

By Representative Holloway

1 A bill to be entitled
2 An act relating to self-insurers; amending s.
3 440.38, F.S.; transferring operation of
4 provisions requiring the securing of payment of
5 compensation by employers from the Division of
6 Workers' Compensation of the Department of
7 Labor and Employment Security to the Florida
8 Self-Insurer's Guaranty Association,
9 Incorporated, and the Department of Insurance;
10 revising and clarifying requirements and
11 procedures; providing powers and duties of the
12 association and the department; providing for
13 allocation or payment of state funds to the
14 association for certain purposes; providing
15 rulemaking authority; amending s. 440.385,
16 F.S.; revising and clarifying provisions
17 relating to the association's creation, board
18 of directors, powers and duties, insolvency
19 fund, and plan of operation; providing
20 additional powers of the association;
21 transferring the powers and duties of the
22 Department of Labor and Employment Security
23 relating to the association to the Department
24 of Insurance and revising such powers and
25 duties; providing additional powers and duties
26 of the Department of Insurance; providing for
27 oversight of the association by the department;
28 deleting a provision relating to detection and
29 prevention of employer insolvencies; amending
30 s. 440.386, F.S.; providing parity for the
31 association with the Department of Insurance

1 relating to proceedings for delinquency,
2 liquidation, and conservation of assets;
3 providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Subsections (1), (2), and (3) of section
8 440.38, Florida Statutes, are amended to read:

9 440.38 Security for compensation; insurance carriers
10 and self-insurers.--

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

13 (a) By insuring and keeping insured the payment of
14 such compensation with any stock company or mutual company or
15 association or exchange, authorized to do business in the
16 state;

17 (b) By furnishing satisfactory proof to the
18 association that the employer has the financial strength
19 necessary to assure timely payment of all current and future
20 claims ~~division of its financial ability to pay such~~
21 ~~compensation~~ individually and on behalf of its subsidiary and
22 affiliated companies with employees in this state and
23 receiving an authorization from the department ~~division~~ to pay
24 such compensation directly. The association shall review the
25 financial strength of applicants for membership, current
26 members, and former members and make recommendations to the
27 department regarding their qualifications to self-insure in
28 accordance with this act and ss. 440.385 and 440.386. The
29 department shall act in accordance with such recommendations
30 unless the department determines by clear and convincing
31 evidence that the recommendations are erroneous. For purposes

1 of this section, "association" means the Florida Self-Insurers
2 Guaranty Association, Incorporated, created in s. 440.385, and
3 "department" means the Department of Insurance.~~the following~~
4 ~~provisions:~~
5 1. The association division may recommend that the
6 department, ~~as a condition to such authorization,~~ require an
7 such employer to deposit with in a depository designated by
8 the association a qualifying deposit. The association shall
9 recommend the type and amount of the qualifying security
10 deposit and shall division either an indemnity bond or
11 securities, ~~at the option of the employer, of a kind and in an~~
12 ~~amount determined by the division and subject to such~~
13 ~~conditions as the division may prescribe~~ conditions for the
14 qualifying security deposit, ~~which shall include authorization~~
15 for to the association to call the qualifying security deposit
16 division in the case of default to sell any such securities
17 sufficient to pay compensation awards and related expenses of
18 the association or to bring suit upon such bonds, to procure
19 prompt payment of compensation under this chapter. In
20 ~~addition, the division shall require,~~ As a condition to
21 authorization to self-insure, the employer shall provide proof
22 that the employer has provided for competent personnel with
23 whom to deliver benefits and to provide a safe working
24 environment. Further, ~~The~~ employer division shall also
25 provide evidence of ~~require such employer to carry~~ reinsurance
26 at levels that will ensure the financial strength and
27 actuarial soundness of such employer in accordance with rules
28 adopted promulgated by the department division. The
29 department division may by rule require that, in the event of
30 an individual self-insurer's insolvency, such qualifying
31 security deposits indemnity bonds, securities, and reinsurance

1 policies are ~~shall be~~ payable to the association ~~Florida~~
2 ~~Self-Insurers Guaranty Association, Incorporated, created~~
3 ~~pursuant to s. 440.385.~~ Any employer securing compensation in
4 accordance with the provisions of this paragraph shall be
5 known as a self-insurer and shall be classed as a carrier of
6 her or his own insurance. All such employers shall, if
7 requested, provide the association an actuarial report signed
8 by a member of the American Academy of Actuaries providing an
9 opinion of the appropriate present value of the reserves for
10 current and future compensation claims. If any member or
11 former member of the association refuses to timely provide
12 such a report, the association may obtain an order from a
13 circuit court requiring the member to produce such a report
14 and ordering such other relief as the court determines
15 appropriate. The association shall be entitled to recover all
16 reasonable costs and attorney's fees in such proceedings.

