

1                   A bill to be entitled  
2           An act relating to rulemaking authority of the  
3           Division of Workers' Compensation of the  
4           Department of Labor and Employment Security  
5           (RAB); amending s. 440.38, F.S.; authorizing  
6           the division to specify by rule the amount of  
7           the security deposit and net worth required for  
8           an employer to obtain authorization to  
9           self-insure; requiring that the division  
10          provide by rule for suspending or revoking an  
11          employer's authorization to self-insure;  
12          providing an effective date.

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

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16           Section 1. Subsection (1) and paragraph (b) of  
17          subsection (3) of section 440.38, Florida Statutes, are  
18          amended to read:

19           440.38 Security for compensation; insurance carriers  
20          and self-insurers.--

21           (1) Every employer shall secure the payment of  
22          compensation under this chapter:

23           (a) By insuring and keeping insured the payment of  
24          such compensation with any stock company or mutual company or  
25          association or exchange, authorized to do business in the  
26          state;

27           (b) By furnishing satisfactory proof to the division  
28          of her or his financial ability to pay such compensation and  
29          receiving an authorization from the division to pay such  
30          compensation directly in accordance with the following  
31          provisions:

1           1. The division may, as a condition to such  
2 authorization, require such employer to deposit in a  
3 depository designated by the division either an indemnity bond  
4 or securities, at the option of the employer, of a kind and in  
5 an amount determined by the division and subject to such  
6 conditions as the division may prescribe, which shall include  
7 authorization to the division in the case of default to sell  
8 any such securities sufficient to pay compensation awards or  
9 to bring suit upon such bonds, to procure prompt payment of  
10 compensation under this chapter. In addition, the division  
11 shall require, as a condition to authorization to self-insure,  
12 proof that the employer has provided for competent personnel  
13 with whom to deliver benefits and to provide a safe working  
14 environment. Further, the division shall require such  
15 employer to carry reinsurance at levels that will ensure the  
16 actuarial soundness of such employer in accordance with rules  
17 promulgated by the division. The division may by rule require  
18 that, in the event of an individual self-insurer's insolvency,  
19 such indemnity bonds, securities, and reinsurance policies  
20 shall be payable to the Florida Self-Insurers Guaranty  
21 Association, Incorporated, created pursuant to s. 440.385.  
22 Any employer securing compensation in accordance with the  
23 provisions of this paragraph shall be known as a self-insurer  
24 and shall be classed as a carrier of her or his own insurance.

25           2. If the employer fails to maintain the foregoing  
26 requirements, the division shall revoke the employer's  
27 authority to self-insure, unless the employer provides to the  
28 division the certified opinion of an independent actuary who  
29 is a member of the American Society of Actuaries as to the  
30 actuarial present value of the employer's determined and  
31 estimated future compensation payments based on cash reserves,

1 using a 4-percent discount rate, and a qualifying security  
2 deposit equal to 1.5 times the value so certified. The  
3 employer shall thereafter annually provide such a certified  
4 opinion until such time as the employer meets the requirements  
5 of subparagraph 1. The qualifying security deposit shall be  
6 adjusted at the time of each such annual report. Upon the  
7 failure of the employer to timely provide such opinion or to  
8 timely provide a security deposit in an amount equal to 1.5  
9 times the value certified in the latest opinion, the division  
10 shall then revoke such employer's authorization to  
11 self-insure, and such failure shall be deemed to constitute an  
12 immediate serious danger to the public health, safety, or  
13 welfare sufficient to justify the summary suspension of the  
14 employer's authorization to self-insure pursuant to s. 120.68.

15 3. Upon the suspension or revocation of the employer's  
16 authorization to self-insure, the employer shall provide to  
17 the division and to the Florida Self-Insurers Guaranty  
18 Association, Incorporated, created pursuant to s. 440.385 the  
19 certified opinion of an independent actuary who is a member of  
20 the American Society of Actuaries of the actuarial present  
21 value of the determined and estimated future compensation  
22 payments of the employer for claims incurred while the member  
23 exercised the privilege of self-insurance, using a discount  
24 rate of 4 percent. The employer shall provide such an opinion  
25 at 6-month intervals thereafter until such time as the latest  
26 opinion shows no remaining value of claims. With each such  
27 opinion, the employer shall deposit with the division a  
28 qualifying security deposit in an amount equal to the value  
29 certified by the actuary. The association has a cause of  
30 action against an employer, and against any successor of the  
31 employer, who fails to timely provide such opinion or who

1 fails to timely maintain the required security deposit with  
2 the division. The association shall recover a judgment in the  
3 amount of the actuarial present value of the determined and  
4 estimated future compensation payments of the employer for  
5 claims incurred while the employer exercised the privilege of  
6 self-insurance, together with attorney's fees. For purposes  
7 of this section, the successor of an employer means any  
8 person, business entity, or group of persons or business  
9 entities, which holds or acquires legal or beneficial title to  
10 the majority of the assets or the majority of the shares of  
11 the employer.

