

By the Committee on Banking and Insurance; and Senator  
Villalobos

311-1784-01

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 certain provisions relating to  
29          detection and prevention of employer  
30          insolvencies; amending s. 440.386, F.S.;  
31          providing parity for the association with the

1 Department of Insurance relating to proceedings  
2 for delinquency, liquidation, and conservation  
3 of assets; amending s. 440.24, F.S.; providing  
4 for the sale of securities on deposit to  
5 satisfy a compensation order; providing an  
6 effective date.

7

8 Be It Enacted by the Legislature of the State of Florida:

9

10 Section 1. Subsections (1), (2), and (3) of section  
11 440.38, Florida Statutes, are amended to read:

12 440.38 Security for compensation; insurance carriers  
13 and self-insurers.--

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

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

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

1 accordance with this act and ss. 440.385 and 440.386. The  
2 department shall consult with the association on any  
3 recommendation before taking action.~~the following provisions:~~  
4       1. The association ~~division~~ may recommend that the  
5 Department of Insurance, ~~as a condition to such authorization,~~  
6 require an such employer to deposit with in a depository  
7 designated by the association a qualifying deposit. The  
8 association shall recommend the type and amount of the  
9 qualifying security deposit and shall ~~division either an~~  
10 ~~indemnity bond or securities, at the option of the employer,~~  
11 ~~of a kind and in an amount determined by the division and~~  
12 ~~subject to such conditions as the division may prescribe~~  
13 conditions for the qualifying security deposit,which shall  
14 include authorization for to the association to call the  
15 qualifying security deposit ~~division~~ in the case of default ~~to~~  
16 ~~sell any such securities sufficient to pay compensation awards~~  
17 and related expenses of the association or to bring suit upon  
18 such bonds, to procure prompt payment of compensation under  
19 this chapter. In addition, the division shall require,As a  
20 condition to authorization to self-insure, the employer shall  
21 provide proof that the employer has provided for competent  
22 personnel with whom to deliver benefits and to provide a safe  
23 working environment. Further,The employer ~~division~~ shall  
24 also provide evidence of ~~require such employer to carry~~  
25 reinsurance at levels that will ensure the financial strength  
26 and actuarial soundness of such employer in accordance with  
27 rules adopted promulgated by the Department of Insurance  
28 division. The Department of Insurance ~~division~~ may by rule  
29 require that, in the event of an individual self-insurer's  
30 insolvency, such qualifying security deposits ~~indemnity bonds,~~  
31 ~~securities,~~and reinsurance policies are ~~shall be~~ payable to

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

17         2. If the employer fails to maintain the foregoing  
18 requirements, the association ~~division~~ shall recommend to the  
19 Department of Insurance that it revoke the employer's  
20 authority 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 provide such information to the  
4 department along with a recommendation, and the Department of  
5 Insurance division shall then revoke an ~~such~~ employer's  
6 authorization to self-insure., ~~and such~~ Failure to comply with  
7 this provision shall be deemed to constitute an immediate  
8 serious danger to the public health, safety, or welfare  
9 sufficient to justify the summary suspension of the employer's  
10 authorization to self-insure pursuant to s. 120.68.

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

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

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

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

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

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

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

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

30 5. The qualifying security deposit shall be held by  
31 the association division, or by a depository authorized by the

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

28 (c) By entering into a contract with a public utility  
29 under an approved utility-provided self-insurance program as  
30 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,  
31

1 1983. The Department of Insurance ~~division~~ shall adopt rules  
2 to implement this paragraph;

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

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



1 deductibles and coinsurance provisions that require the  
2 employee to pay a portion of the actual medical care received  
3 by the employee. If an employer obtains a 24-hour health  
4 insurance policy or self-insured plan to secure payment of  
5 compensation as to medical benefits, the employer must also  
6 obtain an insurance policy or policies that provide indemnity  
7 benefits as follows:

