

By Representative Clarke

1 A bill to be entitled
2 An act relating to transferring and reassigning
3 divisions, functions, and responsibilities of
4 the Department of Labor and Employment
5 Security; providing for a type two transfer of
6 the Division of Workers' Compensation to the
7 Department of Revenue; providing for a type two
8 transfer of workers' compensation medical
9 services to the Agency for Health Care
10 Administration; providing for a type two
11 transfer of workers' compensation
12 rehabilitation and reemployment services to the
13 Department of Education; providing for a type
14 two transfer of the administration of child
15 labor laws to the Department of Business and
16 Professional Regulation; providing for a type
17 two transfer of certain functions of the Office
18 of the Secretary and the Office of
19 Administrative Services of the Department of
20 Labor and Employment Security relating to labor
21 organizations and migrant and farm labor
22 registration to the Department of Business and
23 Professional Regulation; providing for a type
24 two transfer of other workplace regulation
25 functions to the Department of Business and
26 Professional Regulation; providing for the
27 transfer of the Unemployment Appeals Commission
28 to the Agency for Workforce Innovation by a
29 type two transfer; providing for the transfer
30 of the Office of Information Systems to the
31 State Technology Office by a type two transfer;

1 authorizing the Department of Banking and
2 Finance, in conjunction with the Office of the
3 Attorney General, to use unexpended funds to
4 settle certain claims; providing for the
5 continuation of contracts or agreements of the
6 Department of Labor and Employment Security;
7 providing for a successor department, agency,
8 or entity to be substituted for the Department
9 of Labor and Employment Security as a party in
10 interest in pending proceedings; exempting
11 specified state agencies, on a temporary basis,
12 from provisions relating to procurement of
13 property and services and leasing of space;
14 authorizing specified state agencies to develop
15 temporary emergency rules relating to the
16 implementation of this act; amending s. 20.21,
17 F.S.; providing for workers' compensation
18 responsibilities of the Department of Revenue;
19 amending s. 440.02, F.S.; providing a
20 definition for the term "agency"; conforming
21 definitions of "department" and "division" to
22 the transfer of the Division of Workers'
23 Compensation; amending ss. 440.102 and 440.125,
24 F.S.; conforming agency references to reflect
25 the transfer of the Division of Workers'
26 Compensation; amending s. 440.13, F.S.,
27 relating to medical services and supplies under
28 the workers' compensation law; reassigning
29 certain functions from the Division of Workers'
30 Compensation to the Agency for Health Care
31 Administration; conforming agency references to

1 reflect the transfer of the Division of
2 Workers' Compensation; amending s. 440.15,
3 F.S.; providing for the agency to participate
4 in the establishment and use of a uniform
5 permanent impairment rating schedule;
6 correcting a cross reference; amending s.
7 440.207, F.S.; conforming a departmental
8 reference; amending s. 440.385, F.S.; deleting
9 obsolete provisions; conforming departmental
10 references relating to the Florida
11 Self-Insurance Guaranty Association, Inc.;
12 correcting a cross reference; amending s.
13 440.49, F.S.; reassigning responsibility for a
14 report on the Special Disability Trust Fund to
15 the Department of Revenue; amending s. 440.491,
16 F.S.; conforming references based on the
17 transfer of rehabilitation and reemployment
18 services to the Department of Education;
19 amending s. 440.525, F.S.; conforming agency
20 references to reflect the transfer of programs
21 from the Department of Labor and Employment
22 Security to the Department of Revenue; amending
23 s. 443.012, F.S.; providing for the
24 Unemployment Appeals Commission to be created
25 within the Agency for Workforce Innovation
26 rather than the Department of Labor and
27 Employment Security; conforming provisions;
28 amending s. 443.036, F.S.; conforming the
29 definition of "commission" to the transfer of
30 the Unemployment Appeals Commission to the
31 Agency for Workforce Innovation; amending s.

