

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           clarifying the legislative intent that the  
4           terms "net premiums written" and "net premiums  
5           collected" as used in ch. 440, F.S., include  
6           ceded reinsurance premiums in accord with  
7           original intent; amending s. 440.49, F.S.,  
8           relating to the assessment for the Special  
9           Disability Trust Fund; amending s. 440.51,  
10          F.S., relating to the assessment for the  
11          Workers' Compensation Administration Trust Fund  
12          and to expenses of administration; prescribing  
13          effect of deductions with respect to  
14          retaliatory taxes; reducing the assessment rate  
15          for calendar year 2001; creating a Task Force  
16          on Workers' Compensation Administration to  
17          study the way in which the workers'  
18          compensation system is funded and administered;  
19          amending s. 440.50, F.S.; revising the purpose  
20          of the Workers' Compensation Administration  
21          Trust Fund; amending s. 440.51, F.S.; defining  
22          the terms "plan" and "fixed administrative  
23          expenses" for purposes of administering the  
24          workers' administration program; providing for  
25          transfer of funds to the workers' compensation  
26          joint underwriting plan, subject to  
27          appropriation; amending s. 627.311, F.S.;  
28          providing for funding a deficit in the workers'  
29          compensation joint underwriting plan through  
30          policyholder surplus; amending s. 440.38, F.S.;

1           revising certain requirements relating to  
2           self-insurers; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6           Section 1. Legislative intent.--It is the intent of  
7 the Legislature to clarify that the terms "net premiums  
8 written" and "net premiums collected" as used in chapter 440,  
9 Florida Statutes, have meant and continue to mean premiums  
10 arising from workers' compensation policies issued by an  
11 insurer in this state as the primary insurance carrier without  
12 deduction for ceded reinsurance premiums transferred to an  
13 insurance company for reinsurance purchased or any premium  
14 expense attributable to purchasing reinsurance.

15           Section 2. Paragraph (b) of subsection (9) of section  
16 440.49, Florida Statutes, is amended to read:

17           440.49 Limitation of liability for subsequent injury  
18 through Special Disability Trust Fund.--

19           (9) SPECIAL DISABILITY TRUST FUND.--

20           (b)1. The Special Disability Trust Fund shall be  
21 maintained by annual assessments upon the insurance companies  
22 writing compensation insurance in the state, the commercial  
23 self-insurers under ss. 624.462 and 624.4621, the assessable  
24 mutuals under s. 628.601, and the self-insurers under this  
25 chapter, which assessments shall become due and be paid  
26 quarterly at the same time and in addition to the assessments  
27 provided in s. 440.51. The division shall estimate annually in  
28 advance the amount necessary for the administration of this  
29 subsection and the maintenance of this fund and shall make  
30 such assessment in the manner hereinafter provided.

31

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

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

8           b. Two times the disbursements of the most recent  
9 calendar year.

10  
11 Such amount shall be prorated among the insurance companies  
12 writing compensation insurance in the state and the  
13 self-insurers. Provided however, for those carriers that have  
14 excluded ceded reinsurance premiums from their assessments on  
15 or before January 1, 2000, no assessments on ceded reinsurance  
16 premiums shall be paid by those carriers until such time as  
17 the division advises each of those carriers of the impact that  
18 the inclusion of ceded reinsurance premiums has on their  
19 assessment. The division may not recover any past  
20 underpayments of assessments levied against any carrier that  
21 on or before January 1, 2000, excluded ceded reinsurance  
22 premiums from their assessment prior to the point that the  
23 division advises of the appropriate assessment that should  
24 have been paid.

25           3. The net premiums written by the companies for  
26 workers' compensation in this state and the net premium  
27 written applicable to the self-insurers in this state are the  
28 basis for computing the amount to be assessed as a percentage  
29 of net premiums. Such payments shall be made by each carrier  
30 ~~insurance company~~ and self-insurer to the division for the  
31

1 Special Disability Trust Fund in accordance with such  
2 regulations as the division prescribes.

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

9 Section 3. Subsections (1), (2), (3), and (5) of  
10 section 440.51, Florida Statutes, are amended to read:

11 440.51 Expenses of administration.--

12 (1) The division shall estimate annually in advance  
13 the amounts necessary for the administration of this chapter,  
14 in the following manner.

