boards of certain counties to review specified documents and to provide online access to certain information.
- Section 5 Amends s. 288.1226, F.S., revising financial data required to be included in an annual report.
- Section 6 Amends s. 288.904, F.S., revising financial data required to be included in an annual report.
- Section 7 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate but likely insignificant negative fiscal impact on any entity which meets the definition of an “economic development agency” or a “tourism promotion agency”, as a result of any additional workload to meet the reporting and accountability requirements of the bill.

Similarly, the bill may have an indeterminate positive fiscal impact on agencies which meet the above definitions to the extent that it limits expenditures relating to travel reimbursement or compensation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that the officers and board members of an economic development agency or a tourism promotion agency “must file an annual disclosure describing the nature of his or her interests or the interests of his or her principals, including corporate parents and subsidiaries of his or her principal, when such interests benefit from the expenditure” of agency funds, and that such disclosure “satisfies the disclosure requirements of s. 112.3143(4)”⁵⁹. To the extent that the economic development agency and tourism promotion agency definitions could apply equally to both a public local government entity and private corporations, it is not clear how this “satisfaction” language in the bill would apply to an agency that does not have public officers, and whether the bill intends to provide a new, less stringent disclosure requirement for local government officials who happen to be an officer or board member of an economic development agency or a tourism promotion agency. A technical change to this language would clarify this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁵⁹ Section 112.3143(4) provides that “No appointed public officer shall participate in any matter which would inure to the officer’s special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.”

1 A bill to be entitled
 2 An act relating to economic development and tourism
 3 promotion accountability; amending s. 11.45, F.S.;
 4 authorizing the Auditor General to audit certain
 5 accounts and records; creating ss. 288.0751 and
 6 288.12261, F.S.; providing definitions; providing
 7 requirements for the operation of economic development
 8 agencies and tourism promotion agencies, respectively;
 9 requiring specified persons to file an annual
 10 disclosure of certain interests; providing
 11 requirements for such disclosure; requiring board
 12 members to serve without compensation; authorizing per
 13 diem and travel expenses for certain persons paid from
 14 specified funds; prohibiting specified persons from
 15 receiving public compensation in excess of a certain
 16 amount; prohibiting certain performance bonuses and
 17 severance pay; subjecting certain persons to a
 18 specified code of ethics; requiring such agencies to
 19 take certain actions regarding a significant potential
 20 conflict of interest; limiting lodging expenses for
 21 certain persons; providing an exception; prohibiting
 22 the expenditure of agency funds on certain items;
 23 prohibiting specified persons from accepting certain
 24 items from specified entities; prohibiting a tourism
 25 promotion agency from expending funds that directly

26 benefit only one business entity; requiring certain
 27 contracts to include specified information; requiring
 28 a governing board of a county to publish certain
 29 proposed contracts on the county's website and approve
 30 certain contracts; requiring such agencies to submit a
 31 report of financial data to a governing board of a
 32 county; specifying that certain records are public
 33 records; requiring such agencies to provide online
 34 access to certain information; prohibiting such
 35 agencies from receiving or expending public funds;
 36 requiring the Auditor General to conduct certain
 37 audits; authorizing the Governor or Chief Financial
 38 Officer to cease distributing certain tax revenues to
 39 certain noncompliant tourism promotion agencies;
 40 providing that it is unlawful to knowingly and
 41 willfully make false or misleading statements, provide
 42 false or misleading information, fail to report
 43 certain information, or purposefully avoid specified
 44 requirements; providing penalties; providing
 45 applicability; amending s. 125.0104, F.S.; requiring
 46 the governing board of a county to review certain
 47 proposed contracts and certifications relating to
 48 potential conflicts of interest and mitigation plans;
 49 requiring the governing board of a county that imposes
 50 a tourist development tax to provide online access to

51 certain information; amending ss. 288.1226 and
 52 288.904, F.S.; revising financial data required to be
 53 included in an annual report; conforming provisions to
 54 changes made by the act; providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. Paragraphs (y) and (z) are added to subsection
 59 (3) of section 11.45, Florida Statutes, to read:

60 11.45 Definitions; duties; authorities; reports; rules.—

61 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
 62 Auditor General may, pursuant to his or her own authority, or at
 63 the direction of the Legislative Auditing Committee, conduct
 64 audits or other engagements as determined appropriate by the
 65 Auditor General of:

66 (y) The accounts and records pertaining to the use of
 67 funds from a tax imposed pursuant to s. 125.0104, s. 125.0108,
 68 or s. 212.0305 for tourism development or promotion by a local
 69 governmental entity, nonprofit organization, or for-profit
 70 organization, including a tourism promotion agency as defined in
 71 s. 288.12261 or a program or entity created by a tourism
 72 promotion agency.

73 (z) The accounts and records pertaining to:

74 1. An economic development agency of a county or
 75 municipality;

76 2. If the county or municipality does not have an economic
 77 development agency, the county or municipal officers or
 78 employees assigned to promote the general business interests,
 79 industrial interests, or related responsibilities of the county
 80 or municipality; or

81 3. If authorized by the state, a municipality, or a county
 82 to promote the general business interests, industrial interests,
 83 or related responsibilities of the state, municipality, or
 84 county, a private agency, person, partnership, corporation, or
 85 business entity.

86 Section 2. Section 288.0751, Florida Statutes, is created
 87 to read:

88 288.0751 Local economic development agencies.-

89 (1) DEFINITION.-For purposes of this section, the term
 90 "economic development agency" means an entity, including, but
 91 not limited to, an agency as defined in s. 119.011, that
 92 receives public funds and is engaged in economic development
 93 activities on behalf of one or more local governmental entities.

94 (a) An economic development agency may be operated by a
 95 local governmental entity or by an entity under contract with
 96 one or more local governmental entities to promote economic
 97 development activities on behalf of such local governmental
 98 entity or entities through the expenditure of public funds.

99 (b) Enterprise Florida, Inc., and the Department of
 100 Economic Opportunity are not considered economic development

101 agencies.

102 (2) OPERATION.—An economic development agency must operate
 103 in accordance with the following:

104 (a) Each officer and member of the board of directors of
 105 an economic development agency must file an annual disclosure
 106 describing the nature of his or her interests or the nature of
 107 the interests of his or her principals, including corporate
 108 parents and subsidiaries of his or her principals, when such
 109 interests benefit from the expenditure of economic development
 110 agency funds. This paragraph satisfies the disclosure
 111 requirement of s. 112.3143(4). The disclosure must be placed on
 112 the website of the economic development agency and included in
 113 the minutes of each meeting of the board of directors of the
 114 economic development agency when such expenditures are discussed
 115 or voted upon.

116 (b) Board members shall serve without compensation, but
 117 are entitled to receive reimbursement for per diem and travel
 118 expenses pursuant to s. 112.061. Such expenses must be paid out
 119 of funds of the economic development agency.

120 (c) Officers, employees, or agents, including the
 121 president or chief executive officer, may not receive
 122 compensation for employment from public funds that exceeds the
 123 salary and benefits authorized to be paid to the Governor. Any
 124 payments of performance bonuses or severance pay to officers,
 125 employees, or agents from public funds are prohibited unless

126 specifically authorized by law.

127 (d) An economic development agency must comply with the
 128 per diem and travel expense provisions of s. 112.061.

129 (e) Officers and employees are subject to the Code of
 130 Ethics for Public Officers and Employees standards under s.
 131 112.313.

132 (f) An economic development agency must avoid, neutralize,
 133 or mitigate significant potential organizational conflicts of
 134 interest before it enters into a contract. If the economic
 135 development agency elects to mitigate a significant potential
 136 organizational conflict of interest, an adequate mitigation
 137 plan, including organizational, physical, and electronic
 138 barriers, shall be developed and the head of the economic
 139 development agency must certify that the award is in the best
 140 interests of the county and submit such certification to the
 141 governing board of the county within 3 business days after
 142 entering into the contract.

143 (g) Lodging expenses for an employee or board member may
 144 not exceed \$150 per day, excluding taxes, unless the economic
 145 development agency is participating in a negotiated group rate
 146 discount or the economic development agency provides
 147 documentation of at least three comparable alternatives
 148 demonstrating that such lodging at the required rate is not
 149 available. However, an employee or board member may expend his
 150 or her own funds for any lodging expenses in excess of \$150 per

151 day.

152 (h) Economic development agency funds may not be expended
 153 for food, beverages, lodging, entertainment, or gifts for
 154 employees or board members, unless authorized pursuant to s.
 155 112.061 or this section. Employees or board members may not
 156 accept or receive food, beverages, lodging, entertainment, or
 157 gifts from persons, vendors, or other entities doing business
 158 with the economic development agency unless such food, beverage,
 159 lodging, entertainment, or gift is available to similarly
 160 situated members of the general public.

161 (3) TRANSPARENCY.-

162 (a) All contracts entered into by an economic development
 163 agency shall include:

- 164 1. The purpose of the contract.
- 165 2. Specific performance standards and responsibilities for
 166 each entity.
- 167 3. A detailed project or contract budget, if applicable.
- 168 4. The value of any services provided.
- 169 5. The projected travel and entertainment expenses for
 170 employees and board members, if applicable.

171 (b) A proposed contract with an estimated total contract
 172 value of \$250,000 or more must be submitted to the governing
 173 board of the county and published on the county's website at
 174 least 14 days before the contract is executed. If the governing
 175 board of the county rejects such proposed contract by a majority

176 vote held during the 14-day period, the economic development
 177 agency may not execute such proposed contract or any
 178 substantially similar contract without obtaining a majority vote
 179 of the governing body of the county in favor of such contract.

180 An economic development agency may not enter into multiple
 181 related contracts to avoid the requirements of this paragraph.

182 (c)1. An economic development agency shall submit to the
 183 governing board of the county, within 10 days after the end of
 184 its fiscal year, a complete and detailed report setting forth
 185 all public and private financial data of the economic
 186 development agency, and shall publish such report on its
 187 website.

188 2. The financial data shall include:

189 a. The total amount of revenue received from public and
 190 private sources.

191 b. The operating budget.

192 c. The total amount of salary, benefits, and other
 193 compensation provided by the economic development agency to its
 194 officers, employees, or agents, regardless of the funding
 195 source.

196 d. An itemized account of all expenditures, including all
 197 travel and entertainment expenditures.

198 (d) The following information must be posted on the
 199 website of each economic development agency:

200 1. All contracts with a total contract value of \$5,000 or

201 more. Such contracts must be posted within 5 business days after
 202 execution.

203 2. All contracts, information, and financial data
 204 submitted to the governing board of the county. Such contracts,
 205 information, and data must be posted within 5 business days
 206 after submission.

207 3. Video recordings of each board meeting. Such recordings
 208 must be posted within 3 business days after the meeting.

209 4. A detailed report of expenditures following each
 210 marketing event paid for with economic development agency funds.
 211 Such report must be posted within 10 business days after the
 212 event.

213 5. An annual itemized account of the total amount of funds
 214 spent by a third party on behalf of the economic development
 215 agency, its board members, or its employees.

216 6. An annual itemized account of the total amount of
 217 travel and entertainment expenditures.

218 (e) Notwithstanding any provision of law to the contrary,
 219 a record required under this section, including, but not limited
 220 to, a contract or agreement, is a public record and is not
 221 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
 222 the State Constitution. Such record shall be produced in full in
 223 accordance with this section or upon request.

224 (f) An economic development agency shall maintain and
 225 provide online access to all of the information required under

226 this subsection. Each economic development agency shall provide
 227 the Department of Economic Opportunity with the specific website
 228 address where the required information is published and
 229 maintained online, and the Department of Economic Opportunity
 230 shall publish and maintain a single online directory which lists
 231 each economic development agency and the specific website
 232 address where such required information may be located.

233 (g) An economic development agency that fails to comply
 234 with the transparency and accountability requirements of this
 235 subsection may not receive or expend public funds until it
 236 becomes fully compliant.

237 (4) AUDITS.—The Auditor General shall annually select at
 238 least two economic development agencies that received public
 239 funds in the previous year and conduct audits, as defined in s.
 240 11.45, to verify that funds were expended as required by this
 241 section and to verify that transparency and accountability
 242 requirements were met. If the Auditor General determines that
 243 funds were not expended as required by this section, he or she
 244 shall immediately report to the Governor, the President of the
 245 Senate, and the Speaker of the House of Representatives.

246 (5) PENALTIES.—It is unlawful for a person to knowingly
 247 and willfully make a materially false or misleading statement,
 248 provide false or misleading information, fail to report certain
 249 information, or structure an organization or agreement to avoid
 250 the requirements of this section. A person who violates this

251 section commits a misdemeanor of the first degree, punishable as
 252 provided in s. 775.082 or s. 775.083.

253 (6) APPLICABILITY.—A private entity that meets the
 254 definition of an economic development agency under subsection
 255 (1) due solely to the existence of a contract between the
 256 private entity and an economic development agency to engage in
 257 economic development activities is required to comply with this
 258 section only in connection with the performance of its
 259 obligations and the expenditure of funds pursuant to such
 260 contract. This section shall not be construed to require the
 261 private entity to report or conform its other business practices
 262 or activities to the provisions of this section, provided such
 263 practices or activities are not directly related to or funded by
 264 such contract.

265 Section 3. Section 288.12261, Florida Statutes, is created
 266 to read:

267 288.12261 Tourism promotion agencies.—

268 (1) DEFINITION.—For purposes of this section, the term
 269 "tourism promotion agency" means an entity, including, but not
 270 limited to, an agency as defined in s. 119.011, that receives
 271 public funds to promote tourism development.

272 (a) A tourism promotion agency may be operated by a local
 273 governmental entity or by an entity under contract with one or
 274 more local governmental entities to promote tourism development
 275 on behalf of such local governmental entity or entities through

276 the expenditure of public funds.

277 (b) For purposes of this section, the Florida Tourism
 278 Industry Marketing Corporation is not considered a tourism
 279 promotion agency.

280 (2) OPERATION.—A tourism promotion agency must operate in
 281 accordance with the following:

282 (a) Each officer and member of the board of directors of a
 283 tourism promotion agency must file an annual disclosure
 284 describing the nature of his or her interests or the interests
 285 of his or her principals, including corporate parents and
 286 subsidiaries of his or her principal, when such interests
 287 benefit from the expenditure of tourism promotion agency funds.
 288 This paragraph satisfies the disclosure requirement of s.
 289 112.3143(4). The disclosure must be placed on the website of the
 290 tourism promotion agency and included in the minutes of each
 291 meeting of the board of directors of the tourism promotion
 292 agency when such expenditures are discussed or voted upon.

293 (b) Board members shall serve without compensation, but
 294 are entitled to receive reimbursement for per diem and travel
 295 expenses pursuant to s. 112.061. Such expenses must be paid out
 296 of funds of the tourism promotion agency.

297 (c) Officers, employees, or agents, including the
 298 president or chief executive officer, may not receive
 299 compensation for employment from public funds that exceeds the
 300 salary and benefits authorized to be paid to the Governor. Any

301 payments of performance bonuses or severance pay to officers,
 302 employees, or agents from public funds are prohibited unless
 303 specifically authorized by law.

304 (d) A tourism promotion agency must comply with the per
 305 diem and travel expense provisions of s. 112.061.

306 (e) Officers and employees are subject to the Code of
 307 Ethics for Public Officers and Employees standards under s.
 308 112.313.

309 (f) A tourism promotion agency must avoid, neutralize, or
 310 mitigate significant potential organizational conflicts of
 311 interest before it enters into a contract. If the tourism
 312 promotion agency elects to mitigate a significant potential
 313 organizational conflict of interest, an adequate mitigation
 314 plan, including organizational, physical, and electronic
 315 barriers, shall be developed and the head of the tourism
 316 promotion agency must certify that the award is in the best
 317 interests of the county and submit such certification to the
 318 governing board of the county within 3 business days after
 319 entering into the contract.

320 (g) Lodging expenses for an employee or board member may
 321 not exceed \$150 per day, excluding taxes, unless the tourism
 322 promotion agency is participating in a negotiated group rate
 323 discount or the tourism promotion agency provides documentation
 324 of at least three comparable alternatives demonstrating that
 325 such lodging at the required rate is not available. However, an

326 employee or board member may expend his or her own funds for any
 327 lodging expenses in excess of \$150 per day.

328 (h) Tourism promotion agency funds may not be expended for
 329 food, beverages, lodging, entertainment, or gifts for employees
 330 or board members, unless authorized pursuant to s. 112.061 or
 331 this section. Employees or board members may not accept or
 332 receive food, beverages, lodging, entertainment, or gifts from
 333 persons, vendors, or other entities doing business with the
 334 tourism promotion agency unless such food, beverage, lodging,
 335 entertainment, or gift is available to similarly situated
 336 members of the general public.

337 (i) A tourism promotion agency shall not expend public or
 338 private funds that directly benefit only one business entity.

339 (3) TRANSPARENCY.—

340 (a) All contracts entered into by a tourism promotion
 341 agency shall include:

- 342 1. The purpose of the contract.
- 343 2. Specific performance standards and responsibilities for
 344 each entity.
- 345 3. A detailed project or contract budget, if applicable.
- 346 4. The value of any services provided.
- 347 5. The projected travel and entertainment expenses for
 348 employees and board members, if applicable.

349 (b) A proposed contract with an estimated total contract
 350 value of \$250,000 or more must be submitted to the governing

351 board of the county and published on the county's website at
 352 least 14 days before the contract is executed. If the governing
 353 board of the county rejects such proposed contract by a majority
 354 vote held during the 14-day period, the tourism promotion agency
 355 may not execute such proposed contract or any substantially
 356 similar contract without obtaining a majority vote of the
 357 governing body of the county in favor of such contract. A
 358 tourism promotion agency may not enter into multiple related
 359 contracts to avoid the requirements of this paragraph.

360 (c)1. A tourism promotion agency shall submit to the
 361 governing board of the county, within 10 days after the end of
 362 its fiscal year, a complete and detailed report setting forth
 363 all public and private financial data of the tourism promotion
 364 agency, and shall publish such report on its website.

365 2. The financial data shall include:

366 a. The total amount of revenue received from public and
 367 private sources.

368 b. The operating budget.

369 c. The total amount of salary, benefits, and other
 370 compensation provided by the tourism promotion agency to its
 371 officers, employees, or agents, regardless of the funding
 372 source.

373 d. An itemized account of all expenditures, including all
 374 travel and entertainment expenditures.

375 (d) The following information must be posted on the

376 website of each tourism promotion agency:

377 1. All contracts with a total contract value of \$5,000 or

378 more. Such contracts must be posted within 5 business days after

379 execution.

380 2. All contracts, information, and financial data

381 submitted to the governing board of the county. Such contracts,

382 information, and data must be posted within 5 business days

383 after submission.

384 3. Video recordings of each board meeting. Such recordings

385 must be posted within 3 business days after the meeting.

386 4. A detailed report of expenditures following each

387 marketing event paid for with the funds of the tourism promotion

388 agency. Such report must be posted within 10 business days after

389 the event.

390 5. An annual itemized account of the total amount of funds

391 spent by a third party on behalf of the tourism promotion

392 agency, its board members, or its employees.

393 6. An annual itemized account of the total amount of

394 travel and entertainment expenditures.

395 (e) Notwithstanding any provision of law to the contrary,

396 a record required under this section, including, but not limited

397 to, a contract or agreement, is a public record and is not

398 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of

399 the State Constitution. Such record shall be produced in full in

400 accordance with this section or upon request.

401 (f) A tourism promotion agency shall maintain and provide
 402 online access to all of the information required under this
 403 subsection and s. 125.0104(4)(f). Each tourism promotion agency
 404 shall provide the Department of Economic Opportunity with the
 405 specific website address where the required information is
 406 published and maintained online, and the Department of Economic
 407 Opportunity shall publish and maintain a single online directory
 408 which lists each tourism promotion agency and the specific
 409 website address where such required information may be located.

410 (g) A tourism promotion agency that fails to comply with
 411 the transparency and accountability requirements of this
 412 subsection may not receive or expend public funds until it
 413 becomes fully compliant.

414 (4) AUDITS.—

415 (a) For any county that annually receives \$30,000,000 or
 416 more from taxes imposed pursuant to s. 125.0104, s. 125.0108, or
 417 s. 212.0305, the Auditor General shall, biennially, conduct an
 418 audit, as defined in s. 11.45, of all tourism promotion agencies
 419 in such county to verify that funds were expended as required by
 420 this section and to verify that transparency and accountability
 421 requirements were met. If the Auditor General determines that
 422 funds were not expended as required by this section, he or she
 423 shall immediately notify the Department of Revenue, which may
 424 pursue recovery of the funds under the laws and rules governing
 425 the assessment of taxes.

426 (b) The Auditor General shall annually select at least two
 427 tourism promotion agencies in counties that annually received
 428 less than \$30,000,000 from taxes imposed pursuant to s.
 429 125.0104, s. 125.0108, or s. 212.0305 and conduct audits, as
 430 defined in s. 11.45, to verify that funds were expended as
 431 required by this section and to verify that transparency and
 432 accountability requirements were met. If the Auditor General
 433 determines that funds were not expended as required by this
 434 section, he or she shall immediately notify the Department of
 435 Revenue, which may pursue recovery of the funds under the laws
 436 and rules governing the assessment of taxes.

437 (5) ENFORCEMENT.—The Governor or Chief Financial Officer
 438 may at any time order the Department of Revenue or the local
 439 official to whom the tax is remitted to cease and desist
 440 distributing any taxes levied under s. 125.0104, s. 125.0108, or
 441 s. 212.0305 based on a tourism promotion agency's failure to
 442 comply with this section.

443 (6) PENALTIES.—It is unlawful for a person to knowingly
 444 and willfully make a materially false or misleading statement,
 445 provide false or misleading information, fail to report certain
 446 information, or structure an organization or agreement to avoid
 447 the requirements of this section. A person who violates this
 448 section commits a misdemeanor of the first degree, punishable as
 449 provided in s. 775.082 or s. 775.083.

