

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.09, F.S.; excluding coverage
4 under the Defense Base Act; amending s.
5 440.134, F.S.; providing individually
6 self-insured employers the option to provide
7 medical benefits either through managed care
8 arrangements or without managed care
9 arrangements; amending s. 440.135, F.S.;
10 modifying the requirements of the 24-hour
11 health insurance coverage pilot programs;
12 amending s. 440.38, F.S.; permitting local
13 government participation in 24-hour health
14 insurance coverage; amending s. 440.49, F.S.,
15 creating the Special Disability Trust Fund
16 Privatization Commission; providing purpose;
17 providing for members; providing duties;
18 providing for adoption of rules; creating the
19 Special Disability Trust Fund Financing
20 Corporation; providing purposes; providing for
21 a board of directors; providing powers and
22 duties of the corporation; authorizing the
23 Division of Workers' Compensation to enter into
24 service contracts for certain purposes;
25 authorizing the corporation to issue evidences
26 of indebtedness; authorizing the corporation to
27 validate bond obligations; exempting the
28 corporation from certain taxes and assessments;
29 providing application; providing for reversion
30 of the assets to the State upon dissolution of
31 the corporation; providing for the State Board

1 of Administration to be a trustee of the
2 corporation's securities; authorizing the
3 commission to issue a request for proposal for
4 administration of the claims of the fund;
5 authorizing the transfer and assumption of the
6 liabilities of the Special Disability Trust
7 Fund to a qualified entity if it is determined
8 by the commission that such an arrangement
9 would be more cost effective than the current
10 administration by the division; authorizing the
11 Auditor General to examine and audit the
12 records of the corporation; providing an
13 appropriation; providing an effective date.

14

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

16

17 Section 1. Subsection (2) of section 440.09, Florida
18 Statutes, is amended to read:

19 440.09 Coverage.--

20 (2) Benefits are not payable in respect of the
21 disability or death of any employee covered by the Federal
22 Employer's Liability Act, the Longshoremen's and Harbor
23 Worker's Compensation Act, the Defense Base Act, or the Jones
24 Act.

25 Section 2. Paragraph (b) of subsection (2) of section
26 440.134, Florida Statutes, is amended to read:

27 440.134 Workers' compensation managed care
28 arrangement.--

29 (2)

30 (b) Effective January 1, 1997, the employer shall,
31 subject to the limitations specified elsewhere in this

1 chapter, furnish to the employee solely through managed care
 2 arrangements such medically necessary remedial treatment,
 3 care, and attendance for such period as the nature of the
 4 injury or the process of recovery requires pursuant to s.
 5 440.13(2)(a) and (b). An employer that has secured coverage
 6 under s. 440.38(1)(b) as an individual self-insurer or under
 7 s. 440.38(6) shall furnish such medically necessary remedial
 8 treatment, care, and attendance to the employee for such a
 9 period as the nature or process of recovery may require
 10 pursuant to s. 440.13(2)(a) and (b) either through managed
 11 care arrangements or without managed care arrangements. An
 12 individual self-insured employer utilizing a workers'
 13 compensation managed care arrangement otherwise in compliance
 14 with this section may unilaterally elect to be exempt from
 15 obtaining any approval from the agency or making any filing
 16 with the agency required by this section. Nothing in this
 17 subsection shall be construed to prevent an individual
 18 self-insurer from implementing or continuing to use managed
 19 care arrangements in accordance with this section.

20 Section 3. Paragraph (f) of subsection (1) of section
 21 440.135, Florida Statutes, is amended to read:

22 440.135 Pilot programs for medical and remedial care
 23 in workers' compensation.--

24 (1) It is the intent of the Legislature to determine
 25 whether the costs of the workers' compensation system can be
 26 effectively contained by monitoring more closely the medical,
 27 hospital, and remedial care required by s. 440.13, while
 28 providing injured workers with more prompt and effective care
 29 and earlier restoration of earning capacity without diminution
 30 of the quality of such care. It is the further intent of the
 31 Legislature to determine whether the total cost to an employer

1 that provides a policy or plan of health insurance and a
2 separate policy or plan of workers' compensation and
3 employer's liability insurance for its employees can be
4 reduced by combining both coverages under a policy or plan
5 that provides 24-hour health insurance coverage as set forth
6 in this section. Therefore, the Legislature authorizes the
7 establishment of one or more pilot programs to be administered
8 by the Department of Insurance after consulting with the
9 division. Each pilot program shall terminate 2 years after the
10 first date of operation of the program, unless extended by act
11 of the Legislature. In order to evaluate the feasibility of
12 implementing these pilot programs, the Department of Insurance
13 shall consult with the division regarding:

14 (f) Initiating one or more pilot programs under which
15 participating employers would provide a 24-hour health
16 insurance coverage policy to their employees under a single
17 insurance plan policy or self-insured plan that may contain
18 more than one policy. The ~~policy or~~ plan must provide a level
19 of health insurance benefits which meets criteria established
20 by the Department of Insurance but which provides medical
21 benefits for at least occupational injuries and illnesses
22 comparable to those required by this chapter and which may use
23 deductibles and coinsurance provisions that require the
24 employee to pay a portion of the actual medical care received
25 by the employee, notwithstanding any other provisions of this
26 chapter. The policy or plan may also provide indemnity
27 benefits as specified in s. 440.38(1)(e). The employer shall
28 pay the entire workers' compensation portion of the premium
29 for the 24-hour health insurance policy or self-insured plan.
30 The employee may pay all or part of the nonworkers'
31 compensation portion of the premium and all or part of other

1 ~~than~~ the portion of the premium which relates to dependent
2 coverage.

3 Section 4. Paragraph (e) of subsection (1) of section
4 440.38, Florida Statutes, is amended to read:

5 440.38 Security for compensation; insurance carriers
6 and self-insurers.--

7 (1) Every employer shall secure the payment of
8 compensation under this chapter:

9 (e) In accordance with s. 440.135, an employer, ~~other~~
10 ~~than a local government unit,~~ may elect coverage under the
11 Workers' Compensation Law and retain the benefit of the
12 exclusiveness of liability provided in s. 440.11 by obtaining
13 a 24-hour health insurance policy from an authorized property
14 and casualty insurance carrier or an authorized life and
15 health insurance carrier, or by participating in a fully or
16 partially self-insured 24-hour health plan that is established
17 or maintained by or for two or more employers, so long as the
18 law of this state is not preempted by the Employee Retirement
19 Income Security Act of 1974, Pub. L. No. 93-406, or any
20 amendment to that law, which policy or plan must provide, for
21 at least occupational injuries and illnesses, medical benefits
22 that are comparable to those required by this chapter. ~~A local~~
23 ~~government unit, as a single employer, in accordance with s.~~
24 ~~440.135, may participate in the 24-hour health insurance~~
25 ~~coverage plan referenced in this paragraph.~~ Disputes and
26 remedies arising under policies issued under this section are
27 governed by the terms and conditions of the policies and under
28 the applicable provisions of the Florida Insurance Code and
29 rules adopted under the insurance code and other applicable
30 laws of this state. The 24-hour health insurance policy may
31 provide for health care by a health maintenance organization

1 or a preferred provider organization. The premium for such
2 24-hour health insurance policy shall be paid entirely by the
3 employer. The 24-hour health insurance policy may use
4 deductibles and coinsurance provisions that require the
5 employee to pay a portion of the actual medical care received
6 by the employee. If an employer obtains a 24-hour health
7 insurance policy or self-insured plan to secure payment of
8 compensation as to medical benefits, the employer must also
9 obtain an insurance policy or policies that provide indemnity
10 benefits as follows:

11 1. If indemnity benefits are provided only for
12 occupational-related disability, such benefits must be
13 comparable to those required by this chapter.

14 2. If indemnity benefits are provided for both
15 occupational-related and nonoccupational-related disability,
16 such benefits must be comparable to those required by this
17 chapter, except that they must be based on 60 percent of the
18 average weekly wages.

19 3. The employer shall provide for each of its
20 employees life insurance with a death benefit of \$100,000.

21 4. Policies providing coverage under this subsection
22 must use prescribed and acceptable underwriting standards,
23 forms, and policies approved by the Department of Insurance.
24 If any insurance policy that provides coverage under this
25 section is canceled, terminated, or nonrenewed for any reason,
26 the cancellation, termination, or nonrenewal is ineffective
27 until the self-insured employer or insurance carrier or
28 carriers notify the division and the Department of Insurance
29 of the cancellation, termination, or nonrenewal, and until the
30 division has actually received the notification. The division
31 must be notified of replacement coverage under a workers'

1 compensation and employer's liability insurance policy or plan
2 by the employer prior to the effective date of the
3 cancellation, termination, or nonrenewal; or

4 Section 5. Section 440.49, Florida Statutes, is
5 amended to read:

6 440.49 Limitation of liability for subsequent injury
7 through Special Disability Trust Fund.--

8 (1) LEGISLATIVE INTENT.--Whereas it is often difficult
9 for workers with disabilities to achieve employment or to
10 become reemployed following an injury, and it is the desire of
11 the Legislature to facilitate the return of these workers to
12 the workplace, it is the purpose of this section to encourage
13 the employment, reemployment, and accommodation of the
14 physically disabled by reducing an employer's insurance
15 premium for reemploying an injured worker, to decrease
16 litigation between carriers on apportionment issues, and to
17 protect employers from excess liability for compensation and
18 medical expense when an injury to a physically disabled worker
19 merges with, aggravates, or accelerates her or his preexisting
20 permanent physical impairment to cause either a greater
21 disability or permanent impairment, or an increase in
22 expenditures for temporary compensation or medical benefits
23 than would have resulted from the injury alone. The division
24 or the administrator shall inform all employers of the
25 existence and function of the fund and shall interpret
26 eligibility requirements liberally. However, this subsection
27 shall not be construed to create or provide any benefits for
28 injured employees or their dependents not otherwise provided
29 by this chapter. The entitlement of an injured employee or her
30 or his dependents to compensation under this chapter shall be
31 determined without regard to this subsection, the provisions

