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State: Fla.

GOP-Led Panel Bucks Business, Passes Comp Reform Bill: Top [2017-04-14]

The Republican-led Senate Appropriations Committee on Thursday defied every major business organization in Florida and joined Democrats in unanimously passing a workers' compensation reform bill that includes hourly attorney fees capped at \$250.

[SB 1582](#), sponsored by Sen. Rob Bradley, R-Fleming Island, now heads to the Rules Committee before a possible floor vote. The Legislature adjourns May 5.

The measure would require a reconciliation with the House version, [HB 7085](#), which caps hourly claimants' attorney fees at \$150. Unlike its Senate counterpart, the House bill would keep Florida an administered full rate state instead of the loss-cost system used by 38 other states.

HB 7085 has been scheduled for a vote by the full House of Representatives on Tuesday.



Before the 16-0 Senate Appropriations vote Thursday, Bradley's bill was amended to make multiple myeloma and non-Hodgkins lymphoma compensable as occupational diseases for firefighters. A separate amendment was approved to move \$850,000 from the Insurance Regulatory Trust Fund to the Florida Office of Insurance Regulation in order to hire eight new full-time employees, and to cover other OIR and OJCC administrative costs associated with SB 1582.

The National Council on Compensation Insurance estimates in a [preliminary cost impact analysis](#) that SB 1582 could result in small to moderate system savings of \$36.5 million to \$109 million a year.

Like HB 7085, SB 1582 would codify two state Supreme Court decisions by allowing for reasonable attorney fees, and increasing the maximum duration of temporary total and partial disability benefits from 104 weeks to 260 weeks. Raising the TTD and TPD cap to five years "would have no impact on WC system costs in Florida," NCCI actuary Jeff Eddinger wrote.

By allowing judges of compensation claims to deviate upward and downward from the fee schedule, and by imposing a \$250 hourly cap, system costs could experience small to moderate decreases, the NCCI analysis states.

NCCI defines a "small," or less than 1%, impact as up to \$36.5 million; a "moderate," or 1% to 3%, impact as up to \$109 million; and a "sizable," or 3% to 5%, impact as up to \$182 million.

Going from an administered rate system to loss costs "may result in a significant shift in the way that workers' compensation (manual) rates are determined in Florida" but "would not directly affect the benefit costs paid to injured employees," the NCCI analysis states.

David Langham, deputy chief judge of the Office of Judges of Compensation Claims, said after the committee vote that SB 1582 "seems to have an awful lot of support."

"The real question on everybody's mind right now is, how do these key bills get reconciled?" he said. "Are they (both chambers) both going to agree on the House bill or the Senate bill? Or will they agree to disagree, which means nothing happens and we stop right here and wait until next year?"

The Florida League of Cities opposes SB 1582 because of the firefighter cancer amendment, saying it would cost local governments at least \$4 million a year.

That amendment was sponsored by Appropriations Committee Chairman Sen. Jack Latvala, R-Clearwater, and the panel's vice chair, Sen. Anitere Flores, R-Miami.

Latvala said 40,000 Florida firefighters would be affected by the amendment and that the science is solid: Firefighters are 50% more likely to contract multiple myeloma and non-Hodgkins lymphoma than the general population.

"I've worked with the league to take many of their concerns into consideration, and they're still against the bill," Latvala said angrily. "I'm done compromising. Yes or no, it's time to vote."

Winter Park claimants' attorney Geoff Bichler, who represents many first responders, applauded the firefighter amendment and said it's past time that the law is changed to recognize toxic exposures.

"Too many of these brave and selfless public servants are stricken with a horrible diagnosis at an early age, and I believe this bill is the first step in recognizing the need to improve safety in the workplace to minimize the incidence of cancer in the fire service," Bichler said Thursday.

Bichler opposes the attorney fee provisions of SB 1582, however, saying an hourly rate for claimants' attorneys could be seen as arbitrary and unconstitutional.

"It seems a shame that the Legislature is not more concerned about how it might make the system function more efficiently and enhance benefits for injured workers, but all the oxygen is being sucked out of the room by the fight over attorney fees," he said.

Among the bill's opponents are chambers of commerces and organizations representing the poultry industry, home builders, restaurant owners, lodging, roofing and sheet metal contractors, the Farm Bureau, the Sheriffs Risk Management Fund, retailers, builders and contractors, and the Florida Justice Reform Institute.

"Unfortunately, this bill in its current form is a cost driver and will lead to increased litigation, which could jeopardize the current workers' compensation system," William Large, president of the Justice Reform Institute, a tort reform advocate, said in a telephone interview Thursday.

SB 1582, he said, incorporates the findings of the state Supreme Court in [Lee Engineering & Construction Co. v. Fellows](#) from 1968, when the court held that judges should be able to determine reasonable claimants' attorney fees by evaluating case complexities and other factors.

Bradley's bill provides for judges of compensation claims to consider the time and labor required to prosecute a claim; customary fees based on geographic area; the amount of money involved in the case; and the experience, reputation and ability of the claimant's attorney.

Carolyn Johnson, director of business, economic development and innovation policy for the Florida Chamber of Commerce, said reforming workers' compensation remains a top priority for the business community. She said organizations like hers hope to work with Bradley to "improve" SB 1582 before its next stop at the Rules Committee.

SB 1582 also takes aim at excessive defense attorney fees. It would require insurers with 15% or greater defense and cost-containment expenses, measured in incurred losses for three accident years, to give policyholders a cash refund or credit toward future premiums.

The American Insurance Association said it opposes the defense and cost-containment expense provision, and the departure fees for claimants' attorneys.

"We and the business community think the best response is claimant-paid attorney fees, but it does not appear the Florida Legislature is inclined to move in that direction," said Ron Jackson, AIA Southeast region vice president. "We still have questions about both bills and possible further amendments, but at this point, we think the House version is preferable."

Two other workers' compensation bills are slated for Senate committee hearings on Monday:

- [SB 1088](#), by Sen. Victor Torres, D-Kissimmee, goes before the Banking and Insurance Committee at 4 p.m., and would make mental injuries compensable for medical and indemnity benefits for first responders, even without physical injuries. The evidence standard would be "preponderance" and not "clear and convincing."
- [SB 1008](#), by Sens. Bradley and Keith Perry, R-Gainesville, goes before the Government Oversight and Accountability Committee at 4 p.m. and would exclude from public records requirements the names of injured workers or those killed on the job.