

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 appropriation;  
18          providing an effective date.

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

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

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

27           (7) REIMBURSEMENT OF EMPLOYER.--

28           (a) The right to reimbursement as provided in this  
29   section is barred unless written notice of claim of the right  
30   to such reimbursement is filed by the employer or carrier  
31   entitled to such reimbursement with the division at

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

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

15 (c) A proof of claim must be filed on each notice of  
 16 claim on file as of June 30, 1997, within 1 year after July 1,  
 17 1997, or the right to reimbursement of the claim shall be  
 18 barred. A notice of claim on file on or before June 30, 1997,  
 19 may be withdrawn and refiled if, at the time refiled, the  
 20 notice of claim remains within the limitation period specified  
 21 in paragraph (a). Such refiling shall not toll, extend, or  
 22 otherwise alter in any way the limitation period applicable to  
 23 the withdrawn and subsequently refiled notice of claim. Each  
 24 proof of claim filed shall be accompanied by a proof-of-claim  
 25 fee as provided in paragraph (9)(d). The Special Disability  
 26 Trust Fund shall, within 120 days after receipt of the proof  
 27 of claim, serve notice of the acceptance of the claim for  
 28 reimbursement. This paragraph shall apply to all claims  
 29 notwithstanding the provisions of subsection (12).

30 (d) Each notice of claim filed or refiled on or after  
 31 July 1, 1997, must be accompanied by a notification fee as

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

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

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

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

19 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

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

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

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 \$500 fee on  
27 each proof of claim filed in accordance with subsection (7).  
28 Revenues from the fee shall be deposited into the Special  
29 Disability Trust Fund and are exempt from the deduction  
30 required by s. 215.20. The fees provided in this paragraph

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1 shall not be imposed upon any insurer which is in receivership  
2 with the Department of Insurance.

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

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

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

1           625.091 Losses and loss adjustment expense reserves;  
2 liability insurance and workers' compensation insurance.--The  
3 reserve liabilities recorded in the insurer's annual statement  
4 and financial statements for unpaid losses and loss adjustment  
5 expenses shall be the estimated value of its claims when  
6 ultimately settled and shall be computed as follows:

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

12           (b)1. For calendar years 1999-2003, an insurer  
13 recording anticipated recoveries from the Special Disability  
14 Trust Fund shall limit the aggregate amount to the amount  
15 management reasonably expects will be reimbursed or the  
16 following amount, whichever is lower:

17           a. For financial statements filed in 2000, an insurer  
18 may take accounting credit in an amount equalling 80% of the  
19 amount utilized in calendar year 1996.

20           b. For financial statements filed in 2001, an insurer  
21 may take accounting credit in an amount equalling 60% of the  
22 amount utilized in calendar year 1996.

23           c. For financial statements filed in 2002, an insurer  
24 may take accounting credit in an amount equalling 40% of the  
25 amount utilized in calendar year 1996.

26           d. For financial statements filed in 2003, an insurer  
27 may take accounting credit in an amount equalling 20% of the  
28 amount utilized in calendar year 1996.

29           2. Subparagraph 1. does not apply to an insurer  
30 recording anticipated recoveries from the Special Disability  
31 Trust Fund on the basis of:



1           a. A proof of claim which the Fund has reviewed,  
2 determined to be a valid claim and so notified the carrier,  
3 and extended a payment offer; or

4           b. A reimbursement request audited and approved for  
5 payment or paid by the Fund;

6           (c) Beginning with financial statements filed in 2004,  
7 an insurer may only take accounting credit for anticipated  
8 recoveries from the Special Disability Trust Fund for each  
9 proof of claim which the Fund has reviewed, determined to be a  
10 valid claim and so notified the carrier, and extended a  
11 payment offer; or a reimbursement request audited and approved  
12 for payment or paid by the Fund.

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

17           2. For all financial statements filed with the  
18 department beginning in calendar year 1998, each insurer shall  
19 disclose in the notes to the financial statements of any  
20 financial statement required to be filed pursuant to s.  
21 624.424 any credit in loss reserves taken for anticipated  
22 recoveries from the Special Disability Trust Fund. That  
23 disclosure shall include:

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

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

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1           c. The amount the insurer was assessed by the Special  
2 Disability Trust Fund during the prior calendar year and  
3 during the current calendar year.

4           Section 3. There is hereby appropriated from the  
5 Special Disability Trust Fund in the Department of Labor and  
6 Employment Security \$2,743,000 for Other Personal Services and  
7 \$300,000 for related expenses.

8           Section 4. This act shall take effect July 1, 1997.

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