1 of which shall be considered only in determining whether an
2 employer or carrier who has paid compensation under this
3 chapter is entitled to reimbursement from the Special
4 Disability Trust Fund.

5 (2) DEFINITIONS.--As used in this section, the term:

6 (a) "Permanent physical impairment" means and is
7 limited to the conditions listed in paragraph (6)(a).

8 (b) "Preferred worker" means a worker who, because of
9 a permanent impairment resulting from a compensable injury or
10 occupational disease, is unable to return to the worker's
11 regular employment.

12 (c) "Merger" describes or means that:

13 1. If the permanent physical impairment had not
14 existed, the subsequent accident or occupational disease would
15 not have occurred;

16 2. The permanent disability or permanent impairment
17 resulting from the subsequent accident or occupational disease
18 is materially and substantially greater than that which would
19 have resulted had the permanent physical impairment not
20 existed, and the employer has been required to pay, and has
21 paid, permanent total disability or permanent impairment
22 benefits for that materially and substantially greater
23 disability;

24 3. The preexisting permanent physical impairment is
25 aggravated or accelerated as a result of the subsequent injury
26 or occupational disease, or the preexisting impairment has
27 contributed, medically and circumstantially, to the need for
28 temporary compensation, medical, or attendant care and the
29 employer has been required to pay, and has paid, temporary
30 compensation, medical, or attendant care benefits for the
31 aggravated preexisting permanent impairment; or

1 4. Death would not have been accelerated if the
2 permanent physical impairment had not existed.

3 (d) "Excess permanent compensation" means that
4 compensation for permanent impairment, or permanent total
5 disability or death benefits, for which the employer or
6 carrier is otherwise entitled to reimbursement from the
7 Special Disability Trust Fund.

8 (e) "Administrator" means the entity selected by the
9 commission to review, allow, deny, compromise, controvert, and
10 litigate claims of the Special Disability Trust Fund.

11 (f) "Corporation" means the Special Disability Trust
12 Fund Financing Corporation, as created under subsection (14).

13 (g) "Commission" means the Special Disability Trust
14 Fund Privatization Commission, as created under subsection
15 (13).

16 (3) DEDUCTIBLE.--Reimbursement may not be obtained for
17 the first \$10,000 of benefits paid which otherwise qualify for
18 reimbursement under this section. This deductible does not
19 apply to claims by employers for reimbursement under
20 subparagraph (b)3.

21 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL
22 DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT
23 CARE AFTER OTHER PHYSICAL IMPAIRMENT.--

24 (a) Permanent impairment.--If an employee who has a
25 preexisting permanent physical impairment incurs a subsequent
26 permanent impairment from injury or occupational disease
27 arising out of, and in the course of, her or his employment
28 which merges with the preexisting permanent physical
29 impairment to cause a permanent impairment, the employer
30 shall, in the first instance, pay all benefits provided by
31 this chapter; but, subject to the limitations specified in

1 subsection (6), such employer shall be reimbursed from the
2 Special Disability Trust Fund created by subsection (8) for 50
3 percent of all impairment benefits which the employer has been
4 required to provide pursuant to s. 440.15(3)(a) as a result of
5 the subsequent accident or occupational disease.

6 (b) Permanent total disability.--If an employee who
7 has a preexisting permanent physical impairment incurs a
8 subsequent permanent impairment from injury or occupational
9 disease arising out of, and in the course of, her or his
10 employment which merges with the preexisting permanent
11 physical impairment to cause permanent total disability, the
12 employer shall, in the first instance, pay all benefits
13 provided by this chapter; but, subject to the limitations
14 specified in subsection (6), such employer shall be reimbursed
15 from the Special Disability Trust Fund created by subsection
16 (8) for 50 percent of all compensation for permanent total
17 disability.

18 (c) Temporary compensation and medical benefits;
19 aggravation or acceleration of preexisting condition or
20 circumstantial causation.--If an employee who has a
21 preexisting permanent physical impairment experiences an
22 aggravation or acceleration of the preexisting permanent
23 physical impairment as a result of an injury or occupational
24 disease arising out of and in the course of her or his
25 employment, or suffers an injury as a result of a merger as
26 defined in subparagraph (1)(b)2., the employer shall provide
27 all benefits provided by this chapter, but, subject to the
28 limitations specified in subsection (7), the employer shall be
29 reimbursed by the Special Disability Trust Fund created by
30 subsection (8) for 50 percent of its payments for temporary,
31 medical, and attendant care benefits.