15 (a) The division shall, by July 1 of ~~as soon as~~  
16 ~~practicable after July 1~~ in each year, notify carriers and  
17 self-insurers of the assessment rate, which shall be based on  
18 ~~determine~~ the anticipated expenses ~~expense~~ of the  
19 administration of this chapter for the next calendar ~~preceding~~  
20 ~~fiscal year.~~ Such assessment rate shall take effect January 1  
21 of the next calendar year and shall be included in workers'  
22 compensation rate filings approved by the Department of  
23 Insurance which become effective on or after January 1 of the  
24 next calendar year. Assessments shall become due and be paid  
25 quarterly. ~~The expense of administration for such preceding~~  
26 ~~fiscal year shall be used as the basis for determining the~~  
27 ~~amount to be assessed against each carrier in order to provide~~  
28 ~~for the expenses of the administration of this chapter for the~~  
29 ~~current fiscal year.~~

30 (b) The total expenses of administration shall be  
31 prorated among the carriers ~~insurance companies~~ writing

1 compensation insurance in the state and self-insurers. The  
2 net premiums collected by carriers ~~the companies~~ and the  
3 amount of premiums calculated by the division for self-insured  
4 employers ~~a self-insurer would have to pay if insured~~ are the  
5 basis for computing the amount to be assessed. When reporting  
6 deductible policy premium for purposes of computing  
7 assessments levied after July 1, 2001, full policy premium  
8 value must be reported prior to application of deductible  
9 discounts or credits. This amount may be assessed as a  
10 specific amount or as a percentage of net premiums payable as  
11 the division may direct, provided such amount so assessed  
12 shall not exceed 2.75 ~~4~~ percent, beginning January 1, 2001,  
13 except during the interim period from July 1, 2000, through  
14 December 31, 2000, such assessments shall not exceed 4 percent  
15 of such net premiums. The carriers ~~insurance companies~~ may  
16 elect to make the payments required under s. 440.15(1)(f) ~~s.~~  
17 ~~440.15(1)(e)~~ rather than having these payments made by the  
18 division. In that event, such payments will be credited to  
19 the carriers ~~insurance companies~~, and the amount due by the  
20 carrier ~~insurance company~~ under this section will be reduced  
21 accordingly.

22 (2) The division shall provide by regulation for the  
23 collection of the amounts assessed against each carrier. Such  
24 amounts shall be paid within 30 days from the date that notice  
25 is served upon such carrier. If such amounts are not paid  
26 within such period, there may be assessed for each 30 days the  
27 amount so assessed remains unpaid, a civil penalty equal to 10  
28 percent of the amount so unpaid, which shall be collected at  
29 the same time and a part of the amount assessed. For those  
30 carriers who excluded ceded reinsurance premiums from their  
31 assessments prior to January 1, 2000, the division shall not

1 recover any past underpayments of assessments related to ceded  
2 reinsurance premiums prior to January 1, 2001, against such  
3 carriers.

4 (3) If any carrier fails to pay the amounts assessed  
5 against him or her under the provisions of this section within  
6 60 days from the time such notice is served upon him or her,  
7 the Department of Insurance upon being advised by the division  
8 may suspend or revoke the authorization to insure compensation  
9 in accordance with the procedure in s. 440.38(3)(a). The  
10 division may permit a carrier to remit any underpayment of  
11 assessments for assessments levied after January 1, 2001.

12 (5) Any amount so assessed against and paid by an  
13 insurance carrier, self-insurer authorized pursuant to s.  
14 440.57, or commercial self-insurance fund authorized under ss.  
15 624.460-624.488 shall be allowed as a deduction against the  
16 amount of any other tax levied by the state upon the premiums,  
17 assessments, or deposits for workers' compensation insurance  
18 on contracts or policies of said insurance carrier,  
19 self-insurer, or commercial self-insurance fund. Any insurance  
20 carrier claiming such a deduction against the amount of any  
21 such tax shall not be required to pay any additional  
22 retaliatory tax levied pursuant to s. 624.5091 as a result of  
23 claiming such deduction. Because deductions under this  
24 paragraph are available to insurance carriers, s. 624.5091  
25 does not limit such deductions in any manner.