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

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

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

18 4. Policies providing coverage under this subsection  
19 must use prescribed and acceptable underwriting standards,  
20 forms, and policies approved by the Department of Insurance.  
21 If any insurance policy that provides coverage under this  
22 section is canceled, terminated, or nonrenewed for any reason,  
23 the cancellation, termination, or nonrenewal is ineffective  
24 until the self-insured employer or insurance carrier or  
25 carriers notify the ~~division and the~~ Department of Insurance  
26 of the cancellation, termination, or nonrenewal, and until the  
27 Department of Insurance ~~division~~ has actually received the  
28 notification. The Department of Insurance ~~division~~ must be  
29 notified of replacement coverage under a workers' compensation  
30 and employer's liability insurance policy or plan by the  
31

1 employer prior to the effective date of the cancellation,  
2 termination, or nonrenewal; or

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

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

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

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

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

30 ~~(b)(c)~~ Violation of s. 440.381 by a self-insurance  
31 fund shall result in the imposition of a fine not to exceed

1 \$1,000 per audit if the self-insurance fund fails to act on  
2 said audits by correcting errors in employee classification or  
3 accepted applications for coverage where it knew employee  
4 classifications were incorrect. Such fines shall be levied by  
5 the Department of Insurance ~~division~~ and deposited into the  
6 Workers' Compensation Administration Trust Fund.

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

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

11 (1) CREATION OF ASSOCIATION.--

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

31

1 authorized to enter into agreements with the State of Florida  
2 to perform specified services.

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. ~~Prior to a final determination by the Division of~~  
6 ~~Workers' Compensation as to whether or not to approve any~~  
7 ~~applicant for membership in the association, the association~~  
8 ~~may issue opinions to the division concerning any applicant,~~  
9 ~~which opinions shall be considered by the division prior to~~  
10 ~~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 may audit and examine an employer to verify the  
18 financial strength of its current and former members. If the  
19 association determines that a current or former self-insured  
20 employer does not have the financial strength necessary to  
21 assure the timely payment of all current and estimated future  
22 claims, the association may recommend to the department that  
23 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. The association  
3 has a cause of action against an employer, and against any  
4 successor of an employer, who fails to provide an additional  
5 security deposit required by the department. The association  
6 shall recover a judgment in the amount of the requested  
7 additional security deposit together with reasonable  
8 attorney's fees. For the purposes of this section, the  
9 successor of an employer is any person, business entity, or  
10 group of persons or business entities that holds or acquires  
11 legal or beneficial title to the majority of the assets or the  
12 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 10. Implement any and all procedures necessary to  
20 ensure compliance with regulatory actions taken by the  
21 department.

22 (c)1. To the extent necessary to secure funds for the  
23 payment of covered claims and also to pay the reasonable costs  
24 to administer them, the association, subject to approval by  
25 the Department of Insurance Labor and Employment Security,  
26 ~~upon certification of the board of directors,~~ shall levy  
27 assessments based on the annual written normal premium each  
28 employer would have paid had the employer not been  
29 self-insured. Every assessment shall be made as a uniform  
30 percentage of the figure applicable to all individual  
31 self-insurers, provided that the assessment levied against any

1 self-insurer in any one year shall not exceed 1 percent of the  
2 annual written ~~normal~~ premium during the calendar year  
3 preceding the date of the assessment. Assessments shall be  
4 remitted to and administered by the board of directors in the  
5 manner specified by the approved plan. Each employer so  
6 assessed shall have at least 30 days' written notice as to the  
7 date the assessment is due and payable. The association shall  
8 levy assessments against any newly admitted member of the  
9 association so that the basis of contribution of any newly  
10 admitted member is the same as previously admitted members,  
11 provision for which shall be contained in the plan of  
12 operation.

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

19           3. Funds may be allocated or paid from the Workers'  
20 Compensation Administration Trust Fund to contract with the  
21 association to perform services required by law. However, no  
22 state funds of any kind shall be allocated or paid to the  
23 association or any of its accounts for payment of covered  
24 claims or related expenses except those state funds accruing  
25 to the association by and through the assignment of rights of  
26 an insolvent employer. The department shall not levy any  
27 assessment on the Florida Self-Insurance Guaranty Association.

28           (4) INSOLVENCY FUND.--Upon the adoption of a plan of  
29 operation or the adoption of rules by the Department of Labor  
30 and Employment Security pursuant to subsection (5), there  
31

1 shall be created an Insolvency Fund to be managed by the  
2 association.

