

By Senator Villalobos

37-660-01

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 departments; 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 Florida
18 Self-Insurers Guaranty Association, Incorporated, created in
19 s. 440.385, that it has the financial strength necessary to
20 assure timely payment of all current and future claims
21 ~~division of its financial ability to pay such compensation~~
22 individually and on behalf of its subsidiary and affiliated
23 companies with employees in this state and receiving an
24 authorization from the Department of Insurance,~~division~~ to
25 pay such compensation directly. The association shall review
26 the financial strength of applicants for membership, current
27 members, and former members and make recommendations to the
28 department regarding their qualifications to self-insure in
29 accordance with this act and ss. 440.385 and 440.386. The
30 Department of Insurance shall act in accordance with such
31 recommendations unless it determines by clear and convincing

1 evidence that the recommendations are erroneous.~~the following~~
2 ~~provisions:~~

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

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

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

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

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

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

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

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

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

19 ~~b.c.~~ Irrevocable letters of credit in favor of the
20 association division issued by financial institutions located
21 within this state, the deposits of which are insured through
22 the Federal Deposit Insurance Corporation 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 association division, or by a depository authorized by the
30 ~~division~~, exclusively for the benefit of workers' compensation
31 claimants. The security shall not be subject to assignment,

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 letter
4 of credit ~~other qualifying security~~ may be allowed to expire
5 ~~lapse~~, without 90 days' prior written notice to the
6 association division and the deposit by the self-insuring
7 employer of some other qualifying security deposit of equal
8 value within 10 business days after such notice. Failure to
9 provide such written notice or failure to timely provide
10 qualifying replacement security after such notice shall
11 constitute grounds for the association division to call or sue
12 upon the surety bond, or to ~~act with respect to other pledged~~
13 ~~security in any manner necessary to preserve its value for the~~
14 ~~purposes intended by this section, including the exercise its~~
15 ~~of~~ rights under a letter of credit. Current self-insured
16 employers must comply with this section on or before December
17 31, 2001, or upon maturity of existing security deposits,
18 whichever occurs later ~~the sale of any security at then~~
19 ~~prevailing market rates, or the withdrawal of any funds~~
20 ~~represented by any certificate of deposit forming part of the~~
21 ~~qualifying security deposit.~~ The Department of Insurance
22 division may specify by rule the amount of the qualifying
23 security deposit required prior to authorizing an employer to
24 self-insure and the amount of net worth required for an
25 employer to qualify for authorization to self-insure;
26 (c) By entering into a contract with a public utility
27 under an approved utility-provided self-insurance program as
28 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,
29 1983. The Department of Insurance division shall adopt rules
30 to implement this paragraph;
31

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 of Insurance ~~division~~ has actually received the
26 notification. The Department of Insurance ~~division~~ must be
27 notified of replacement coverage under a workers' compensation
28 and employer's liability insurance policy or plan by the
29 employer prior to the effective date of the cancellation,
30 termination, or 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 of Insurance ~~division~~ may adopt
5 rules to implement this subsection.

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

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

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

1 said audits by correcting errors in employee classification or
2 accepted applications for coverage where it knew employee
3 classifications were incorrect. Such fines shall be levied by
4 the Department of Insurance ~~division~~ and deposited into the
5 Workers' Compensation Administration Trust Fund.

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

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

10 (1) CREATION OF ASSOCIATION.--

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

31

1 Section of the Bureau of Operations Support of the Department
2 of Labor and Employment Security.

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

11 7. Collect and review financial information from
12 employers and make recommendations to the Department of
13 Insurance regarding the appropriate security deposit and
14 reinsurance amounts necessary for an employer to demonstrate
15 that it has the financial strength necessary to assure the
16 timely payment of all current and future claims. The
17 association shall be the sole entity authorized to audit and
18 examine an employer to verify the financial strength of its
19 current and former members. If the association determines that
20 a current or former self-insured employer does not have the
21 financial strength necessary to assure the timely payment of
22 all current and estimated future claims, the association may
23 recommend to 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 subsection (6). The association has a cause of action against
4 an employer, and against any successor of an employer, who
5 fails to provide an additional security deposit required by
6 the department. The association shall recover a judgment in
7 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 Insurance Labor and Employment Security,
23 ~~upon 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 of Insurance.~~By September 15, 1982, the board of~~
28 ~~directors shall submit to the Department of Labor and~~
29 ~~Employment Security a proposed plan of operation for the~~
30 ~~administration of the association and the Insolvency Fund.~~

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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 of Insurance
12 shall approve any amendments to the plan consistent with this
13 act, and determined appropriate to carry out the duties and
14 responsibilities of the association.

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

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

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

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

30 2. Establish procedures for handling assets of the
31 association.

1 3. Establish the amount and method of reimbursing
2 members of the board of directors under subsection (2).

3 4. Establish procedures by which claims may be filed
4 with the association and establish acceptable forms of proof
5 of covered claims. Notice of claims to the receiver or
6 liquidator of the insolvent employer shall be deemed notice to
7 the association or its agent, and a list of such claims shall
8 be submitted periodically to the association or similar
9 organization in another state by the receiver or liquidator.