1 447.02, F.S.; conforming the definition of
2 "department" to the transfer of the regulation
3 of labor organizations to the Department of
4 Business and Professional Regulation; amending
5 s. 447.305, F.S.; providing that notification
6 of registrations and renewals of registration
7 shall be furnished to the Department of
8 Business and Professional Regulation, to
9 conform; amending s. 450.012, F.S.; conforming
10 the definition of "department" to the transfer
11 of the regulation of child labor to the
12 Department of Business and Professional
13 Regulation; amending s. 450.191, F.S., relating
14 to the duties of the Executive Office of the
15 Governor with respect to migrant labor;
16 conforming provisions to changes made by the
17 act; amending s. 450.28, F.S.; conforming the
18 definition of "department" to the transfer of
19 the regulation of farm labor to the Department
20 of Business and Professional Regulation;
21 amending s. 627.0915, F.S.; conforming
22 departmental references to changes made by the
23 act; amending ss. 110.205, 112.19, 112.191,
24 121.125, 122.03, 238.06, 440.10, 440.104, and
25 440.14, F.S., to conform; repealing s. 20.171,
26 F.S., relating to establishment and the
27 authority and organizational structure of the
28 Department of Labor and Employment Security;
29 repealing s. 440.4416, F.S., relating to the
30 Workers' Compensation Oversight Board;
31

1 providing for severability; providing an
2 effective date.

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

5
6 Section 1. (1) All powers, duties, functions, rules,
7 records, personnel, property, and unexpended balances of
8 appropriations, allocations, and other funds of the Division
9 of Workers' Compensation are transferred by a type two
10 transfer, as defined in s. 20.06(2), Florida Statutes, from
11 the Department of Labor and Employment Security to the
12 Department of Revenue, except that 19 full-time equivalent
13 positions, and the associated salaries and benefits and
14 expenses funding, related to oversight of medical services in
15 workers' compensation provider relations, dispute and
16 complaint resolution, program evaluation, data management, and
17 carrier compliance and review, are transferred by a type two
18 transfer, as defined in s. 20.06(2), Florida Statutes, from
19 the Department of Labor and Employment Security to the Agency
20 for Health Care Administration, and except that 96 full-time
21 equivalent positions, and the associated salaries and benefits
22 and expenses funding, related to the rehabilitation and
23 reemployment of injured workers, are transferred by a type two
24 transfer, as defined in s. 20.06(2), Florida Statutes, from
25 the Department of Labor and Employment Security to the
26 Department of Education, and except that 11 full-time
27 equivalent positions, and the associated salaries and benefits
28 and expenses funding, related to the administration of child
29 labor laws under chapter 450, Florida Statutes, are
30 transferred by a type two transfer, as defined in s. 20.06(2),
31 Florida Statutes, from the Department of Labor and Employment

1 Security to the Department of Business and Professional
2 Regulation.

3 (2) All powers, duties, functions, rules, records,
4 personnel, property, and unexpended balances of
5 appropriations, allocations, and other funds of the Office of
6 the Secretary and the Office of Administrative Services of the
7 Department of Labor and Employment Security related to the
8 regulation of labor organizations under chapter 447, Florida
9 Statutes, and the administration of migrant labor and farm
10 labor laws under chapter 450, Florida Statutes, are
11 transferred by a type two transfer, as defined in s. 20.06(2),
12 Florida Statutes, from the Department of Labor and Employment
13 Security to the Department of Business and Professional
14 Regulation.

15 (3) Any other powers, duties, functions, rules,
16 records, property, and unexpended balances of appropriations,
17 allocations, and other funds of the Department of Labor and
18 Employment Security not otherwise transferred by this act,
19 relating to workplace regulation and enforcement, including,
20 but not limited to, those under chapter 448, Florida Statutes,
21 are transferred by a type two transfer, as defined in s.
22 20.06(2), Florida Statutes, from the Department of Labor and
23 Employment Security to the Department of Business and
24 Professional Regulation.

25 (4) All powers, duties, functions, rules, records,
26 personnel, property, and unexpended balances of
27 appropriations, allocations, and other funds of the
28 Unemployment Appeals Commission relating to the commission's
29 specified authority, powers, duties, and responsibilities are
30 transferred by a type two transfer, as defined in s. 20.06(2),
31 Florida Statutes, to the Agency for Workforce Innovation.