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

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

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

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

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

31

1 ~~Employment Security a proposed plan of operation for the~~  
2 ~~administration of the association and the Insolvency Fund.~~

3 (a) The purpose of the plan of operation shall be to  
4 provide the association and the board of directors with the  
5 authority and responsibility to establish the necessary  
6 programs and to take the necessary actions to protect against  
7 the insolvency of a member of the association. In addition,  
8 the plan shall provide that the members of the association  
9 shall be responsible for maintaining an adequate Insolvency  
10 Fund to meet the obligations of insolvent members provided for  
11 under this act and shall authorize the board of directors to  
12 contract and employ those persons with the necessary expertise  
13 to carry out this stated purpose. By January 1, 2002, the  
14 board of directors shall submit to the Department of Insurance  
15 a proposed plan of operation for the administration of the  
16 association. The Department of Insurance shall approve the  
17 plan by order, consistent with this act. The Department of  
18 Insurance shall approve any amendments to the plan, by order  
19 consistent with this act, and determined appropriate to carry  
20 out the duties and responsibilities of the association.

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

30 (b)(c) All member employers shall comply with the plan  
31 of operation.

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

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

13 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~  
14 ~~AND EMPLOYMENT SECURITY~~.--

15 (a) The department shall+

16 ~~1. review recommendations of the association~~  
17 concerning whether current or former self-insured employers or  
18 members of the association have the financial strength  
19 necessary to ensure the timely payment of all current and  
20 estimated future claims. If the association determines an  
21 employer does not have the financial strength necessary to  
22 ensure the timely payment of all current and future claims and  
23 recommends action pursuant to paragraph (3)(b), the Department  
24 of Insurance may take such action as necessary to order the  
25 employer to comply with the recommendation.~~Notify the~~  
26 ~~association of the existence of an insolvent employer not~~  
27 ~~later than 3 days after it receives notice of the~~  
28 ~~determination of insolvency.~~

29 (b) The department may:

30 1. Contract with the association for services, which  
31 may include, but not be limited to, the following:

- 1           a. Process applications for self-insurance.  
2           b. Collect and review financial statements and loss  
3 reserve information from individual self-insurers.  
4           c. Collect and maintain files for original security  
5 deposit documents and reinsurance policies from individual  
6 self-insurers and, if necessary, perfect security interests in  
7 security deposits.  
8           d. Process compliance documentation for individual  
9 self-insurers and provide same to the Department of Insurance.  
10          e. Collect all data necessary to calculate annual  
11 premium for all individual self-insurers, including individual  
12 self-insurers that are public utilities or governmental  
13 entities, and provide such calculated annual premium to the  
14 Department of Insurance for assessment purposes.  
15          f. Inspect and audit annually, if necessary, the  
16 payroll and other records of each individual self-insurer,  
17 including individual self-insurers that are public utilities  
18 or governmental entities, in order to determine the wages paid  
19 by each individual self-insurer, the premium such individual  
20 self-insurer would have to pay if insured, and all payments of  
21 compensation made by such individual self-insurer during each  
22 prior period with the results of such audit provided to the  
23 Department of Insurance. For the purposes of this section,  
24 the payroll records of each individual self-insurer shall be  
25 open to inspection and audit by the association, the  
26 department, or their authorized representative, during regular  
27 business hours.  
28          g. Provide legal representation to implement the  
29 administration and audit of individual self-insurers and make  
30 recommendations regarding prosecution of any administrative or  
31

1 legal proceedings necessitated by the department's regulation  
2 of the individual self-insurers.