450 (7) APPLICABILITY.—A private entity that meets the

451 definition of a tourism promotion agency under subsection (1)
 452 due solely to the existence of a contract between the private
 453 entity and a tourism promotion agency to promote tourism
 454 development is required to comply with this section only in
 455 connection with the performance of its obligations and the
 456 expenditure of funds pursuant to such contract. This section
 457 shall not be construed to require the private entity to report
 458 or conform its other business practices or activities to the
 459 provisions of this section, provided such practices or
 460 activities are not directly related to or funded by such
 461 contract.

462 Section 4. Paragraph (e) of subsection (4) of section
 463 125.0104, Florida Statutes, is amended, and paragraph (f) is
 464 added to that subsection, to read:

465 125.0104 Tourist development tax; procedure for levying;
 466 authorized uses; referendum; enforcement.—

467 (4) ORDINANCE LEVY TAX; PROCEDURE.—

468 (e) The governing board of each county which levies and
 469 imposes a tourist development tax under this section shall
 470 appoint an advisory council to be known as the "... (name of
 471 county)... Tourist Development Council." The council shall be
 472 established by ordinance and composed of nine members who shall
 473 be appointed by the governing board. The chair of the governing
 474 board of the county or any other member of the governing board
 475 as designated by the chair shall serve on the council. Two

476 members of the council shall be elected municipal officials, at
 477 least one of whom shall be from the most populous municipality
 478 in the county or subcounty special taxing district in which the
 479 tax is levied. Six members of the council shall be persons who
 480 are involved in the tourist industry and who have demonstrated
 481 an interest in tourist development, of which members, not less
 482 than three nor more than four shall be owners or operators of
 483 motels, hotels, recreational vehicle parks, or other tourist
 484 accommodations in the county and subject to the tax. All members
 485 of the council shall be electors of the county. The governing
 486 board of the county shall have the option of designating the
 487 chair of the council or allowing the council to elect a chair.
 488 The chair shall be appointed or elected annually and may be
 489 reelected or reappointed. The members of the council shall serve
 490 for staggered terms of 4 years. The terms of office of the
 491 original members shall be prescribed in the resolution required
 492 under paragraph (b). The council shall meet at least once each
 493 quarter and, from time to time, shall make recommendations to
 494 the county governing board for the effective operation of the
 495 special projects or for uses of the tourist development tax
 496 revenue and perform such other duties as may be prescribed by
 497 county ordinance or resolution. The council shall continuously
 498 review expenditures of revenues from the tourist development
 499 trust fund and shall receive, at least quarterly, expenditure
 500 reports from the county governing board or its designee.

501 Expenditures which the council believes to be unauthorized shall
 502 be reported to the county governing board and the Department of
 503 Revenue. The governing board and the department shall review the
 504 findings of the council and take appropriate administrative or
 505 judicial action to ensure compliance with this section. The
 506 county governing board shall review a proposed contract with an
 507 estimated total contract value of \$250,000 or more. The county
 508 governing board may reject such proposed contract by a majority
 509 vote before the execution of such contract. The county governing
 510 board must review all certifications by the head of a tourism
 511 promotion agency related to potential conflicts of interest and
 512 mitigation plans ~~The changes in the composition of the~~
 513 ~~membership of the tourist development council mandated by~~
 514 ~~chapter 86-4, Laws of Florida, and this act shall not cause the~~
 515 ~~interruption of the current term of any person who is a member~~
 516 ~~of a council on October 1, 1996.~~

517 (f) The governing board of a county that levies and
 518 imposes a tourist development tax under this section shall
 519 publish and make the following information available online:

520 1. The approved tourist development plan, including the
 521 approximate cost or expense allocation for each specific project
 522 or special use.

523 2. Any substantial amendments to the tourist development
 524 plan.

525 3. The tax district in which the tourist development tax

526 is levied.

527 4. A prioritized list of the proposed uses of the tax
 528 revenue by specific project or special use.

529 5. The quarterly expenditure reports from the county
 530 governing board or its designee.

531 Section 5. Paragraph (c) of subsection (13) of section
 532 288.1226, Florida Statutes, is amended to read:

533 288.1226 Florida Tourism Industry Marketing Corporation;
 534 use of property; board of directors; duties; audit.—

535 (13) TRANSPARENCY.—

536 (c)1. Any entity that in the previous fiscal year received
 537 more than 50 percent of its revenue from the corporation ~~or~~
 538 ~~taxes imposed pursuant to s. 125.0104, s. 125.0108, or s.~~
 539 ~~212.0305, and that partners with the corporation or participates~~
 540 ~~in a program, cooperative advertisement, promotional~~
 541 ~~opportunity, or other activity offered by or in conjunction with~~
 542 ~~the corporation,~~ shall annually on July 1 report all public and
 543 private financial data to the Governor, the President of the
 544 Senate, and the Speaker of the House of Representatives, and
 545 include such report on its website.

546 2. The financial data shall include:

547 a. The total amount of revenue received from public and
 548 private sources.

549 b. The operating budget ~~of the partner entity.~~

550 c. The total amount of salary, benefits, and other

551 compensation provided by the entity to its officers, employees,
 552 board members, or agents, regardless of the funding source
 553 ~~Employee and board member salary and benefit details from public~~
 554 ~~and private funds.~~

555 d. An itemized account of all expenditures, including all
 556 travel and entertainment expenditures, by the ~~partner~~ entity on
 557 the behalf of, or coordinated for the benefit of, the
 558 corporation, its board members, or its employees.

559 ~~e. Itemized travel and entertainment expenditures of the~~
 560 ~~partner entity.~~

561 Section 6. Paragraph (c) of subsection (6) of section
 562 288.904, Florida Statutes, is amended to read:

563 288.904 Funding for Enterprise Florida, Inc.; performance
 564 and return on the public's investment.-

565 (6)

566 (c)1. Any entity that in the previous fiscal year received
 567 more than 50 percent of its revenue from Enterprise Florida,
 568 Inc., ~~or a tax imposed pursuant to s. 125.0104, s. 125.0108, or~~
 569 ~~s. 212.0305, and that partners with Enterprise Florida, Inc., in~~
 570 ~~a program or other activity offered by or in conjunction with~~
 571 ~~Enterprise, Florida, Inc.,~~ shall annually on July 1 report all
 572 public and private financial data to the Governor, the President
 573 of the Senate, and the Speaker of the House of Representatives,
 574 and include such report on its website.

575 2. The financial data shall include:

HB 3

2018

- 576 a. The total amount of revenue received from public and
 577 private sources.
- 578 b. The operating budget ~~of the partner entity.~~
- 579 c. The total amount of salary, benefits, and other
 580 compensation provided by the entity to its officers, employees,
 581 board members, or agents, regardless of the funding source
 582 ~~Employee and board member salary and benefit details from public~~
 583 ~~and private funds.~~
- 584 d. An itemized account of all expenditures, including all
 585 travel and entertainment expenditures, by the ~~partner~~ entity on
 586 the behalf of, or coordinated for the benefit of, Enterprise
 587 Florida, Inc., its board members, or its employees.
- 588 e. ~~Itemized travel and entertainment expenditures of the~~
 589 ~~partner entity.~~
- 590 Section 7. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

HB 3 by Rep. Grant, M. Economic Development & Tourism Promotion Accountability

AMENDMENT SUMMARY November 14, 2017

Amendment No. 1 by Rep. Grant, M. (Strike-all amendment)

The amendment makes technical and clarifying changes throughout the bill, including the following:

- Clarifies certain public financial disclosure requirements for board members of TPAs and EDAs that are not part of county or municipal government and clarifies that county employees and public officers continue to be subject to state ethics requirements. (lines 105-111, and 283-289)
- Clarifies the duties of the Auditor General to audit TPAs and EDAs. (line 75; and lines 427-430)
- Clarifies that certain contracts must be posted on the website of the appropriate local jurisdiction. (Lines 173-179)
- Clarifies definitions. (Lines 271-279)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Commerce Committee

2 Representative Grant, M. offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraphs (y) and (z) are added to subsection
7 (3) of section 11.45, Florida Statutes, to read:

8 11.45 Definitions; duties; authorities; reports; rules.—

9 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
10 Auditor General may, pursuant to his or her own authority, or at
11 the direction of the Legislative Auditing Committee, conduct
12 audits or other engagements as determined appropriate by the
13 Auditor General of:

14 (y) The accounts and records pertaining to the use of
15 funds from a tax imposed pursuant to s. 125.0104, s. 125.0108,
16 or s. 212.0305 for tourism development or promotion by a local

Amendment No. 1

17 governmental entity, nonprofit organization, or for-profit
18 organization, including a tourism promotion agency as defined in
19 s. 288.12261 or a program or entity created by a tourism
20 promotion agency.

21 (z) The accounts and records pertaining to:

22 1. An economic development agency of a county or
23 municipality, including an economic development agency as
24 defined in s. 288.0751 or a program or entity created by an
25 economic development agency;

26 2. If the county or municipality does not have an economic
27 development agency, the county or municipal officers or
28 employees assigned to promote the general business interests,
29 industrial interests, or related responsibilities of the county
30 or municipality; or

31 3. If authorized by the state, a municipality, or a county
32 to promote the general business interests, industrial interests,
33 or related responsibilities of the state, municipality, or
34 county, a private agency, person, partnership, corporation, or
35 business entity.

36 Section 2. Section 288.0751, Florida Statutes, is created
37 to read:

38 288.0751 Local economic development agencies.-

39 (1) DEFINITION.-For purposes of this section, the term
40 "economic development agency" means an entity, including, but
41 not limited to, an agency as defined in s. 119.011, that

Amendment No. 1

42 receives public funds and is engaged in economic development
43 activities on behalf of one or more local governmental entities.

44 (a) An economic development agency may include any local
45 governmental entity or any entity under contract with one or
46 more local governmental entities to promote economic development
47 activities on behalf of such local governmental entity or
48 entities through the expenditure of public funds.

49 (b) Enterprise Florida, Inc., and the Department of
50 Economic Opportunity are not considered economic development
51 agencies.

52 (2) OPERATION.—An economic development agency must operate
53 in accordance with the following:

54 (a) Each officer and member of the board of directors of
55 an economic development agency who is not otherwise required to
56 file a financial disclosure pursuant to ch. 112 must file an
57 annual disclosure describing the nature of his or her interests
58 or the nature of the interests of his or her principals,
59 including corporate parents and subsidiaries of his or her
60 principals, when such interests benefit from the expenditure of
61 economic development agency funds. The disclosure must be placed
62 on the website of the economic development agency and included
63 in the minutes of each meeting of the board of directors of the
64 economic development agency when such expenditures are discussed
65 or voted upon.

Amendment No. 1

66 (b) Board members shall serve without compensation, but
67 are entitled to receive reimbursement for per diem and travel
68 expenses pursuant to s. 112.061. Such expenses must be paid out
69 of funds of the economic development agency.

70 (c) Officers, employees, or agents, including the
71 president or chief executive officer, may not receive
72 compensation for employment from public funds, pursuant to such
73 contract, that exceeds the salary and benefits authorized to be
74 paid to the Governor. Any payments of performance bonuses or
75 severance pay to officers, employees, or agents from public
76 funds are prohibited unless specifically authorized by law.

77 (d) An economic development agency must comply with the
78 per diem and travel expense provisions of s. 112.061.

79 (e) Officers and employees are subject to the Code of
80 Ethics for Public Officers and Employees standards under s.
81 112.313.

82 (f) An economic development agency must avoid, neutralize,
83 or mitigate significant potential organizational conflicts of
84 interest before it enters into a contract. If the economic
85 development agency elects to mitigate a significant potential
86 organizational conflict of interest, an adequate mitigation
87 plan, including organizational, physical, and electronic
88 barriers, shall be developed and the head of the economic
89 development agency must certify that the award is in the best
90 interests of the county and submit such certification to the

Amendment No. 1

91 governing board of the county within 3 business days after
92 entering into the contract.

93 (g) Lodging expenses for an employee or board member may
94 not exceed \$150 per day, excluding taxes, unless the economic
95 development agency is participating in a negotiated group rate
96 discount or the economic development agency provides
97 documentation of at least three comparable alternatives
98 demonstrating that such lodging at the required rate is not
99 available. However, an employee or board member may expend his
100 or her own funds for any lodging expenses in excess of \$150 per
101 day.

102 (h) Economic development agency funds may not be expended
103 for food, beverages, lodging, entertainment, or gifts for
104 employees or board members, unless authorized pursuant to s.
105 112.061 or this section. Employees or board members may not
106 accept or receive food, beverages, lodging, entertainment, or
107 gifts from persons, vendors, or other entities doing business
108 with the economic development agency unless such food, beverage,
109 lodging, entertainment, or gift is available to similarly
110 situated members of the general public.

111 (3) TRANSPARENCY.-

112 (a) All contracts entered into by an economic development
113 agency shall include:

114 1. The purpose of the contract.

Amendment No. 1

115 2. Specific performance standards and responsibilities for
116 each entity.

117 3. A detailed project or contract budget, if applicable.

118 4. The value of any services provided.

119 5. The projected travel and entertainment expenses for
120 employees and board members, if applicable.

121 (b) A proposed contract with an estimated total contract
122 value of \$250,000 or more must be submitted to the governing
123 body of the local governmental entity on whose behalf the
124 contracted activity will occur and published on that local
125 governmental entity's website at least 14 days before the
126 contract is executed. If the governing body of the local
127 governmental entity rejects such proposed contract by a majority
128 vote held during the 14-day period, the economic development
129 agency may not execute such proposed contract or any
130 substantially similar contract without obtaining a majority vote
131 of the governing body of the local governmental entity in favor
132 of such contract. An economic development agency may not enter
133 into multiple related contracts to avoid the requirements of
134 this paragraph.

135 (c)1. An economic development agency shall submit to the
136 governing board of the county, within 30 days after the end of
137 its fiscal year, a complete and detailed report setting forth
138 all public and private financial data of the economic

Amendment No. 1

139 development agency, and shall publish such report on its
140 website.

141 2. The financial data shall include:

142 a. The total amount of revenue received from public and
143 private sources.

144 b. The operating budget.

145 c. The total amount of salary, benefits, and other
146 compensation provided by the economic development agency to its
147 officers, employees, or agents, regardless of the funding
148 source.

149 d. An itemized account of all expenditures, including all
150 travel and entertainment expenditures.

151 (d) The following information must be posted on the
152 website of each economic development agency:

153 1. All contracts with a total contract value of \$5,000 or
154 more. Such contracts must be posted within 5 business days after
155 execution.

156 2. All contracts, information, and financial data
157 submitted to the governing board of the county. Such contracts,
158 information, and data must be posted within 5 business days
159 after submission.

160 3. Video recordings of each board meeting. Such recordings
161 must be posted within 3 business days after the meeting.

162 4. A detailed report of expenditures following each
163 marketing event paid for with economic development agency funds.

Amendment No. 1

164 Such report must be posted within 10 business days after the
165 event.

166 5. An annual itemized account of the total amount of funds
167 spent by a third party on behalf of the economic development
168 agency, its board members, or its employees.

169 6. An annual itemized account of the total amount of
170 travel and entertainment expenditures.

171 (e) Notwithstanding any provision of law to the contrary,
172 a record required under this section, including, but not limited
173 to, a contract or agreement, is a public record and is not
174 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
175 the State Constitution. Such record shall be produced in full in
176 accordance with this section or upon request.

177 (f) An economic development agency shall maintain and
178 provide online access to all of the information required under
179 this subsection. Each economic development agency shall provide
180 the Department of Economic Opportunity with the specific website
181 address where the required information is published and
182 maintained online, and the Department of Economic Opportunity
183 shall publish and maintain a single online directory which lists
184 each economic development agency and the specific website
185 address where such required information may be located.

186 (g) An economic development agency that fails to comply
187 with the transparency and accountability requirements of this

Amendment No. 1

188 subsection may not receive or expend public funds until it
189 becomes fully compliant.

190 (4) AUDITS.—The Auditor General shall annually select at
191 least two economic development agencies that received public
192 funds in the previous year and conduct audits, as defined in s.
193 11.45, to verify that funds were expended as required by this
194 section and to verify that transparency and accountability
195 requirements were met. If the Auditor General determines that
196 funds were not expended as required by this section, he or she
197 shall immediately report such findings to the Governor, the
198 President of the Senate, and the Speaker of the House of
199 Representatives.

200 (5) PENALTIES.—It is unlawful for a person to knowingly
201 and willfully make a materially false or misleading statement,
202 provide false or misleading information, fail to report certain
203 information, or structure an organization or agreement to avoid
204 the requirements of this section. A person who violates this
205 section commits a misdemeanor of the first degree, punishable as
206 provided in s. 775.082 or s. 775.083.

207 (6) APPLICABILITY.—A private entity that meets the
208 definition of an economic development agency under subsection
209 (1) due solely to the existence of a contract between the
210 private entity and an economic development agency to engage in
211 economic development activities is required to comply with this
212 section only in connection with the performance of its

Amendment No. 1

213 obligations and the expenditure of funds pursuant to such
214 contract. This section shall not be construed to require the
215 private entity to report or conform its other business practices
216 or activities to the provisions of this section, provided such
217 practices or activities are not directly related to or funded by
218 such contract.

219 Section 3. Section 288.12261, Florida Statutes, is created
220 to read:

221 288.12261 Tourism promotion agencies.-

222 (1) DEFINITION.-For purposes of this section, the term
223 "tourism promotion agency" means an entity, including, but not
224 limited to, an agency as defined in s. 119.011, that receives
225 public funds to promote tourism development on behalf of one or
226 more local governmental entities.

227 (a) A tourism promotion agency may include any local
228 governmental entity or any entity under contract with one or
229 more local governmental entities to promote tourism development
230 on behalf of such local governmental entity or entities through
231 the expenditure of public funds.

232 (b) For purposes of this section, the Florida Tourism
233 Industry Marketing Corporation and the Department of Economic
234 Opportunity are not considered tourism promotion agencies.

235 (2) OPERATION.-A tourism promotion agency must operate in
236 accordance with the following:

Amendment No. 1

237 (a) Each officer and member of the board of directors of a
238 tourism promotion agency who is not otherwise required to file a
239 financial disclosure pursuant to ch. 112 must file an annual
240 disclosure describing the nature of his or her interests or the
241 interests of his or her principals, including corporate parents
242 and subsidiaries of his or her principal, when such interests
243 benefit from the expenditure of tourism promotion agency funds.
244 The disclosure must be placed on the website of the tourism
245 promotion agency and included in the minutes of each meeting of
246 the board of directors of the tourism promotion agency when such
247 expenditures are discussed or voted upon.

248 (b) Board members shall serve without compensation, but
249 are entitled to receive reimbursement for per diem and travel
250 expenses pursuant to s. 112.061. Such expenses must be paid out
251 of funds of the tourism promotion agency.

252 (c) Officers, employees, or agents, including the
253 president or chief executive officer, may not receive
254 compensation for employment from public funds, pursuant to such
255 contract, that exceeds the salary and benefits authorized to be
256 paid to the Governor. Any payments of performance bonuses or
257 severance pay to officers, employees, or agents from public
258 funds are prohibited unless specifically authorized by law.

259 (d) A tourism promotion agency must comply with the per
260 diem and travel expense provisions of s. 112.061.

Amendment No. 1

261 (e) Officers and employees are subject to the Code of
262 Ethics for Public Officers and Employees standards under s.
263 112.313.

264 (f) A tourism promotion agency must avoid, neutralize, or
265 mitigate significant potential organizational conflicts of
266 interest before it enters into a contract. If the tourism
267 promotion agency elects to mitigate a significant potential
268 organizational conflict of interest, an adequate mitigation
269 plan, including organizational, physical, and electronic
270 barriers, shall be developed and the head of the tourism
271 promotion agency must certify that the award is in the best
272 interests of the county and submit such certification to the
273 governing board of the county within 3 business days after
274 entering into the contract.

275 (g) Lodging expenses for an employee or board member may
276 not exceed \$150 per day, excluding taxes, unless the tourism
277 promotion agency is participating in a negotiated group rate
278 discount or the tourism promotion agency provides documentation
279 of at least three comparable alternatives demonstrating that
280 such lodging at the required rate is not available. However, an
281 employee or board member may expend his or her own funds for any
282 lodging expenses in excess of \$150 per day.

283 (h) Tourism promotion agency funds may not be expended for
284 food, beverages, lodging, entertainment, or gifts for employees
285 or board members, unless authorized pursuant to s. 112.061 or

Amendment No. 1

286 this section. Employees or board members may not accept or
287 receive food, beverages, lodging, entertainment, or gifts from
288 persons, vendors, or other entities doing business with the
289 tourism promotion agency unless such food, beverage, lodging,
290 entertainment, or gift is available to similarly situated
291 members of the general public.

292 (i) A tourism promotion agency shall not expend public or
293 private funds that directly benefit only one business entity.

294 (3) TRANSPARENCY.-

295 (a) All contracts entered into by a tourism promotion
296 agency shall include:

297 1. The purpose of the contract.

298 2. Specific performance standards and responsibilities for
299 each entity.

300 3. A detailed project or contract budget, if applicable.

301 4. The value of any services provided.

302 5. The projected travel and entertainment expenses for
303 employees and board members, if applicable.

304 (b) A proposed contract with an estimated total contract
305 value of \$250,000 or more must be submitted to the governing
306 board of the county and published on the county's website at
307 least 14 days before the contract is executed. If the governing
308 board of the county rejects such proposed contract by a majority
309 vote held during the 14-day period, the tourism promotion agency
310 may not execute such proposed contract or any substantially

Amendment No. 1

311 similar contract without obtaining a majority vote of the
312 governing body of the county in favor of such contract. A
313 tourism promotion agency may not enter into multiple related
314 contracts to avoid the requirements of this paragraph.

315 (c)1. A tourism promotion agency shall submit to the
316 governing board of the county, within 30 days after the end of
317 its fiscal year, a complete and detailed report setting forth
318 all public and private financial data of the tourism promotion
319 agency, and shall publish such report on its website.

320 2. The financial data shall include:

321 a. The total amount of revenue received from public and
322 private sources.