26 Section 4. (1) Effective upon this act becoming a  
27 law, there is created the Task Force on Workers' Compensation  
28 Administration for the purpose of examining the way in which  
29 the workers' compensation system is funded and administered.  
30 The Task Force shall consist of seven members appointed as  
31 follows: three members appointed by the Governor, one of whom

1 shall serve as chair; two members appointed by the President  
2 of the Senate, and two members appointed by the Speaker of the  
3 House of Representatives. Appointments shall be made no later  
4 than July 1, 2000.

5 (2) The Task Force shall submit recommendations to the  
6 Governor, the President of the Senate, and the Speaker of the  
7 House of Representatives by January 15, 2001 concerning:

8 (a) Whether the administration of the workers'  
9 compensation system should be funded through assessments,  
10 general revenue, or some other source, and to what extent.

11 (b) How the funds should be used to accomplish the  
12 goal of administering the workers' compensation system in the  
13 most cost-effective manner.

14 (c) What services, functions, or entities, including  
15 the Workers' Compensation Oversight Board, should be funded as  
16 part of the administration of the workers' compensation  
17 system.

18 (d) What services and functions, including workplace  
19 safety, if any, should be housed within the Division of  
20 Workers' Compensation.

21 (e) What cost savings could be achieved in the  
22 administration of the workers' compensation system, including  
23 the operations of the Division of Workers' Compensation.

24 (f) What organizational changes affecting the  
25 administration of the workers' compensation system, if any,  
26 should be made to make it more efficient.

27 (3) To assist the task force in its work, the  
28 Executive Office of the Governor shall contract for the  
29 completion of a budgetary and operational analysis of the  
30 Division of Workers' Compensation, detailing the staffing of  
31 the division, receipt and expenditure of revenues,

1 reliability of financial records and reports, and the  
2 efficiency of internal controls and procedures. The Executive  
3 Office of the Governor shall arrange for the study to be  
4 completed and transmitted to the task force by September 1,  
5 2000.

6 (4) The sum of \$250,000 is appropriated from the  
7 Workers' Compensation Administration Trust Fund to the  
8 Executive Office of the Governor for the purpose of funding  
9 the study required in subsection (3).

10 Section 5. If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 invalidity does not affect other provisions or applications of  
13 the act which can be given effect without the invalid  
14 provision or application, and to this end the provisions of  
15 this act are severable.

16 Section 6. Paragraph (a) of subsection (1) of section  
17 440.50, Florida Statutes, is amended to read:

18 440.50 Workers' Compensation Administration Trust  
19 Fund.--

20 (1)(a) There is established in the State Treasury a  
21 special fund to be known as the "Workers' Compensation  
22 Administration Trust Fund" for the purpose of providing for  
23 the payment of all expenses in respect to the administration  
24 of this chapter, including the vocational rehabilitation of  
25 injured employees as provided in s. 440.49 and the payments  
26 due under s. 440.15(1)(f), the funding of the fixed  
27 administrative expenses of the plan,and the funding of the  
28 Bureau of Workers' Compensation Fraud within the Department of  
29 Insurance. Such fund shall be administered by the division.

30 Section 7. Subsections (13) and (14) are added to  
31 section 440.51, Florida Statutes, to read:



1 440.51 Expenses of administration.--

2 (13) As used in s. 440.50 and this section, the term:

3 (a) "Plan" means the workers' compensation joint  
4 underwriting plan provided for in s. 627.311(4).

5 (b) "Fixed administrative expenses" means the expenses  
6 of the plan, not to exceed \$750,000, which are directly  
7 related to the plan's administration but which do not vary in  
8 direct relationship to the amount of premium written by the  
9 plan and which do not include loss adjustment premiums.

10 (14) Before July 1 in each year, the plan shall notify  
11 the division of the amount of the plan's gross written  
12 premiums for the preceding calendar year. Whenever the plan's  
13 gross written premiums reported to the division are less than  
14 \$30 million, the division shall transfer to the plan, subject  
15 to appropriation by the Legislature, an amount not to exceed  
16 the plan's fixed administrative expenses for the preceding  
17 calendar year.