3       2. Contract with an attorney or attorneys recommended  
4 by the association for representation of the department in any  
5 administrative or legal proceedings necessitated by the  
6 recommended regulation of the individual self-insurers. ~~Upon~~  
7 ~~request of the board of directors, provide the association~~  
8 ~~with a statement of the annual normal premiums of each member~~  
9 ~~employer.~~

10       ~~(b) The department may:~~

11       3.1. Direct the association to require from each  
12 individual self-insurer, at such time and in accordance with  
13 such regulations as the department prescribes, reports in  
14 respect to wages paid, the amount of premiums 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 and determine the amounts paid by each individual  
18 self-insurer and the amounts paid by all individual  
19 self-insurers during such period. For the purposes of this  
20 section, the payroll records of each individual self-insurer  
21 shall be open to annual inspection and audit by the  
22 association, the department, or their authorized  
23 representative, during regular business hours, and if any  
24 audit of such records of an individual self-insurer discloses  
25 a deficiency in the amount reported to the association or in  
26 the amounts paid to the Department of Insurance by an  
27 individual self-insurer for its assessment for the Workers'  
28 Compensation Administration Trust Fund, the Department of  
29 Insurance or the association may assess the cost of such audit  
30 against the individual self-insurer.



1           4. Require that the association notify the member  
2 employers and any other interested parties of the  
3 determination of insolvency and of their rights under this  
4 section. Such notification shall be by mail at the last known  
5 address thereof when available; but, if sufficient information  
6 for notification by mail is not available, notice by  
7 publication in a newspaper of general circulation shall be  
8 sufficient.

9           5.2. Suspend or revoke the authority of any member  
10 employer failing to pay an assessment when due or failing to  
11 comply with the plan of operation to self-insure in this  
12 state. As an alternative, the department may levy a fine on  
13 any member employer failing to pay an assessment when due.  
14 Such fine shall not exceed 5 percent of the unpaid assessment  
15 per month, except that no fine shall be less than \$100 per  
16 month.

17           ~~3. Revoke the designation of any servicing facility if~~  
18 ~~the department finds that claims are being handled~~  
19 ~~unsatisfactorily.~~

20           (7) EFFECT OF PAID CLAIMS.--

21           (a) Any person who recovers from the association under  
22 this section shall be deemed to have assigned his or her  
23 rights to the association to the extent of such recovery.  
24 Every claimant seeking the protection of this section shall  
25 cooperate with the association to the same extent as such  
26 person would have been required to cooperate with the  
27 insolvent member. The association shall have no cause of  
28 action against the employee of the insolvent member for any  
29 sums the association has paid out, except such causes of  
30 action as the insolvent member would have had if such sums had  
31 been paid by the insolvent member. In the case of an

1 insolvent member operating on a plan with assessment  
2 liability, payments of claims by the association shall not  
3 operate to reduce the liability of the insolvent member to the  
4 receiver, liquidator, or statutory successor for unpaid  
5 assessments.

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

15 (c) The association shall file periodically with the  
16 receiver or liquidator of the insolvent member statements of  
17 the covered claims paid by the association and estimates of  
18 anticipated claims on the association, which shall preserve  
19 the rights of the association against the assets of the  
20 insolvent member.

21 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid  
22 in the detection and prevention of employer insolvencies+

23 ~~(a)~~ upon determination by majority vote that any  
24 member employer may be insolvent or in a financial condition  
25 hazardous to the employees thereof or to the public, it shall  
26 be the duty of the board of directors to notify the Department  
27 of Insurance ~~Labor and Employment Security~~ of any information  
28 indicating such condition.

29 ~~(b) The board of directors may, upon majority vote,~~  
30 ~~request that the department determine the condition of any~~  
31 ~~member employer which the board in good faith believes may no~~

1 ~~longer be qualified to be a member of the association. Within~~  
2 ~~30 days of the receipt of such request or, for good cause~~  
3 ~~shown, within a reasonable time thereafter, the department~~  
4 ~~shall make such determination and shall forthwith advise the~~  
5 ~~board of its findings. Each request for a determination shall~~  
6 ~~be kept on file by the department, but the request shall not~~  
7 ~~be open to public inspection prior to the release of the~~  
8 ~~determination to the public.~~

9 ~~(c) It shall also be the duty of the department to~~  
10 ~~report to the board of directors when it has reasonable cause~~  
11 ~~to believe that a member employer may be in such a financial~~  
12 ~~condition as to be no longer qualified to be a member of the~~  
13 ~~association.~~

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

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

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

29 (9) EXAMINATION OF THE ASSOCIATION.--The association  
30 shall be subject to examination and regulation by the  
31 Department of Insurance Labor and Employment Security. No

1 later than March 30 of each year, the board of directors shall  
2 submit an audited a financial statement report for the  
3 preceding calendar year in a form approved by the department.

