

By the Committee on Financial Services and Representatives
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1 A bill to be entitled
 2 An act relating to the Special Disability Trust
 3 Fund; amending s. 440.49, F.S.; revising
 4 procedures and requirements for reimbursement
 5 from the fund; providing for barring the filing
 6 of a claim for reimbursement under certain
 7 circumstances; providing a maximum fund
 8 assessment rate; requiring certain fees;
 9 requiring the Department of Labor and
 10 Employment Security to prepare an annual
 11 report; providing a schedule for reimbursements
 12 from the fund under certain circumstances;
 13 amending s. 625.091, F.S.; providing for
 14 accounting for anticipated recoveries under the
 15 Special Disability Trust Fund; requiring
 16 insurers to identify anticipated recoveries
 17 from the fund; providing an effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Subsections (7), (9), and (11) of section
 22 440.49, Florida Statutes, 1996 Supplement, are amended to
 23 read:

24 440.49 Limitation of liability for subsequent injury
 25 through Special Disability Trust Fund.--

26 (7) REIMBURSEMENT OF EMPLOYER.--

27 (a) The right to reimbursement as provided in this
 28 section is barred unless written notice of claim of the right
 29 to such reimbursement is filed by the employer or carrier
 30 entitled to such reimbursement with the division at
 31 Tallahassee within 2 years after the date the employee last

1 reached maximum medical improvement, or within 2 years after
2 the date of the first payment of compensation for permanent
3 total disability, wage loss, or death, whichever is later. The
4 notice of claim must contain such information as the division
5 by rule requires; and the employer or carrier claiming
6 reimbursement shall furnish such evidence in support of the
7 claim as the division reasonably may require.

8 (b) For notice of claims on the Special Disability
9 Trust Fund filed on or after July 1, 1978, the Special
10 Disability Trust Fund shall, within 120 days after receipt of
11 notice that a carrier has paid, been required to pay, or
12 accepted liability for excess compensation, serve notice of
13 the acceptance of the claim for reimbursement.

14 (c) A proof of claim must be filed on each notice of
15 claim on file on or before June 30, 1997, within 1 year after
16 the date the notice of claim was filed or the right to
17 reimbursement of the claim shall be barred. A notice of claim
18 on file on or before June 30, 1997, may be withdrawn and
19 refiled if, at the time refiled, the notice of claim remains
20 within the limitation period specified in paragraph (a). Such
21 refiling shall not toll, extend, or otherwise alter in any way
22 the limitation period applicable to the withdrawn and
23 subsequently refiled notice of claim. Each proof of claim
24 filed shall be accompanied by a \$1,000 proof-of-claim fee. The
25 Special Disability Trust Fund shall, within 120 days after
26 receipt of the proof of claim, serve notice of the acceptance
27 of the claim for reimbursement. This paragraph shall apply to
28 all claims notwithstanding the provisions of subsection (12).

29 (d) Each notice of claim filed or refiled on or after
30 July 1, 1997, must be accompanied by a notification fee as
31 provided in paragraph (9)(d). A proof of claim must be filed

1 within 1 year after the date the notice of claim is filed or
2 refiled, accompanied by a proof-of-claim fee, or the claim
3 shall be barred. The notification fee shall be waived if both
4 the notice of claim and proof of claim are submitted together
5 as a single filing. The Special Disability Trust Fund shall,
6 within 180 days after receipt of the proof of claim, serve
7 notice of the acceptance of the claim for reimbursement. This
8 paragraph shall apply to all claims notwithstanding the
9 provisions of subsection (12).

10 (e) For dates of accident on or after ~~before~~ January
11 1, 1994, the Special Disability Trust Fund shall, within 120
12 days of receipt of notice that a carrier has been required to
13 pay, and has paid over \$10,000 in benefits, serve notice of
14 the acceptance of the claim for reimbursement. Failure of the
15 Special Disability Trust Fund to serve notice of acceptance
16 shall give rise to the right to request a hearing on the claim
17 for reimbursement. If the Special Disability Trust Fund
18 through its representative denies or controverts the claim,
19 the right to such reimbursement shall be barred unless an
20 application for a hearing thereon is filed with the division
21 at Tallahassee within 60 days after notice to the employer or
22 carrier of such denial or controversion. When such application
23 for a hearing is timely filed, the claim shall be heard and
24 determined in accordance with the procedure prescribed in s.
25 440.25, to the extent that such procedure is applicable, and
26 in accordance with the workers' compensation rules of
27 procedure. In such proceeding on a claim for reimbursement,
28 the Special Disability Trust Fund shall be made the party
29 respondent, and no findings of fact made with respect to the
30 claim of the injured employee or the dependents for
31 compensation, including any finding made or order entered

1 pursuant to s. 440.20(12), shall be res judicata. The Special
2 Disability Trust Fund may not be joined or made a party to any
3 controversy or dispute between an employee and the dependents
4 and the employer or between two or more employers or carriers
5 without the written consent of the fund.

