

Bill No. CS for SB 2532

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Dyer moved the following amendment:

**Senate Amendment (with title amendment)**

On page 7, between lines 12 and 13,

insert:

Section 6. Paragraph (b) of subsection (1) of section 440.38, Florida Statutes, is amended to read:

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

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

(b) By furnishing satisfactory proof to the division of its her or his financial ability to pay such compensation individually and on behalf of its subsidiary and affiliated companies with employees in this state and receiving an authorization from the division to pay such compensation directly in accordance with the following provisions:

1. The division may, as a condition to such authorization, require such employer to deposit in a depository designated by the division either an indemnity bond

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

22       2. If the employer fails to maintain the foregoing  
23 requirements, the division shall revoke the employer's  
24 authority to self-insure, unless the employer provides to the  
25 division the certified opinion of an independent actuary who  
26 is a member of the American Society of Actuaries as to the  
27 actuarial present value of the employer's determined and  
28 estimated future compensation payments based on cash reserves,  
29 using a 4-percent discount rate, and a qualifying security  
30 deposit equal to 1.5 times the value so certified. The  
31 employer shall thereafter annually provide such a certified

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

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

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1 estimated future compensation payments of the employer for  
 2 claims incurred while the employer exercised the privilege of  
 3 self-insurance, together with attorney's fees. For purposes  
 4 of this section, the successor of an employer means any  
 5 person, business entity, or group of persons or business  
 6 entities, which holds or acquires legal or beneficial title to  
 7 the majority of the assets or the majority of the shares of  
 8 the employer.

9 4. A qualifying security deposit shall consist, at the  
 10 option of the employer, of:

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

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

21 c. Irrevocable letters of credit in favor of the  
 22 division issued by financial institutions described in  
 23 sub-subparagraph b.

24 d. Direct obligations of the United States Treasury  
 25 backed by the full faith and credit of the United States.

26 e. Securities issued by this state and backed by the  
 27 full faith and credit of this state.

28 5. The qualifying security deposit shall be held by  
 29 the division, or by a depository authorized by the division,  
 30 exclusively for the benefit of workers' compensation  
 31 claimants. The security shall not be subject to assignment,

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1 execution, attachment, or any legal process whatsoever, except  
2 as necessary to guarantee the payment of compensation under  
3 this chapter. No surety bond may be terminated, and no other  
4 qualifying security may be allowed to lapse, without 90 days'  
5 prior notice to the division and deposit by the self-insuring  
6 employer of other qualifying security of equal value within 10  
7 business days after such notice. Failure to provide such  
8 notice or failure to timely provide qualifying replacement  
9 security after such notice shall constitute grounds for the  
10 division to call or sue upon the surety bond, or to act with  
11 respect to other pledged security in any manner necessary to  
12 preserve its value for the purposes intended by this section,  
13 including the exercise of rights under a letter of credit, the  
14 sale of any security at then prevailing market rates, or the  
15 withdrawal of any funds represented by any certificate of  
16 deposit forming part of the qualifying security deposit;

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19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, line 17, after the semicolon,

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23 insert:

24 amending s. 440.38, F.S.; revising certain  
25 requirements relating to self-insurers;

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