1 (5) WHEN DEATH RESULTS.--If death results from the
2 subsequent permanent impairment contemplated in paragraph (c)
3 within 1 year after the subsequent injury, or within 5 years
4 after the subsequent injury when disability has been
5 continuous since the subsequent injury, and it is determined
6 that the death resulted from a merger, the employer shall, in
7 the first instance, pay the funeral expenses and the death
8 benefits prescribed by this chapter; but, subject to the
9 limitations specified in subsection (6), she or he shall be
10 reimbursed from the Special Disability Trust Fund created by
11 subsection (8) for the last 50 percent of all compensation
12 allowable and paid for such death and for 50 percent of the
13 amount paid as funeral expenses.

14 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.--

15 (a) Reimbursement is not allowed under this section
16 unless it is established that the employer knew of the
17 preexisting permanent physical impairment prior to the
18 occurrence of the subsequent injury or occupational disease,
19 and that the permanent physical impairment is one of the
20 following:

- 21 1. Epilepsy.
- 22 2. Diabetes.
- 23 3. Cardiac disease.
- 24 4. Amputation of foot, leg, arm, or hand.
- 25 5. Total loss of sight of one or both eyes or a
26 partial loss of corrected vision of more than 75 percent
27 bilaterally.
- 28 6. Residual disability from poliomyelitis.
- 29 7. Cerebral palsy.
- 30 8. Multiple sclerosis.
- 31 9. Parkinson's disease.

- 1 10. Meniscectomy.
- 2 11. Patellectomy.
- 3 12. Ruptured cruciate ligament.
- 4 13. Hemophilia.
- 5 14. Chronic osteomyelitis.
- 6 15. Surgical or spontaneous fusion of a major
- 7 weight-bearing joint.
- 8 16. Hyperinsulinism.
- 9 17. Muscular dystrophy.
- 10 18. Thrombophlebitis.
- 11 19. Herniated intervertebral disk.
- 12 20. Surgical removal of an intervertebral disk or
- 13 spinal fusion.
- 14 21. One or more back injuries or a disease process of
- 15 the back resulting in disability over a total of 120 or more
- 16 days, if substantiated by a doctor's opinion that there was a
- 17 preexisting impairment to the claimant's back.
- 18 22. Total deafness.
- 19 23. Mental retardation, provided the employee's
- 20 intelligence quotient is such that she or he falls within the
- 21 lowest 2 percentile of the general population. However, it
- 22 shall not be necessary for the employer to know the employee's
- 23 actual intelligence quotient or actual relative ranking in
- 24 relation to the intelligence quotient of the general
- 25 population.
- 26 24. Any permanent physical condition which, prior to
- 27 the industrial accident or occupational disease, constitutes a
- 28 20-percent impairment of a member or of the body as a whole.
- 29 25. Obesity, provided the employee is 30 percent or
- 30 more over the average weight designated for her or his height
- 31 and age in the Table of Average Weight of Americans by Height

1 and Age prepared by the Society of Actuaries using data from
2 the 1979 Build and Blood Pressure Study.

3 26. Any permanent physical impairment as defined in s.
4 440.15(3) which is a result of a prior industrial accident
5 with the same employer or the employer's parent company,
6 subsidiary, sister company, or affiliate located within the
7 geographical boundaries of this state.

8 (b) The Special Disability Trust Fund is not liable
9 for any costs, interest, penalties, or attorneys' fees.

10 (c) An employer's or carrier's right to apportionment
11 or deduction pursuant to ss. 440.02(1), 440.15(5)(b), and
12 440.151(1)(c) does not preclude reimbursement from such fund,
13 except when the merger comes within the definition of
14 subparagraph (2)(b)2. and such apportionment or deduction
15 relieves the employer or carrier from providing the materially
16 and substantially greater permanent disability benefits
17 otherwise contemplated in those paragraphs.

18 (7) REIMBURSEMENT OF EMPLOYER.--

19 (a) The right to reimbursement as provided in this
20 section is barred unless written notice of claim of the right
21 to such reimbursement is filed by the employer or carrier
22 entitled to such reimbursement with the division or
23 administrator at Tallahassee within 2 years after the date the
24 employee last reached maximum medical improvement, or within 2
25 years after the date of the first payment of compensation for
26 permanent total disability, wage loss, or death, whichever is
27 later. The notice of claim must contain such information as
28 the division by rule requires or as established by the
29 administrator; and the employer or carrier claiming
30 reimbursement shall furnish such evidence in support of the
31 claim as the division or administrator reasonably may require.