6 (f) When it has been determined that an employer or
7 carrier is entitled to reimbursement in any amount, the
8 employer or carrier shall be reimbursed annually from the
9 Special Disability Trust Fund for the compensation and medical
10 benefits paid by the employer or carrier for which the
11 employer or carrier is entitled to reimbursement, upon filing
12 request therefor and submitting evidence of such payment in
13 accordance with rules prescribed by the division, which rules
14 may include parameters for annual audits. The Special
15 Disability Trust Fund shall pay the approved reimbursement
16 requests on a first-in, first-out basis reflecting the order
17 in which the reimbursement requests were received.

18 (9) SPECIAL DISABILITY TRUST FUND.--

19 (a) There is established in the State Treasury a
20 special fund to be known as the "Special Disability Trust
21 Fund," which shall be available only for the purposes stated
22 in this section; and the assets thereof may not at any time be
23 appropriated or diverted to any other use or purpose. The
24 Treasurer shall be the custodian of such fund, and all moneys
25 and securities in such fund shall be held in trust by such
26 Treasurer and shall not be the money or property of the state.
27 The Treasurer is authorized to disburse moneys from such fund
28 only when approved by the division and upon the order of the
29 Comptroller. The Treasurer shall deposit any moneys paid into
30 such fund into such depository banks as the division may
31 designate and is authorized to invest any portion of the fund

1 which, in the opinion of the division, is not needed for
2 current requirements, in the same manner and subject to all
3 the provisions of the law with respect to the deposits of
4 state funds by such Treasurer. All interest earned by such
5 portion of the fund as may be invested by the Treasurer shall
6 be collected by him and placed to the credit of such fund.

7 (b)1. The Special Disability Trust Fund shall be
8 maintained by annual assessments upon the insurance companies
9 writing compensation insurance in the state, the commercial
10 self-insurers under ss. 624.462 and 624.4621, the assessable
11 mutuals under s. 628.601, and the self-insurers under this
12 chapter, which assessments shall become due and be paid
13 quarterly at the same time and in addition to the assessments
14 provided in s. 440.51. The division shall estimate annually in
15 advance the amount necessary for the administration of this
16 subsection and the maintenance of this fund and shall make
17 such assessment in the manner hereinafter provided.

18 2. The annual assessment shall be calculated to
19 produce during the ensuing fiscal year an amount which, when
20 combined with that part of the balance in the fund on June 30
21 of the current fiscal year which is in excess of \$100,000, is
22 equal to the average of:

23 a. The sum of disbursements from the fund during the
24 immediate past 3 calendar years, and

25 b. Two times the disbursements of the most recent
26 calendar year.

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28 Such amount shall be prorated among the insurance companies
29 writing compensation insurance in the state and the
30 self-insurers.

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1 3. The net premiums written by the companies for
2 workers' compensation in this state and the net premium
3 written applicable to the self-insurers in this state are the
4 basis for computing the amount to be assessed as a percentage
5 of net premiums. Such payments shall be made by each insurance
6 company and self-insurer to the division for the Special
7 Disability Trust Fund in accordance with such regulations as
8 the division prescribes.

9 4. The Treasurer is authorized to receive and credit
10 to such Special Disability Trust Fund any sum or sums that may
11 at any time be contributed to the state by the United States
12 under any Act of Congress, or otherwise, to which the state
13 may be or become entitled by reason of any payments made out
14 of such fund.

15 (c) Notwithstanding the Special Disability Trust Fund
16 assessment rate calculated pursuant to this section, the rate
17 assessed shall not exceed 4.52 percent ~~provisions of this~~
18 ~~subsection, in order to implement specific appropriations 1475~~
19 ~~and 1748 of the 1996-1997 General Appropriations Act, for~~
20 ~~fiscal year 1996-1997 only, the workers' compensation Special~~
21 ~~Disability Trust Fund assessment rate in effect on January 1,~~
22 ~~1995, shall remain in effect until June 30, 1997. This~~
23 ~~paragraph is repealed on July 1, 1997.~~

24 (d) The Special Disability Trust Fund shall be
25 supplemented by a \$250 notification fee on each notice of
26 claim filed or refiled after July 1, 1997, and a \$1,000 fee on
27 each proof of claim filed in accordance with subsection (7).
28 If the Special Disability Trust Fund accepts the claim for
29 reimbursement, the fund shall refund \$500 of the \$1,000
30 proof-of-claim fee to the carrier or employer at the time the
31 initial reimbursement payment is made. Revenues from the fee

1 shall be deposited into the Special Disability Trust Fund and
2 are exempt from the deduction required by s. 215.20. The fees
3 provided in this paragraph shall not be imposed upon any
4 insurer which is in receivership with the Department of
5 Insurance.