10 5. Establish regular places and times for meetings of
11 the board of directors.

12 6. Establish procedures for records to be kept of all
13 financial transactions of the association and its agents and
14 the board of directors.

15 7. Provide that any member employer aggrieved by any
16 final action or decision of the association may appeal to the
17 department within 30 days after the action or decision.

18 8. Establish the procedures whereby recommendations of
19 candidates for the board of directors shall be submitted to
20 the department.

21 9. Contain additional provisions necessary or proper
22 for the execution of the powers and duties of the association.

23 (d)~~(e)~~ The plan of operation may provide that any or
24 all of the powers and duties of the association, except those
25 specified under subparagraphs (c)~~(d)~~ 1. and 2., be delegated to
26 a corporation, association, or other organization which
27 performs or will perform functions similar to those of this
28 association or its equivalent in two or more states. Such a
29 corporation, association, or organization shall be reimbursed
30 as a servicing facility would be reimbursed and shall be paid
31 for its performance of any other functions of the association.

1 A delegation of powers or duties under this subsection shall
2 take effect only with the approval of both the board of
3 directors and the department and may be made only to a
4 corporation, association, or organization which extends
5 protection which is not substantially less favorable and
6 effective than the protection provided by this section.

7 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
8 ~~AND EMPLOYMENT SECURITY.--~~

9 (a) The department shall:

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

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

- 27 1. Process applications for self-insurance.
28 2. Collect and review financial statements and loss
29 reserve information from individual self-insurers. Collect
30 and maintain files for original security deposit documents and
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1 reinsurance policies from individual self-insurers and, if
2 necessary, perfect security interests in security deposits.

3 3. Process compliance documentation for individual
4 self-insurers and provide same to the Department of Insurance.

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

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

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

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

30 (c)2. Contract with an attorney or attorneys
31 recommended by the association for representation of the

1 department in any administrative or legal proceedings
2 necessitated by the recommended regulation of the individual
3 self-insurers.~~Upon request of the board of directors, provide~~
4 ~~the association with a statement of the annual normal premiums~~
5 ~~of each member employer.~~

6 (b) ~~The department may:~~

7 (d)1. Direct the association to require from each
8 individual self-insurer, at such time and in accordance with
9 such regulations as the department prescribes, reports in
10 respect to wages paid, the amount of premiums such individual
11 self-insurer would have to pay if insured, and all payments of
12 compensation made by such individual self-insurer during each
13 prior period and determine the amounts paid by each individual
14 self-insurer and the amounts paid by all individual
15 self-insurers during such period. For the purposes of this
16 section, the payroll records of each individual self-insurer
17 shall be open to annual inspection and audit by the
18 association or its authorized representative, during regular
19 business hours, and if any audit of such records of an
20 individual self-insurer discloses a deficiency in the amount
21 reported to the association or in the amounts paid to the
22 Department of Insurance by an individual self-insurer for its
23 assessment for the Workers' Compensation Administration Trust
24 Fund, the association may assess the cost of such audit
25 against the individual self-insurer.~~Require that the~~
26 ~~association notify the member employers and any other~~
27 ~~interested parties of the determination of insolvency and of~~
28 ~~their rights under this section. Such notification shall be~~
29 ~~by mail at the last known address thereof when available; but,~~
30 ~~if sufficient information for notification by mail is not~~

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1 ~~available, notice by publication in a newspaper of general~~
2 ~~circulation shall be sufficient.~~

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

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

14 (7) EFFECT OF PAID CLAIMS.--

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

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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 of Insurance as provided in this chapter ~~Labor~~
27 ~~and Employment Security~~. No later than March 30 of each year,
28 the 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.~~

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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
5 Insurance ~~Labor and Employment Security~~ or its representatives
6 for any action taken by them in the performance of their
7 powers and duties 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 Insurance 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.--The
17 Department of Insurance or the Florida Self-Insurers Guaranty
18 Association, Incorporated, may commence a delinquency ~~any such~~
19 proceeding by application to the court for an order directing
20 the individual self-insurer to show cause why the department
21 or association should not have the relief prayed for. ~~The~~
22 ~~Florida Self-Insurers Guaranty Association, Incorporated, may~~
23 ~~petition the department to commence such proceedings, and upon~~
24 ~~receipt of such petition, the department shall commence such~~
25 ~~proceeding.~~ On the return of such order to show cause, and
26 after a full hearing, the court shall either deny the
27 application or grant the application, together with such other
28 relief as the nature of the case and the interests of the
29 claimants, creditors, stockholders, members, subscribers, or
30 public may require. The Department of Insurance and the
31 association shall give ~~Florida Self-Insurers Guaranty~~

1 ~~Association, Incorporated, shall be given~~ reasonable written
2 notice to each other by the department of all hearings which
3 pertain to an adjudication of insolvency of a member
4 individual self-insurer.

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

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

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

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

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

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LEGISLATIVE 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 association with the Department of Insurance relating to proceedings for delinquency, liquidation, and conservation of assets. (See bill for details.)