323 b. The operating budget.

324 c. The total amount of salary, benefits, and other
325 compensation provided by the tourism promotion agency to its
326 officers, employees, or agents, regardless of the funding
327 source.

328 d. An itemized account of all expenditures, including all
329 travel and entertainment expenditures.

330 (d) The following information must be posted on the
331 website of each tourism promotion agency:

332 1. All contracts with a total contract value of \$5,000 or
333 more. Such contracts must be posted within 5 business days after
334 execution.

Amendment No. 1

- 335 2. All contracts, information, and financial data
336 submitted to the governing board of the county. Such contracts,
337 information, and data must be posted within 5 business days
338 after submission.
- 339 3. Video recordings of each board meeting. Such recordings
340 must be posted within 3 business days after the meeting.
- 341 4. A detailed report of expenditures following each
342 marketing event paid for with the funds of the tourism promotion
343 agency. Such report must be posted within 10 business days after
344 the event.
- 345 5. An annual itemized account of the total amount of funds
346 spent by a third party on behalf of the tourism promotion
347 agency, its board members, or its employees.
- 348 6. An annual itemized account of the total amount of
349 travel and entertainment expenditures.
- 350 (e) Notwithstanding any provision of law to the contrary,
351 a record required under this section, including, but not limited
352 to, a contract or agreement, is a public record and is not
353 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
354 the State Constitution. Such record shall be produced in full in
355 accordance with this section or upon request.
- 356 (f) A tourism promotion agency shall maintain and provide
357 online access to all of the information required under this
358 subsection and s. 125.0104(4)(f). Each tourism promotion agency
359 shall provide the Department of Economic Opportunity with the

Amendment No. 1

360 specific website address where the required information is
361 published and maintained online, and the Department of Economic
362 Opportunity shall publish and maintain a single online directory
363 which lists each tourism promotion agency and the specific
364 website address where such required information may be located.

365 (g) A tourism promotion agency that fails to comply with
366 the transparency and accountability requirements of this
367 subsection may not receive or expend public funds until it
368 becomes fully compliant.

369 (4) AUDITS.—

370 (a) For any county that annually receives \$30,000,000 or
371 more from taxes imposed pursuant to s. 125.0104, s. 125.0108, or
372 s. 212.0305, the Auditor General shall, biennially, conduct an
373 audit, as defined in s. 11.45, of all tourism promotion agencies
374 in such county to verify that funds were expended as required by
375 this section and to verify that transparency and accountability
376 requirements were met. If the Auditor General determines that
377 funds were not expended as required by this section, he or she
378 shall immediately notify the Department of Revenue, which may
379 pursue recovery of the funds under the laws and rules governing
380 the assessment of taxes.

381 (b) The Auditor General shall annually select at least two
382 counties that in the previous year received less than
383 \$30,000,000 from taxes imposed pursuant to s. 125.0104, s.
384 125.0108, or s. 212.0305 and conduct audits, as defined in s.

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Amendment No. 1

385 11.45, of all tourism promotion agencies in the county to verify
386 that funds were expended as required by this section and to
387 verify that transparency and accountability requirements were
388 met. If the Auditor General determines that funds were not
389 expended as required by this section, he or she shall
390 immediately notify the Department of Revenue, which may pursue
391 recovery of the funds under the laws and rules governing the
392 assessment of taxes.

393 (5) ENFORCEMENT.—The Governor or Chief Financial Officer
394 may at any time order the Department of Revenue or the local
395 official to whom the tax is remitted to cease and desist
396 distributing any taxes levied under s. 125.0104, s. 125.0108, or
397 s. 212.0305 based on a tourism promotion agency's failure to
398 comply with this section.

399 (6) PENALTIES.—It is unlawful for a person to knowingly
400 and willfully make a materially false or misleading statement,
401 provide false or misleading information, fail to report certain
402 information, or structure an organization or agreement to avoid
403 the requirements of this section. A person who violates this
404 section commits a misdemeanor of the first degree, punishable as
405 provided in s. 775.082 or s. 775.083.

406 (7) APPLICABILITY.—A private entity that meets the
407 definition of a tourism promotion agency under subsection (1)
408 due solely to the existence of a contract between the private
409 entity and a tourism promotion agency to promote tourism

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410 development is required to comply with this section only in
411 connection with the performance of its obligations and the
412 expenditure of funds pursuant to such contract. This section
413 shall not be construed to require the private entity to report
414 or conform its other business practices or activities to the
415 provisions of this section, provided such practices or
416 activities are not directly related to or funded by such
417 contract.

418 Section 4. Paragraph (e) of subsection (4) of section
419 125.0104, Florida Statutes, is amended, and paragraph (f) is
420 added to that subsection, to read:

421 125.0104 Tourist development tax; procedure for levying;
422 authorized uses; referendum; enforcement.—

423 (4) ORDINANCE LEVY TAX; PROCEDURE.—

424 (e) The governing board of each county which levies and
425 imposes a tourist development tax under this section shall
426 appoint an advisory council to be known as the "... (name of
427 county)... Tourist Development Council." The council shall be
428 established by ordinance and composed of nine members who shall
429 be appointed by the governing board. The chair of the governing
430 board of the county or any other member of the governing board
431 as designated by the chair shall serve on the council. Two
432 members of the council shall be elected municipal officials, at
433 least one of whom shall be from the most populous municipality
434 in the county or subcounty special taxing district in which the

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 3 (2018)

Amendment No. 1

435 tax is levied. Six members of the council shall be persons who
436 are involved in the tourist industry and who have demonstrated
437 an interest in tourist development, of which members, not less
438 than three nor more than four shall be owners or operators of
439 motels, hotels, recreational vehicle parks, or other tourist
440 accommodations in the county and subject to the tax. All members
441 of the council shall be electors of the county. The governing
442 board of the county shall have the option of designating the
443 chair of the council or allowing the council to elect a chair.
444 The chair shall be appointed or elected annually and may be
445 reelected or reappointed. The members of the council shall serve
446 for staggered terms of 4 years. The terms of office of the
447 original members shall be prescribed in the resolution required
448 under paragraph (b). The council shall meet at least once each
449 quarter and, from time to time, shall make recommendations to
450 the county governing board for the effective operation of the
451 special projects or for uses of the tourist development tax
452 revenue and perform such other duties as may be prescribed by
453 county ordinance or resolution. The council shall continuously
454 review expenditures of revenues from the tourist development
455 trust fund and shall receive, at least quarterly, expenditure
456 reports from the county governing board or its designee.
457 Expenditures which the council believes to be unauthorized shall
458 be reported to the county governing board and the Department of
459 Revenue. The governing board and the department shall review the

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Published On: 11/13/2017 6:34:09 PM

Page 19 of 23

Amendment No. 1

460 findings of the council and take appropriate administrative or
461 judicial action to ensure compliance with this section. The
462 county governing board shall review a proposed contract with an
463 estimated total contract value of \$250,000 or more. The county
464 governing board may reject such proposed contract by a majority
465 vote before the execution of such contract. The county governing
466 board must review all certifications by the head of a tourism
467 promotion agency related to potential conflicts of interest and
468 mitigation plans ~~The changes in the composition of the~~
469 ~~membership of the tourist development council mandated by~~
470 ~~chapter 86-4, Laws of Florida, and this act shall not cause the~~
471 ~~interruption of the current term of any person who is a member~~
472 ~~of a council on October 1, 1996.~~

473 (f) The governing board of a county that levies and
474 imposes a tourist development tax under this section shall
475 publish and make the following information available online:

476 1. The approved tourist development plan, including the
477 approximate cost or expense allocation for each specific project
478 or special use.

479 2. Any substantial amendments to the tourist development
480 plan.

481 3. The tax district in which the tourist development tax
482 is levied.

483 4. A prioritized list of the proposed uses of the tax
484 revenue by specific project or special use.

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Amendment No. 1

485 5. The quarterly expenditure reports from the county
486 governing board or its designee.

487 Section 5. Paragraph (c) of subsection (13) of section
488 288.1226, Florida Statutes, is amended to read:

489 288.1226 Florida Tourism Industry Marketing Corporation;
490 use of property; board of directors; duties; audit.—

491 (13) TRANSPARENCY.—

492 (c)1. Any entity that in the previous fiscal year received
493 more than 50 percent of its revenue from the corporation ~~or~~
494 ~~taxes imposed pursuant to s. 125.0104, s. 125.0108, or s.~~
495 ~~212.0305, and that partners with the corporation or participates~~
496 ~~in a program, cooperative advertisement, promotional~~
497 ~~opportunity, or other activity offered by or in conjunction with~~
498 ~~the corporation,~~ shall annually on July 1 report all public and
499 private financial data to the Governor, the President of the
500 Senate, and the Speaker of the House of Representatives, and
501 include such report on its website.

502 2. The financial data shall include:

503 a. The total amount of revenue received from public and
504 private sources.

505 b. The operating budget ~~of the partner entity.~~

506 c. The total amount of salary, benefits, and other
507 compensation provided by the entity to its officers, employees,
508 board members, or agents, regardless of the funding source

Amendment No. 1

509 ~~Employee and board member salary and benefit details from public~~
510 ~~and private funds.~~

511 d. An itemized account of all expenditures, including all
512 travel and entertainment expenditures, by the ~~partner~~ entity on
513 the behalf of, or coordinated for the benefit of, the
514 corporation, its board members, or its employees.

515 ~~e. Itemized travel and entertainment expenditures of the~~
516 ~~partner entity.~~

517 Section 6. Paragraph (c) of subsection (6) of section
518 288.904, Florida Statutes, is amended to read:

519 288.904 Funding for Enterprise Florida, Inc.; performance
520 and return on the public's investment.-

521 (6)

522 (c)1. Any entity that in the previous fiscal year received
523 more than 50 percent of its revenue from Enterprise Florida,
524 Inc., ~~or a tax imposed pursuant to s. 125.0104, s. 125.0108, or~~
525 ~~s. 212.0305, and that partners with Enterprise Florida, Inc., in~~
526 ~~a program or other activity offered by or in conjunction with~~
527 ~~Enterprise, Florida, Inc.,~~ shall annually on July 1 report all
528 public and private financial data to the Governor, the President
529 of the Senate, and the Speaker of the House of Representatives,
530 and include such report on its website.

531 2. The financial data shall include:

532 a. The total amount of revenue received from public and
533 private sources.

Amendment No. 1

- 534 b. The operating budget ~~of the partner entity.~~
- 535 c. The total amount of salary, benefits, and other
- 536 compensation provided by the entity to its officers, employees,
- 537 board members, or agents, regardless of the funding source
- 538 ~~Employee and board member salary and benefit details from public~~
- 539 ~~and private funds.~~
- 540 d. An itemized account of all expenditures, including all
- 541 travel and entertainment expenditures, by the ~~partner~~ entity on
- 542 the behalf of, or coordinated for the benefit of, Enterprise
- 543 Florida, Inc., its board members, or its employees.
- 544 ~~e. Itemized travel and entertainment expenditures of the~~
- 545 ~~partner entity.~~

546 Section 7. This act shall take effect July 1, 2018

547 -----

548

549 **T I T L E A M E N D M E N T**

550 Remove everything before the enacting clause and insert:

551 Enter Amending Text Here

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 18-01 Workers' Compensation
SPONSOR(S): Commerce Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Lloyd <i>Sc...</i>	Hamon <i>K.W.H.</i>

SUMMARY ANALYSIS

It is the stated intent of the Legislature that the workers' compensation system be self-executing and for the law to be interpreted to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Workers' compensation is the injured employee's remedy for "compensable" workplace injuries. Employees generally cannot sue a covered employer for workplace injuries.

Florida courts have recently found multiple parts of the workers' compensation law unconstitutional in the areas of carrier paid injured worker attorney fees, time limits on temporary wage replacement benefits (i.e., indemnity), and the right of an injured worker to pay for their own attorney. For these and other reasons, the Office of Insurance Regulation (OIR) ordered a rate increase of 14.5 percent effective December 1, 2016. OIR has also ordered a 9.5 percent decrease in rates, effective January 1, 2018, that is unrelated to the 14.5 percent increase. The prior increase remains in the base rates despite the pending decrease.

The bill makes the following changes to the workers' compensation law:

- Permits direct payment of attorneys by or for claimants.
- Increases total combined temporary wage replacement benefits (TTD/TPD) from 104 weeks to 260 weeks.
- Fills a benefit gap that happens when TTD/TPD ends, but the injured worker is not at overall maximum medical improvement and/or no overall permanent impairment rating.
- Allows a Judge of Compensation Claims (JCC) to award an hourly fee that departs from the statutory percentage based attorney fee schedule.
 - This is only permitted if the statutory fee is less than 40 percent or greater than 125 percent of the hourly rate customarily charged in the local community by defense attorneys, with the JCC determining the relevant facts.
 - If the departure fee is allowed, the JCC determines the hourly rate, not to exceed \$150 per hour, using statutory factors and the number of necessary attorney hours.
- Provides that the injured worker is responsible for any remaining attorney fees if required by their retainer agreement; the retainer agreements must be filed with the JCCs, but are not subject to JCC approval.
- Allows insurers to uniformly reduce premiums by no more than 5 percent, if they file an informational-only notice within 30 days, subject to regulatory oversight.
- Grants the Three-Member Panel authority to fill gaps in statutory reimbursement when adopting schedules of maximum reimbursement allowances for medical care.
- Requires a good faith effort by the claimant and their attorney to resolve disputes prior to filing a petition for benefits; mandates a specified notice regarding attorney fees be signed by the claimant; increases the requirements applicable to petitions for benefits; eliminates carrier paid attorney fees for services occurring before the filing a petition; attaches attorney fees 45 days, rather than 30 days, following the filing of a petition; requires a JCC to dismiss a petition for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether a hearing is required.
- Eliminates the charge-based reimbursement of health care facility outpatient medical care in favor of reimbursing them at 200 percent (unscheduled care) and 160 percent (scheduled surgery) of Medicare. If no Medicare fee exists, then current reimbursement standards apply, which are incorporated into statute.
- Requires the authorization or denial of medical care authorization requests, unless there is a material deficiency.
- Provides for collecting additional information on attorney fees.

The bill has no fiscal impact on state and local government revenues; a positive impact on state and local government expenditures; and positive and negative impacts on the private sector.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Recent Workers' Compensation Case Law

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,¹ involving attorney fees; *Westphal v. City of St. Petersburg*,² and *Jones v. Food Lion, Inc.*,³ relating to temporary wage replacement benefits (i.e., indemnity); and, *Miles v. City of Edgewater Police Department*,⁴ which addresses the right of an injured worker to pay for their own attorney.

CASTELLANOS

In 2003, the Legislature removed a provision allowing the award⁵ of a reasonable hourly fee to an injured workers' attorney when the statutory percentage based fee schedule resulted in an unreasonably low fee.⁶ This limited the injured worker's attorney to a fee based solely on a percentage of the amount of benefits that the attorney obtained for their client. In 2008, the Florida Supreme Court (Court) found that the law required the award of a reasonable attorney fee because of the continued use of the term "reasonable" in the statute.⁷ In 2009, the Legislature removed any reference to reasonableness and reenacted the statutory percentage based fee schedule.⁸

In *Castellanos*, the Court held that the exclusive statutory percentage based fee schedule created an irrebuttable presumption that the schedule always results in a correct fee.⁹ The Court found this irrebuttable presumption an unconstitutional violation of the claimant's due process rights. Accordingly, the Court invalidated the statute's limitation on attorney compensation and gave the Judge of Compensation Claims (JCC) the authority to award a reasonable attorney fee, if the JCC found that the fee schedule resulted in an unreasonable fee.

WESTPHAL and JONES

In *Westphal* and *Jones*, the Court (in *Westphal*) and the First District Court of Appeal (1st DCA) (in *Jones*) recognized that there was an unconstitutional gap in benefits for certain injured workers. Temporary wage replacement benefits are only payable until the earlier of the injured worker getting as healthy as they are going to be, also called "maximum medical improvement," or when they have received 104 weeks of temporary wage replacement. Because permanent wage replacement benefits are only paid after an injured worker has reached maximum medical improvement, some injured workers were not receiving or were ineligible for wage replacement benefits while they were still disabled. This happens because they are not eligible for temporary wage replacement benefits after they have reached the 104th week and they were not yet eligible for permanent wage replacement benefits without reaching maximum medical improvement. Because there was no benefit that they could receive or sue for, the Court found that they were unconstitutionally deprived of their right to access the courts. Therefore, the Court invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. This restored the law to the 1993 statute. However, the Court did

¹ *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. 2016). Opinion below – 124 So. 3d 392 (Fla. 1st DCA 2013).

² *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016). Opinion below – 122 So. 3d 440 (Fla. 1st DCA 2013).

³ *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016).

⁴ *Miles v. City of Edgewater Police Department*, 190 So. 3d 171 (Fla. 1st DCA 2016).

⁵ There are multiple circumstances that require an award of attorney fees, but the one that leads to most attorney fee awards is when a prevailing claimant has employed an attorney in the successful pursuit of the matter. s. 440.34(3), F.S.

⁶ Ch. 2003-415, L.O.F.

⁷ *Emma Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008).

⁸ Ch. 2009-094, L.O.F.

⁹ In *Castellanos*, the attorney secured a benefit of about \$850 and was due only \$164.54 for 107 hours of work. This works out to \$1.53, per hour.

not provide a solution for the unconstitutional gap in benefits; it just extended the number of weeks, which makes it less likely that an injured worker would be affected by it.

MILES

Finally, the 1st DCA issued an opinion in a case that holds another portion of the workers' compensation law on attorney fees unconstitutional. In *Miles*, the Court invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.¹⁰ The attorney was only paid by the employer/carrier¹¹ and then only if the injured worker won the case. In fact, it was a criminal offense for an attorney to take a payment from an injured worker for legal representation. The 1st DCA found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney. Therefore, the 1st DCA struck down the prohibition on attorneys accepting payment directly from their client.

Financial Impact of the Cases and Overview of the 2016 Rate Filing

In 2016, the National Council on Compensation Insurance, Inc. (NCCI), the organization that files workers' compensation rates for approval by OIR and use by all workers' compensation insurance carriers doing business in the state, requested approval of a 19.6 percent increase in rates to become effective October 1, 2016, for in-force, new and renewal policies. NCCI's rate request sought a 15 percent increase based on *Castellanos*, alone.¹² OIR proposed to approve a 14.5 percent increase effective December 1, 2016, for new and renewal policies. NCCI filed an amended request on October 4, 2016, in compliance with OIR's proposal and on October 5, 2016, OIR issued an order approving a 14.5 percent increase effective December 1, 2016.^{13, 14} The rate increase was allocated, as follows:

<i>Castellanos</i>	10.1 percent
<i>Westphal and Jones</i>	2.2 percent
<u>Increase in provider reimbursement</u>	<u>1.8 percent</u>
Total	14.5 percent ¹⁵

The rate increase was estimated to increase annual premiums over \$528 million (\$368 million assignable to *Castellanos*) in the first year. The portion attributable to the cost impact of *Castellanos* is controversial and is expected to continue to develop in subsequent years, which would lead to additional rate increases as soon as two years later. The actual impact on attorney's fee related costs will not be known for some time.

Overview of the 2017 Rate Filing

On August 28, 2017, NCCI requested approval by OIR of a 9.3 percent reduction in workers' compensation insurance rates.¹⁶ This annual filing incorporated industry experience and trend data for

¹⁰ ss. 440.105(2)(c) and 440.34(1), F.S.

¹¹ Workers' compensation insurers are referred to as carriers. "Carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462. s. 440.02(4), F.S.

¹² The NCCI rate request also includes an estimated increase in costs associated with the Court's decision in *Westphal* and the Legislature's ratification of the Workers' Compensation Health Care Provider Reimbursement Manual [HB 7073 (2016)].

¹³ *Revised Workers' Compensation Rates and Rating Values as Filed by the NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.*, Case No. 191880-16, <http://www.floir.com/siteDocuments/NCCI191880-16-FOORF.pdf> (Fla. OIR Oct. 5, 2016).

¹⁴ On November 23, 2016, a court order blocked the rate increase due to violations of the Sunshine Law and Public Records Law. *Order on Non-Jury Trial and Final Judgement Providing Declaratory and Injunctive Relief*, Case No. 37 2016 CA 002159 (Fla. 2nd Cir. Nov. 23, 2016). OIR and NCCI appealed the court order. Pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure and a stay issued by the 1st DCA, the court order did not go into effect while the appeal was pending. Accordingly, the rate increase became effective on December 1, 2016. On May 9, 2017, the 1st DCA found that there was no violation of the Sunshine Law or Public Records Law, reversed the trial court, and allowed the rate order to become permanent. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172 (Fla. 1st DCA 2017).

¹⁵ The components of the rate increase are compiled together for the net increase. Therefore, the total amount of the increase exceeds the sum of the three components (i.e., rates are increased by 10.1 percent, then by 2.2 percent, and then by the final 1.8 percent for an overall increase of 14.5 percent).

policy years 2014 and 2015. On October 18, 2017, OIR held a public rate hearing on NCCI's request. At the hearing and in written submissions, NCCI provided data and actuarial opinions regarding the rate request, including an explanation of when the costs related to the case could be a significant part of the experience data for a rate filing.

At the time of the rate filing, only the last six months or so of the 24-month experience period included the effect of the *Castellanos* case. For the expected 2019 rate filing (to be filed in the fall of 2018), approximately 18 months of the 24-month experience period will include the *Castellanos* case. Finally, the 2020 rate filing (to be filed in the fall of 2019) will include the effect of *Castellanos* in all 24 months of experience used in the filing. Therefore, the *Castellanos* case impact was only slightly developed at the time of the rate filing, will be moderately developed at the time of the expected 2019 rate filing, and will be fully developed at the time of the expected 2020 rate filing.¹⁷ Absent a change in statute that directly addresses the carrier paid claimant attorney fee provisions of the workers' compensation law, the *Castellanos* related portion of the 14.5 percent increase that went into effect on December 1, 2016, will remain in the base workers' compensation rate regardless of future increases or decreases approved by OIR.

