

By Representative Melvin

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.