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

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

22 (d) Each notice of claim filed or refiled on or after
23 July 1, 1997, must be accompanied by a notification fee as
24 provided in paragraph (9)(d). A proof of claim must be filed
25 within 1 year after the date the notice of claim is filed or
26 refiled, accompanied by a proof-of-claim fee as provided in
27 paragraph (9)(d), or the claim shall be barred. The
28 notification fee shall be waived if both the notice of claim
29 and proof of claim are submitted together as a single filing.
30 The Special Disability Trust Fund shall, within 180 days after
31 receipt of the proof of claim, serve notice of the acceptance

1 of the claim for reimbursement. This paragraph shall apply to
2 all claims notwithstanding the provisions of subsection (12).

3 (e) For dates of accident on or after January 1, 1994,
4 the Special Disability Trust Fund shall, within 120 days of
5 receipt of notice that a carrier has been required to pay, and
6 has paid over \$10,000 in benefits, serve notice of the
7 acceptance of the claim for reimbursement. Failure of the
8 Special Disability Trust Fund to serve notice of acceptance
9 shall give rise to the right to request a hearing on the claim
10 for reimbursement. If the Special Disability Trust Fund
11 through its representative denies or controverts the claim,
12 the right to such reimbursement shall be barred unless an
13 application for a hearing thereon is filed with the division
14 or administrator at Tallahassee within 60 days after notice to
15 the employer or carrier of such denial or controversion. When
16 such application for a hearing is timely filed, the claim
17 shall be heard and determined in accordance with the procedure
18 prescribed in s. 440.25, to the extent that such procedure is
19 applicable, and in accordance with the workers' compensation
20 rules of procedure. In such proceeding on a claim for
21 reimbursement, the Special Disability Trust Fund shall be made
22 the party respondent, and no findings of fact made with
23 respect to the claim of the injured employee or the dependents
24 for compensation, including any finding made or order entered
25 pursuant to s. 440.20(12), shall be res judicata. The Special
26 Disability Trust Fund may not be joined or made a party to any
27 controversy or dispute between an employee and the dependents
28 and the employer or between two or more employers or carriers
29 without the written consent of the fund.

30 (f) When it has been determined that an employer or
31 carrier is entitled to reimbursement in any amount, the

1 employer or carrier shall be reimbursed annually from the
2 Special Disability Trust Fund for the compensation and medical
3 benefits paid by the employer or carrier for which the
4 employer or carrier is entitled to reimbursement, upon filing
5 request therefor and submitting evidence of such payment in
6 accordance with rules prescribed by the division, which rules
7 may include parameters for annual audits. The Special
8 Disability Trust Fund shall pay the approved reimbursement
9 requests on a first-in, first-out basis reflecting the order
10 in which the reimbursement requests were received.

11 (8) PREFERRED WORKER PROGRAM.--The division or
12 administrator shall issue identity cards to preferred workers
13 upon request by qualified employees and shall reimburse an
14 employer, from the Special Disability Trust Fund, for the cost
15 of workers' compensation premium related to the preferred
16 workers payroll for up to 3 years of continuous employment
17 upon satisfactory evidence of placement and issuance of
18 payroll and classification records and upon the employee's
19 certification of employment.

20 (9) SPECIAL DISABILITY TRUST FUND.--

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

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

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

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

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

28 b. Two times the disbursements of the most recent
29 calendar year.
30
31

1 Such amount shall be prorated among the insurance companies
2 writing compensation insurance in the state and the
3 self-insurers.

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

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

18 (c) Notwithstanding the Special Disability Trust Fund
19 assessment rate calculated pursuant to this section, the rate
20 assessed shall not exceed 4.52 percent.

21 (d) The Special Disability Trust Fund shall be
22 supplemented by a \$250 notification fee on each notice of
23 claim filed or refiled after July 1, 1997, and a \$500 fee on
24 each proof of claim filed in accordance with subsection (7).
25 Revenues from the fee shall be deposited into the Special
26 Disability Trust Fund and are exempt from the deduction
27 required by s. 215.20. The fees provided in this paragraph
28 shall not be imposed upon any insurer which is in receivership
29 with the Department of Insurance.

30 (e) The Department of Labor and Employment Security or
31 administrator shall report annually on the status of the

1 Special Disability Trust Fund. The report shall update the
2 estimated undiscounted and discounted fund liability, as
3 determined by an independent actuary ~~the projected change in~~
4 ~~fund liability~~, change in the total number of notices of claim
5 on file with the fund in addition to the number of newly filed
6 notices of claim, change in the number of proofs of claim
7 processed by the fund, ~~and~~ the fee revenues refunded and
8 revenues applied to pay down the liability of the fund, the
9 average time required to reimburse accepted claims, and the
10 average administrative costs per claim. The department or
11 administrator 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 of each year, 1998, and December 1, 1999.