On November 1, 2017, OIR issued an order on the 2017 workers' compensation rate filing. OIR required a rate decrease slightly greater than that which NCCI requested. OIR disapproved the filing in part and advised NCCI that OIR would approve a 9.5 percent rate reduction upon receipt of an amended filing that conforms to that condition. The primary reason for the change is OIR's reduction of the profit and contingency factor from 2.0 percent to 1.85 percent based on NCCI's failure to include in the rate filing consideration of: 1) reasonably likely policyholder dividends, and 2) realized investment returns. OIR also ordered NCCI to provide a detailed quantitative analysis of the impact of the *Castellanos* decision in future rate filings.

To meet statutory notice deadlines for the rate change to go into effect on January 1, 2018, NCCI made a compliance filing on November 7, 2017. Effective January 1, 2018, workers' compensation rates are reduced by 9.5 percent for new and renewal policies.

Overview of Florida's Workers' Compensation System

The foundations of workers' compensation in the modern era are found in 19th century Europe and the Industrial Revolution. By the early 1900's, workers' compensation was making inroads in the United States. The first successful workers' compensation laws were adopted in New Jersey and Wisconsin in 1911. Florida's law was passed in 1935. By 1948, every state had a workers' compensation law. Every state continues to maintain workers' compensation; however, Texas does allow employers and employees to opt-out of the workers' compensation system and utilize the tort system.

Chapter 440, Florida Statutes, is Florida's workers' compensation law. It is the stated intent of the Legislature that the workers' compensation system be self-executing and for the law to be interpreted to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer."¹⁸ For work-related injuries, workers' compensation provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics¹⁹ and compensation for disability²⁰ when the injury causes an employee to miss more than seven days of work.²¹

¹⁶ FLORIDA OFFICE OF INSURANCE REGULATION, *Office Statement on Annual Workers' Compensation Filing* (Aug. 29, 2017) <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2205> (last visited Nov. 7, 2017).

¹⁷ THE FLORIDA CHANNEL, *10/18/17 Office of Insurance Regulation Rate Hearing for National Council on Compensation Insurance (NCCI)*, <http://thefloridachannel.org/videos/101817-office-insurance-regulation-rate-hearing-national-council-compensation-insurance-ncci/> (last visited Nov. 7, 2017).

¹⁸ s. 440.015, F.S.

¹⁹ s. 440.13(2)(a), F.S.

²⁰ The use of the term "disability" in the context of workers' compensation differs from common parlance. In this context, it refers to a wage-loss, rather than a reduction in physical abilities. Section 440.02(13), F.S., defines "disability" as an "incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury." Workers' compensation laws describe reduced physical ability in terms of "permanent impairment." Section 440.02(22), F.S., defines "permanent

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.²² Employees generally cannot sue a covered employer for workplace injuries.²³ The Division of Workers' Compensation within the Department of Financial Services (Division) provides regulatory oversight of Florida's workers' compensation system.

Workers' Compensation Premium Rates and Coverage Options

Workers' compensation premium rates (per \$100 of payroll) are set annually by OIR, upon a review of rate filings made by NCCI, Florida's workers' compensation rating organization. The premium a particular employer will pay for a workers' compensation insurance policy is dependent upon various factors, including the employer's workers' compensation loss history, total payroll, industry, and job classifications.

There are three ways for employers to obtain workers' compensation coverage. The majority of employers purchase a workers' compensation insurance policy from an authorized insurance company or they qualify as a self-insurer.²⁴ Employers that are not self-insured and are unable to purchase coverage from an insurance company may purchase coverage from the Workers' Compensation Joint Underwriting Association.²⁵ The Joint Underwriting Association is the insurer of last resort for workers' compensation insurance, also known as the residual market provider.²⁶

Injuries Covered by Workers' Compensation

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.²⁷ The workplace injury must be the "major contributing cause" for medical treatment and remain as such to continue medical treatment at the expense of the employer. "Major contributing cause" is the one cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought.²⁸

Reporting Injuries

Employees are required to inform employers of their injury within 30 days of the injury or initial manifestation of the injury. The failure to report within this timeframe may result in the inability to claim benefits.²⁹ Employers are required to report a workplace injury to their workers' compensation insurance company no later than seven days after the employer has knowledge of the injury.³⁰ Administrative fines will be imposed against employers that do not timely report injuries.³¹

impairment" as "any anatomic or functional abnormality or loss determined as a percentage of the body as a whole, existing after the date of maximum medical improvement, which results from the injury."

²¹ s. 440.12(1), F.S.

²² "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

²³ s. 440.11(1), F.S. Employers who fail to obtain required workers' compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

²⁴ s. 440.38, F.S.

²⁵ s. 627.311(5)(a), F.S.

²⁶ For calendar year 2015, 2.4 percent of Florida policyholders obtained their coverage from the Joint Underwriting Association representing 1.0 percent of Florida's direct written premium. FLORIDA OFFICE OF INSURANCE REGULATION, *Workers' Compensation Annual Report* (Jan. 2017), 24, available at: <https://www.floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf> (last visited Nov. 8, 2017).

²⁷ s. 440.09(1), F.S.

²⁸ *Id.*

²⁹ s. 440.185(1), F.S.

³⁰ s. 440.185(2), F.S.

³¹ s. 440.185(9), F.S.

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.³² Medical services must be provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).³³ When the insurance company has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation health care provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached "maximum medical improvement."³⁴ Injured employees are entitled to one change of physician during the course of treatment for any one accident.³⁵ After the initial examination and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the workers' compensation insurance company to determine whether such treatment would be recognized as reasonably prudent.³⁶

Cash Payments for Lost Wages and Permanent Impairments

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.³⁷ The first seven days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.³⁸ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),³⁹ up to the maximum weekly benefit established by law.⁴⁰ For 2017, this amount is \$886.46,⁴¹ which is the statewide average weekly wage (SAWW).⁴² Payments are due every two weeks.⁴³ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁴⁴
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.⁴⁵

³² s. 440.13(2)(a), F.S.

³³ s. 440.13(3)(a), F.S.

³⁴ s. 440.13(13), F.S. The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. s. 440.02(10), F.S.

³⁵ s. 440.13(2)(f), F.S.

³⁶ s. 440.13(2)(e), F.S.

³⁷ s. 440.12(1), F.S.

³⁸ *Id.*

³⁹ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

⁴⁰ s. 440.15(1)-(4), F.S.

⁴¹ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Informational Bulletin DFS-03-2016*, <https://www.myfloridacfo.com/Division/WC/pdf/DFS-03-2016.pdf> (last visited Nov. 8, 2017).

⁴² "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the Department of Economic Opportunity on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S.

⁴³ s. 440.20(2)(a), F.S.

⁴⁴ s. 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

⁴⁵ s. 440.15(3), F.S.

- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.⁴⁶

Educational and Training Benefits

Once an injured worker reaches maximum medical improvement, they may receive educational and training benefits, if they are unable to earn at least 80 percent of their pre-injury income. Educational and training benefits include:

- From the Division:
 - Vocational counseling;
 - Job-seeking skills training;
 - Job analysis;
 - Transferable skills analysis;
 - Selective job placement;
 - Training and education; or
 - Other services deemed necessary and appropriate to help an injured worker return to work.
- From the employer/carrier:
 - Indemnity benefits, which are classified as Educational and Training Temporary Total Compensation benefits that pays for lost earnings while the injured worker learns new vocational skills.

The Educational and Training Temporary Total Compensation benefit is payable to employees for up to 26 weeks, which may be extended for an additional 26 weeks;⁴⁷ however, injured workers may only receive Educational and Training Temporary Total Compensation benefits, temporary total disability benefits, and temporary partial disability benefits for a combined maximum of 260 weeks.⁴⁸ Their entitlement to Educational and Training Temporary Total Compensation benefits ends at the 260th week of combined temporary benefits, regardless of whether their educational or training program is still ongoing as of the 260th week. The insurance carrier has the discretion to continue to pay the benefit beyond the 260th week, however.⁴⁹

Death Benefits

Workers' compensation also provides funeral expenses, up to \$7,500, and death benefits payable to a deceased worker's surviving spouse and dependents when an employee dies as a result of a work-related injury, up to a maximum of \$150,000.⁵⁰

Denial of Benefits by the Carrier

Injured employees have the right to file a Petition for Benefits with the Office of the Judges of Compensation Claims for any benefit that is ripe, due, and owing.⁵¹ Within 14 days of receipt of the Petition for Benefits, the workers' compensation insurance company is required to either pay the requested benefits or file a response to the petition.⁵² Forty days after the Petition for Benefits has been filed, the Judge of Compensation Claims will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the Petition for Benefits.⁵³ If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the

⁴⁶ s. 440.15(1), F.S.

⁴⁷ s. 440.491(6)(b), F.S.

⁴⁸ ss. 440.15(2) and (4) and 440.491(6)(b), F.S. See *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. Jun. 9, 2016) and *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

⁴⁹ *Id.*

⁵⁰ s. 440.16(1)(a) and (b), F.S.

⁵¹ s. 440.192(1), F.S.

⁵² s. 440.192(8), F.S.

⁵³ s. 440.25, F.S.

mediation. The overall time limit for dispute resolution from the date of the Petition for Benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a Petition for Benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.⁵⁴

Attorney Fee Costs

Despite the legislative intent that the workers' compensation system be self-executing, it is sometimes necessary for an injured worker to dispute the adjustment or denial of their claim through a petition for benefits filed with the Office of the Judges of Compensation Claims (OJCC). Due to the complex nature of the law, such injured workers employ an attorney to handle their petition in the vast majority of cases (as do employer/carriers). For fiscal years 2010-2011 through 2015-2016, attorneys represented injured workers in about 90 percent of cases.⁵⁵

Injured workers that prevail in a lawsuit before the OJCC to enforce their entitlement to workers' compensation benefits are generally awarded payment of their attorney's fees against the employer/carrier. The attorney's fee is calculated based on a formula provided in s. 440.34, F.S. This has been referred to as the statutory fee schedule for employer/carrier paid claimant attorney fees. Prior to October 1, 2003, the JCC was authorized to depart from the statutory fee schedule and increase or decrease the attorney fee award based on listed factors. As part of the 2003 workers' compensation reform passed by the Legislature,⁵⁶ the authority of the JCC to depart from the statutory fee schedule was removed. It was briefly revived by case law⁵⁷ in 2008, but was again removed by legislative action.⁵⁸ On April 28, 2016, the Florida Supreme Court revived the JCC's authority to award a fee that departs from the statutory fee schedule.⁵⁹ This is commonly referred to as the *Castellanos* decision. Pursuant to *Castellanos*, the JCC again has the authority award a reasonable fee.

The JCCs collect detailed information regarding claimant attorney fee costs; however, only a portion of this data is recorded in their electronic database. While the JCC can readily produce much of the information that they collect related to awards of claimant attorney fees, they cannot readily produce the attorney's hourly rates and number of hours the attorney claimed to spend on the matter. These two pieces of information may be critical in the future to understanding how attorney behavior changed following *Castellanos* and whether there is an increase in litigation costs, as a result.

The following information is based on data reported by the JCCs⁶⁰ and the Workers' Compensation Research Institute (WCRI). Changes in this information going forward can quantify the impact of the *Castellanos* decision and may identify any developing policy issues that may need legislative consideration.

⁵⁴ s. 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. Apr. 28, 2016).

⁵⁵ STATE OF FLORIDA, DIVISION OF ADMINISTRATIVE HEARINGS, *2015-2016 Annual Report of the Office of the Judges of Compensation Claims*, 16 <https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#16> (last visited Nov. 8, 2017).

⁵⁶ Ch. 2003-412, L.O.F.

⁵⁷ *Emma Murray v. Mariner Health*, 994 So. 2d 1051 (Fla. 2008).

⁵⁸ Ch. 2009-94, L.O.F.

⁵⁹ *Castellanos v. Next Door Company*, 192 So. 3d 431 (Fla. Apr. 28, 2016). The Florida Supreme Court held that the irrebuttable statutory presumption in favor of the fixed statutory fee schedule is an unconstitutional violation of the claimant's due process rights.

⁶⁰ *State of Florida Division of Administrative Hearings, 2015-2016 Annual Report of the Office of the Judges of Compensation Claims*, <https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#>.

Number of Petitions for Benefit Received by JCCs⁶¹

Fiscal Year	Number of Petitions Received	Average Number of Petitions Received Monthly
2010-11	64,679	5,390
2011-12	61,354	5,113
2012-13	58,041	4,837
2013-14	59,292	4,941
2014-15	60,021	5,002
2015-16	67,265	5,605
2016-17	70,363	5,684

Amount of Attorney Fees Reported by JCCs, by Party Type

Pursuant to statute, the JCC's receive insurance carrier defense fee information. Carriers and their representatives are required to report their annual defense costs by September 1st each year. This information is self-reported, aggregated, and unaudited. There are no controls to avoid duplicate reporting (third party administrators and carriers are both self-reporting). Nor is there categorization of the reported defense costs or definitions governing what constitutes a reportable defense cost, including whether the cost is related to pending litigation. Accordingly, the accuracy of defense costs filed with and reported by the JCCs is unknown.

Fiscal Year	Claimant Attorney Fees ⁶²	Percent Change	Defense Attorney Fees	Percent Change	Claimant and Defense Combined	Percentage Claimant	Percentage Defense
2010-11	\$157,081,084		\$259,323,175		\$416,404,259	37.72%	62.28%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%	\$395,294,706	38.67%	61.33%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%	\$392,784,122	38.67%	61.33%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%	\$379,222,337	37.41%	62.59%
2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%	\$370,741,896	36.73%	63.27%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%	\$378,573,902	36.05%	63.95%
2016-17	\$185,676,766	36.07%	\$253,932,265	4.88%	\$439,609,031	42.24%	57.76%

Average Attorney Fee

Reported by JCCs⁶³

Fiscal Year	Number of Claimant Attorney Fee Awards on Petitions for Benefit	Average Claimant Attorney Fee Awarded on Petitions for Benefit ⁶⁴	Number of Defense Attorney "Cases" Reported by Employer/Carriers	Average Annual Defense Attorney Fee per "Case" Reported by Employer/Carriers
2010-11	32,325	\$3,731	n/a	n/a
2011-12	33,173	\$3,657	n/a	n/a
2012-13	32,431	\$3,645	n/a	n/a
2013-14	32,993	\$3,399	n/a	n/a
2014-15	31,545	\$3,517	67,898	\$3,496.52
2015-16	32,762	\$3,520	73,268	\$3,201.38

⁶¹ Email from David Langham, Deputy Chief Judge, Division of Administrative Hearings, RE: summary and analysis 092915 rev2, at 4 (Sept. 6, 2017).

⁶² From fiscal year 2015-16 to fiscal year 2016-17, the mean claimant attorney hourly rate increased from \$150 per hour to \$250 per hour (a 67 percent increase). *Id.* at 3.

⁶³ Average Claimant Attorney Fee Awarded represents the award at the conclusion of litigation over a petition filed with the JCCs. Average Annual Defense Attorney Fee per Reported Case represents the calculated average defense attorney fee per case using aggregate defense attorney payments self-reported by carriers and third party administrators to the JCCs for the given year. These two attorney fee figures are for general comparison purposes only and are not based on the same periods or cases.

⁶⁴ For injuries after September 30, 2003.

Time Frame		Average Defense Attorney Fee Cost per Lost Time Claim, on Claims with >\$500 in Fees	Percentage of Lost Time Claims with Defense Attorney Fee Cost >\$500	Average Total Cost per Lost Time Claim ⁶⁵
12 Months Maturity	2011-2012 ⁶⁶	\$4,222	28%	\$22,634
	2013-2014 ⁶⁷	\$4,612	27%	\$23,582
	2014-2015 ⁶⁸	\$4,460	27%	\$24,227
	2015-2016 ⁶⁹	\$4,461	29%	\$24,647
36 Months Maturity	2009-2012 ⁷⁰	\$7,143	42%	\$35,674
	2011-2014 ⁷¹	\$6,857	40%	\$35,639
	2012-2015 ⁷²	\$6,784	40%	\$35,495
	2015-2016 ⁷³	\$6,634	39%	\$35,734

Medical Claim Costs

All medical claims are reported to the Division. This occurs in the form of electronic copies of every medical bill received by employer/carriers for workers' compensation medical services provided to injured workers.

- The total charges and total paid workers' compensation health care provider services were stable from 2010 through 2016. While charges increased 2.3 percent per year on average during the period, the amount paid for medical services decreased by 0.2 percent per year. A similar pattern is evident for average charge per line item and average paid per line item.⁷⁴
- Average annual percentage change in total amount billed, by provider type (from 2011 through 2016):⁷⁵
 - Hospital Inpatient 6.7%
 - Ambulatory Surgical Center 6.5%
 - Medical Supplies 3.5%
 - Hospital Outpatient 3.3%
 - Dental 2.1%
 - Pharmacy 1.0%
 - Health Care Provider -0.2%
 - Home Health Services -0.7%
 - Nursing Homes -7.3%

⁶⁵ WCRI includes the following in Average Total Cost per Lost Time Claim: Average Medical Payment per Claim, Average Indemnity Payment per Claim, and Average Benefit Delivery Expense per Claim, which, among other things, includes defense attorney fees.

⁶⁶ Rui Yang, *CompScope Benchmarks for Florida, 14th Ed.* (Oct. 2013), 53 and 54, and *CompScope Benchmarks for Florida, 14th Ed.: The Databook* (Oct. 2013), 19, http://www.wcrinet.org/result/bmcscope_multi14_FL_result.html.

⁶⁷ Rui Yang & Roman Dolinschi, *CompScope Benchmarks for Florida, 15th Ed.* (Apr. 2015), 62, 74, and 76 *CompScope Benchmarks for Florida, 15th Ed.: The Databook* (Apr. 2015), 20, http://www.wcrinet.org/result/bmcscope_multi15_FL_result.html.

⁶⁸ Rui Yang & Roman Dolinschi, *CompScope Benchmarks for Florida, 16th Ed.* (Apr. 2016), 54 and 55, and *CompScope Benchmarks for Florida, 16th Ed.: The Databook* (Apr. 2016), 20, http://www.wcrinet.org/result/bmcscope_multi16_FL_result.html.

⁶⁹ Rui Yang, *CompScope Benchmarks for Florida, 17th Ed.* (Apr. 2017), 61, 62, 74 and 76, <http://www.wcrinet.org>.

⁷⁰ Rui Yang, *supra* note 66.

⁷¹ Rui Yang & Roman Dolinschi, *supra* note 67.

⁷² Rui Yang & Roman Dolinschi, *supra* note 68.

⁷³ Rui Yang, *supra* note 69.

⁷⁴ Email from Brittany O'Neil, WC Policy Coordinator, Division of Workers' Compensation, Department of Financial Services, RE: 2017 Accomplishments Report (Nov. 9, 2017).

⁷⁵ *Id.*

- Average annual percentage change in total amount paid within one year of the injury, by provider type (from 2011 through 2016):⁷⁶
 - Hospital Inpatient 7.3%
 - Hospital Outpatient 1.2%
 - Ambulatory Surgical Center -1.6%
 - Pharmacy -2.2%
 - Medical Supplies -2.4%
 - Dental -3.8%
 - Health Care Provider -4.3%
 - Home Health Services -9.0%
 - Nursing Home -9.4%

Hospital Inpatient and Hospital Outpatient

Hospital inpatient care is reimbursed based on a schedule of per diem rates, subject to a stop-loss amount above which reimbursement is made at 75 percent of the hospital's billed charge.⁷⁷ Hospital outpatient care, except for scheduled outpatient surgery, is reimbursed at 75 percent of the usual and customary (U&C). Scheduled hospital outpatient surgery and ambulatory surgical center care are reimbursed at 60 percent of U&C. Note: the resulting scheduled surgery reimbursement rate is 80 percent of the rate for all other hospital outpatient care (i.e., 60% of U&C / 75% of U&C = 80%).

- Both hospital inpatient and hospital outpatient services have seen an increase in total charges and total payments from 2011 through 2016.
 - Hospital inpatient:⁷⁸
 - Charges increased 5.5 percent per year.
 - Payments increased 6.7 percent per year.
 - Hospital outpatient:⁷⁹
 - Charges increased 6.6 percent per year.
 - Payments increased 3.2 percent per year.
- The total number of hospital bills has declined annually from 2011 through 2016:
 - Total number of hospital inpatient bills declined 1.5 percent per year on average.
 - Total number of hospital outpatient bills declined 2.8 percent per year on average.

⁷⁶ *Id.*

⁷⁷ Inpatient per diem rates for trauma center licensed hospitals is \$3,850.33 per day for surgical stays and \$2,313.69 per day for non-surgical stays. For other acute care hospitals, they are \$3,849.16 per day for surgical stays and \$2,283.40 per day for non-surgical stays. If the total charges, excluding implants, is \$59,891.34 or less, then the per diem rates apply, otherwise reimbursement is 75 percent of the total gross charge, excluding implants. Implants are reimbursed under a separate method. *Florida Workers' Compensation Reimbursement Manual for Hospitals, 2014 Edition* (Effective Jan. 1, 2015) https://www.flrules.org/gateway/notice_Files.asp?ID=15268011 (last visited Nov. 8, 2017).