17 2. If the employer fails to maintain the foregoing
18 requirements, the association ~~division~~ shall recommend to the
19 department that the department revoke the employer's authority
20 to self-insure, unless the employer provides to the
21 association ~~division~~ the certified opinion of an independent
22 actuary who is a member of the American Academy ~~Society~~ of
23 Actuaries as to the actuarial present value of the employer's
24 determined and estimated future compensation payments based on
25 cash reserves, using a 4-percent discount rate, and a
26 qualifying security deposit equal to 1.5 times the value so
27 certified. The employer shall thereafter annually provide such
28 a certified opinion until such time as the employer meets the
29 requirements of subparagraph 1. The qualifying security
30 deposit shall be adjusted at the time of each such annual
31 report. Upon the failure of the employer to timely provide

1 such opinion or to timely provide a security deposit in an
2 amount equal to 1.5 times the value certified in the latest
3 opinion, the association shall recommend and the department
4 ~~division~~ shall then revoke such employer's authorization to
5 self-insure., ~~and such Failure to comply with this provision~~
6 shall be deemed to constitute an immediate serious danger to
7 the public health, safety, or welfare sufficient to justify
8 the summary suspension of the employer's authorization to
9 self-insure pursuant to s. 120.68.

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

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

7 4. A qualifying security deposit shall consist, at the
8 option of the employer, of:

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

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

20 ~~b.c.~~ Irrevocable letters of credit in favor of the
21 association division issued by financial institutions located
22 within this state, the deposits of which are insured through
23 the Federal Deposit Insurance Corporation described in
24 sub-subparagraph b.

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

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

29 5. The qualifying security deposit shall be held by
30 the association division, ~~or by a depository authorized by the~~
31 ~~division~~, exclusively for the benefit of workers' compensation

1 claimants. The security shall not be subject to assignment,
2 execution, attachment, or any legal process whatsoever, except
3 as necessary to guarantee the payment of compensation under
4 this chapter. No surety bond may be terminated, and no letter
5 of credit ~~other qualifying security~~ may be allowed to expire
6 ~~lapse~~, without 90 days' prior written notice to the
7 association division and the deposit by the self-insuring
8 employer of some other qualifying security deposit of equal
9 value within 10 business days after such notice. Failure to
10 provide such written notice or failure to timely provide
11 qualifying replacement security after such notice shall
12 constitute grounds for the association division to call or sue
13 upon the surety bond, or to ~~act with respect to other pledged~~
14 ~~security in any manner necessary to preserve its value for the~~
15 ~~purposes intended by this section, including the exercise its~~
16 ~~of rights under a letter of credit.~~ Current self-insured
17 employers shall comply with this section on or before December
18 31, 2001, or upon maturity of existing security deposits,
19 whichever occurs later ~~the sale of any security at then~~
20 ~~prevailing market rates, or the withdrawal of any funds~~
21 ~~represented by any certificate of deposit forming part of the~~
22 ~~qualifying security deposit.~~ The department division may
23 specify by rule the amount of the qualifying security deposit
24 required prior to authorizing an employer to self-insure and
25 the amount of net worth required for an employer to qualify
26 for authorization to self-insure;

27 (c) By entering into a contract with a public utility
28 under an approved utility-provided self-insurance program as
29 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
30 1983. The department division shall adopt rules to implement
31 this paragraph;

1 (d) By entering into an interlocal agreement with
2 other local governmental entities to create a local government
3 pool pursuant to s. 624.4622;

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

1 by the employee. If an employer obtains a 24-hour health
2 insurance policy or self-insured plan to secure payment of
3 compensation as to medical benefits, the employer must also
4 obtain an insurance policy or policies that provide indemnity
5 benefits as follows:

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

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

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

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

31

1 (f) By entering into a contract with an individual
2 self-insurer under an approved individual
3 self-insurer-provided self-insurance program as set forth in
4 s. 624.46225. The department ~~division~~ may adopt rules to
5 implement this subsection.

6 (2)(a) The department ~~division~~ shall adopt rules by
7 which businesses may become qualified to provide underwriting
8 claims-adjusting, loss control, and safety engineering
9 services to self-insurers.

10 (b) The department ~~division~~ shall adopt rules
11 requiring self-insurers to file any reports necessary to
12 fulfill the requirements of this chapter. Any self-insurer
13 who fails to file any report as prescribed by the rules
14 adopted by the department ~~division~~ shall be subject to a civil
15 penalty not to exceed \$100 per month, not to exceed \$1,000,
16 for each such failure.

17 ~~(3)(a) The license of any stock company or mutual~~
18 ~~company or association or exchange authorized to do insurance~~
19 ~~business in the state shall for good cause, upon~~
20 ~~recommendation of the division, be suspended or revoked by the~~
21 ~~Department of Insurance. No suspension or revocation shall~~
22 ~~affect the liability of any carrier already incurred.~~

23 ~~(a)(b)~~ The department ~~division~~ shall suspend or revoke
24 any authorization to a self-insurer for failure to comply with
25 this act or for good cause, as defined by rule of the
26 department ~~division~~. No suspension or revocation shall affect
27 the liability of any self-insurer already incurred.

28 ~~(b)(c)~~ Violation of s. 440.381 by a self-insurance
29 fund shall result in the imposition of a fine not to exceed
30 \$1,000 per audit if the self-insurance fund fails to act on
31 said audits by correcting errors in employee classification or

1 accepted applications for coverage where it knew employee
2 classifications were incorrect. Such fines shall be levied by
3 the department ~~division~~ and deposited into the Workers'
4 Compensation Administration Trust Fund.