16 (10) DIVISION ADMINISTRATION OF FUND; CLAIMS; ADVISORY
17 COMMITTEE; EXPENSES.--The division or administrator shall
18 administer the Special Disability Trust Fund with authority to
19 allow, deny, compromise, controvert, and litigate claims made
20 against it and to designate an attorney to represent it in
21 proceedings involving claims against the fund, including
22 negotiation and consummation of settlements, hearings before
23 judges of compensation claims, and judicial review. The
24 division or administrator or the attorney designated by it
25 shall be given notice of all hearings and proceedings
26 involving the rights or obligations of such fund and shall
27 have authority to make expenditures for such medical
28 examinations, expert witness fees, depositions, transcripts of
29 testimony, and the like as may be necessary to the proper
30 defense of any claim. The division shall appoint an advisory
31 committee composed of representatives of management,

1 compensation insurance carriers, and self-insurers to aid it
2 in formulating policies with respect to conservation of the
3 fund, who shall serve without compensation for such terms as
4 specified by it, but be reimbursed for travel expenses as
5 provided in s. 112.061. All expenditures made in connection
6 with conservation of the fund, including the salary of the
7 attorney designated to represent it and necessary travel
8 expenses, shall be allowed and paid from the Special
9 Disability Trust Fund as provided in this section upon the
10 presentation of itemized vouchers therefor approved by the
11 division.

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

27 (12) REIMBURSEMENT FROM THE SPECIAL DISABILITY TRUST
28 FUND.--The applicable law for the purposes of determining
29 entitlement to reimbursement from the Special Disability Trust
30 Fund is the law in effect on the date the accident occurred.
31

1 (13)(a) The Special Disability Trust Fund
 2 Privatization Commission is created to evaluate and determine
 3 the feasibility of privatizing the Special Disability Trust
 4 Fund. The commission shall determine the liabilities of the
 5 fund and the costs to presently administer the Special
 6 Disability Trust Fund. The commission may develop and issue a
 7 request for proposal to transfer the liabilities of the
 8 Special Disability Trust Fund to a qualified entity. The
 9 commission is authorized to select and contract with a
 10 qualified entity, only if the commission determines that such
 11 an arrangement would substantially reduce the costs and be
 12 more effective than the current administration of the Special
 13 Disability Trust Fund. The commission may adopt rules
 14 necessary for the performance of its assigned duties and
 15 responsibilities.

16 (b) Consistent with the closing of the fund provided
 17 in subsection (11), the Special Disability Trust Fund
 18 Privatization Commission is authorized to contract with an
 19 administrator to review, allow, deny, compromise, controvert,
 20 and litigate claims of the Special Disability Trust Fund under
 21 this section. The Commission, in consultation with the
 22 division, is authorized to contract with a qualified entity to
 23 assume the reimbursement obligations of the Special Disability
 24 Trust Fund for claims which have previously have accepted for
 25 reimbursement by the Special Disability Trust Fund and claims
 26 which are determined to be reimbursable by the Special
 27 Disability Trust Fund. The qualified entity and the
 28 administrator shall not be affiliates of the other, and shall
 29 not establish or maintain a financial or contractual agreement
 30 with each other for purposes of this section. On or before
 31 July 1, 1999, the commission, in consultation with the

1 division, may develop and issue a request for proposal for the
 2 transfer and assumption of liabilities, and administration of
 3 certain functions related to claims of the Special Disability
 4 Trust Fund. The administrator shall have experience in
 5 workers' compensation claims management of sufficient scope
 6 and size to undertake the duties and responsibilities of this
 7 section and shall demonstrate the ability to meet the criteria
 8 established by the commission, which shall include the ability
 9 to substantially reduce the overall costs of reviewing and
 10 reimbursing claims, and to settle and extinguish the
 11 liabilities of the Special Disability Trust Fund in a more
 12 cost efficient and more timely manner than presently provided
 13 by the division. In the event liabilities on the Special
 14 Disabilities Trust Fund are transferred to and assumed by a
 15 qualified entity, such entity shall provide the state with
 16 financial assurance as to the satisfaction of any such
 17 liabilities or claims and the state and the Special Disability
 18 Trust Fund shall have no further liability with respect to
 19 those liabilities and claims. The financial assurances may
 20 include, but are not limited to, cash reserves, reinsurance,
 21 guarantees, or letters of credit.

22 (c) The commission shall be composed of three members,
 23 one member selected by the Governor; one selected by the
 24 Insurance Commissioner; and one selected by the Comptroller.