⁷⁸ *Id.*

⁷⁹ *Id.*

- The average amount charged and the average amount paid per hospital inpatient and hospital outpatient bill have increased significantly from 2011 through 2016. These increases have exceeded the “Hospital and related services” component of the Consumer Price Index for medical care.⁸⁰
 - Hospital inpatient:
 - Average charge per bill increased 7.1 percent per year.
 - Average payment per bill increased 8.4 percent per year.
 - Hospital outpatient:
 - Average charge per bill increased 9.6 percent per year.
 - Average payment per bill increased 6.2 percent per year.⁸¹

Effect of the Bill

The bill makes the following changes:

Attorney fees

- Provides that claimant attorney hours must be filed at least 5 days before the pre-trial hearing and the final hearing.
- Requires the injured worker to receive and acknowledge a specific notice about workers’ compensation attorney fees prior to engaging an attorney.
- Mandates a good faith effort by the claimant and their attorney to resolve disputes prior to filing a petition for benefits.
- Provides that documentation of the signed notice and good faith effort be filed as part of a petition for benefits, subject to dismissal without prejudice to refile the petition.
- Repeals provisions that prohibit attorneys from accepting and the JCC from approving attorney’s fees paid directly by or on behalf of the injured worker outside of an award against the employer/carrier.
- Provides authority for attorneys to accept fees paid directly by or on behalf of the injured worker outside of an award against the employer/carrier.
- Requires the filing of retainer agreements with the JCC, but the retainers are not subject to JCC approval.
- Provides authority to the JCC to approve an attorney fee that departs from the statutory attorney fee schedule, if:
 - The statutory attorney fee schedule produces an equivalent hourly rate that is less than 40 percent or more than 125 percent of the fee customarily charged in the locality for similar legal services by defense attorneys.
- Requires the JCC to:
 - Determine the number of attorney hours that were necessary for the claimant’s attorney to obtain the benefits secured, including an allocation of those hours between issues that the claimant won and lost,
 - Specify the number of attorney hours reasonably related to benefits that the claimant did not win, and
 - Reduce the number of attorney hours to remove any that are excessive.
- Incorporates factors to guide the JCC when awarding a departure fee.

⁸⁰ For the four years ending August 2017, the “Hospital and related services” component of the Consumer Price Index for medical care was: 4.1 percent (2016-2107), 5.8 percent (2015-2016), 3.3 percent (2014-2015) and 3.8 percent (2013-2014). UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Consumer Price Index, Archived Consumer Price Index Detailed Report Information*, <https://www.bls.gov/cpi/tables/supplemental-files/home.htm> (last visited Nov. 1, 2017).

⁸¹ In 2015, the average paid per hospital outpatient bill declined. This may be due to adoption of revised reimbursement methodology by DFS that became effective Jan. 1, 2015. See *Florida Workers’ Compensation Reimbursement Manual for Hospitals, 2014 Edition*, https://www.flrules.org/gateway/notice_Files.asp?ID=15268011 (last visited Nov. 8, 2017).

- Provides discretion to JCC to determine the precise hourly amount of the departure fee that is awarded, in \$1 increments.
- Caps the amount the carrier must pay under a departure fee at \$150 per hour, thus limiting how much of the attorney fees would be payable by the carrier; the injured worker may be responsible for any attorney fees due after award of the statutory fee schedule amount or the departure fee, as applicable, pursuant to a retainer agreement.
- Prohibits the award of carrier paid attorney fees for services provided prior to the filing of a petition for benefits.
- Extends the attachment of attorney fees following the filing of a petition for benefits from 30 days to 45 days.
- Allows the carrier to petition for secondary review of an award of a departure fee, in certain circumstances.
- Modifies current law to allow an alternative minimum attorney fee of \$150 per hour, not to exceed \$1,500, in all medical-only cases, rather than only once per accident.

Temporary Total Disability and Temporary Partial Disability Benefits

- Increases the allowed total combined number of weeks of temporary total disability (TTD) and temporary partial disability (TPD) from 104 weeks to 260 weeks. The extension of the duration of TTD/TPD benefits also increases the opportunity for the injured worker to receive training and education. The duration of training and education benefits are not expanded, but since they are provided within the duration of TTD/TPD benefits, the timeframe in which they may be received is changed.
- Provides a limited extension of TTD benefits for up to 26 additional weeks when the injured worker reaches the maximum number of weeks but permanent benefits cannot begin because the injured worker is not at overall maximum medical improvement and/or does not have an overall permanent impairment rating.
 - If the injured worker is not at overall maximum medical improvement after the extended TTD benefit is exhausted, the JCC is required, upon motion, to determine the injured workers' eligibility for permanent total disability benefits.
- Requires the provisional payment of Impairment Benefits (IBs) if the injured worker reaches the maximum number of weeks of TPD benefits (i.e., 260 weeks) but permanent benefits cannot begin because the injured worker is not at overall maximum medical improvement and/or does not have an overall permanent impairment rating.
 - Pays provisional IBs consistent with the single highest permanent impairment rating and credits this amount to the carrier when final IBs payment occurs upon achieving overall maximum medical improvement and receiving overall permanent impairment rating.

Attorney Fee Data Reports

- Requires greater specificity when reporting defense attorney fees as required by statute. For litigated claims, the total amount of attorney fees and the total number of attorney hours will be filed with the OJCC. For attorney fees unrelated to litigation, only the total amount of attorney fees will be filed.

Three-Member Panel

- Authorizes the Three-Member Panel to fill gaps in statutory reimbursement methodologies so that they may adopt schedules of maximum reimbursement allowances, as required, in a comprehensive manner.

Medical Care Authorizations

- Provides that carriers must authorize or deny medical authorization requests within the current 3 day or 10 day periods, but they are allowed to return a request for material deficiency, e.g., incomplete or improper forms or missing required documentation.

Outpatient Medical Care Reimbursement

- Changes the reimbursement methodology for outpatient services provided by hospitals and ambulatory surgical centers from a charge based reimbursement to a percentage of the fee or rate established under the Medicare Outpatient Prospective Payment System (OPPS).
 - The applicable reimbursement is:
 - For hospital outpatient services, 200 percent of OPSS fee or rate, except scheduled surgery is reimbursed 160 percent of OPSS fee or rate (i.e., 200% x 80% = 160%).
 - For ambulatory surgical center care, 160 percent of OPSS fee or rate.
 - Incorporates into statute the current reimbursement methodology adopted by the Three-Member Panel for outpatient services that are not reimbursable under OPSS. This is either 75 percent (hospitals generally) or 60 percent (hospital scheduled surgery or ambulatory surgical center care) of the statewide average charge for the applicable procedure, as derived from the Division's database of billed charges at a frequency of 50 or more charges. And, for those procedures that lack an allowed amount under the primary or secondary method, reimbursement would occur at either 75 percent or 60 percent, as applicable, of the facility's actual billed charge.

Carrier Competition/Premium Discount

- Authorizes a carrier to depart from required premiums in a uniform way by no more than five percent, if they notify OIR of such a departure within 30 days of implementation. No review or approval is required by OIR; however, OIR may disallow the lower rate if it violates the ratemaking standards, imperils the financial condition of the carrier, or results in predatory pricing.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.02, F.S., relating to definitions.

Section 2. Amends s. 440.105, F.S., relating to prohibited activities; reports; penalties; limitations.

Section 3. Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.

Section 4. Amends s. 440.15, F.S., relating to compensation for disability.

Section 5. Creates s. 440.1915, F.S., relating to notice regarding payment of attorney fees.

Section 6. Amends s. 440.192, F.S., relating to procedure for resolving benefit disputes.

Section 7. Amends s. 440.25, F.S., relating to procedures for mediation and hearings.

Section 8. Amends s. 440.34, F.S., relating to attorney's fees; costs.

Section 9. Amends s. 440.345, F.S., relating to reporting of attorney's fees.

Section 10. Amends s. 440.491, F.S., relating to reemployment of injured workers; rehabilitation.

Section 11. Amends s. 627.211, F.S., relating to deviations; workers' compensation and employer's liability insurances.

Section 12. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

State government, as a self-insured employer for workers' compensation purposes, will experience reduced expenses in the same manner as the private sector, if the bill reduces the cost of workers' compensation coverage. See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments, as self-insured employers or purchasers of workers' compensation coverage, will experience reduced expenses in the same manner as the private sector, if the bill reduces the cost of workers' compensation coverage. See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has positive and negative impacts on the private sector. Positive impacts include: public and private employers will experience reduced premiums because of reduced rates and the availability of five percent summary departure from required premiums authorized by the bill. Negative impacts include: hospitals and ambulatory surgical centers may experience reduced reimbursement for outpatient services.

D. FISCAL COMMENTS:

NCCI has not completed an estimate of the impact specifically of PCB COM 18-01. However, NCCI has released a preliminary estimate of the impact of many of the provisions of the bill.⁸² The NCCI estimate was based upon the text of PCB IBS 17-01. PCB COM 18-01 is substantively identical to PCB IBS 17-01 for the elements analyzed by NCCI. They estimated that it would result in a "moderate to significant decrease" in overall workers' compensation costs. NCCI defines a "moderate decrease" as "between 1.0% and 3.0%" and "significant decrease" as "greater than or equal to 5.0%."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

⁸² Email from Jeff Eddinger, State Relations Executive, National Council on Compensation Insurance, re: 7085, with attached report *NCCI: Preliminary Cost Impact Analysis – Proposed Committee Bill IBS 17-01, As Received on 3/10/2017* (Mar. 22, 2017).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

With two minor exceptions, the bill is identical to CS/HB 7085, 1st Engrossed, which passed the House on April 19, 2017. The Senate adopted an amendment to the 2017 bill on May 5, 2017. The House refused to concur in the Senate amendment, adopted an amendment, and returned the 2017 bill to the Senate. The 2017 bill died in Senate Returning Messages on May 5, 2017.

Last year's bill included a provision relating to the process to fill vacancies on the Three-Member Panel. The Three-Member Panel now has all vacancies filled, so this provision was not included. The second difference relates to prior amendments on the floor. CS/HB 7085 proposed an award of "reasonable attorney fees" as a sanction when one fails to make a good faith effort to resolve the dispute prior to filing a petition for benefits. This proposal did not include an hourly rate cap. On Second Reading, a floor amendment was adopted that limited the attorney fee award to \$150 per hour. This floor amendment was inadvertently left out of the 2018 bill. An amendment related to this issue is expected.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

26 requirements; deleting a provision relating to the
 27 calculation of time periods for payment of benefits;
 28 conforming provisions; creating s. 440.1915, F.S.;
 29 requiring claimants to sign an attestation before
 30 engaging the services of an attorney or other
 31 representation related to a workers' compensation
 32 claim; providing requirements; amending s. 440.192,
 33 F.S.; revising conditions under which the Office of
 34 the Judges of Compensation Claims must dismiss
 35 petitions for benefits; revising requirements for such
 36 petitions; requiring a good faith effort to resolve a
 37 dispute; requiring dismissal of a petition for failure
 38 to make such good faith effort; revising construction
 39 relating to dismissals of petitions or portions
 40 thereof; requiring judges of compensation claims to
 41 enter orders on certain motions to dismiss within
 42 specified timeframes; revising a restriction on
 43 awarding attorney fees; amending s. 440.25, F.S.;
 44 requiring the filing of an attestation detailing a
 45 claimant's attorney hours before pretrial and final
 46 hearings; extending the timeframe in which attorney
 47 fees attach; amending s. 440.34, F.S.; revising
 48 provisions relating to awarding attorney fees;
 49 providing that retainer agreements do not require
 50 approval by a judge of compensation claims but are

51 required to be filed with the Office of the Judges of
 52 Compensation Claims; conforming a cross-reference;
 53 extending the timeframe in which attorney fees attach;
 54 authorizing a judge of compensation claims to depart
 55 from the attorney fees schedule under certain
 56 circumstances; requiring a judge to consider certain
 57 factors when awarding attorney fees that depart from
 58 such schedule; defining terms; limiting the amount of
 59 such fee; amending s. 440.345, F.S.; providing
 60 requirements for a carrier's report; amending s.
 61 440.491, F.S.; specifying that training and education
 62 benefits provided to a claimant are not in addition to
 63 the maximum number of weeks in which a claimant may
 64 receive temporary benefits; amending s. 627.211, F.S.;
 65 authorizing a member of or subscriber to a rating
 66 organization to depart from the rates set by such
 67 organization under certain circumstances; providing
 68 requirements for such departure; providing an
 69 effective date.

70
 71 Be It Enacted by the Legislature of the State of Florida:

72
 73 Section 1. Subsection (40) of section 440.02, Florida
 74 Statutes, is amended to read:
 75 440.02 Definitions.—When used in this chapter, unless the

76 context clearly requires otherwise, the following terms shall
 77 have the following meanings:

78 (40) "Specificity" means information on the petition for
 79 benefits sufficient to put the employer or carrier on notice of
 80 the exact statutory classification and outstanding time period
 81 for each requested benefit, the specific amount of each
 82 requested benefit, the calculation used for computing the
 83 specific amount of each requested benefit, ~~of benefits being~~
 84 ~~requested~~ and ~~includes~~ a detailed explanation of any benefits
 85 received that should be increased, decreased, changed, or
 86 otherwise modified. If the petition is for medical benefits, the
 87 information must ~~shall~~ include specific details as to why such
 88 benefits are being requested, why such benefits are medically
 89 necessary, and why current treatment, if any, is not sufficient.
 90 Any petition requesting alternate or other medical care,
 91 including, but not limited to, petitions requesting psychiatric
 92 or psychological treatment, must specifically identify the
 93 physician, as defined in s. 440.13(1), who is recommending such
 94 treatment. A copy of a report from such physician making the
 95 recommendation for alternate or other medical care must ~~shall~~
 96 also be attached to the petition. A judge of compensation claims
 97 may ~~shall~~ not order such treatment if a physician is not
 98 recommending such treatment.

99 Section 2. Paragraph (c) of subsection (3) of section
 100 440.105, Florida Statutes, is amended to read:

101 440.105 Prohibited activities; reports; penalties;
 102 limitations.-

103 (3) Whoever violates any provision of this subsection
 104 commits a misdemeanor of the first degree, punishable as
 105 provided in s. 775.082 or s. 775.083.

106 (c) Except for an attorney retained by or for an injured
 107 worker receiving a fee or other consideration from or on behalf
 108 of an injured worker, it is unlawful for any ~~attorney or other~~
 109 person, in his or her individual capacity or in his or her
 110 capacity as a public or private employee, or for any firm,
 111 corporation, partnership, or association to receive any fee or
 112 other consideration or any gratuity from a person on account of
 113 services rendered for a person in connection with any
 114 proceedings arising under this chapter, unless such fee,
 115 consideration, or gratuity is approved by a judge of
 116 compensation claims or by the Deputy Chief Judge of Compensation
 117 Claims.

118 Section 3. Paragraphs (d) and (i) of subsection (3) and
 119 subsection (12) of section 440.13, Florida Statutes, are amended
 120 to read:

121 440.13 Medical services and supplies; penalty for
 122 violations; limitations.-

123 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.-

124 (d) By telephone or in writing, a carrier must authorize
 125 or deny ~~respond, by telephone or in writing,~~ to a request for

126 authorization from an authorized health care provider, or inform
 127 the provider of material deficiencies that prevent authorization
 128 or denial, by the close of the third business day after receipt
 129 of the request. A carrier who fails to respond to a written
 130 request for authorization for referral for medical treatment by
 131 the close of the third business day after receipt of the request
 132 consents to the medical necessity for such treatment. All such
 133 requests must be made to the carrier. Notice to the employer
 134 ~~carrier~~ does not include notice to the carrier ~~employer~~.

135 (i) Notwithstanding paragraph (d), a claim for specialist
 136 consultations, surgical operations, physiotherapeutic or
 137 occupational therapy procedures, X-ray examinations, or special
 138 diagnostic laboratory tests that cost more than \$1,000 and other
 139 specialty services that the department identifies by rule is not
 140 valid and reimbursable unless the services have been expressly
 141 authorized by the carrier, unless the carrier has failed to
 142 authorize or deny, or inform the provider of material
 143 deficiencies that prevent authorization or denial, ~~respond~~
 144 within 10 days after ~~to~~ a written request for authorization, or
 145 unless emergency care is required. The insurer shall authorize
 146 such consultation or procedure unless the health care provider
 147 or facility is not authorized, unless such treatment is not in
 148 accordance with practice parameters and protocols of treatment
 149 established in this chapter, or unless a judge of compensation
 150 claims has determined that the consultation or procedure is not

151 medically necessary, not in accordance with the practice
 152 parameters and protocols of treatment established in this
 153 chapter, or otherwise not compensable under this chapter.
 154 Authorization of a treatment plan does not constitute express
 155 authorization for purposes of this section, except to the extent
 156 the carrier provides otherwise in its authorization procedures.
 157 This paragraph does not limit the carrier's obligation to
 158 identify and disallow overutilization or billing errors.

159 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 160 REIMBURSEMENT ALLOWANCES.—

161 (a)1. A three-member panel is created, consisting of the
 162 Chief Financial Officer, or the Chief Financial Officer's
 163 designee, and two members to be appointed by the Governor,
 164 subject to confirmation by the Senate, one member who, on
 165 account of present or previous vocation, employment, or
 166 affiliation, shall be classified as a representative of
 167 employers, the other member who, on account of previous
 168 vocation, employment, or affiliation, shall be classified as a
 169 representative of employees.

170 2. Annually, the panel shall adopt ~~determine~~ statewide
 171 schedules of maximum reimbursement allowances for medically
 172 necessary treatment, care, and attendance provided by
 173 physicians, hospitals, ambulatory surgical centers, work-
 174 hardening programs, pain programs, and durable medical
 175 equipment. ~~The maximum reimbursement allowances for inpatient~~

176 ~~hospital care shall be based on a schedule of per diem rates, to~~
177 ~~be approved by the three-member panel no later than March 1,~~
178 ~~1994, to be used in conjunction with a precertification manual~~
179 ~~as determined by the department, including maximum hours in~~
180 ~~which an outpatient may remain in observation status, which~~
181 ~~shall not exceed 23 hours. All compensable charges for hospital~~
182 ~~outpatient care shall be reimbursed at 75 percent of usual and~~
183 ~~customary charges, except as otherwise provided by this~~
184 ~~subsection. Annually, the three-member panel shall adopt~~
185 ~~schedules of maximum reimbursement allowances for physicians,~~
186 ~~hospital inpatient care, hospital outpatient care, ambulatory~~
187 ~~surgical centers, work-hardening programs, and pain programs. An~~
188 ~~individual physician, hospital, ambulatory surgical center, pain~~
189 ~~program, or work-hardening program shall be reimbursed either~~
190 ~~the agreed-upon contract price or the maximum reimbursement~~
191 ~~allowance in the appropriate schedule.~~

192 (b) Except as provided in this subsection, the schedules
193 of maximum reimbursement allowances adopted by the panel must be
194 based upon the reimbursement methodologies provided in this
195 subsection. However, the panel may adopt a reimbursement
196 methodology for compensable medical care for which a
197 reimbursement methodology is not provided in this subsection.
198 Reimbursements shall be made based upon adopted schedules of
199 maximum reimbursement allowances. It is the intent of the
200 Legislature to increase the schedule of maximum reimbursement

201 ~~allowances for selected physicians effective January 1, 2004,~~
 202 ~~and to pay for the increases through reductions in payments to~~
 203 ~~hospitals. Revisions developed pursuant to this subsection are~~
 204 ~~limited to the following:~~

205 1. Payments for outpatient physical, occupational, and
 206 speech therapy provided by hospitals shall be reimbursed at
 207 ~~reduced to~~ the schedule of maximum reimbursement allowances for
 208 these services which apply ~~applies~~ to nonhospital providers.

209 2. Payments for scheduled outpatient nonemergency
 210 radiological and clinical laboratory services that are not
 211 provided in conjunction with a surgical procedure shall be
 212 reimbursed at ~~reduced to~~ the schedule of maximum reimbursement
 213 allowances for these services which applies to nonhospital
 214 providers.

215 3.a. Reimbursement for scheduled outpatient surgery in a
 216 hospital or ambulatory surgical center shall be 160 percent of
 217 the fee or rate established by the Medicare outpatient
 218 prospective payment system, except as otherwise provided by this
 219 subsection.

220 b. Reimbursement for scheduled outpatient surgery in a
 221 hospital or ambulatory surgical center that does not have a fee
 222 or rate under the Medicare outpatient prospective payment system
 223 shall be 60 percent of the statewide average charge for that
 224 service derived from the division's database of billed hospital
 225 or ambulatory surgical center charges, as applicable, over a

226 consecutive 18-month period within the 36 months before the
 227 adoption of the schedule, as designated by the panel if at least
 228 50 bills for the billed service are contained in the database
 229 during the 18-month period. Services related to scheduled
 230 outpatient surgery in a hospital or ambulatory surgical center
 231 which do not have a fee or rate under the Medicare outpatient
 232 prospective payment system and do not have a statewide average
 233 charge shall be reimbursed at 60 percent of the facility's
 234 actual billed charge ~~Outpatient reimbursement for scheduled~~
 235 ~~surgeries shall be reduced from 75 percent of charges to 60~~
 236 ~~percent of charges.~~

237 4.a. Reimbursement for nonscheduled hospital outpatient
 238 care shall be 200 percent of the fee or rate established by the
 239 Medicare outpatient prospective payment system, except as
 240 otherwise provided by this subsection.

241 b. Reimbursement for nonscheduled hospital outpatient
 242 surgical services that do not have a fee or rate under the
 243 Medicare outpatient prospective payment system shall be 75
 244 percent of the statewide average charge for that service derived
 245 from the division's database of billed hospital charges over a
 246 consecutive 18-month period within the 36 months before the
 247 adoption of the schedule, as designated by the panel, if at
 248 least 50 bills for the billed service are contained in the
 249 database during the 18-month period. Nonscheduled hospital
 250 outpatient surgical services that do not have a fee or rate

251 under the Medicare outpatient prospective payment system and do
 252 not have a statewide average charge shall be reimbursed at 75
 253 percent of the hospital's actual billed charge.

254 5. Maximum reimbursement for a physician licensed under
 255 chapter 458 or chapter 459 shall be at ~~increased to~~ 110 percent
 256 of the reimbursement allowed by Medicare, using appropriate
 257 codes and modifiers or the medical reimbursement level adopted
 258 by the ~~three-member~~ panel as of January 1, 2003, whichever is
 259 greater.

260 ~~6.5.~~ Maximum reimbursement for surgical procedures shall
 261 be at ~~increased to~~ 140 percent of the reimbursement allowed by
 262 Medicare or the medical reimbursement level adopted by the
 263 ~~three-member~~ panel as of January 1, 2003, whichever is greater.