5 Section 2. Section 440.385, Florida Statutes, is
6 amended to read:

7 440.385 Florida Self-Insurers Guaranty Association,
8 Incorporated.--

9 (1) CREATION OF ASSOCIATION.--

10 (a) There is created a nonprofit corporation to be
11 known as the "Florida Self-Insurers Guaranty Association,
12 Incorporated," hereinafter referred to as "the association."
13 Upon incorporation of the association, all individual
14 self-insurers as defined in ss. 440.02~~(21)(23)(a)~~ and
15 440.38(1)(b), other than individual self-insurers which are
16 public utilities or governmental entities, shall be members of
17 the association as a condition of their authority to
18 individually self-insure in this state. The association shall
19 perform its functions under a plan of operation as established
20 and approved under subsection (5) and shall exercise its
21 powers and duties through a board of directors as established
22 under subsection (2). The corporation shall have those powers
23 granted or permitted corporations not for profit, as provided
24 in chapter 617. The activities of the association shall be
25 subject to review by the department. The department shall
26 have oversight responsibility as provided in this section and
27 ss. 440.38 and 440.386. The corporation is specifically
28 authorized to enter into agreements with this state to perform
29 services previously performed by the Self-Insurance Section of
30 the Bureau of Operations Support of the Department of Labor
31

1 and Employment Security. For purposes of this section,
2 "department" means the Department of Insurance.
3 (b) A member may voluntarily withdraw from the
4 association when the member voluntarily terminates the
5 self-insurance privilege and pays all assessments due to the
6 date of such termination. However, the withdrawing member
7 shall continue to be bound by the provisions of this section
8 relating to the period of his or her membership and any claims
9 charged pursuant thereto. The withdrawing member who is a
10 member on or after January 1, 1991, shall also be required to
11 provide to the association ~~division~~ upon withdrawal, and at
12 12-month intervals thereafter, satisfactory proof, including,
13 if requested by the association, a report of known and
14 potential claims certified by a member of the American Academy
15 of Actuaries, that it continues to meet the standards of s.
16 440.38(1)(b)1. in relation to claims incurred while the
17 withdrawing member exercised the privilege of self-insurance.
18 Such reporting shall continue until the withdrawing member
19 demonstrates to ~~satisfies~~ the association ~~division~~ that there
20 is no remaining value to claims incurred while the withdrawing
21 member was self-insured. If a withdrawing member fails or
22 refuses to timely provide an actuarial report to the
23 association, the association may obtain an order from a
24 circuit court requiring the member to produce such a report
25 and ordering such other relief as the court determines
26 appropriate. The association shall be entitled to recover all
27 reasonable costs and attorney's fees expended in such
28 proceedings. If during this reporting period the withdrawing
29 member fails to meet the standards of s. 440.38(1)(b)1., the
30 withdrawing member who is a member on or after January 1,
31 1991, shall thereupon, and at 6-month intervals thereafter,

1 provide to the ~~division and the~~ association the certified
2 opinion of an independent actuary who is a member of the
3 American Academy ~~Society~~ of Actuaries of the actuarial present
4 value of the determined and estimated future compensation
5 payments of the member for claims incurred while the member
6 was a self-insurer, using a discount rate of 4 percent. With
7 each such opinion, the withdrawing member shall deposit with
8 the association ~~division~~ security in an amount equal to the
9 value certified by the actuary and of a type that is
10 acceptable for qualifying security deposits under s.
11 440.38(1)(b). The withdrawing member shall continue to
12 provide such opinions and to provide such security until such
13 time as the latest opinion shows no remaining value of claims.
14 The association has a cause of action against a withdrawing
15 member, and against any successor of a withdrawing member, who
16 fails to timely provide the required opinion or who fails to
17 maintain the required deposit with the division. The
18 association shall be entitled to recover a judgment in the
19 amount of the actuarial present value of the determined and
20 estimated future compensation payments of the withdrawing
21 member for claims incurred during the time that the
22 withdrawing member exercised the privilege of self-insurance,
23 together with reasonable attorney's fees. The association is
24 also entitled to recover reasonable attorney's fees in any
25 action to compel production of any actuarial report required
26 by this section. For purposes of this section, the successor
27 of a withdrawing member means any person, business entity, or
28 group of persons or business entities, which holds or acquires
29 legal or beneficial title to the majority of the assets or the
30 majority of the shares of the withdrawing member.
31

1 (2) BOARD OF DIRECTORS.--The board of directors of the
2 association shall consist of nine persons and shall be
3 organized as established in the plan of operation. All board
4 members shall be experienced in self-insurance in this state.
5 ~~With respect to initial appointments, the Secretary of Labor~~
6 ~~and Employment Security shall, by July 15, 1982, approve and~~
7 ~~appoint to the board persons who are experienced with~~
8 ~~self-insurance in this state and who are recommended by the~~
9 ~~individual self-insurers in this state required to become~~
10 ~~members of the association pursuant to the provisions of~~
11 ~~paragraph (1)(a). In the event the secretary finds that any~~
12 ~~person so recommended does not have the necessary~~
13 ~~qualifications for service on the board and a majority of the~~
14 ~~board has been appointed, the secretary shall request the~~
15 ~~directors thus far approved and appointed to recommend another~~
16 ~~person for appointment to the board.~~Each director shall serve
17 for a 4-year term and may be reappointed. Appointments after
18 March 21, 2001,~~other than initial appointments~~ shall be made
19 by the Insurance Commissioner ~~Secretary of Labor and~~
20 ~~Employment Security~~ upon recommendation of members of the
21 association. Any vacancy on the board shall be filled for the
22 remaining period of the term in the same manner as
23 appointments other than initial appointments are made. Each
24 director shall be reimbursed for expenses incurred in carrying
25 out the duties of the board on behalf of the association.