25 (d) The commission is authorized to appoint and employ
 26 such officers, agents, and employees as the commission deems
 27 advisable to operate and manage the affairs of the commission,
 28 which officers, agents, and employees may be employees of the
 29 division or the State Board of Administration. The commission
 30 shall contract with consultants deemed necessary to determine
 31 the liabilities of the Special Disability Trust Fund, as of

1 December 31, 1998, and the feasibility of privatizing the
2 Special Disability Trust Fund.

3 (14) Florida Special Disability Trust Fund Financing
4 Corporation.--

5 (a) The Legislature finds that:

6 1. The liabilities of the Special Disability Trust
7 Fund are substantial and that the extinguishment of these
8 liabilities in a cost effective and timely manner are of
9 paramount importance to the state. In connection therewith, in
10 the event that the commission determines that it is more cost
11 effective and in the best interest of the Special Disabilities
12 Trust Fund and the state to finance the liabilities of the
13 Special Disabilities Trust Fund through the issuance of bonds,
14 notes or other evidence of indebtedness, it shall request the
15 assistance of the corporation to issue such bonds, notes or
16 other evidences of indebtedness.

17 2. The Legislature finds that the creation of a public
18 benefits corporation and the issuance of bonds or other forms
19 of indebtedness under this section is consistent with the
20 underlying public purpose of reducing and ultimately
21 eliminating the liabilities of the Special Disability Trust
22 Fund. The purpose of the corporation and the subsequent bond
23 issuance is to fund and pay the liabilities of the Special
24 Disability Trust Fund, ensure the existence of a sufficient
25 funding source for reimbursements to employers and carriers,
26 and reduce the overall costs of the program provided by the
27 state by employers and carriers.

28 (b) In the event the commission determines that it is
29 more cost effective and in the best interest of the Special
30 Disability Trust Fund, the state, insurers, and employers to
31 finance the liabilities of the Special Disability Trust Fund

1 through the issuance of bonds, notes, or other evidences of
2 indebtedness, there is created a public benefits corporation
3 to be known as the Special Disability Trust Fund Financing
4 Corporation.

5 1. The corporation shall operate under a three-member
6 board of directors consisting of the Governor or a designee,
7 the Treasurer or a designee, and the Comptroller or a
8 designee.

9 2. The corporation has all of the powers of
10 corporations under chapter 607 and under chapter 617.

11 3. The corporation may issue bonds, notes, or other
12 evidences of indebtedness and engage in such other financial
13 transactions as are necessary to provide sufficient funds to
14 achieve the purposes of this section.

15 4. The corporation may invest in any of the
16 investments authorized under s. 215.47.

17 5. There shall be no liability on the part of, and no
18 cause of action shall arise against, any board members or
19 employees of the corporation or the state for any actions
20 taken by them in the performance of their duties under this
21 paragraph.

22 6. The corporation may appoint and employ such
23 officers, agents, and employees as the corporation deems
24 advisable to operate and manage the affairs of the
25 corporation, which officers, agents, and employees may be
26 employees of the division or the State Board of
27 Administration. The administrative costs and fees incurred by
28 the corporation, and employee salaries, shall be paid from
29 bond revenues. The corporation and the division shall have
30 the power to contract with each other for expenses incurred in
31

1 connection with the transfer, assumption, and settlement of
2 liabilities of the Special Disability Trust Fund.

3 7. In addition to bonding, the corporation may also
4 borrow from, or enter into other financing arrangements with,
5 any market sources at interest rates not exceeding prevailing
6 interest rates.

7 (c)1. The proceeds of revenue bonds issued by this
8 corporation may be used to pay obligations of the Special
9 Disability Trust Fund made pursuant to this section; to
10 finance or replace previously existing borrowings or financial
11 arrangements; to pay interest on bonds; to fund reserves for
12 the bonds; to pay expenses incident to the issuance or sale of
13 any bonds issued under this subsection, or for such other
14 purposes related to the financial obligations of the Special
15 Disability Trust Fund as the corporation may determine. The
16 corporation may pledge all or a portion of the revenues
17 collected under subsection (9) to secure such revenue bonds,
18 and may execute such agreements between the corporation and
19 the division, necessary or desirable in connection with the
20 issuance of any revenue bonds.

21 2. The corporation may contract with the State Board
22 of Administration to serve as trustee with respect to debt
23 obligations issued by the corporation as provided by this
24 section and to hold, administer, and invest proceeds of such
25 debt obligations and other funds of the corporation. The State
26 Board of Administration may perform such services and may
27 contract with others to provide all or a part of such services
28 and to recover the costs and expenses of providing such
29 services. The investment of proceeds of debt obligations or
30 other funds of the corporation and contracts of funds held in
31 trust by the State Board of Administration, whether directly

1 or indirectly related to the investments or contracts, are
2 exempt from the provisions of chapter 287.