1 (5) The Office of Information Systems is transferred
2 by a type two transfer, as defined in s. 20.06(2), Florida
3 Statutes, from the Department of Labor and Employment Security
4 to the State Technology Office.

5 (6)(a) The records, property, and unexpended balances
6 of appropriations, allocations, and other funds and resources
7 of the Office of the Secretary and the Office of
8 Administrative Services of the Department of Labor and
9 Employment Security which support the activities and functions
10 transferred under subsection (1) to the Department of Revenue
11 are transferred as provided in s. 20.06(2), Florida Statutes,
12 to the Department of Revenue.

13 (b) The records, property, and unexpended balances of
14 appropriations, allocations, and other funds and resources of
15 the Office of the Secretary and the Office of Administrative
16 Services of the Department of Labor and Employment Security
17 which support the activities and functions transferred under
18 subsection (1) to the Agency for Health Care Administration
19 are transferred as provided in s. 20.06(2), Florida Statutes,
20 to the Agency for Health Care Administration.

21 (c) The records, property, and unexpended balances of
22 appropriations, allocations, and other funds and resources of
23 the Office of the Secretary and the Office of Administrative
24 Services of the Department of Labor and Employment Security
25 which support the activities and functions transferred under
26 subsection (1) to the Department of Education are transferred
27 as provided in s. 20.06(2), Florida Statutes, to the
28 Department of Education.

29 (d) The records, property, and unexpended balances of
30 appropriations, allocations, and other funds and resources of
31 the Office of the Secretary and the Office of Administrative

1 Services of the Department of Labor and Employment Security
2 which support the activities and functions transferred under
3 subsections (1), (2), and (3) to the Department of Business
4 and Professional Regulation are transferred as provided in s.
5 20.06(2), Florida Statutes, to the Department of Business and
6 Professional Regulation.

7 (e) The records, property, and unexpended balances of
8 appropriations, allocations, and other funds and resources of
9 the Office of the Secretary and the Office of Administrative
10 Services of the Department of Labor and Employment Security
11 which support the activities and functions transferred under
12 subsection (4) to the Agency for Workforce Innovation are
13 transferred as provided in s. 20.06(2), Florida Statutes, to
14 the Agency for Workforce Innovation.

15 (f) The records, property, and unexpended balances of
16 appropriations, allocations, and other funds and resources of
17 the Office of the Secretary and the Office of Administrative
18 Services of the Department of Labor and Employment Security
19 which support the activities and functions transferred under
20 subsection (5) to the State Technology Office are transferred
21 as provided in s. 20.06(2), Florida Statutes, to the State
22 Technology Office.

23 (7) The transfer of any programs, activities, and
24 functions under this act shall include the transfer of any
25 records and unexpended balances of appropriations,
26 allocations, or other funds related to such programs,
27 activities, and functions. Any surplus records and unexpended
28 balances of appropriations, allocations, or other funds not so
29 transferred shall be transferred to the Department of
30 Management Services for proper disposition. The Department of
31 Management Services shall become the custodian of any property

1 of the Department of Labor and Employment Security which is
2 not otherwise transferred for the purposes of chapter 273,
3 Florida Statutes. The Department of Management Services is
4 authorized to permit the use of such property by organizations
5 as necessary to implement the provisions of this act.

6 (8) The Department of Banking and Finance, in
7 conjunction with the Office of the Attorney General, may use
8 any unexpended balances of the Department of Labor and
9 Employment Security to settle any claims or leases, pay out
10 personnel annual leave or sick leave, or close out other costs
11 owed by the department, regardless of whether such costs
12 relate to federal, state, or local governments, department
13 employees, or the private sector. Any remaining balances of
14 the department shall be transferred as directed by this act or
15 by budget amendment.

16 (9) Notwithstanding any other provision of law, any
17 binding contract or interagency agreement existing on or
18 before January 1, 2002, between the Department of Labor and
19 Employment Security, or an entity or agent of the department,
20 and any other agency, entity, or person shall continue as a
21 binding contract or agreement for the remainder of the term of
22 such contract or agreement with the successor department,
23 agency, or entity responsible for the program, activity, or
24 functions relative to the contract or agreement.