26 (3) POWERS AND DUTIES.--

27 (a) Upon creation of the Insolvency Fund pursuant to
28 the provisions of subsection (4), the association is obligated
29 for payment of compensation under this chapter to insolvent
30 members' employees resulting from incidents and injuries
31 existing prior to the member becoming an insolvent member and

1 from incidents and injuries occurring within 30 days after the
2 member has become an insolvent member, provided the incidents
3 giving rise to claims for compensation under this chapter
4 occur during the year in which such insolvent member is a
5 member of the guaranty fund and was assessable pursuant to the
6 plan of operation, and provided the employee makes timely
7 claim for such payments according to procedures set forth by a
8 court of competent jurisdiction over the delinquency or
9 bankruptcy proceedings of the insolvent member. Such
10 obligation includes only that amount due the injured worker or
11 workers of the insolvent member under this chapter. In no
12 event is the association obligated to a claimant in an amount
13 in excess of the obligation of the insolvent member. The
14 association shall be deemed the insolvent employer for
15 purposes of this chapter to the extent of its obligation on
16 the covered claims and, to such extent, shall have all rights,
17 duties, and obligations of the insolvent employer as if the
18 employer had not become insolvent. However, in no event shall
19 the association be liable for any penalties or interest.

20 (b) The association may:

21 1. Employ or retain such persons as are necessary to
22 handle claims and perform other duties of the association.

23 2. Borrow funds necessary to effect the purposes of
24 this section in accord with the plan of operation.

25 3. Sue or be sued.

26 4. Negotiate and become a party to such contracts as
27 are necessary to carry out the purposes of this section.

28 5. Purchase such reinsurance as is determined
29 necessary pursuant to the plan of operation.

30 6. Review all applicants for membership in the
31 association to determine whether the applicant is qualified

1 for membership under the law. The association shall recommend
2 to the department that the application be accepted or rejected
3 based on the criteria set forth in s. 440.38(1)(b). The
4 department shall approve or disapprove the application as
5 provided in paragraph (6)(a). ~~Prior to a final determination~~
6 ~~by the Division of Workers' Compensation as to whether or not~~
7 ~~to approve any applicant for membership in the association,~~
8 ~~the association may issue opinions to the division concerning~~
9 ~~any applicant, which opinions shall be considered by the~~
10 ~~division prior to any final determination.~~

11 7. Collect and review financial information from
12 employers and make recommendations to the department regarding
13 the appropriate security deposit and reinsurance amounts
14 necessary for an employer to demonstrate that the employer has
15 the financial strength necessary to assure the timely payment
16 of all current and future claims. The association shall be the
17 sole entity authorized to audit and examine employers to
18 verify the financial strength of the association's current and
19 former members. If the association determines that a current
20 or former self-insured employer does not have the financial
21 strength necessary to assure the timely payment of all current
22 and estimated future claims, the association may recommend to
23 the department that the department:

24 a. Revoke the employer's self-insurance privilege.

25 b. Require the employer to provide a certified opinion
26 of an independent actuary who is a member of the American
27 Academy of Actuaries as to the actuarial present value of the
28 employer's estimated current and future compensation payments,
29 using a 4-percent discount rate.

30 c. Require an increase in the employer's security
31 deposit in an amount determined by the association to be

1 necessary to assure payment of compensation claims. The
2 department shall act on such recommendations as provided in
3 paragraph (6)(a). The association has a cause of action
4 against an employer, and against any successor of an employer,
5 who fails to provide an additional security deposit required
6 by the department. The association shall recover a judgment
7 in the amount of the requested additional security deposit
8 together with reasonable attorney's fees. For the purposes of
9 this section, the successor of an employer is any person,
10 business entity, or group of persons or business entities that
11 holds or acquires legal or beneficial title to the majority of
12 the assets or the majority of the shares of the employer.

13 ~~8.7.~~ Charge fees to any member of the association to
14 cover the actual costs of examining the financial and safety
15 conditions of that member.

16 ~~9.8.~~ Charge an applicant for membership in the
17 association a fee sufficient to cover the actual costs of
18 examining the financial condition of the applicant.