3 (d)1. Revenue bonds may not be issued under this
4 subsection until validated under chapter 75. In any suit,
5 action, or proceeding involving the validity or enforceability
6 of any bond issued under this subsection, or the security
7 therefor, any such bond reciting in substance that it has been
8 issued by the corporation in connection with any purpose of
9 this section shall be conclusively deemed to have been carried
10 out in accordance with the mandates herein. In actions under
11 chapter 75 to validate any bonds issued by the corporation,
12 the notice required by s. 75.06 shall be published only in
13 Leon County and in two newspapers of general circulation in
14 the state, and the complaint and order of the court shall be
15 served only on the State Attorney of the Second Judicial
16 Circuit. The validation of at least the first obligations
17 incurred pursuant to this subsection shall be appealed to the
18 Supreme Court, to be handled on an expedited basis.

19 2. The state hereby covenants with holders of bonds of
20 the corporation that the state will not repeal or abrogate the
21 power of the division to levy the assessments and to collect
22 the proceeds of the revenues pledged to the payment of such
23 bonds as long as any such bonds remain outstanding unless
24 adequate provision has been made for the payment of such bonds
25 pursuant to the documents authorizing the issuance of such
26 bonds.

27 3. The corporation and its corporate existence shall
28 continue until terminated by law; however, no such law shall
29 take effect as long as the corporation has bonds outstanding
30 unless adequate provision has been made for the payment of
31 such bonds pursuant to the documents authorizing the issuance

1 of such bonds. Upon termination of the existence of the
 2 corporation, all of its rights and properties in excess of its
 3 obligations shall pass to and be vested in the state.

4 (e)1. The funds, credit, property, or taxing power of
 5 the state or political subdivisions of the state shall not be
 6 pledged for the payment of such bonds. The bonds of the
 7 corporation are not a debt of the state or of any political
 8 subdivision, and neither the state nor any political
 9 subdivision is liable on such bonds. The corporation does not
 10 have the power to pledge the credit, the revenues, or the
 11 taxing power of the state or of any political subdivision. The
 12 credit, revenues, or taxing power of the state or of any
 13 political subdivision shall not be deemed to be pledged to the
 14 payment of any bonds of the corporation. However, bonds issued
 15 under this subsection are declared to be for an essential
 16 public and governmental purpose.

17 2. The property, revenues, and other assets of the
 18 corporation; the transactions and operations of the
 19 corporation and the income from such transactions and
 20 operations; and all bonds issued under this paragraph and the
 21 interest on such bonds, which is exempt from income taxes of
 22 the United States, are exempt from taxation by the state and
 23 any political subdivision, including, but not limited to, the
 24 intangibles tax under chapter 199, the income tax under
 25 chapter 220, and the premium tax under the Florida Insurance
 26 Code. This exemption does not apply to any tax imposed by
 27 chapter 220 on interest income or profits on debt obligations
 28 owned by corporations other than the Special Disability Trust
 29 Fund Financing Corporation. The corporation is not subject to
 30 the reporting requirements mandated by the Florida Insurance
 31 Code.

1 (f) All bonds of the corporation shall be and
 2 constitute legal investments without limitation for all public
 3 bodies of this state; for all banks, trust companies, savings
 4 banks, savings associations, savings and loan associations,
 5 and investment companies; for all administrators, executors,
 6 trustees, and other fiduciaries; for all insurance companies
 7 and associations and other persons carrying on an insurance
 8 business; and for all other persons who are now or may
 9 hereafter be authorized to invest in bonds or other
 10 obligations of the state and shall be and constitute eligible
 11 securities to be deposited as collateral for the security of
 12 any state, county, municipal, or other public funds. This
 13 paragraph shall be considered as additional and supplemental
 14 authority and shall not be limited without specific reference
 15 to this paragraph.

16 (g) In the event the commission selects a qualified
 17 entity to assume all or some of the liabilities of the Special
 18 Disability Trust Fund, all or any portion of the monetary
 19 assets and claims liabilities held in and accruing to the
 20 Special Disability Trust Fund may, with the agreement of the
 21 corporation or the administrator, be transferred to and fully
 22 assumed by the corporation or the qualified entity. As
 23 provided in an agreement with the corporation or the qualified
 24 entity, subsequent assessments under subsection (9) shall be
 25 collected by the division, deposited into the Special
 26 Disability Trust Fund, and used exclusively for the debt
 27 service of the bonds issued by the corporation, the payment of
 28 outstanding liabilities of the Special Disability Trust Fund
 29 not assumed by the corporation or the qualified entity, and
 30 expenses of the corporation.

31

1 (h) The administrator is prohibited from reviewing,
2 auditing, litigating, reimbursing, or settling any pending or
3 future claim or liability of its affiliates or subsidiaries.
4 The administrator is required to subcontract the
5 responsibility of reviewing, auditing, litigating,
6 reimbursing, or settling such a claim or liability.

7 (i) The Auditor General is authorized to examine and
8 audit the records and accounts of the corporation.

9 Section 6. There is hereby appropriated \$200,000 from
10 the Special Disability Trust Fund to the Special Disability
11 Trust Fund Privatization Commission to implement this act.

12 Section 7. This act shall take effect upon becoming a
13 law.

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