6 (e) The Department of Labor and Employment Security
7 shall report annually on the status of the Special Disability
8 Trust Fund. The report shall update the projected change in
9 fund liability, change in the total number of notices of claim
10 on file with the fund in addition to the number of newly filed
11 notices of claim, change in the number of proofs of claim
12 processed by the fund, and the fee revenues refunded and
13 revenues applied to pay down the liability of the fund. The
14 department shall submit its initial report to the Governor,
15 the President of the Senate, and the Speaker of the House of
16 Representatives by March 1, 1998, for the period ending
17 February 1, 1998, with additional reports submitted by
18 December 1, 1998, and December 1, 1999.

19 (11) EFFECTIVE DATES.--This section does not apply to
20 any case in which the accident causing the subsequent injury
21 or death or the disablement or death from a subsequent
22 occupational disease occurred prior to July 1, 1955, or on or
23 after January 1, 1998. In no event shall the Special
24 Disability Trust Fund be liable for, or reimburse employers or
25 carriers for, any case in which the accident causing the
26 subsequent injury or death or the disablement or death from a
27 subsequent occupational disease occurred on or after January
28 1, 1998. The Special Disability Trust Fund shall continue to
29 reimburse employers or carriers for subsequent injuries
30 occurring prior to January 1, 1998, and the division shall
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1 continue to assess for and fund reimbursements as provided in
2 subsection (9) for this purpose.

3 Section 2. Subsection (4) is added to section 625.091,
4 Florida Statutes, to read:

5 625.091 Losses and loss adjustment expense reserves;
6 liability insurance and workers' compensation insurance.--The
7 reserve liabilities recorded in the insurer's annual statement
8 and financial statements for unpaid losses and loss adjustment
9 expenses shall be the estimated value of its claims when
10 ultimately settled and shall be computed as follows:

11 (4)(a) Accounting credit for anticipated recoveries
12 from the Special Disability Trust Fund may only be taken in
13 the determination of loss reserves and may not be reflected on
14 the financial statements in any manner other than that allowed
15 pursuant to this subsection.

16 (b) For calendar years 1999-2002, an insurer recording
17 anticipated recoveries from the Special Disability Trust Fund
18 on the basis of anything other than claims accepted for
19 payment or claims paid shall limit the aggregate amount to the
20 amount management reasonably expects will be reimbursed or the
21 following amount, whichever is lower:

22 1. For financial statements filed in 2000, an insurer
23 may take accounting credit in an amount equalling 75 percent
24 of the amount utilized in calendar year 1996.

25 2. For financial statements filed in 2001, an insurer
26 may take accounting credit in an amount equalling 50 percent
27 of the amount utilized in calendar year 1996.

28 3. For financial statements filed in 2002, an insurer
29 may take accounting credit in an amount equalling 25 percent
30 of the amount utilized in calendar year 1996.

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1 (c) Beginning with financial statements filed in 2003,
2 an insurer may only take accounting credit for anticipated
3 recoveries from the Special Disability Trust Fund for which a
4 claim has been accepted for payment.

5 (d)1. Beginning in calendar year 1998, each insurer
6 shall separately identify anticipated recoveries from the
7 Special Disability Trust Fund on the annual statement required
8 to be filed pursuant to s. 624.424.

9 2. For all financial statements filed with the
10 department beginning in calendar year 1998, each insurer shall
11 disclose in the notes to the financial statements of any
12 financial statement required to be filed pursuant to s.
13 624.424 any credit in loss reserves taken for anticipated
14 recoveries from the Special Disability Trust Fund. That
15 disclosure shall include:

16 a. The amount of credit taken by the insurer in the
17 determination of its loss reserves for the prior calendar year
18 and the current reporting period on a year-to-date basis.

19 b. The amount of payments received by the insurer from
20 the Special Disability Trust Fund during the prior calendar
21 year and the year-to-date recoveries for the current year.

22 c. The amount the insurer was assessed by the Special
23 Disability Trust Fund during the prior calendar year and
24 during the current calendar year.

25 Section 3. This act shall take effect July 1, 1997.

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HOUSE SUMMARY

Revises provisions relating to the Special Disability Trust Fund. Revises procedures and requirements for reimbursement, provides for barring the filing of a claim for reimbursement under specified circumstances, provides a maximum fund assessment rate, provides for fees, and accounts for anticipated recoveries under the Special Disability Trust Fund. See bill for details.