19 (c)1. To the extent necessary to secure funds for the
20 payment of covered claims and also to pay the reasonable costs
21 to administer them, the association, subject to approval by
22 the department of Labor and Employment Security, upon
23 ~~certification of the board of directors,~~ shall levy
24 assessments based on the annual normal premium each employer
25 would have paid had the employer not been self-insured. The
26 department's review of the assessment shall be limited to
27 determining whether the amount was accurately calculated under
28 this provision. Every assessment shall be made as a uniform
29 percentage of the figure applicable to all individual
30 self-insurers, provided that the assessment levied against any
31 self-insurer in any one year shall not exceed 1 percent of the

1 annual normal premium during the calendar year preceding the
2 date of the assessment. Assessments shall be remitted to and
3 administered by the board of directors in the manner specified
4 by the approved plan. Each employer so assessed shall have at
5 least 30 days' written notice as to the date the assessment is
6 due and payable. The association shall levy assessments
7 against any newly admitted member of the association so that
8 the basis of contribution of any newly admitted member is the
9 same as previously admitted members, provision for which shall
10 be contained in the plan of operation.

11 2. If, in any one year, funds available from such
12 assessments, together with funds previously raised, are not
13 sufficient to make all the payments or reimbursements then
14 owing, the funds available shall be prorated, and the unpaid
15 portion shall be paid as soon thereafter as sufficient
16 additional funds become available.

17 3. State funds may be allocated or paid to the
18 association for the payment of the costs involved in the
19 administration of the association and the audit of individual
20 self-insurers. However, no state funds of any kind shall be
21 allocated or paid to the association or any of its accounts
22 for payment of covered claims or related expenses except those
23 state funds accruing to the association by and through the
24 assignment of rights of an insolvent employer. In addition, no
25 association funds or fees shall be allocated to the department
26 or to any regulatory trust fund.

27 (4) ~~INSOLVENCY FUND.--Upon the adoption of a plan of~~
28 ~~operation or the adoption of rules by the Department of Labor~~
29 ~~and Employment Security pursuant to subsection (5), there~~
30 shall be created an Insolvency Fund to be managed by the
31 association.

1 (a) The Insolvency Fund is created for purposes of
2 meeting the obligations of insolvent members incurred while
3 members of the association and after the exhaustion of any
4 security deposit bond, as required under this chapter.
5 However, if such security deposit bond, surety, or reinsurance
6 policy is payable to the Florida Self-Insurers Guaranty
7 Association, the association shall commence to provide
8 benefits out of the Insolvency Fund and be reimbursed from the
9 security deposit bond, surety, or reinsurance policy. The
10 method of operation of the Insolvency Fund shall be defined in
11 the plan of operation as provided in subsection (5).

12 (b) The department shall have the authority to audit
13 the financial soundness of the Insolvency Fund annually.

14 (c) The department may offer certain amendments to the
15 plan of operation to the board of directors of the association
16 for purposes of assuring the ongoing financial soundness of
17 the Insolvency Fund and its ability to meet the obligations of
18 this section.

19 ~~(d) The department actuary may make certain~~
20 ~~recommendations to improve the orderly payment of claims.~~

21 (5) PLAN OF OPERATION.--The association shall operate
22 pursuant to a plan of operation approved by the board of
23 directors. The plan of operation in effect on March 1, 2001,
24 and approved by the Department of Labor and Employment
25 Security shall remain in effect. However, any amendments to
26 the plan shall not become effective until approved by the
27 department. By September 15, 1982, the board of directors
28 shall submit to the Department of Labor and Employment
29 Security a proposed plan of operation for the administration
30 of the association and the Insolvency Fund.

31

1 (a) The purpose of the plan of operation shall be to
2 provide the association and the board of directors with the
3 authority and responsibility to establish the necessary
4 programs and to take the necessary actions to protect against
5 the insolvency of a member of the association. In addition,
6 the plan shall provide that the members of the association
7 shall be responsible for maintaining an adequate Insolvency
8 Fund to meet the obligations of insolvent members provided for
9 under this act and shall authorize the board of directors to
10 contract and employ those persons with the necessary expertise
11 to carry out this stated purpose. The department shall approve
12 any amendments to the plan consistent with these purposes,
13 this section and ss. 440.38 and 440.386, and determined
14 appropriate to carry out the duties and responsibilities of
15 the association.

16 ~~(b) The plan of operation, and any amendments thereto,~~
17 ~~shall take effect upon approval in writing by the department.~~
18 ~~If the board of directors fails to submit a plan by September~~
19 ~~15, 1982, or fails to make required amendments to the plan~~
20 ~~within 30 days thereafter, the department shall promulgate~~
21 ~~such rules as are necessary to effectuate the provisions of~~
22 ~~this subsection. Such rules shall continue in force until~~
23 ~~modified by the department or superseded by a plan submitted~~
24 ~~by the board of directors and approved by the department.~~

25 (b)(c) All member employers shall comply with the plan
26 of operation.

27 (c)(d) The plan of operation shall:

28 1. Establish the procedures whereby all the powers and
29 duties of the association under subsection (3) will be
30 performed.