25 (10) This act does not affect the validity of any
26 judicial or administrative proceeding involving the Department
27 of Labor and Employment Security which is pending as of the
28 effective date of any transfer under this act. The successor
29 department, agency, or entity responsible for the program,
30 activity, or function relative to the proceeding shall be
31 substituted, as of the effective date of the applicable

1 transfer under this act, for the Department of Labor and
2 Employment Security as a party in interest in any such
3 proceedings.

4 (11) To expedite the acquisition of goods and services
5 for implementation of the provisions of this act, the
6 Department of Revenue, the Agency for Health Care
7 Administration, the Department of Education, the Department of
8 Business and Professional Regulation, the Agency for Workforce
9 Innovation, and the State Technology Office are exempt from
10 the provisions of chapter 287, Florida Statutes, when
11 contracting for the purchase or lease of goods or services
12 under this act. This section shall take effect upon this act
13 becoming a law and shall expire July 1, 2002.

14 (12) To expedite the leasing of facilities for
15 implementation of the provisions of this act, the Department
16 of Revenue, the Agency for Health Care Administration, the
17 Department of Education, the Department of Business and
18 Professional Regulation, the Agency for Workforce Innovation,
19 and the State Technology Office are exempt from the
20 requirements of any state laws relating to the leasing of
21 space, including, but not limited to, the requirements imposed
22 by s. 255.25, Florida Statutes, and any rules adopted under
23 such laws; provided, however, that all leases entered into
24 under this act through July 1, 2002, must be submitted for
25 approval to the Department of Management Services at the
26 earliest practicable time. This section shall take effect upon
27 this act becoming a law and shall expire July 1, 2002.

28 (13) Notwithstanding any provisions of chapter 120,
29 Florida Statutes, to the contrary, the Department of Revenue,
30 the Agency for Health Care Administration, the Department of
31 Education, the Department of Business and Professional

1 Regulation, the Agency for Workforce Innovation, and the State
2 Technology Office are authorized to develop emergency rules
3 relating to and in furtherance of the orderly implementation
4 of the provisions of this act. This section shall take effect
5 upon this act becoming a law, and these emergency rules shall
6 be valid for a period of 180 days after January 1, 2002.

7 Section 2. Paragraph (i) is added to subsection (2) of
8 section 20.21, Florida Statutes, to read:

9 20.21 Department of Revenue.--There is created a
10 Department of Revenue.

11 (2)

12 (i) The workers' compensation responsibilities of the
13 department include workers' compensation management and policy
14 implementation under the Division of Workers' Compensation.

15 Section 3. Subsections (3) through (39) of section
16 440.02, Florida Statutes, are renumbered as subsections (4)
17 through (40), respectively, a new subsection (3) is added to
18 said section, and renumbered subsections (12) and (14) are
19 amended, to read:

20 440.02 Definitions.--When used in this chapter, unless
21 the context clearly requires otherwise, the following terms
22 shall have the following meanings:

23 (3) "Agency" means the Agency for Health Care
24 Administration.

25 (12)(11) "Department" means the Department of Revenue
26 Labor and Employment Security.

27 (14)(13) "Division" means the Division of Workers'
28 Compensation of the Department of Revenue Labor and Employment
29 Security.

30 Section 4. Paragraph (a) of subsection (3) of section
31 440.102, Florida Statutes, is amended to read:

1 440.102 Drug-free workplace program requirements.--The
2 following provisions apply to a drug-free workplace program
3 implemented pursuant to law or to rules adopted by the Agency
4 for Health Care Administration:

5 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.--

6 (a) One time only, prior to testing, an employer shall
7 give all employees and job applicants for employment a written
8 policy statement which contains:

9 1. A general statement of the employer's policy on
10 employee drug use, which must identify:

11 a. The types of drug testing an employee or job
12 applicant may be required to submit to, including
13 reasonable-suspicion drug testing or drug testing conducted on
14 any other basis.