264 7. Maximum reimbursement for inpatient hospital care shall
 265 be based on a schedule of per diem rates, subject to a stop-loss
 266 amount, approved by the panel to be used in conjunction with a
 267 precertification manual as determined by the department,
 268 including maximum hours in which an outpatient may remain in
 269 observation status, which reimbursement may not exceed 23 hours
 270 of observation, regardless of whether more than 23 hours of
 271 observation occurred.

272 8. Maximum reimbursement for a physician, hospital,
 273 ambulatory surgical center, work-hardening program, pain-
 274 management program, or durable medical equipment provider shall
 275 be the agreed-upon contract price or the maximum reimbursement

276 allowance in the appropriate schedule adopted by the panel.

277 (c) 1. ~~As to reimbursement for a prescription medication,~~

278 The reimbursement amount for a prescription medication shall be
279 the average wholesale price plus \$4.18 for the dispensing fee.

280 For repackaged or relabeled prescription medications dispensed
281 by a dispensing practitioner as provided in s. 465.0276, the fee
282 schedule for reimbursement shall be 112.5 percent of the average
283 wholesale price, plus \$8.00 for the dispensing fee. For purposes
284 of this subsection, the average wholesale price shall be
285 calculated by multiplying the number of units dispensed times
286 the per-unit average wholesale price set by the original
287 manufacturer of the underlying drug dispensed by the
288 practitioner, based upon the published manufacturer's average
289 wholesale price published in the Medi-Span Master Drug Database
290 as of the date of dispensing. All pharmaceutical claims
291 submitted for repackaged or relabeled prescription medications
292 must include the National Drug Code of the original
293 manufacturer. Fees for pharmaceuticals and pharmaceutical
294 services shall be reimbursable at the applicable fee schedule
295 amount except where the employer or carrier, or a service
296 company, third party administrator, or any entity acting on
297 behalf of the employer or carrier directly contracts with the
298 provider seeking reimbursement for a lower amount.

299 2. For prescription medication purchased under the
300 requirements of this paragraph, a dispensing practitioner may

301 not possess a prescription medication unless payment has been
 302 made by the practitioner, the practitioner's professional
 303 practice, or the practitioner's practice management company or
 304 employer to the supplying manufacturer, wholesaler, distributor,
 305 or drug repackager within 60 days after such practitioner takes
 306 possession of such medication.

307 (d) Reimbursement for all fees and other charges for such
 308 treatment, care, and attendance, including treatment, care, and
 309 attendance provided by any hospital or other health care
 310 provider, ambulatory surgical center, work-hardening program, or
 311 pain program, must not exceed the amounts provided by the
 312 ~~uniform~~ schedule of maximum reimbursement allowances as
 313 determined by the panel or as otherwise provided in this
 314 section. This subsection also applies to independent medical
 315 examinations performed by health care providers under this
 316 chapter. In determining the ~~uniform~~ schedule, the panel shall
 317 first approve the data which it finds representative of
 318 prevailing charges in the state for similar treatment, care, and
 319 attendance of injured persons. Each health care provider, health
 320 care facility, ambulatory surgical center, work-hardening
 321 program, or pain program receiving workers' compensation
 322 payments shall maintain records verifying their usual charges.
 323 In establishing the ~~uniform~~ schedule of maximum reimbursement
 324 allowances, the panel must consider:

- 325 1. The levels of reimbursement for similar treatment,

326 care, and attendance made by other health care programs or
 327 third-party providers;

328 2. The impact upon cost to employers for providing a level
 329 of reimbursement for treatment, care, and attendance which will
 330 ensure the availability of treatment, care, and attendance
 331 required by injured workers;

332 3. The financial impact of the reimbursement allowances
 333 upon health care providers and health care facilities, including
 334 trauma centers as defined in s. 395.4001, and its effect upon
 335 their ability to make available to injured workers such
 336 medically necessary remedial treatment, care, and attendance.
 337 The ~~uniform~~ schedule of maximum reimbursement allowances must be
 338 reasonable, must promote health care cost containment and
 339 efficiency with respect to the workers' compensation health care
 340 delivery system, and must be sufficient to ensure availability
 341 of such medically necessary remedial treatment, care, and
 342 attendance to injured workers; and

343 4. The most recent average maximum allowable rate of
 344 increase for hospitals determined by the Health Care Board under
 345 chapter 408.

346 (e) In addition to establishing the ~~uniform~~ schedule of
 347 maximum reimbursement allowances, the panel shall:

348 1. Take testimony, receive records, and collect data to
 349 evaluate the adequacy of the workers' compensation fee schedule,
 350 nationally recognized fee schedules and alternative methods of

351 reimbursement to health care providers and health care
 352 facilities for inpatient and outpatient treatment and care.

353 2. Survey health care providers and health care facilities
 354 to determine the availability and accessibility of workers'
 355 compensation health care delivery systems for injured workers.

356 3. Survey carriers to determine the estimated impact on
 357 carrier costs and workers' compensation premium rates by
 358 implementing changes to the carrier reimbursement schedule or
 359 implementing alternative reimbursement methods.

360 4. Submit recommendations on or before January 15, 2017,
 361 and biennially thereafter, to the President of the Senate and
 362 the Speaker of the House of Representatives on methods to
 363 improve the workers' compensation health care delivery system.

364 (f) The department, as requested, shall provide data to
 365 the panel, including, but not limited to, utilization trends in
 366 the workers' compensation health care delivery system. The
 367 department shall provide the panel with an annual report
 368 regarding the resolution of medical reimbursement disputes and
 369 ~~any~~ actions pursuant to subsection (8). The department shall
 370 provide administrative support and service to the panel to the
 371 extent requested by the panel. ~~For prescription medication~~
 372 ~~purchased under the requirements of this subsection, a~~
 373 ~~dispensing practitioner shall not possess such medication unless~~
 374 ~~payment has been made by the practitioner, the practitioner's~~
 375 ~~professional practice, or the practitioner's practice management~~

376 ~~company or employer to the supplying manufacturer, wholesaler,~~
 377 ~~distributor, or drug repackager within 60 days of the dispensing~~
 378 ~~practitioner taking possession of that medication.~~

379 Section 4. Paragraph (a) of subsection (2), paragraph (d)
 380 of subsection (3), paragraphs (a) and (e) of subsection (4), and
 381 subsection (6) of section 440.15, Florida Statutes, are amended,
 382 and subsection (13) is added to that section, to read:

383 440.15 Compensation for disability.—Compensation for
 384 disability shall be paid to the employee, subject to the limits
 385 provided in s. 440.12(2), as follows:

386 (2) TEMPORARY TOTAL DISABILITY.—

387 (a) Subject to subparagraph (3)(d)3. and subsections
 388 ~~subsection (7) and (13),~~ in case of disability total in
 389 character but temporary in quality, 66 2/3 or 66.67 percent of
 390 the average weekly wages shall be paid to the employee during
 391 the continuance thereof, ~~not to exceed 104 weeks~~ except as
 392 provided in this subsection and s. 440.12(1), ~~and s. 440.14(3).~~
 393 Once the employee reaches the maximum number of weeks allowed,
 394 or the employee reaches overall ~~the date of~~ maximum medical
 395 improvement, whichever occurs earlier, temporary disability
 396 benefits shall cease and the injured worker's permanent
 397 impairment shall be determined. If the employee reaches the
 398 maximum number of weeks allowed, but has not reached overall
 399 maximum medical improvement, benefits shall be provided pursuant
 400 to subparagraph (3)(d)3.

401 (3) PERMANENT IMPAIRMENT BENEFITS.—

402 (d) After the employee has been certified by a doctor as
 403 having reached maximum medical improvement or 6 weeks before the
 404 expiration of temporary benefits, whichever occurs earlier, the
 405 certifying doctor shall evaluate the condition of the employee
 406 and assign an impairment rating, using the impairment schedule
 407 referred to in paragraph (b). If the certification and
 408 evaluation are performed by a doctor other than the employee's
 409 treating doctor, the certification and evaluation must be
 410 submitted to the treating doctor, the employee, and the carrier
 411 within 10 days after the evaluation. The treating doctor must
 412 indicate to the carrier agreement or disagreement with the other
 413 doctor's certification and evaluation.

414 1. The certifying doctor shall issue a written report to
 415 the employee and the carrier certifying that maximum medical
 416 improvement has been reached, stating the impairment rating to
 417 the body as a whole, and providing any other information
 418 required by the department by rule. The carrier shall establish
 419 an overall maximum medical improvement date and permanent
 420 impairment rating, based upon all such reports.

421 2. Within 14 days after the carrier's knowledge of each
 422 maximum medical improvement date and impairment rating to the
 423 body as a whole upon which the carrier is paying benefits, the
 424 carrier shall report such maximum medical improvement date and,
 425 when determined, the overall maximum medical improvement date

426 and associated impairment rating to the department in a format
427 as set forth in department rule. If the employee has not been
428 certified as having reached overall maximum medical improvement
429 before the expiration of 254 ~~98~~ weeks after the date temporary
430 disability benefits begin to accrue, the carrier shall notify
431 the treating doctor of the requirements of this section.

432 3. If an employee receiving benefits under subsection (2)
433 has not reached overall maximum medical improvement before
434 receiving the maximum number of weeks of temporary disability
435 benefits, the maximum number of weeks are extended for up to an
436 additional 26 weeks. If the employee has not reached overall
437 maximum medical improvement after receiving the additional weeks
438 allowed under this subparagraph, a judge of compensation claims,
439 upon petition, must determine the employee's current eligibility
440 for benefits under this subsection and subsection (1).

441 4. If an employee receiving benefits under subsection (4)
442 has not reached overall maximum medical improvement before
443 receiving the maximum number of weeks of temporary disability
444 benefits, the employee shall receive benefits under this
445 subsection in accordance with the greatest single impairment
446 rating assigned to the employee. Impairment benefits received
447 under this subparagraph shall be credited against indemnity
448 benefits subsequently due to the employee.

449 (4) TEMPORARY PARTIAL DISABILITY.—

450 (a) Subject to subparagraph (3)(d)3. and subsections

451 ~~subsection~~ (7) (13), in case of temporary partial
 452 disability, compensation shall be equal to 80 percent of the
 453 difference between 80 percent of the employee's average weekly
 454 wage and the salary, wages, and other remuneration the employee
 455 is able to earn postinjury, as compared weekly; however, weekly
 456 temporary partial disability benefits may not exceed an amount
 457 equal to 66 2/3 or 66.67 percent of the employee's average
 458 weekly wage at the time of accident. In order to simplify the
 459 comparison of the preinjury average weekly wage with the salary,
 460 wages, and other remuneration the employee is able to earn
 461 postinjury, the department may by rule provide for payment of
 462 the initial installment of temporary partial disability benefits
 463 to be paid as a partial week so that payment for remaining weeks
 464 of temporary partial disability can coincide as closely as
 465 possible with the postinjury employer's work week. The amount
 466 determined to be the salary, wages, and other remuneration the
 467 employee is able to earn shall in no case be less than the sum
 468 actually being earned by the employee, including earnings from
 469 sheltered employment. Benefits shall be payable under this
 470 subsection only if overall maximum medical improvement has not
 471 been reached and the medical conditions resulting from the
 472 accident create restrictions on the injured employee's ability
 473 to return to work.

474 (e) Subject to subparagraph (3)(d)3. and subsections (7)
 475 and (13), such benefits shall be paid during the continuance of

476 such disability, ~~not to exceed a period of 104 weeks,~~ as
 477 provided by this subsection and subsection (2). ~~Once the injured~~
 478 ~~employee reaches the maximum number of weeks, temporary~~
 479 ~~disability benefits cease and the injured worker's permanent~~
 480 ~~impairment must be determined.~~ If the employee is terminated
 481 from postinjury employment based on the employee's misconduct,
 482 temporary partial disability benefits are not payable as
 483 provided for in this section. The department shall by rule
 484 specify forms and procedures governing the method and time for
 485 payment of temporary disability benefits for dates of accidents
 486 before January 1, 1994, and for dates of accidents on or after
 487 January 1, 1994.

488 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee
 489 refuses employment suitable to the capacity thereof, offered to
 490 or procured therefor, such employee shall not be entitled to any
 491 compensation at any time during the continuance of such refusal
 492 unless at any time in the opinion of the judge of compensation
 493 claims such refusal is justifiable. ~~Time periods for the payment~~
 494 ~~of benefits in accordance with this section shall be counted in~~
 495 ~~determining the limitation of benefits as provided for in~~
 496 ~~paragraphs (2) (a), (3) (c), and (4) (b).~~

497 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks
 498 of benefits received by an employee for temporary total
 499 disability payable pursuant to subsection (2), temporary partial
 500 disability payable pursuant to subsection (4), and temporary

501 total disability payable pursuant to s. 440.491 may not exceed
 502 260 weeks, except as provided in subparagraph (3)(d)3.

503 Section 5. Section 440.1915, Florida Statutes, is created
 504 to read:

505 440.1915 Notice regarding payment of attorney fees.—An
 506 injured employee or any other party making a claim for benefits
 507 under this chapter through an attorney or other representative
 508 shall provide his or her personal signature attesting that he or
 509 she has reviewed, understands, and acknowledges the following
 510 statement, which must be in at least 14-point bold type, prior
 511 to engaging an attorney or other representative for services
 512 related to a petition for benefits under s. 440.192 or s.
 513 440.25: "THE WORKERS' COMPENSATION LAW REQUIRES YOU TO PAY YOUR
 514 OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER
 515 ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES, EXCEPT IN CERTAIN
 516 CIRCUMSTANCES. EVEN THEN, YOU MAY BE RESPONSIBLE FOR PAYING
 517 ATTORNEY FEES IN ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS
 518 CARRIER MAY BE REQUIRED TO PAY, DEPENDING ON THE DETAILS OF YOUR
 519 AGREEMENT WITH YOUR ATTORNEY OR REPRESENTATIVE. CAREFULLY READ
 520 AND MAKE SURE YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR
 521 REPRESENTATION BEFORE YOU SIGN IT." If the injured employee or
 522 other party does not sign or refuses to sign the document
 523 attesting that he or she has reviewed, understands, and
 524 acknowledges the statement, the injured employee or other party
 525 making a claim under this chapter shall be prohibited from

526 proceeding with a petition for benefits under s. 440.192 or s.
 527 440.25, except pro se, until such signature is obtained.

528 Section 6. Subsections (2), (4), (5), and (7) of section
 529 440.192, Florida Statutes, are amended to read:

530 440.192 Procedure for resolving benefit disputes.—

531 (2) Upon receipt, the Office of the Judges of Compensation
 532 Claims shall review each petition and shall dismiss each
 533 petition or any portion of such a petition that does not on its
 534 face meet the requirements of this section and the definition of
 535 specificity under s. 440.02, and specifically identify or
 536 itemize the following:

537 (a) The name, address, and telephone number,~~and social~~
 538 ~~security number~~ of the employee.

539 (b) The name, address, and telephone number of the
 540 employer.

541 (c) A detailed description of the injury and cause of the
 542 injury, including the Florida county or, if outside of Florida,
 543 the state location of the occurrence and the date or dates of
 544 the accident.

545 (d) A detailed description of the employee's job, work
 546 responsibilities, and work the employee was performing when the
 547 injury occurred.

548 (e) The specific time period for which compensation and
 549 the specific classification of compensation were not timely
 550 provided.

551 (f) The specific date of maximum medical improvement,
 552 character of disability, and specific statement of all benefits
 553 or compensation that the employee is seeking. A claim for
 554 permanent benefits must include the specific date of maximum
 555 medical improvement and the specific date that such permanent
 556 benefits are claimed to begin.

557 (g) All specific travel costs to which the employee
 558 believes she or he is entitled, including dates of travel and
 559 purpose of travel, means of transportation, and mileage and
 560 including the date the request for mileage was filed with the
 561 carrier and a copy of the request filed with the carrier.

562 (h) A specific listing of all medical charges alleged
 563 unpaid, including the name and address of the medical provider,
 564 the amounts due, and the specific dates of treatment.

565 (i) The type or nature of treatment care or attendance
 566 sought and the justification for such treatment. If the employee
 567 is under the care of a physician for an injury identified under
 568 paragraph (c), a copy of the physician's request, authorization,
 569 or recommendation for treatment, care, or attendance must
 570 accompany the petition.

571 (j) The specific amount of compensation claimed and the
 572 methodology used to calculate the average weekly wage, if the
 573 average weekly wage calculated by the employer or carrier is
 574 disputed; otherwise, the average weekly wage and corresponding
 575 compensation calculated by the employer or carrier are presumed

576 to be accurate.

577 (k) ~~(j)~~ A specific explanation of any other disputed issue
 578 that a judge of compensation claims will be called to rule upon.

579 (l) The signed attestation required pursuant to s.
 580 440.1915.

581 (m) Evidence of a good faith attempt to resolve the
 582 dispute pursuant to subsection (4).

583
 584 The dismissal of any petition or portion of such a petition
 585 under this subsection ~~section~~ is without prejudice and does not
 586 require a hearing.

587 (4) Prior to filing a petition, the claimant or, if the
 588 claimant is represented by counsel, the claimant's attorney must
 589 make a good faith effort to resolve the dispute. The petition
 590 must include evidence that a certification by the claimant or,
 591 if the claimant is represented by counsel, the claimant's
 592 attorney, stating that the claimant, or attorney if the claimant
 593 is represented by counsel, has made a good faith effort to
 594 resolve the dispute and that the claimant or attorney was unable
 595 to resolve the dispute with the carrier or employer, if self-
 596 insured. If the petition is not dismissed under subsection (2),
 597 the judge of compensation claims must review the evidence
 598 required under this subsection and determine, in her or his
 599 independent discretion, whether a good faith effort to resolve
 600 the dispute was made by the claimant or the claimant's attorney.

601 Upon a determination that the claimant or the claimant's
602 attorney has not made a good faith effort to resolve the
603 dispute, the judge of compensation claims must dismiss the
604 petition and may impose sanctions to ensure compliance with this
605 subsection, which may include an order to pay to the other party
606 or parties the amount of the reasonable expenses incurred
607 because of the filing of the petition, including reasonable
608 attorney fees.

609 (5) (a) All motions to dismiss must state with
610 particularity the basis for the motion. The judge of
611 compensation claims shall enter an order upon such motions
612 without hearing, unless good cause for hearing is shown.
613 Dismissal of any petition or portion of a petition under this
614 subsection is without prejudice.

615 (b) Upon motion that a petition or portion of a petition
616 be dismissed for lack of specificity, a judge of compensation
617 claims shall enter an order on the motion, unless stipulated in
618 writing by the parties, within 10 days after the motion is filed
619 or, if good cause for hearing is shown, within 20 days after
620 hearing on the motion. When any petition or portion of a
621 petition is dismissed for lack of specificity under this
622 subsection, the claimant must be allowed 20 days after the date
623 of the order of dismissal in which to file an amended petition.
624 Any grounds for dismissal for lack of specificity under this
625 section which are not asserted within 30 days after receipt of

626 the petition for benefits are thereby waived.

627 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge
628 of compensation claims may not award attorney ~~attorney's~~ fees
629 payable by the employer or carrier for services expended or
630 costs incurred before ~~prior to~~ the filing of a petition ~~that~~
631 ~~does not meet the requirements of this section.~~

632 Section 7. Paragraphs (a), (c), (h), and (j) of subsection
633 (4) of section 440.25, Florida Statutes, are amended to read:

634 440.25 Procedures for mediation and hearings.—

635 (4)

636 (a) If the parties fail to agree to written submission of
637 pretrial stipulations, the judge of compensation claims shall
638 conduct a live pretrial hearing. The judge of compensation
639 claims shall give the interested parties at least 14 days'
640 advance notice of the pretrial hearing by mail or by electronic
641 means approved by the Deputy Chief Judge. At least 5 days before
642 the pretrial hearing, the claimant's attorney must file with the
643 judge of compensation claims, and serve on all interested
644 parties, a personal attestation detailing his or her hours to
645 date, which specifically allocates the hours by each benefit
646 claimed, and accounting for hours relating to multiple benefits
647 in a manner that apportions such hours by percentage, in whole
648 numbers, to each benefit.

649 (c) The judge of compensation claims shall give the
650 interested parties at least 14 days' advance notice of the final

651 hearing, served upon the interested parties by mail or by
 652 electronic means approved by the Deputy Chief Judge. At least 5
 653 days before the final hearing, the claimant's attorney must file
 654 with the judge of compensation claims, and serve on all
 655 interested parties, a personal attestation detailing his or her
 656 hours to date, which specifically allocates the hours by each
 657 benefit claimed, and accounting for hours relating to multiple
 658 benefits in a manner that apportions such hours by percentage,
 659 in whole numbers, to each benefit.

660 (h) To further expedite dispute resolution and to enhance
 661 the self-executing features of the system, those petitions filed
 662 in accordance with s. 440.192 that involve a claim for benefits
 663 of \$5,000 or less shall, in the absence of compelling evidence
 664 to the contrary, be presumed to be appropriate for expedited
 665 resolution under this paragraph; and any other claim filed in
 666 accordance with s. 440.192, upon the written agreement of both
 667 parties and application by either party, may similarly be
 668 resolved under this paragraph. A claim in a petition of \$5,000
 669 or less for medical benefits only or a petition for
 670 reimbursement for mileage for medical purposes shall, in the
 671 absence of compelling evidence to the contrary, be resolved
 672 through the expedited dispute resolution process provided in
 673 this paragraph. For purposes of expedited resolution pursuant to
 674 this paragraph, the Deputy Chief Judge shall make provision by
 675 rule or order for expedited and limited discovery and expedited

676 docketing in such cases. At least 15 days prior to hearing, the
677 parties shall exchange and file with the judge of compensation
678 claims a pretrial outline of all issues, defenses, and
679 witnesses, including a personal attestation detailing his or her
680 hours to date, which specifically allocates the hours by each
681 benefit claimed, and accounting for hours relating to multiple
682 benefits in a manner that apportions such hours by percentage,
683 in whole numbers, to each benefit, on a form adopted by the
684 Deputy Chief Judge; provided, in no event shall such hearing be
685 held without 15 days' written notice to all parties. No pretrial
686 hearing shall be held and no mediation scheduled unless
687 requested by a party. The judge of compensation claims shall
688 limit all argument and presentation of evidence at the hearing
689 to a maximum of 30 minutes, and such hearings shall not exceed
690 30 minutes in length. Neither party shall be required to be
691 represented by counsel. The employer or carrier may be
692 represented by an adjuster or other qualified representative.
693 The employer or carrier and any witness may appear at such
694 hearing by telephone. The rules of evidence shall be liberally
695 construed in favor of allowing introduction of evidence.