12 4. A qualifying security deposit shall consist, at the  
13 option of the employer, of:

14 a. Surety bonds, in a form and containing such terms  
15 as prescribed by the division, issued by a corporation surety  
16 authorized to transact surety business by the Department of  
17 Insurance, and whose policyholders' and financial ratings, as  
18 reported in A.M. Best's Insurance Reports, Property-Liability,  
19 are not less than "A" and "V", respectively.

20 b. Certificates of deposit with financial  
21 institutions, the deposits of which are insured through the  
22 Federal Deposit Insurance Corporation or the Federal Savings  
23 and Loan Insurance Corporation.

24 c. Irrevocable letters of credit in favor of the  
25 division issued by financial institutions described in  
26 sub-subparagraph b.

27 d. Direct obligations of the United States Treasury  
28 backed by the full faith and credit of the United States.

29 e. Securities issued by this state and backed by the  
30 full faith and credit of this state.

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1           5. The qualifying security deposit shall be held by  
2 the division, or by a depository authorized by the division,  
3 exclusively for the benefit of workers' compensation  
4 claimants. The security shall not be subject to assignment,  
5 execution, attachment, or any legal process whatsoever, except  
6 as necessary to guarantee the payment of compensation under  
7 this chapter. No surety bond may be terminated, and no other  
8 qualifying security may be allowed to lapse, without 90 days'  
9 prior notice to the division and deposit by the self-insuring  
10 employer of other qualifying security of equal value within 10  
11 business days after such notice. Failure to provide such  
12 notice or failure to timely provide qualifying replacement  
13 security after such notice shall constitute grounds for the  
14 division to call or sue upon the surety bond, or to act with  
15 respect to other pledged security in any manner necessary to  
16 preserve its value for the purposes intended by this section,  
17 including the exercise of rights under a letter of credit, the  
18 sale of any security at then prevailing market rates, or the  
19 withdrawal of any funds represented by any certificate of  
20 deposit forming part of the qualifying security deposit. The  
21 division may specify by rule the amount of the qualifying  
22 security deposit required prior to authorizing an employer to  
23 self-insure and the amount of net worth required for an  
24 employer to qualify for authorization to self-insure;

25           (c) By entering into a contract with a public utility  
26 under an approved utility-provided self-insurance program as  
27 set forth in s. 440.571 in effect as of July 1, 1983. The  
28 division shall adopt rules to implement this paragraph;

29           (d) By entering into an interlocal agreement with  
30 other local governmental entities to create a local government  
31 pool pursuant to s. 440.575;

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

1 obtain an insurance policy or policies that provide indemnity  
2 benefits as follows:

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

6 2. If indemnity benefits are provided for both  
7 occupational-related and nonoccupational-related disability,  
8 such benefits must be comparable to those required by this  
9 chapter, except that they must be based on 60 percent of the  
10 average weekly wages.

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

13 4. Policies providing coverage under this subsection  
14 must use prescribed and acceptable underwriting standards,  
15 forms, and policies approved by the Department of Insurance.  
16 If any insurance policy that provides coverage under this  
17 section is canceled, terminated, or nonrenewed for any reason,  
18 the cancellation, termination, or nonrenewal is ineffective  
19 until the self-insured employer or insurance carrier or  
20 carriers notify the division and the Department of Insurance  
21 of the cancellation, termination, or nonrenewal, and until the  
22 division has actually received the notification. The division  
23 must be notified of replacement coverage under a workers'  
24 compensation and employer's liability insurance policy or plan  
25 by the employer prior to the effective date of the  
26 cancellation, termination, or nonrenewal; or

27 (f) By entering into a contract with an individual  
28 self-insurer under an approved individual  
29 self-insurer-provided self-insurance program as set forth in  
30 s. 440.571. The division may adopt rules to implement this  
31 subsection.

1 (3)

2 (b) The division shall suspend or revoke any  
3 authorization to a self-insurer for good cause, as defined by  
4 rule of the division. No suspension or revocation shall  
5 affect the liability of any self-insurer already incurred.

6 Section 2. This act shall take effect upon becoming a  
7 law.

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