

hbd-032

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Clarke offered the following:

**Amendment to Amendment (325659) (with title amendment)**

On page 115, line 5, through page 122, line 24,  
remove from the amendment: all of said lines,

and insert in lieu thereof:

Section 36. Subsections (1), (2), and (3) of section  
440.38, Florida Statutes, are amended to read:

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

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

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

(b) By furnishing satisfactory proof to the Florida  
Self-Insurers Guaranty Association, Incorporated, created in  
s. 440.385, that it has the financial strength necessary to  
assure timely payment of all current and future claims

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1 ~~division of its financial ability to pay such compensation~~  
2 individually and on behalf of its subsidiary and affiliated  
3 companies with employees in this state and receiving an  
4 authorization from the Department of Insurance,~~division~~ to  
5 pay such compensation directly. The association shall review  
6 the financial strength of applicants for membership, current  
7 members, and former members and make recommendations to the  
8 department regarding their qualifications to self-insure in  
9 accordance with this act and ss. 440.385 and 440.386. The  
10 department shall consult with the association on any  
11 recommendation before taking action.~~the following provisions:~~

12       1. The association ~~division~~ may recommend that the  
13 Department of Insurance, ~~as a condition to such authorization,~~  
14 require an such employer to deposit with in a depository  
15 designated by the association a qualifying deposit. The  
16 association shall recommend the type and amount of the  
17 qualifying security deposit and shall ~~division either an~~  
18 ~~indemnity bond or securities, at the option of the employer,~~  
19 ~~of a kind and in an amount determined by the division and~~  
20 ~~subject to such conditions as the division may prescribe~~  
21 conditions for the qualifying security deposit, ~~which shall~~  
22 include authorization for to the association to call the  
23 qualifying security deposit ~~division~~ in the case of default ~~to~~  
24 ~~sell any such securities sufficient to pay compensation awards~~  
25 and related expenses of the association ~~or to bring suit upon~~  
26 ~~such bonds, to procure prompt payment of compensation under~~  
27 ~~this chapter. In addition, the division shall require,~~ As a  
28 condition to authorization to self-insure, the employer shall  
29 provide proof that the employer has provided for competent  
30 personnel with whom to deliver benefits and to provide a safe  
31 working environment. Further, The employer ~~division~~ shall

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1 also provide evidence of ~~require such employer to carry~~  
2 reinsurance at levels that will ensure the financial strength  
3 and actuarial soundness of such employer in accordance with  
4 rules adopted ~~promulgated~~ by the Department of Insurance  
5 division. The Department of Insurance ~~division~~ may by rule  
6 require that, in the event of an individual self-insurer's  
7 insolvency, such qualifying security deposits ~~indemnity bonds,~~  
8 ~~securities,~~ and reinsurance policies are ~~shall be~~ payable to  
9 the association ~~Florida Self-Insurers Guaranty Association,~~  
10 ~~incorporated, created pursuant to s. 440.385.~~ Any employer  
11 securing compensation in accordance with the provisions of  
12 this paragraph shall be known as a self-insurer and shall be  
13 classed as a carrier of her or his own insurance. All such  
14 employers shall, if requested, provide the association an  
15 actuarial report signed by a member of the American Academy of  
16 Actuaries providing an opinion of the appropriate present  
17 value of the reserves for current and future compensation  
18 claims. If any member or former member of the association  
19 refuses to timely provide such a report, the association may  
20 obtain an order from a circuit court requiring the member to  
21 produce such a report and ordering such other relief as the  
22 court determines appropriate. The association shall be  
23 entitled to recover all reasonable costs and attorney's fees  
24 in such proceedings.