696 (j) A judge of compensation claims may not award interest
697 on unpaid medical bills and the amount of such bills may not be
698 used to calculate the amount of interest awarded. Regardless of
699 the date benefits were initially requested, attorney ~~attorney's~~
700 fees do not attach under this subsection until 45 ~~30~~ days after

701 the date the carrier ~~or self-insured employer~~ receives the
 702 petition.

703 Section 8. Section 440.34, Florida Statutes, is amended to
 704 read:

705 440.34 Attorney ~~Attorney's~~ fees; costs.-

706 (1) A judge of compensation claims may award attorney fees
 707 payable to the claimant pursuant to this section to be paid by
 708 the employer or carrier. An employer or carrier may not pay a
 709 fee, gratuity, or other consideration ~~may not be paid~~ for a
 710 claimant in connection with any proceedings arising under this
 711 chapter, unless approved by the judge of compensation claims or
 712 court having jurisdiction over such proceedings. Attorney fees
 713 awarded ~~Any attorney's fee approved~~ by a judge of compensation
 714 claims for benefits secured on behalf of a claimant must equal
 715 ~~to~~ 20 percent of the first \$5,000 of the amount of the benefits
 716 secured, 15 percent of the next \$5,000 of the amount of the
 717 benefits secured, 10 percent of the remaining amount of the
 718 benefits secured to be provided during the first 10 years after
 719 the date the claim is filed, and 5 percent of the benefits
 720 secured after 10 years. ~~A The judge of compensation claims shall~~
 721 ~~not approve a compensation order, a joint stipulation for lump-~~
 722 ~~sum settlement, a stipulation or agreement between a claimant~~
 723 ~~and his or her attorney, or any other agreement related to~~
 724 ~~benefits under this chapter which provides for an attorney's fee~~
 725 ~~in excess of the amount permitted by this section. The judge of~~

726 ~~compensation claims is not required to approve any~~ retainer
 727 agreement between the claimant and his or her attorney is not
 728 subject to approval by a judge of compensation claims but must
 729 be filed with the Office of the Judges of Compensation Claims.
 730 Attorney fees are a lien upon compensation payable to the
 731 claimant, notwithstanding s. 440.22. A retainer agreement may
 732 not place any portion of the employee's compensation into an
 733 escrow account until benefits are secured. ~~The retainer~~
 734 ~~agreement as to fees and costs may not be for compensation in~~
 735 ~~excess of the amount allowed under this subsection or subsection~~
 736 ~~(7).~~

737 (2) In awarding a claimant's attorney fees ~~attorney's fee,~~
 738 a ~~the~~ judge of compensation claims must ~~shall~~ consider only
 739 those benefits secured by the attorney. ~~An~~ ~~Attorney is not~~
 740 ~~entitled to attorney's fees~~ are not due for representation in
 741 any issue that was ripe, due, and owing and that reasonably
 742 could have been addressed, but was not addressed, during the
 743 pendency of other issues for the same injury or on claimant
 744 attorney hours reasonably related to a benefit upon which the
 745 claimant did not prevail. The amount, statutory basis, and type
 746 of benefits obtained through legal representation shall be
 747 listed on all attorney ~~attorney's~~ fees awarded by a ~~the~~ judge of
 748 compensation claims. For purposes of this section, the term
 749 "benefits secured" does not include future medical benefits to
 750 be provided ~~on any date~~ more than 5 years after the date the

751 petition claim is filed. In the event an offer to settle an
 752 issue pending before a judge of compensation claims, including
 753 attorney ~~attorney's~~ fees ~~as provided for in this section~~, is
 754 communicated in writing to the claimant or the claimant's
 755 attorney at least 30 days before ~~prior to~~ the trial date on such
 756 issue, for purposes of calculating the amount of attorney
 757 ~~attorney's~~ fees to be taxed against the employer or carrier, the
 758 term "benefits secured" includes ~~shall be deemed to include~~ only
 759 that amount awarded to the claimant above the amount specified
 760 in the offer to settle. If multiple issues are pending before a
 761 ~~the~~ judge of compensation claims, said offer of settlement must
 762 ~~shall~~ address each issue pending and ~~shall~~ state explicitly
 763 whether or not the offer on each issue is severable. The written
 764 offer must ~~shall~~ also unequivocally state whether or not it
 765 includes medical witness fees and expenses and all other costs
 766 associated with the claim.

767 (3) If a ~~any~~ party prevails ~~should prevail~~ in any
 768 proceedings before a judge of compensation claims or court,
 769 there shall be taxed against the nonprevailing party the
 770 reasonable costs of such proceedings, not to include attorney
 771 ~~attorney's~~ fees. A claimant is responsible for the payment of
 772 her or his own attorney ~~attorney's~~ fees, except that a claimant
 773 is entitled to recover attorney fees ~~an attorney's fee~~ in an
 774 amount equal to the amount provided for in subsection (1),
 775 subsection (5), or subsection (6) ~~(7)~~ from a carrier or

776 employer:

777 (a) Against whom she or he successfully asserts a petition
 778 for medical benefits only, if the claimant has not filed or is
 779 not entitled to file at such time a claim for disability,
 780 permanent impairment, ~~wage-loss,~~ or death benefits, arising out
 781 of the same accident;

782 (b) In a ~~any~~ case in which the employer or carrier files a
 783 response to petition denying benefits with the Office of the
 784 Judges of Compensation Claims and the injured person has
 785 employed an attorney in the successful prosecution of the
 786 petition;

787 (c) In a proceeding in which a carrier or employer denies
 788 that an accident occurred for which compensation benefits are
 789 payable, and the claimant prevails on the issue of
 790 compensability; or

791 (d) In cases in which ~~where~~ the claimant successfully
 792 prevails in proceedings filed under s. 440.24 or s. 440.28.

793

794 Regardless of the date benefits were initially requested,
 795 attorney ~~attorney's~~ fees do ~~shall~~ not attach under this
 796 subsection until 45 ~~30~~ days after the date the carrier or
 797 employer, ~~if self-insured,~~ receives the petition.

798 ~~(4) In such cases in which the claimant is responsible for~~
 799 ~~the payment of her or his own attorney's fees, such fees are a~~
 800 ~~lien upon compensation payable to the claimant, notwithstanding~~

801 ~~s. 440.22.~~

802 ~~(4)(5)~~ If ~~any~~ proceedings are had for review of a ~~any~~
 803 claim, award, or compensation order before any court, the court
 804 may, in its discretion, award the injured employee or dependent
 805 attorney fees ~~an attorney's fee~~ to be paid by the employer or
 806 carrier, ~~in its discretion, which shall be paid~~ as the court may
 807 direct.

808 (5)(a) As used in this subsection, the term:

809 1. "Attorney hours" means the number of hours necessary
 810 for the claimant's attorney to obtain the benefits secured as
 811 determined by a judge of compensation claims. The term does not
 812 include the volume of hours expended by the claimant's attorney
 813 which were devoted to claimed benefits upon which the claimant
 814 did not prevail.

815 2. "Customary fee" means the average hourly rate that an
 816 attorney for an employer or carrier customarily charges in the
 817 same locality for similar legal services in defense of claims
 818 under this chapter as determined by a judge of compensation
 819 claims.

820 3. "Departure fee" means the amount of attorney fees
 821 calculated by a judge of compensation claims in place of the fee
 822 allowed under subsection (1) when attorney fees are due under
 823 this section.

824 (b) A departure fee under this subsection is in place of,
 825 not in addition to, the amount allowed under subsection (1) or

826 subsection (6).

827 (c) Upon a petition, a judge of compensation claims may
 828 depart from the attorney fees amount set forth in subsection (1)
 829 upon a finding that the attorney fees provided for in that
 830 subsection are less than 40 percent or greater than 125 percent
 831 of the customary fee when the amount allowed under subsection
 832 (1) is converted to an hourly rate by dividing that amount by
 833 the attorney hours necessary to obtain the benefits secured.

834 (d) When resolving a petition for a departure fee under
 835 this subsection, a judge of compensation claims must:

836 1. Determine the number of attorney hours and make
 837 specific detailed findings specifically allocating the attorney
 838 hours to each benefit claimed, which must account for hours
 839 relating to multiple benefits in a manner that, in the
 840 independent discretion of the judge of compensation claims,
 841 apportions such hours by percentage, in whole numbers, to each
 842 benefit claimed;

843 2. Specify the number of hours claimed by the claimant's
 844 attorney that, in the independent discretion of the judge of
 845 compensation claims, reasonably relate to benefits upon which
 846 the claimant did not prevail; and

847 3. Reduce the number of attorney hours if he or she
 848 determines, in her or his independent discretion, that the
 849 number of attorney hours are excessive.

850 (e) A judge of compensation claims may determine the

851 locality and is not limited to an average hourly rate or number
 852 of attorney hours pled by a party, but may not exceed the amount
 853 or hours pled by the claimant's attorney, and may rely on
 854 evidence or take notice of credible data, including attorney fee
 855 data on file with the office of the judges of compensation
 856 claims or the Florida Bar.

857 (f) If a departure is permitted pursuant to paragraph (c),
 858 a judge of compensation claims must consider the following
 859 factors when departing from the amount set forth in subsection
 860 (1):

861 1. Whether the departure fee sought by the claimant's
 862 attorney is excessive.

863 2. The time and labor reasonably required, the novelty and
 864 difficulty of the questions involved, and the skill required to
 865 properly perform the legal services as established by evidence
 866 or as independently determined by the judge of compensation
 867 claims.

868 3. The customary fee.

869 4. Whether the total fee available under this section in
 870 relation to the amount involved in the controversy is excessive.

871 5. Whether the total fee available under this section in
 872 relation to the amount of benefits secured is excessive.

873 6. The time limits imposed by the circumstances.

874 7. The contingency or certainty of a claimant's attorney
 875 fee, taking into account any retainer agreement filed under this

876 section.

877 8. The volume of hours expended by the claimant's attorney
878 that were devoted to issues upon which the claimant did not
879 prevail.

880 9. Whether the departure fee sought by the claimant's
881 attorney shocks the conscience as excessive.

882 (g) Based on the considerations of the factors in
883 paragraph (f), a judge of compensation claims shall determine
884 the hourly rate used to compute the departure fee awarded under
885 this subsection, in \$1 increments, which may not exceed \$150 per
886 hour. A judge of compensation claims is not limited to an hourly
887 rate pled by a party.

888 (h) Using the hourly rate determined under paragraph (g)
889 and number of attorney hours determined under paragraph (d), a
890 judge of compensation claims must determine the amount of the
891 departure fee under this subsection by multiplying the hourly
892 rate by the number of attorney hours. The claimant is
893 responsible for attorney fees pursuant to his or her retainer
894 agreement that exceed the departure fee.

895 (i) The employer or carrier may contest the departure fee
896 amount awarded under this section within 20 calendar days after
897 the entry of the departure fee award. Upon the filing of a
898 request by the employer or carrier, the departure fee award must
899 be vacated and reviewed de novo upon the existing record by a
900 judge of compensation claims in another district as assigned by

901 the Deputy Chief Judge of Compensation Claims if the number of
 902 attorney hours determined by the presiding judge of compensation
 903 claims under paragraph (d) exceeds 125 percent of the number of
 904 hours the employer's or carrier's attorney attests were devoted
 905 by him or her to the defense of the benefits secured. The
 906 reviewing judge of compensation claims must issue an order
 907 determining the amount of the departure fee under this paragraph
 908 making all determinations and findings required under this
 909 subsection. The judge of compensation claims must issue the
 910 order within 30 calendar days after receiving the assignment.
 911 This paragraph does not apply to cases settled under s.
 912 440.20(11) or if a stipulation has been filed resolving the
 913 claimant's attorney fees.

914 ~~(6) A judge of compensation claims may not enter an order~~
 915 ~~approving the contents of a retainer agreement that permits~~
 916 ~~placing any portion of the employee's compensation into an~~
 917 ~~eserow account until benefits have been secured.~~

918 ~~(7)~~ If an attorney ~~attorney's~~ fee is owed under paragraph
 919 (3)(a), a ~~the~~ judge of compensation claims may approve an
 920 alternative attorney ~~attorney's~~ fee not to exceed \$1,500 ~~only~~
 921 ~~once per accident~~, based on a maximum hourly rate of \$150 per
 922 hour, if the judge of compensation claims expressly finds that
 923 the attorney ~~attorney's~~ fee amount provided for in subsection
 924 (1), based on benefits secured, results in an effective hourly
 925 rate of less than \$150 per hour ~~fails to fairly compensate the~~

926 attorney for disputed medical-only claims as provided in
 927 paragraph (3) (a) ~~and the circumstances of the particular case~~
 928 ~~warrant such action.~~ The attorney fees under this subsection are
 929 in place of, not in addition to, any attorney fees available
 930 under this section.

931 Section 9. Section 440.345, Florida Statutes, is amended
 932 to read:

933 440.345 Reporting of attorney ~~attorney's~~ fees.—All fees
 934 paid to attorneys for services rendered under this chapter shall
 935 be reported to the Office of the Judges of Compensation Claims
 936 as the Division of Administrative Hearings requires by rule. A
 937 carrier must specify in its report the total amount of attorney
 938 fees paid for and the total number of attorney hours spent on
 939 services related to the defense of petitions, and the total
 940 amount of attorney fees paid for services unrelated to the
 941 defense of petitions.

942 Section 10. Paragraph (b) of subsection (6) of section
 943 440.491, Florida Statutes, is amended to read:

944 440.491 Reemployment of injured workers; rehabilitation.—

945 (6) TRAINING AND EDUCATION.—

946 (b) When an employee who has attained maximum medical
 947 improvement is unable to earn at least 80 percent of the
 948 compensation rate and requires training and education to obtain
 949 suitable gainful employment, the employer or carrier shall pay
 950 the employee additional training and education temporary total

951 compensation benefits while the employee receives such training
 952 and education for a period not to exceed 26 weeks, which period
 953 may be extended for an additional 26 weeks or less, if such
 954 extended period is determined to be necessary and proper by a
 955 judge of compensation claims. The benefits provided under this
 956 paragraph are ~~shall~~ not ~~be~~ in addition to the maximum number of
 957 ~~104~~ weeks as specified in s. 440.15(2). However, a carrier or
 958 employer is not precluded from voluntarily paying additional
 959 temporary total disability compensation beyond that period. If
 960 an employee requires temporary residence at or near a facility
 961 or an institution providing training and education which is
 962 located more than 50 miles away from the employee's customary
 963 residence, the reasonable cost of board, lodging, or travel must
 964 be borne by the department from the Workers' Compensation
 965 Administration Trust Fund established by s. 440.50. An employee
 966 who refuses to accept training and education that is recommended
 967 by the vocational evaluator and considered necessary by the
 968 department will forfeit any additional training and education
 969 benefits and any additional compensation ~~payment for lost wages~~
 970 under this chapter. The carrier shall notify the injured
 971 employee of the availability of training and education benefits
 972 as specified in this chapter. The Department of Financial
 973 Services shall include information regarding the eligibility for
 974 training and education benefits in informational materials
 975 specified in ss. 440.207 and 440.40.

976 Section 11. Subsection (1) of section 627.211, Florida
 977 Statutes, is amended, and subsection (7) is added to that
 978 section, to read:

979 627.211 Deviations and departures; workers' compensation
 980 and employer's liability insurances.-

981 (1) Except as provided in subsection (7), every member or
 982 subscriber to a rating organization shall, as to workers'
 983 compensation or employer's liability insurance, adhere to the
 984 filings made on its behalf by such organization; except that any
 985 such insurer may make written application to the office for
 986 permission to file a uniform percentage decrease or increase to
 987 be applied to the premiums produced by the rating system so
 988 filed for a kind of insurance, for a class of insurance which is
 989 found by the office to be a proper rating unit for the
 990 application of such uniform percentage decrease or increase, or
 991 for a subdivision of workers' compensation or employer's
 992 liability insurance:

993 (a) Comprised of a group of manual classifications which
 994 is treated as a separate unit for ratemaking purposes; or

995 (b) For which separate expense provisions are included in
 996 the filings of the rating organization.

997
 998 Such application shall specify the basis for the modification
 999 and shall be accompanied by the data upon which the applicant
 1000 relies. A copy of the application and data shall be sent

1001 | simultaneously to the rating organization.

1002 | (7) Without approval of the office, a member or subscriber

1003 | to a rating organization may depart from the filings made on its

1004 | behalf by a rating organization for a period of 12 months by a

1005 | uniform decrease of up to 5 percent to be applied uniformly to

1006 | the premiums resulting from the approved rates for the policy

1007 | period. The member or subscriber must file an informational

1008 | departure statement with the office within 30 days after initial

1009 | use of such departure specifying the percentage of the departure

1010 | from the approved rates and an explanation of how the departure

1011 | will be applied. If the departure is to be applied over a

1012 | subsequent 12-month period, the member or subscriber must file a

1013 | supplemental informational departure statement pursuant to this

1014 | subsection at least 30 days before the end of the current

1015 | period. If the office determines that a departure violates the

1016 | applicable principles for ratemaking under ss. 627.062 and

1017 | 627.072, would result in predatory pricing, or imperils the

1018 | financial condition of the member or subscriber, the office must

1019 | issue an order specifying its findings and stating the time

1020 | period within which the departure expires, which must be within

1021 | a reasonable time period after the order is issued. The order

1022 | does not affect an insurance contract or policy made or issued

1023 | before the departure expiration period set forth in the order.

1024 | Section 12. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

PCB 18-01 by Commerce Committee Workers' Compensation

AMENDMENT SUMMARY November 14, 2017

Amendment 1 by Rep. Burgess (Line 507): The amendment provides that a Judge of Compensation Claims may award attorney fees limited to \$150 per hour as a sanction, rather than "reasonable attorney fees." It requires statements of accrued hours be verified statements, rather than attestations. Also, the amendment makes technical and grammatical changes.

Amendment 2 by Rep. Shaw (Line 122): The amendment provides injured workers with the option to receive a one-time second medical opinion, which may be rejected by the injured worker. If the injured worker accepts, the treatment proceeds with the second opinion physician. If the injured worker rejects treatment recommended by the second opinion physician, treatment continues with the previous physician. Either way, the injured worker's one-time change of physician will have been used. It does not limit the choice of physicians, thus allowing the injured worker to choose a physician not contracted with the employer/carrier.

Amendment 3 by Rep. Shaw (Line 402): The amendment allows benefits for psychiatric impairment regardless of whether a physical injury occurred and deletes the 1 percentage point limitation on Permanent Partial Disability Impairment Benefits (IBs) benefits for permanent psychiatric impairment.

For all injuries, it increases the amount of IB benefits from 50 percent of the injured worker's average weekly wage (AWW) to 66 2/3 percent of their AWW, not to exceed the statewide AWW. For all injuries on or after October 1, 2003, it also increases the duration of IBs, for example:

- a 1% impairment receives 26 weeks of benefits (6 months), instead of 2 weeks,
- a 10% impairment receives 572 weeks of benefits (11 years), instead of 20 weeks, and
- a 20% impairment receives 2,444 weeks of benefits (47 years), instead of 55 weeks.

Amendment 4 by Rep. Jenne (Line 706): The amendment removes the proposed attorney fee provisions and instead authorizes the Judge of Compensation Claims (JCC) to increase the percentage based statutory attorney fee based on factors modeled on the Florida Bar ethics rule. The JCC receives broad discretion to determine the amount of a carrier paid claimant attorney fee without specific limitations. It repeals the alternative minimum attorney fee applicable to certain medical-only claims and provides that the law must not be interpreted to limit the claimant's right to retain an attorney and pay them a reasonable fee.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 1

17 ON THE DETAILS OF YOUR AGREEMENT WITH YOUR ATTORNEY OR
18 REPRESENTATIVE. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY
19 AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT." If
20 the injured employee or other party does not sign or refuses to
21 sign the document attesting that he or she has reviewed,
22 understands, and acknowledges the statement, the injured
23 employee or other party making a claim under this chapter shall
24 be prohibited from proceeding with a petition for benefits under
25 s. 440.192 or s. 440.25, except pro se, until such signature is
26 obtained.

27 Section 6. Subsections (2), (4), (5), and (7) of section
28 440.192, Florida Statutes, are amended to read:

29 440.192 Procedure for resolving benefit disputes.—

30 (2) Upon receipt, the Office of the Judges of Compensation
31 Claims shall review each petition and shall dismiss each
32 petition or any portion of such a petition that does not on its
33 face meet the requirements of this section and the definition of
34 specificity under s. 440.02, and specifically identify or
35 itemize the following:

36 (a) The name, address, and telephone number,~~and social~~
37 ~~security number~~ of the employee.

38 (b) The name, address, and telephone number of the
39 employer.

40 (c) A detailed description of the injury and cause of the
41 injury, including the Florida county or, if outside of Florida,

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

42 the state location of the occurrence and the date or dates of
43 the accident.

44 (d) A detailed description of the employee's job, work
45 responsibilities, and work the employee was performing when the
46 injury occurred.

47 (e) The specific time period for which compensation and
48 the specific classification of compensation were not timely
49 provided.

50 (f) The specific date of maximum medical improvement,
51 character of disability, and specific statement of all benefits
52 or compensation that the employee is seeking. A claim for
53 permanent benefits must include the specific date of maximum
54 medical improvement and the specific date that such permanent
55 benefits are claimed to begin.