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

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

29 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding  
30 any other provision of this chapter, a covered claim, as  
31 defined herein, with respect to which settlement is not

1 effected and pursuant to which suit is not instituted against  
2 the insured of an insolvent member or the association within 1  
3 year after the deadline for filing claims with the receiver of  
4 the insolvent member, or any extension of the deadline, shall  
5 thenceforth be barred as a claim against the association.

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

14 Section 3. Subsections (2), (3), and (4) of section  
15 440.386, Florida Statutes, are amended to read:

16 440.386 Individual self-insurers' insolvency;  
17 conservation; liquidation.--

18 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
19 Department of Insurance or the Florida Self-Insurers Guaranty  
20 Association, Incorporated, may commence a delinquency ~~any such~~  
21 proceeding by application to the court for an order directing  
22 the individual self-insurer to show cause why the department  
23 or association should not have the relief prayed for. ~~The~~  
24 ~~Florida Self-Insurers Guaranty Association, Incorporated,~~ may  
25 ~~petition the department to commence such proceedings, and upon~~  
26 ~~receipt 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 of Insurance and the  
2 association shall give Florida Self-Insurers Guaranty  
3 ~~Association, Incorporated, shall be given~~ reasonable written  
4 notice to each other ~~by the department~~ of all hearings which  
5 pertain to an adjudication of insolvency of a member  
6 individual self-insurer.

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

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

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

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

1           Section 4. Subsection (3) of section 440.24, Florida  
2 Statutes, is amended to read:

3           440.24 Enforcement of compensation orders;  
4 penalties.--

5           (3) In any case where the employer is a self-insurer  
6 and fails to comply with any compensation order of a judge of  
7 compensation claims or court within 10 days after such order  
8 becomes final, the department ~~division~~ may suspend or revoke  
9 any authorization previously given to the employer to become a  
10 self-insurer, and the Florida Self-Insurer's Guaranty  
11 Association ~~division~~ may sell such of the securities deposited  
12 by such self-insurer with the Florida Self-Insurer's Guaranty  
13 Association ~~division~~ as may be necessary to satisfy such  
14 order.

15           Section 5. This act shall take effect October 1, 2001.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 1140

- 4 Revises the duties and authority of the Department of  
5 Insurance (department) and the Florida Self-Insurers Guaranty  
6 Association (association) relative to regulation of individual  
7 self-insured employers, including the following:  
8 Provides that the department shall consult with the  
9 association regarding the association's recommendations for  
10 actions to be taken with respect to self-insured employers and  
11 applicants for approval to self-insure, rather than requiring  
12 the department to take such actions unless it determines by  
13 clear and convincing evidence that the recommendations are  
14 erroneous.  
15 Provides that the department may, rather than shall, contract  
16 with the association for specified services.  
17 Strikes the specified amount of the fine that applies if a  
18 self-insurer fails to file any report as prescribed by rules  
19 adopted by the department.  
20 Provides that either the department or the association may  
21 audit a self-insured employer, rather than providing that the  
22 association is the sole entity authorized to audit employers.  
23 Specifies that assessments on self-insured employers are based  
24 on annual "written" premium each employer would have paid had  
25 the employer not been self-insured.  
26 Specifies that funds may be allocated or paid from the  
27 Workers' Compensation Administration Trust Fund to contract  
28 with the association to perform services required by law.  
29 Specifies that the department shall not levy any assessment on  
30 the association.  
31 Provides that by January 1, 2002, the board of the association  
shall submit to the department a proposed plan of operation  
for approval by the department.  
Retains current law that the department may require that the  
association notify the member employers and any other  
interested parties of the determination of insolvency and of  
their rights under this section.  
Retains the current law that the association notify the  
department of any information indicating that a member  
employer may be insolvent or in a financial condition  
hazardous to the employees or to the public.  
Amends s. 440.24, F.S., to authorize the department to suspend  
or revoke any authorization of an employer to self-insure if  
the employer fails to comply with ay compensation order of a  
judge of compensation claims or court and to authorize the  
association to sell such securities deposited by the  
self-insurer with the association as may be necessary to  
satisfy the order.