31

- 1 2. Establish procedures for handling assets of the
2 association.
- 3 3. Establish the amount and method of reimbursing
4 members of the board of directors under subsection (2).
- 5 4. Establish procedures by which claims may be filed
6 with the association and establish acceptable forms of proof
7 of covered claims. Notice of claims to the receiver or
8 liquidator of the insolvent employer shall be deemed notice to
9 the association or its agent, and a list of such claims shall
10 be submitted periodically to the association or similar
11 organization in another state by the receiver or liquidator.
- 12 5. Establish regular places and times for meetings of
13 the board of directors.
- 14 6. Establish procedures for records to be kept of all
15 financial transactions of the association and its agents and
16 the board of directors.
- 17 7. Provide that any member employer aggrieved by any
18 final action or decision of the association may appeal to the
19 department within 30 days after the action or decision.
- 20 8. Establish the procedures whereby recommendations of
21 candidates for the board of directors shall be submitted to
22 the department.
- 23 9. Contain additional provisions necessary or proper
24 for the execution of the powers and duties of the association.
- 25 (d)~~(e)~~ The plan of operation may provide that any or
26 all of the powers and duties of the association, except those
27 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to
28 a corporation, association, or other organization which
29 performs or will perform functions similar to those of this
30 association or its equivalent in two or more states. Such a
31 corporation, association, or organization shall be reimbursed

1 as a servicing facility would be reimbursed and shall be paid
2 for its performance of any other functions of the association.
3 A delegation of powers or duties under this subsection shall
4 take effect only with the approval of both the board of
5 directors and the department and may be made only to a
6 corporation, association, or organization which extends
7 protection which is not substantially less favorable and
8 effective than the protection provided by this section.

9 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
10 ~~AND EMPLOYMENT SECURITY~~.--

11 ~~(a)~~ The department shall:

12 ~~(a)1.~~ Review recommendations of the association
13 concerning whether current or former self-insured employers or
14 members of the association have the financial strength
15 necessary to ensure the timely payment of all current and
16 estimated future claims. If the association determines an
17 employer does not have the financial strength necessary to
18 ensure the timely payment of all current and future claims and
19 recommends action pursuant to paragraph (3)(b), the department
20 shall take such action as necessary to order the employer to
21 comply with the recommendation unless the department
22 determines by clear and convincing evidence that the
23 recommendation is erroneous.~~Notify the association of the~~
24 ~~existence of an insolvent employer not later than 3 days after~~
25 ~~it receives notice of the determination of insolvency.~~

26 (b) Contract with the association for the
27 administration and audit of the individual self-insurers, said
28 duties to include, but not be limited to, the following:

- 29 1. Process applications for self-insurance.
30 2. Collect and review financial statements and loss
31 reserve information from individual self-insurers. Collect

1 and maintain files for original security deposit documents and
2 reinsurance policies from individual self-insurers and, if
3 necessary, perfect security interests in security deposits.

4 3. Process compliance documentation for individual
5 self-insurers and provide same to the department.

6 4. Collect all data necessary to calculate annual
7 premium for all individual self-insurers, including individual
8 self-insurers that are public utilities or governmental
9 entities, and provide such calculated annual premium to the
10 Department of Insurance for assessment purposes.

11 5. Inspect and audit annually, if necessary, the
12 payroll and other records of each individual self-insurer,
13 including individual self-insurers that are public utilities
14 or governmental entities, in order to determine the wages paid
15 by each individual self-insurer, the premium such individual
16 self-insurer would have to pay if insured, and all payments of
17 compensation made by such individual self-insurer during each
18 prior period with the results of such audit provided to the
19 department. For the purposes of this section, the payroll
20 records of each individual self-insurer shall be open to
21 inspection and audit by the association or its authorized
22 representative, during regular business hours.

23 6. Provide legal representation to implement the
24 administration and audit of individual self-insurers and make
25 recommendations regarding prosecution of any administrative or
26 legal proceedings necessitated by the department's regulation
27 of the individual self-insurers.

28 7. Implement any and all procedures necessary to
29 ensure compliance with regulatory actions taken by the
30 department.

31

1 ~~(c)2.~~ Contract with an attorney or attorneys
2 recommended by the association for representation of the
3 department in any administrative or legal proceedings
4 necessitated by the recommended regulation of the individual
5 self-insurers.~~Upon request of the board of directors, provide~~
6 ~~the association with a statement of the annual normal premiums~~
7 ~~of each member employer.~~
8 ~~(b)~~ ~~The department may:~~
9 ~~(d)1.~~ Direct the association to require from each
10 individual self-insurer, at such time and in accordance with
11 such regulations as the department prescribes, reports in
12 respect to wages paid, the amount of premiums such individual
13 self-insurer would have to pay if insured, and all payments of
14 compensation made by such individual self-insurer during each
15 prior period and determine the amounts paid by each individual
16 self-insurer and the amounts paid by all individual
17 self-insurers during such period. For the purposes of this
18 section, the payroll records of each individual self-insurer
19 shall be open to annual inspection and audit by the
20 association or its authorized representative, during regular
21 business hours, and if any audit of such records of an
22 individual self-insurer discloses a deficiency in the amount
23 reported to the association or in the amounts paid to the
24 department by an individual self-insurer for its assessment
25 for the Workers' Compensation Administration Trust Fund, the
26 association may assess the cost of such audit against the
27 individual self-insurer.~~Require that the association notify~~
28 ~~the member employers and any other interested parties of the~~
29 ~~determination of insolvency and of their rights under this~~
30 ~~section. Such notification shall be by mail at the last known~~
31 ~~address thereof when available; but, if sufficient information~~

1 ~~for notification by mail is not available, notice by~~
2 ~~publication in a newspaper of general circulation shall be~~
3 ~~sufficient.~~

4 (e)2. Suspend or revoke the authority of any member
5 employer failing to pay an assessment when due or failing to
6 comply with the plan of operation to self-insure in this
7 state. As an alternative, the department may levy a fine on
8 any member employer failing to pay an assessment when due.
9 Such fine shall not exceed 5 percent of the unpaid assessment
10 per month, except that no fine shall be less than \$100 per
11 month.