56 (g) All specific travel costs to which the employee
57 believes she or he is entitled, including dates of travel and
58 purpose of travel, means of transportation, and mileage and
59 including the date the request for mileage was filed with the
60 carrier and a copy of the request filed with the carrier.

61 (h) A specific listing of all medical charges alleged
62 unpaid, including the name and address of the medical provider,
63 the amounts due, and the specific dates of treatment.

64 (i) The type or nature of treatment care or attendance
65 sought and the justification for such treatment. If the employee
66 is under the care of a physician for an injury identified under

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

67 paragraph (c), a copy of the physician's request, authorization,
68 or recommendation for treatment, care, or attendance must
69 accompany the petition.

70 (j) The specific amount of compensation claimed and the
71 methodology used to calculate the average weekly wage, if the
72 average weekly wage calculated by the employer or carrier is
73 disputed; otherwise, the average weekly wage and corresponding
74 compensation calculated by the employer or carrier are presumed
75 to be accurate.

76 (k)~~(j)~~ A specific explanation of any other disputed issue
77 that a judge of compensation claims will be called to rule upon.

78 (l) The signed attestation required pursuant to s.
79 440.1915.

80 (m) Evidence of a good faith attempt to resolve the
81 dispute pursuant to subsection (4).

82
83 The dismissal of any petition or portion of such a petition
84 under this subsection ~~section~~ is without prejudice and does not
85 require a hearing.

86 (4) Prior to filing a petition, the claimant or, if the
87 claimant is represented by counsel, the claimant's attorney must
88 make a good faith effort to resolve the dispute. The petition
89 must include evidence of a certification by the claimant or, if
90 the claimant is represented by counsel, the claimant's attorney,
91 stating that the claimant, or attorney if the claimant is

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 1

92 represented by counsel, has made a good faith effort to resolve
93 the dispute and that the claimant or attorney was unable to
94 resolve the dispute with the carrier or employer, if self-
95 insured. If the petition is not dismissed under subsection (2),
96 the judge of compensation claims must review the evidence
97 required under this subsection and determine, in her or his
98 independent discretion, whether a good faith effort to resolve
99 the dispute was made by the claimant or the claimant's attorney.
100 Upon a determination that the claimant or the claimant's
101 attorney has not made a good faith effort to resolve the
102 dispute, the judge of compensation claims must dismiss the
103 petition and may impose sanctions to ensure compliance with this
104 subsection, which may include an order to pay to the other party
105 or parties the amount of the reasonable expenses incurred
106 because of the filing of the petition, including attorney fees,
107 not to exceed \$150 per hour, based on the number of necessary
108 hours related to the determination that the claimant or, if the
109 claimant is represented by counsel, the claimant's attorney has
110 not made a good faith effort to resolve the dispute.

111 (5)(a) All motions to dismiss must state with
112 particularity the basis for the motion. The judge of
113 compensation claims shall enter an order upon such motions
114 without hearing, unless good cause for hearing is shown.
115 Dismissal of any petition or portion of a petition under this
116 subsection is without prejudice.

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 1

117 (b) Upon motion that a petition or portion of a petition
118 be dismissed for lack of specificity, a judge of compensation
119 claims shall enter an order on the motion, unless stipulated in
120 writing by the parties, within 10 days after the motion is filed
121 or, if good cause for hearing is shown, within 20 days after
122 hearing on the motion. When any petition or portion of a
123 petition is dismissed for lack of specificity under this
124 subsection, the claimant must be allowed 20 days after the date
125 of the order of dismissal in which to file an amended petition.
126 Any grounds for dismissal for lack of specificity under this
127 section which are not asserted within 30 days after receipt of
128 the petition for benefits are thereby waived.

129 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge
130 of compensation claims may not award attorney ~~attorney's~~ fees
131 payable by the employer or carrier for services expended or
132 costs incurred before ~~prior to~~ the filing of a petition ~~that~~
133 ~~does not meet the requirements of this section.~~

134 Section 7. Paragraphs (a), (c), (h), and (j) of subsection
135 (4) of section 440.25, Florida Statutes, are amended to read:

136 440.25 Procedures for mediation and hearings.—

137 (4)

138 (a) If the parties fail to agree to written submission of
139 pretrial stipulations, the judge of compensation claims shall
140 conduct a live pretrial hearing. The judge of compensation
141 claims shall give the interested parties at least 14 days'

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

Amendment No. 1

142 advance notice of the pretrial hearing by mail or by electronic
143 means approved by the Deputy Chief Judge. At least 5 days before
144 the pretrial hearing, the claimant's attorney must file with the
145 judge of compensation claims, and serve on all interested
146 parties, a statement verified pursuant to s. 92.525 detailing
147 his or her hours to date, which specifically allocates the hours
148 by each benefit claimed, and accounting for hours relating to
149 multiple benefits in a manner that apports such hours by
150 percentage, in whole numbers, to each benefit.

151 (c) The judge of compensation claims shall give the
152 interested parties at least 14 days' advance notice of the final
153 hearing, served upon the interested parties by mail or by
154 electronic means approved by the Deputy Chief Judge. At least 5
155 days before the final hearing, the claimant's attorney must file
156 with the judge of compensation claims, and serve on all
157 interested parties, a statement verified pursuant to s. 92.525
158 detailing his or her hours to date, which specifically allocates
159 the hours by each benefit claimed, and accounting for hours
160 relating to multiple benefits in a manner that apports such
161 hours by percentage, in whole numbers, to each benefit.

162 (h) To further expedite dispute resolution and to enhance
163 the self-executing features of the system, those petitions filed
164 in accordance with s. 440.192 that involve a claim for benefits
165 of \$5,000 or less shall, in the absence of compelling evidence
166 to the contrary, be presumed to be appropriate for expedited

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 1

167 resolution under this paragraph; and any other claim filed in
168 accordance with s. 440.192, upon the written agreement of both
169 parties and application by either party, may similarly be
170 resolved under this paragraph. A claim in a petition of \$5,000
171 or less for medical benefits only or a petition for
172 reimbursement for mileage for medical purposes shall, in the
173 absence of compelling evidence to the contrary, be resolved
174 through the expedited dispute resolution process provided in
175 this paragraph. For purposes of expedited resolution pursuant to
176 this paragraph, the Deputy Chief Judge shall make provision by
177 rule or order for expedited and limited discovery and expedited
178 docketing in such cases. At least 15 days prior to hearing, the
179 parties shall exchange and file with the judge of compensation
180 claims a pretrial outline of all issues, defenses, and
181 witnesses, including a statement verified pursuant to s. 92.525
182 detailing his or her

T I T L E A M E N D M E N T

Remove line 44 and insert:

requiring the filing of a verified statement detailing a

PCB COM 18-01 a1

PCB COM 18-01-line 507Published On: 11/13/2017 6:38:48 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Shaw offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Between lines 122 and 123, insert:

6 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

7 (f) Upon the written request of the employee, the carrier
8 shall authorize a one-time second opinion physician of the
9 employee's choice who is not professionally affiliated with the
10 previously authorized physician within 5 business days after
11 receipt of the request ~~give the employee the opportunity for one~~
12 ~~change of physieian during the course of treatment for any one~~
13 ~~accident. The second opinion physician need not be in the same~~
14 specialty as the originally authorized physician. Upon the
15 ~~granting of a change of physician, the originally authorized~~
16 ~~physician in the same specialty as the changed physician shall~~

PCB COM 18-01 a2

Published On: 11/13/2017 8:14:25 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 2

17 ~~become deauthorized upon written notification by the employer or~~
18 ~~carrier. The carrier shall authorize an alternative physician~~
19 ~~who shall not be professionally affiliated with the previous~~
20 ~~physician within 5 days after receipt of the request. Following~~
21 ~~the second opinion, the employee shall furnish the carrier~~
22 ~~written notice of his or her intent to treat with either the~~
23 ~~originally authorized physician or the second opinion physician.~~
24 If the carrier fails to timely authorize a second opinion
25 ~~provide a change of physician as requested by the employee, the~~
26 ~~employee may select the physician and such physician shall be~~
27 ~~considered authorized if the treatment being provided is~~
28 ~~compensable and medically necessary.~~

31 -----
32 D I R E C T O R Y A M E N D M E N T

33 Remove lines 118-120 and insert:

34 Section 3. Paragraph (f) of subsection (2), paragraphs (d)
35 and (i) of subsection (3) and subsection (12) of section 440.13,
36 Florida Statutes, are amended to read:

37 -----
38
39
40 T I T L E A M E N D M E N T

41 Remove line 7 and insert:

PCB COM 18-01 a2

Published On: 11/13/2017 8:14:25 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 2

42 amending s. 440.13, F.S.; requiring a carrier to authorize a
43 one-time, second-opinion physician chosen by an employee under
44 specified circumstances; requiring the employee to provide the
45 carrier with specified written notice of intent; requiring
46 carriers to take
47

PCB COM 18-01 a2

Published On: 11/13/2017 8:14:25 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Commerce Committee

2 Representative Shaw offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove lines 402-448 and insert:

6 (c) All impairment income benefits shall be based on an
7 impairment rating using the impairment schedule referred to in
8 paragraph (b). Impairment income benefits are paid biweekly at
9 the rate of ~~75 percent~~ of the employee's average weekly
10 temporary total disability benefit not to exceed the maximum
11 weekly benefit under s. 440.12; provided, however, that such
12 benefits shall be reduced by 50 percent for each week in which
13 the employee has earned income equal to or in excess of the
14 employee's average weekly wage. An employee's entitlement to
15 impairment income benefits begins the day after the employee
16 reaches maximum medical improvement or the expiration of

PCB COM 18-01 a3

Published On: 11/13/2017 8:17:26 PM

Amendment No. 3

17 temporary benefits, whichever occurs earlier, and continues
18 until the earlier of:

19 1. The expiration of a period computed at the rate of 3
20 weeks for each percentage point of impairment; or

21 2. The death of the employee.

22
23 ~~Impairment income benefits as defined by this subsection are~~
24 ~~payable only for impairment ratings for physical impairments.~~
25 ~~If objective medical findings can substantiate a permanent~~
26 ~~psychiatric impairment resulting from the accident, permanent~~
27 ~~impairment benefits are limited for the permanent psychiatric~~
28 ~~impairment to 1 percent permanent impairment.~~

29 (d) After the employee has been certified by a doctor as
30 having reached maximum medical improvement or 6 weeks before
31 the expiration of temporary benefits, whichever occurs
32 earlier, the certifying doctor shall evaluate the condition of
33 the employee and assign an impairment rating, using the
34 impairment schedule referred to in paragraph (b). If the
35 certification and evaluation are performed by a doctor other
36 than the employee's treating doctor, the certification and
37 evaluation must be submitted to the treating doctor, the
38 employee, and the carrier within 10 days after the evaluation.
39 The treating doctor must indicate to the carrier agreement or
40 disagreement with the other doctor's certification and
41 evaluation.

PCB COM 18-01 a3

Published On: 11/13/2017 8:17:26 PM

Amendment No. 3

42 1. The certifying doctor shall issue a written report to
43 the employee and the carrier certifying that maximum medical
44 improvement has been reached, stating the impairment rating to
45 the body as a whole, and providing any other information
46 required by the department by rule. The carrier shall
47 establish an overall maximum medical improvement date and
48 permanent impairment rating, based upon all such reports.

49 2. Within 14 days after the carrier's knowledge of each
50 maximum medical improvement date and impairment rating to the
51 body as a whole upon which the carrier is paying benefits, the
52 carrier shall report such maximum medical improvement date
53 and, when determined, the overall maximum medical improvement
54 date and associated impairment rating to the department in a
55 format as set forth in department rule. If the employee has
56 not been certified as having reached overall maximum medical
57 improvement before the expiration of 254 98 weeks after the
58 date temporary disability benefits begin to accrue, the
59 carrier shall notify the treating doctor of the requirements
60 of this section.

61 3. If an employee receiving benefits under subsection
62 (2) has not reached overall maximum medical improvement before
63 receiving the maximum number of weeks of temporary disability
64 benefits, the maximum number of weeks are extended for up to
65 an additional 26 weeks. If the employee has not reached
66 overall maximum medical improvement after receiving the

Amendment No. 3

67 additional weeks allowed under this subparagraph, a judge of
68 compensation claims, upon petition, must determine the
69 employee's current eligibility for benefits under this
70 subsection and subsection (1).

71 4. If an employee receiving benefits under subsection
72 (4) has not reached overall maximum medical improvement before
73 receiving the maximum number of weeks of temporary disability
74 benefits, the employee shall receive benefits under this
75 subsection in accordance with the greatest single impairment
76 rating assigned to the employee. Impairment benefits received
77 under this subparagraph shall be credited against indemnity
78 benefits subsequently due to the employee.

79 (g) Notwithstanding paragraph (c), for accidents
80 occurring on or after October 1, 2003, an employee's
81 entitlement to impairment income benefits begins the day after
82 the employee reaches maximum medical improvement or the
83 expiration of temporary benefits, whichever occurs earlier,
84 and continues for the following periods:

85 1. Twenty-six ~~Two~~ weeks of benefits are to be paid to
86 the employee for each percentage point of impairment from 1
87 percent up to and including 3 ~~10~~ percent.

88 2. Fifty-two weeks of benefits are to be paid to the
89 employee for each percentage point of impairment from 4
90 percent up to and including 6 percent.

91 3. For each percentage point of impairment from 7 ~~11~~

Amendment No. 3

92 percent up to and including 9 ~~15~~ percent, 78 ~~3~~ weeks of
93 benefits are to be paid.

94 ~~4.3.~~ For each percentage point of impairment from 10 ~~16~~
95 percent up to and including 12 ~~20~~ percent, 104 ~~4~~-weeks of
96 benefits are to be paid.

97 ~~5.4.~~ For each percentage point of impairment from 13 ~~21~~
98 percent and higher, 208 ~~6~~ weeks of benefits are to be paid.
99

100
101 -----
102 D I R E C T O R Y A M E N D M E N T

103 Remove lines 379-380 and insert:

104 Section 4. Paragraph (a) of subsection (2), paragraphs (c),
105 (d) and (g) of subsection (3), paragraphs (a) and (e) of
106 subsection (4), and
107

108 -----
109 T I T L E A M E N D M E N T

110 Remove lines 22-24 and insert:

111 receive temporary total disability benefits; increasing the
112 value of permanent impairment benefits; removing certain
113 limitations on permanent impairment income benefits for
114 psychiatric injuries; providing conditions under which employees
115 may receive permanent impairment benefits; increasing the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 3

116 duration of permanent impairment benefits; extending the
117 timeframe in which

PCB COM 18-01 a3

Published On: 11/13/2017 8:17:26 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Commerce Committee

2 Representative Jenne offered the following:

3
4 **Amendment (with title amendment)**

5 Remove lines 706-930 and insert:

6 (1) (a) A fee, gratuity, or other consideration may not be
7 paid by a carrier ~~for a claimant~~ in connection with any
8 proceedings arising under this chapter, unless approved by the
9 judge of compensation claims or court having jurisdiction over
10 such proceedings. Any attorney fees ~~attorney's fee~~ approved by a
11 judge of compensation claims for benefits secured on behalf of a
12 claimant must equal to 20 percent of the first \$5,000 of the
13 amount of the benefits secured, 15 percent of the next \$5,000 of
14 the amount of the benefits secured, 10 percent of the remaining
15 amount of the benefits secured to be provided during the first

PCB COM 18-01 a4

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

16 10 years after the date the claim is filed, and 5 percent of the
17 benefits secured after 10 years.

18 (b) Notwithstanding paragraph (a), the judge of
19 compensation claims must consider the following factors in each
20 case and may increase the attorney fees if, in his or her
21 judgment, he or she expressly finds that the circumstances of
22 the particular case warrant such increase:

23 1. The time and labor required, the novelty and difficulty
24 of the questions involved, and the skill required to perform the
25 legal service properly.

26 2. The fee customarily charged in the locality for similar
27 legal services.

28 3. The amount involved in the controversy and the benefits
29 accruing to the claimant.

30 4. The time limitation imposed by the claimant or the
31 circumstances.

32 5. The experience, reputation, and ability of the
33 attorneys performing services.

34 6. The contingent nature of a fee.

35 (c) The judge of compensation claims may ~~shall~~ not approve
36 a compensation order, a joint stipulation for lump sum
37 settlement, a stipulation or agreement between a claimant and
38 his or her attorney, or any other agreement related to benefits
39 under this chapter that ~~which~~ provides for carrier-paid attorney
40 fees ~~an attorney's fee~~ in excess of the amount permitted by this

PCB COM 18-01 a4

Published On: 11/13/2017 8:22:15 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

41 section. The judge of compensation claims is not required to
42 approve any retainer agreement between the claimant and his or
43 her attorney. ~~The retainer agreement as to fees and costs may~~
44 ~~not be for compensation in excess of the amount allowed under~~
45 ~~this subsection or subsection (7).~~

46 (2) In awarding carrier-paid attorney fees ~~a claimant's~~
47 ~~attorney's fee~~, the judge of compensation claims shall consider
48 only those benefits secured by the attorney. An attorney is not
49 entitled to attorney ~~attorney's~~ fees for representation in any
50 issue that was ripe, due, and owing and that reasonably could
51 have been addressed, but was not addressed, during the pendency
52 of other issues for the same injury. The amount, statutory
53 basis, and type of benefits obtained through legal
54 representation must ~~shall~~ be listed on all attorney ~~attorney's~~
55 fees awarded by the judge of compensation claims. For purposes
56 of this section, the term "benefits secured" does not include
57 future medical benefits to be provided on any date more than 5
58 years after the date on which the claim is filed. ~~In the event~~
59 ~~an offer to settle an issue pending before a judge of~~
60 ~~compensation claims, including attorney's fees as provided for~~
61 ~~in this section, is communicated in writing to the claimant or~~
62 ~~the claimant's attorney at least 30 days prior to the trial date~~
63 ~~on such issue, for purposes of calculating the amount of~~
64 ~~attorney's fees to be taxed against the employer or carrier, the~~
65 ~~term "benefits secured" shall be deemed to include only that~~

PCB COM 18-01 a4

Published On: 11/13/2017 8:22:15 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

66 ~~amount awarded to the claimant above the amount specified in the~~
67 ~~offer to settle. If multiple issues are pending before the judge~~
68 ~~of compensation claims, said offer of settlement shall address~~
69 ~~each issue pending and shall state explicitly whether or not the~~
70 ~~offer on each issue is severable. The written offer shall also~~
71 ~~unequivocally state whether or not it includes medical witness~~
72 ~~fees and expenses and all other costs associated with the claim.~~

73 (3) ~~If a any party prevails should prevail~~ in any
74 proceedings before a judge of compensation claims or court,
75 ~~there shall be taxed against the nonprevailing party the~~
76 reasonable costs of such proceedings, not to include attorney
77 attorney's fees, must be taxed against the nonprevailing party.
78 A claimant is responsible for the payment of her or his own
79 attorney attorney's fees, except that a claimant is entitled to
80 recover attorney fees ~~an attorney's fee~~ in an amount equal to
81 the amount provided for in subsection (1) ~~or subsection (7)~~ from
82 a carrier or employer:

83 (a) Against whom she or he successfully asserts a petition
84 for medical benefits only, if the claimant has not filed or is
85 not entitled to file at such time a claim for disability,
86 permanent impairment, wage-loss, or death benefits, arising out
87 of the same accident;

88 (b) In any case in which the employer or carrier files a
89 response to petition denying benefits with the Office of the
90 Judges of Compensation Claims and the injured person has

PCB COM 18-01 a4

Published On: 11/13/2017 8:22:15 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

91 employed an attorney in the successful prosecution of the
92 petition;

93 (c) In a proceeding in which a carrier or employer denies
94 that an accident occurred for which compensation benefits are
95 payable, and the claimant prevails on the issue of
96 compensability; or

97 (d) In cases where the claimant successfully prevails in
98 proceedings filed under s. 440.24 or s. 440.28.

99

100 Regardless of the date benefits were initially requested,
101 attorney ~~attorney's~~ fees shall not attach under this subsection
102 until 30 days after the date the carrier or employer, if self-
103 insured, receives the petition.

104 (4) In such cases in which the claimant is responsible for
105 the payment of her or his own attorney ~~attorney's~~ fees, such
106 fees are a lien upon compensation payable to the claimant,
107 notwithstanding s. 440.22.

108 (5) If any proceedings are had for review of any claim,
109 award, or compensation order before any court, the court may
110 award the injured employee or dependent attorney fees ~~an~~
111 ~~attorney's~~ fee to be paid by the employer or carrier, in its
112 discretion, which shall be paid as the court may direct.

113 (6) A judge of compensation claims may not enter an order
114 approving the contents of a retainer agreement that permits the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

115 placing of any portion of the employee's compensation into an
116 escrow account until benefits have been secured.

117 (7) This section may not be interpreted to limit or
118 otherwise infringe on a claimant's right to retain an attorney
119 and pay the attorney reasonable attorney fees for legal services
120 related to a claim under this chapter. If an attorney's fee is
121 owed under paragraph (3)(a), the judge of compensation claims
122 may approve an alternative attorney's fee not to exceed \$1,500
123 only once per accident, based on a maximum hourly rate of \$150
124 per hour, if the judge of compensation claims expressly finds
125 that the attorney's fee amount provided for in subsection (1),
126 based on benefits secured, fails to fairly compensate the
127 attorney for disputed medical only claims as provided in
128 paragraph (3)(a) and the circumstances of the particular case
129 warrant such action.

130 -----

131 T I T L E A M E N D M E N T

132 Remove lines 52-59 and insert:

133 Compensation Claims; authorizing a judge of
134 compensation claims to increase an award of attorney
135 fees upon consideration of specified factors; removing
136 a limitation on attorney fees and costs in retainer
137 agreements; deleting requirements related to offers of
138 settlement; providing construction; removing a
139 limitation on alternative attorney fees related to

PCB COM 18-01 a4

Published On: 11/13/2017 8:22:15 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB COM 18-01 (2018)

Amendment No. 4

140 | certain claims for medical benefits only; amending s.
141 | 440.345, F.S.; providing