25           2. If the employer fails to maintain the foregoing  
26 requirements, the association ~~division~~ shall recommend to the  
27 Department of Insurance that it revoke the employer's  
28 authority to self-insure, unless the employer provides to the  
29 association ~~division~~ the certified opinion of an independent  
30 actuary who is a member of the American Academy ~~Society~~ of  
31 Actuaries as to the actuarial present value of the employer's

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1 determined and estimated future compensation payments based on  
2 cash reserves, using a 4-percent discount rate, and a  
3 qualifying security deposit equal to 1.5 times the value so  
4 certified. The employer shall thereafter annually provide such  
5 a certified opinion until such time as the employer meets the  
6 requirements of subparagraph 1. The qualifying security  
7 deposit shall be adjusted at the time of each such annual  
8 report. Upon the failure of the employer to timely provide  
9 such opinion or to timely provide a security deposit in an  
10 amount equal to 1.5 times the value certified in the latest  
11 opinion, the association shall provide such information to the  
12 department along with a recommendation, and the Department of  
13 Insurance division shall then revoke an such employer's  
14 authorization to self-insure., ~~and such~~ Failure to comply with  
15 this provision shall be deemed to constitute an immediate  
16 serious danger to the public health, safety, or welfare  
17 sufficient to justify the summary suspension of the employer's  
18 authorization to self-insure pursuant to s. 120.68.

19 3. Upon the suspension or revocation of the employer's  
20 authorization to self-insure, the employer shall provide to  
21 the ~~division and to the Florida Self-Insurers Guaranty~~  
22 ~~association, Incorporated, created pursuant to s. 440.385~~ the  
23 certified opinion of an independent actuary who is a member of  
24 the American Academy Society of Actuaries of the actuarial  
25 present value of the determined and estimated future  
26 compensation payments of the employer for claims incurred  
27 while the member exercised the privilege of self-insurance,  
28 using a discount rate of 4 percent. The employer shall provide  
29 such an opinion at 6-month intervals thereafter until such  
30 time as the latest opinion shows no remaining value of claims.  
31 With each such opinion, the employer shall deposit with the

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1 ~~association division~~ a qualifying security deposit in an  
2 amount equal to the value certified by the actuary. The  
3 association has a cause of action against an employer, and  
4 against any successor of the employer, who fails to timely  
5 provide such opinion or who fails to timely maintain the  
6 required security deposit with the association division. The  
7 association shall recover a judgment in the amount of the  
8 actuarial present value of the determined and estimated future  
9 compensation payments of the employer for claims incurred  
10 while the employer exercised the privilege of self-insurance,  
11 together with attorney's fees. For purposes of this section,  
12 the successor of an employer means any person, business  
13 entity, or group of persons or business entities, which holds  
14 or acquires legal or beneficial title to the majority of the  
15 assets or the majority of the shares of the employer.

16 4. A qualifying security deposit shall consist, at the  
17 option of the employer, of:

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

25 ~~b. Certificates of deposit with financial~~  
26 ~~institutions, the deposits of which are insured through the~~  
27 ~~Federal Deposit Insurance Corporation or the Federal Savings~~  
28 ~~and Loan Insurance Corporation.~~

29 ~~b.c.~~ Irrevocable letters of credit in favor of the  
30 association division issued by financial institutions located  
31 within this state, the deposits of which are insured through

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1 ~~the Federal Deposit Insurance Corporation described in~~  
2 ~~sub-subparagraph b.~~

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

5 ~~e. Securities issued by this state and backed by the~~  
6 ~~full faith and credit of this state.~~

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

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1 ~~division~~ may specify by rule the amount of the qualifying  
2 security deposit required prior to authorizing an employer to  
3 self-insure and the amount of net worth required for an  
4 employer to qualify for authorization to self-insure;

5 (c) By entering into a contract with a public utility  
6 under an approved utility-provided self-insurance program as  
7 set forth in s. 624.46225 ~~440.571~~ in effect as of July 1,  
8 1983. The Department of Insurance ~~division~~ shall adopt rules  
9 to implement this paragraph;