15 b. The actions the employer may take against an
16 employee or job applicant on the basis of a positive confirmed
17 drug test result.

18 2. A statement advising the employee or job applicant
19 of the existence of this section.

20 3. A general statement concerning confidentiality.

21 4. Procedures for employees and job applicants to
22 confidentially report to a medical review officer the use of
23 prescription or nonprescription medications to a medical
24 review officer both before and after being tested.

25 5. A list of the most common medications, by brand
26 name or common name, as applicable, as well as by chemical
27 name, which may alter or affect a drug test. A list of such
28 medications as developed by the Agency for Health Care
29 Administration shall be available to employers through the
30 Division of Workers' Compensation of the Department of Revenue
31 ~~Labor and Employment Security~~.

- 1 6. The consequences of refusing to submit to a drug
2 test.
- 3 7. A representative sampling of names, addresses, and
4 telephone numbers of employee assistance programs and local
5 drug rehabilitation programs.
- 6 8. A statement that an employee or job applicant who
7 receives a positive confirmed test result may contest or
8 explain the result to the medical review officer within 5
9 working days after receiving written notification of the test
10 result; that if an employee's or job applicant's explanation
11 or challenge is unsatisfactory to the medical review officer,
12 the medical review officer shall report a positive test result
13 back to the employer; and that a person may contest the drug
14 test result pursuant to law or to rules adopted by the Agency
15 for Health Care Administration.
- 16 9. A statement informing the employee or job applicant
17 of his or her responsibility to notify the laboratory of any
18 administrative or civil action brought pursuant to this
19 section.
- 20 10. A list of all drugs for which the employer will
21 test, described by brand name or common name, as applicable,
22 as well as by chemical name.
- 23 11. A statement regarding any applicable collective
24 bargaining agreement or contract and the right to appeal to
25 the Public Employees Relations Commission or applicable court.
- 26 12. A statement notifying employees and job applicants
27 of their right to consult with a medical review officer for
28 technical information regarding prescription or
29 nonprescription medication.
- 30 Section 5. Subsection (1) of section 440.125, Florida
31 Statutes, is amended to read:

1 440.125 Medical records and reports; identifying
2 information in employee medical bills; confidentiality.--

3 (1) Any medical records and medical reports of an
4 injured employee and any information identifying an injured
5 employee in medical bills which are provided to the Division
6 of Workers' Compensation of the Department of Revenue Labor
7 ~~and Employment Security~~ pursuant to s. 440.13 are confidential
8 and exempt from the provisions of s. 119.07(1) and s. 24(a),
9 Art. I of the State Constitution, except as otherwise provided
10 by this chapter.

11 Section 6. Paragraphs (a), (c), (f), (i), and (j) of
12 subsection (3), paragraphs (a) and (b) of subsection (4),
13 paragraphs (b) and (e) of subsection (5), subsections (6),
14 (7), (8), (9), and (11), paragraph (a) of subsection (12), and
15 paragraphs (e) and (g) of subsection (13) of section 440.13,
16 Florida Statutes, are amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

19 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

20 (a) As a condition to eligibility for payment under
21 this chapter, a health care provider who renders services must
22 be a certified health care provider and must receive
23 authorization from the carrier before providing treatment.
24 This paragraph does not apply to emergency care. The agency
25 ~~division~~ shall adopt rules to implement the certification of
26 health care providers.

27 (c) A health care provider may not refer the employee
28 to another health care provider, diagnostic facility, therapy
29 center, or other facility without prior authorization from the
30 carrier, except when emergency care is rendered. Any referral
31 must be to a health care provider that has been certified by

1 the agency ~~division~~, unless the referral is for emergency
2 treatment.

3 (f) By accepting payment under this chapter for
4 treatment rendered to an injured employee, a health care
5 provider consents to the jurisdiction of the agency ~~division~~
6 as set forth in subsection (11) and to the submission of all
7 records and other information concerning such treatment to the
8 agency ~~division~~ in connection with a reimbursement dispute,
9 audit, or review as provided by this section. The health care
10 provider must further agree to comply with any decision of the
11 agency ~~division~~ rendered under this section.