18 Section 8. Paragraph (g) of subsection (4) of section  
19 627.311, Florida Statutes, is amended to read:

20 627.311 Joint underwriters and joint reinsurers.--

21 (4)

22 (g) Whenever a deficit exists, the plan shall, within  
23 90 days, provide the department with a program to eliminate  
24 the deficit within a reasonable time. The deficit may be  
25 funded ~~both~~ through increased premiums charged to insureds of  
26 the plan for subsequent years, through the use of policyholder  
27 surplus attributable to any year, and through assessments on  
28 insureds in the plan if the plan uses assessable policies.

29 Section 9. Paragraph (b) of subsection (1) of section  
30 440.38, Florida Statutes, is amended to read:

31

1           440.38 Security for compensation; insurance carriers  
2 and self-insurers.--

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

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

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

1 Any employer securing compensation in accordance with the  
2 provisions of this paragraph shall be known as a self-insurer  
3 and shall be classed as a carrier of her or his own insurance.

4         2. If the employer fails to maintain the foregoing  
5 requirements, the division shall revoke the employer's  
6 authority to self-insure, unless the employer provides to the  
7 division the certified opinion of an independent actuary who  
8 is a member of the American Society of Actuaries as to the  
9 actuarial present value of the employer's determined and  
10 estimated future compensation payments based on cash reserves,  
11 using a 4-percent discount rate, and a qualifying security  
12 deposit equal to 1.5 times the value so certified. The  
13 employer shall thereafter annually provide such a certified  
14 opinion until such time as the employer meets the requirements  
15 of subparagraph 1. The qualifying security deposit shall be  
16 adjusted at the time of each such annual report. Upon the  
17 failure of the employer to timely provide such opinion or to  
18 timely provide a security deposit in an amount equal to 1.5  
19 times the value certified in the latest opinion, the division  
20 shall then revoke such employer's authorization to  
21 self-insure, and such failure shall be deemed to constitute an  
22 immediate serious danger to the public health, safety, or  
23 welfare sufficient to justify the summary suspension of the  
24 employer's authorization to self-insure pursuant to s. 120.68.

25         3. Upon the suspension or revocation of the employer's  
26 authorization to self-insure, the employer shall provide to  
27 the division and to the Florida Self-Insurers Guaranty  
28 Association, Incorporated, created pursuant to s. 440.385 the  
29 certified opinion of an independent actuary who is a member of  
30 the American Society of Actuaries of the actuarial present  
31 value of the determined and estimated future compensation

1 payments of the employer for claims incurred while the member  
2 exercised the privilege of self-insurance, using a discount  
3 rate of 4 percent. The employer shall provide such an opinion  
4 at 6-month intervals thereafter until such time as the latest  
5 opinion shows no remaining value of claims. With each such  
6 opinion, the employer shall deposit with the division a  
7 qualifying security deposit in an amount equal to the value  
8 certified by the actuary. The association has a cause of  
9 action against an employer, and against any successor of the  
10 employer, who fails to timely provide such opinion or who  
11 fails to timely maintain the required security deposit with  
12 the division. The association shall recover a judgment in the  
13 amount of the actuarial present value of the determined and  
14 estimated future compensation payments of the employer for  
15 claims incurred while the employer exercised the privilege of  
16 self-insurance, together with attorney's fees. For purposes  
17 of this section, the successor of an employer means any  
18 person, business entity, or group of persons or business  
19 entities, which holds or acquires legal or beneficial title to  
20 the majority of the assets or the majority of the shares of  
21 the employer.

22 4. A qualifying security deposit shall consist, at the  
23 option of the employer, of:

24 a. Surety bonds, in a form and containing such terms  
25 as prescribed by the division, issued by a corporation surety  
26 authorized to transact surety business by the Department of  
27 Insurance, and whose policyholders' and financial ratings, as  
28 reported in A.M. Best's Insurance Reports, Property-Liability,  
29 are not less than "A" and "V", respectively.

30 b. Certificates of deposit with financial  
31 institutions, the deposits of which are insured through the

1 Federal Deposit Insurance Corporation or the Federal Savings  
2 and Loan Insurance Corporation.

3 c. Irrevocable letters of credit in favor of the  
4 division issued by financial institutions described in  
5 sub-subparagraph b.

6 d. Direct obligations of the United States Treasury  
7 backed by the full faith and credit of the United States.

8 e. Securities issued by this state and backed by the  
9 full faith and credit of this state.

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

30 Section 10. Except as otherwise expressly provided in  
31 this act, this act shall take effect July 1, 2000.