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

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

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1 the applicable provisions of the Florida Insurance Code and  
2 rules adopted under the insurance code and other applicable  
3 laws of this state. The 24-hour health insurance policy may  
4 provide for health care by a health maintenance organization  
5 or a preferred provider organization. The premium for such  
6 24-hour health insurance policy shall be paid entirely by the  
7 employer. The 24-hour health insurance policy may use  
8 deductibles and coinsurance provisions that require the  
9 employee to pay a portion of the actual medical care received  
10 by the employee. If an employer obtains a 24-hour health  
11 insurance policy or self-insured plan to secure payment of  
12 compensation as to medical benefits, the employer must also  
13 obtain an insurance policy or policies that provide indemnity  
14 benefits as follows:

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

18 2. If indemnity benefits are provided for both  
19 occupational-related and nonoccupational-related disability,  
20 such benefits must be comparable to those required by this  
21 chapter, except that they must be based on 60 percent of the  
22 average weekly wages.

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

25 4. Policies providing coverage under this subsection  
26 must use prescribed and acceptable underwriting standards,  
27 forms, and policies approved by the Department of Insurance.  
28 If any insurance policy that provides coverage under this  
29 section is canceled, terminated, or nonrenewed for any reason,  
30 the cancellation, termination, or nonrenewal is ineffective  
31 until the self-insured employer or insurance carrier or



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1 carriers notify the ~~division and the~~ Department of Insurance  
2 of the cancellation, termination, or nonrenewal, and until the  
3 Department of Insurance division has actually received the  
4 notification. The Department of Insurance division must be  
5 notified of replacement coverage under a workers' compensation  
6 and employer's liability insurance policy or plan by the  
7 employer prior to the effective date of the cancellation,  
8 termination, or nonrenewal; or

9 (f) By entering into a contract with an individual  
10 self-insurer under an approved individual  
11 self-insurer-provided self-insurance program as set forth in  
12 s. 624.46225. The Department of Insurance division may adopt  
13 rules to implement this subsection.

14 (2)(a) The Department of Insurance division shall  
15 adopt rules by which businesses may become qualified to  
16 provide underwriting claims-adjusting, loss control, and  
17 safety engineering services to self-insurers.

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

24 ~~(3)(a) The license of any stock company or mutual~~  
25 ~~company or association or exchange authorized to do insurance~~  
26 ~~business in the state shall for good cause, upon~~  
27 ~~recommendation of the division, be suspended or revoked by the~~  
28 ~~Department of Insurance. No suspension or revocation shall~~  
29 ~~affect the liability of any carrier already incurred.~~

30 ~~(a)(b)~~ The Department of Insurance division shall  
31 suspend or revoke any authorization to a self-insurer for

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1 failure to comply with this act or for good cause, as defined  
2 by rule of the department ~~division~~. No suspension or  
3 revocation shall affect the liability of any self-insurer  
4 already incurred.

5 (b)(e) Violation of s. 440.381 by a self-insurance  
6 fund shall result in the imposition of a fine not to exceed  
7 \$1,000 per audit if the self-insurance fund fails to act on  
8 said audits by correcting errors in employee classification or  
9 accepted applications for coverage where it knew employee  
10 classifications were incorrect. Such fines shall be levied by  
11 the Department of Insurance ~~division~~ and deposited into the  
12 Workers' Compensation Administration Trust Fund.

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

16 And the title is amended as follows:

17 On page 189, line 6, of the amendment, after the  
18 semicolon,

19

20 insert:

21 amending s. 440.38, F.S.; transferring  
22 operation of provisions requiring the securing  
23 of payment of compensation by employers from  
24 the Division of Workers' Compensation of the  
25 Department of Labor and Employment Security to  
26 the Florida Self-Insurer's Guaranty  
27 Association, Incorporated, and the Department  
28 of Insurance; revising and clarifying  
29 requirements and procedures; providing powers  
30 and duties of the association and the  
31 departments; providing for allocation or

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payment of state funds to the association for  
certain purposes; providing rulemaking  
authority;