12 ~~3. Revoke the designation of any servicing facility if~~
13 ~~the department finds that claims are being handled~~
14 ~~unsatisfactorily.~~

15 (7) EFFECT OF PAID CLAIMS.--

16 (a) Any person who recovers from the association under
17 this section shall be deemed to have assigned his or her
18 rights to the association to the extent of such recovery.
19 Every claimant seeking the protection of this section shall
20 cooperate with the association to the same extent as such
21 person would have been required to cooperate with the
22 insolvent member. The association shall have no cause of
23 action against the employee of the insolvent member for any
24 sums the association has paid out, except such causes of
25 action as the insolvent member would have had if such sums had
26 been paid by the insolvent member. In the case of an
27 insolvent member operating on a plan with assessment
28 liability, payments of claims by the association shall not
29 operate to reduce the liability of the insolvent member to the
30 receiver, liquidator, or statutory successor for unpaid
31 assessments.

1 (b) The receiver, liquidator, or statutory successor
2 of an insolvent member shall be bound by settlements of
3 covered claims by the association or a similar organization in
4 another state. The court having jurisdiction shall grant such
5 claims priority against the assets of the insolvent member
6 equal to that to which the claimant would have been entitled
7 in the absence of this section. The expense of the association
8 or similar organization in handling claims shall be accorded
9 the same priority as the expenses of the liquidator.

10 (c) The association shall file periodically with the
11 receiver or liquidator of the insolvent member statements of
12 the covered claims paid by the association and estimates of
13 anticipated claims on the association, which shall preserve
14 the rights of the association against the assets of the
15 insolvent member.

16 ~~(8) PREVENTION OF INSOLVENCIES. To aid in the~~
17 ~~detection and prevention of employer insolvencies:~~

18 ~~(a) Upon determination by majority vote that any~~
19 ~~member employer may be insolvent or in a financial condition~~
20 ~~hazardous to the employees thereof or to the public, it shall~~
21 ~~be the duty of the board of directors to notify the Department~~
22 ~~of Labor and Employment Security of any information indicating~~
23 ~~such condition.~~

24 ~~(b) The board of directors may, upon majority vote,~~
25 ~~request that the department determine the condition of any~~
26 ~~member employer which the board in good faith believes may no~~
27 ~~longer be qualified to be a member of the association. Within~~
28 ~~30 days of the receipt of such request or, for good cause~~
29 ~~shown, within a reasonable time thereafter, the department~~
30 ~~shall make such determination and shall forthwith advise the~~
31 ~~board of its findings. Each request for a determination shall~~

1 ~~be kept on file by the department, but the request shall not~~
2 ~~be open to public inspection prior to the release of the~~
3 ~~determination to the public.~~

4 ~~(c) It shall also be the duty of the department to~~
5 ~~report to the board of directors when it has reasonable cause~~
6 ~~to believe that a member employer may be in such a financial~~
7 ~~condition as to be no longer qualified to be a member of the~~
8 ~~association.~~

9 ~~(d) The board of directors may, upon majority vote,~~
10 ~~make reports and recommendations to the department upon any~~
11 ~~matter which is germane to the solvency, liquidation,~~
12 ~~rehabilitation, or conservation of any member employer. Such~~
13 ~~reports and recommendations shall not be considered public~~
14 ~~documents.~~

15 ~~(e) The board of directors may, upon majority vote,~~
16 ~~make recommendations to the department for the detection and~~
17 ~~prevention of employer insolvencies.~~

18 ~~(f) The board of directors shall, at the conclusion of~~
19 ~~any member's insolvency in which the association was obligated~~
20 ~~to pay covered claims, prepare a report on the history and~~
21 ~~cause of such insolvency, based on the information available~~
22 ~~to the association, and shall submit such report to the~~
23 ~~department.~~

24 ~~(8)(9)~~ EXAMINATION OF THE ASSOCIATION.--The
25 association shall be subject to examination and regulation by
26 the department as provided in this chapter of Labor and
27 ~~Employment Security~~. No later than March 30 of each year, the
28 board of directors shall submit an audited ~~a~~ financial
29 statement ~~report~~ for the preceding calendar year ~~in a form~~
30 ~~approved by the department.~~

31

1 (9)~~(10)~~ IMMUNITY.--There shall be no liability on the
2 part of, and no cause of action of any nature shall arise
3 against, any member employer, the association or its agents or
4 employees, the board of directors, or the department ~~of Labor~~
5 ~~and Employment Security~~ or its representatives for any action
6 taken by them in the performance of their powers and duties
7 under this section.

8 (10)~~(11)~~ STAY OF PROCEEDINGS; REOPENING OF DEFAULT
9 JUDGMENTS.--All proceedings in which an insolvent employer is
10 a party, or is obligated to defend a party, in any court or
11 before any quasi-judicial body or administrative board in this
12 state shall be stayed for up to 6 months, or for such
13 additional period from the date the employer becomes an
14 insolvent member, as is deemed necessary by a court of
15 competent jurisdiction to permit proper defense by the
16 association of all pending causes of action as to any covered
17 claims arising from a judgment under any decision, verdict, or
18 finding based on the default of the insolvent member. The
19 association, either on its own behalf or on behalf of the
20 insolvent member, may apply to have such judgment, order,
21 decision, verdict, or finding set aside by the same court or
22 administrator that made such judgment, order, decision,
23 verdict, or finding and shall be permitted to defend against
24 such claim on the merits. If requested by the association,
25 the stay of proceedings may be shortened or waived.

26 (11)~~(12)~~ LIMITATION ON CERTAIN
27 ACTIONS.--Notwithstanding any other provision of this chapter,
28 a covered claim, as defined herein, with respect to which
29 settlement is not effected and pursuant to which suit is not
30 instituted against the insured of an insolvent member or the
31 association within 1 year after the deadline for filing claims

1 with the receiver of the insolvent member, or any extension of
2 the deadline, shall thenceforth be barred as a claim against
3 the association.

4 (12)~~(13)~~ CORPORATE INCOME TAX CREDIT.--Any sums
5 acquired by a member by refund, dividend, or otherwise from
6 the association shall be payable within 30 days of receipt to
7 the Department of Revenue for deposit with the Treasurer to
8 the credit of the General Revenue Fund. All provisions of
9 chapter 220 relating to penalties and interest on delinquent
10 corporate income tax payments apply to payments due under this
11 subsection.

12 Section 3. Subsections (2), (3), and (4) of section
13 440.386, Florida Statutes, are amended to read:

14 440.386 Individual self-insurers' insolvency;
15 conservation; liquidation.--

16 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--For
17 purposes of this section, "department" means the Department of
18 Insurance and "association" means the Florida Self-Insurers
19 Guaranty Association, Incorporated.The department or the
20 association, may commence a delinquency ~~any such~~ proceeding by
21 application to the court for an order directing the individual
22 self-insurer to show cause why the department or association
23 should not have the relief prayed for. ~~The Florida~~
24 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
25 ~~the department to commence such proceedings, and upon receipt~~
26 ~~of such petition, the department shall commence such~~
27 ~~proceeding.~~ On the return of such order to show cause, and
28 after a full hearing, the court shall either deny the
29 application or grant the application, together with such other
30 relief as the nature of the case and the interests of the
31 claimants, creditors, stockholders, members, subscribers, or

1 public may require. The department and the association shall
2 give Florida Self-Insurers Guaranty Association, Incorporated,
3 ~~shall be given~~ reasonable written notice to each other by the
4 ~~department~~ of all hearings which pertain to an adjudication of
5 insolvency of a member individual self-insurer.

6 (3) GROUNDS FOR LIQUIDATION.--The department or the
7 association may apply to the court for an order appointing a
8 receiver and directing the receiver to liquidate the business
9 of a domestic individual self-insurer if such individual
10 self-insurer is insolvent. ~~Florida Self-Insurers Guaranty~~
11 ~~Association, Incorporated, may petition the department to~~
12 ~~apply to the court for such order. Upon receipt of such~~
13 ~~petition, the department shall apply to the court for such~~
14 ~~order.~~

15 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
16 SELF-INSURERS.--

17 (a) The department or the association may apply to the
18 court for an order appointing a receiver or ancillary
19 receiver, and directing the receiver to conserve the assets
20 within this state, of a foreign individual self-insurer if
21 such individual self-insurer is insolvent. ~~Florida~~
22 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~
23 ~~the department to apply for such order, and, upon receipt of~~
24 ~~such petition, the department shall apply to the court for~~
25 ~~such order.~~

26 (b) An order to conserve the assets of an individual
27 self-insurer shall require the receiver forthwith to take
28 possession of the property of the receiver within the state
29 and to conserve it, subject to the further direction of the
30 court.

31 Section 4. This act shall take effect October 1, 2001.

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HOUSE SUMMARY

Revises provisions relating to self-insurers and the Florida Self-Insurers Guaranty Association, Incorporated. Transfers operation of provisions requiring the securing of payment of compensation by employers from the Division of Workers' Compensation of the Department of Labor and Employment Security to the association and the Department of Insurance. Provides for allocation or payment of state funds to the association for specified purposes. Revises and clarifies provisions relating to the association's creation, board of directors, powers and duties, insolvency fund, and plan of operation. Provides additional powers of the association. Transfers the powers and duties of the Department of Labor and Employment Security relating to the association to the Department of Insurance and revises such powers and duties. Provides additional powers and duties of the Department of Insurance and provides for oversight of the association by the department. Provides parity for the proceedings with the Department of Insurance relating to proceedings for delinquency, liquidation, and conservation of assets. See bill for details.