12 (i) Notwithstanding paragraph (d), a claim for
13 specialist consultations, surgical operations,
14 physiotherapeutic or occupational therapy procedures, X-ray
15 examinations, or special diagnostic laboratory tests that cost
16 more than \$1,000 and other specialty services that the agency
17 ~~division~~ identifies by rule is not valid and reimbursable
18 unless the services have been expressly authorized by the
19 carrier, or unless the carrier has failed to respond within 10
20 days to a written request for authorization, or unless
21 emergency care is required. The insurer shall not refuse to
22 authorize such consultation or procedure unless the health
23 care provider or facility is not authorized or certified or
24 unless an expert medical advisor has determined that the
25 consultation or procedure is not medically necessary or
26 otherwise compensable under this chapter. Authorization of a
27 treatment plan does not constitute express authorization for
28 purposes of this section, except to the extent the carrier
29 provides otherwise in its authorization procedures. This
30 paragraph does not limit the carrier's obligation to identify
31 and disallow overutilization or billing errors.

1 (j) Notwithstanding anything in this chapter to the
2 contrary, a sick or injured employee shall be entitled, at all
3 times, to free, full, and absolute choice in the selection of
4 the pharmacy or pharmacist dispensing and filling
5 prescriptions for medicines required under this chapter. It is
6 expressly forbidden for the agency division, an employer, or a
7 carrier, or any agent or representative of the agency
8 ~~division~~, an employer, or a carrier to select the pharmacy or
9 pharmacist which the sick or injured employee must use;
10 condition coverage or payment on the basis of the pharmacy or
11 pharmacist utilized; or to otherwise interfere in the
12 selection by the sick or injured employee of a pharmacy or
13 pharmacist.

14 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH AGENCY
15 DIVISION.--

16 (a) Any health care provider providing necessary
17 remedial treatment, care, or attendance to any injured worker
18 shall submit treatment reports to the carrier in a format
19 prescribed by the agency division. A claim for medical or
20 surgical treatment is not valid or enforceable against such
21 employer or employee, unless, by the close of the third
22 business day following the first treatment, the physician
23 providing the treatment furnishes to the employer or carrier a
24 preliminary notice of the injury and treatment on forms
25 prescribed by the agency division and, within 15 days
26 thereafter, furnishes to the employer or carrier a complete
27 report, and subsequent thereto furnishes progress reports, if
28 requested by the employer or insurance carrier, at intervals
29 of not less than 3 weeks apart or at less frequent intervals
30 if requested on forms prescribed by the agency division.

31

1 (b) Upon the request of the Division of Workers'
2 Compensation, each medical report or bill obtained or received
3 by the employer, the carrier, or the injured employee, or the
4 attorney for the employer, carrier, or injured employee, with
5 respect to the remedial treatment, care, and attendance of the
6 injured employee, including any report of an examination,
7 diagnosis, or disability evaluation, must be filed with the
8 agency ~~Division of Workers' Compensation~~ pursuant to rules
9 adopted by the agency ~~division~~. The health care provider shall
10 also furnish to the injured employee or to his or her
11 attorney, on demand, a copy of his or her office chart,
12 records, and reports, and may charge the injured employee an
13 amount authorized by the agency ~~division~~ for the copies. Each
14 such health care provider shall provide to the agency ~~division~~
15 information about the remedial treatment, care, and attendance
16 which the agency ~~division~~ reasonably requests.

17 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

18 (b) Each party is bound by his or her selection of an
19 independent medical examiner and is entitled to an alternate
20 examiner only if:

21 1. The examiner is not qualified to render an opinion
22 upon an aspect of the employee's illness or injury which is
23 material to the claim or petition for benefits;

24 2. The examiner ceases to practice in the specialty
25 relevant to the employee's condition;

26 3. The examiner is unavailable due to injury, death,
27 or relocation outside a reasonably accessible geographic area;
28 or

29 4. The parties agree to an alternate examiner.
30
31

1 Any party may request, or a judge of compensation claims may
2 require, designation of an agency ~~a division~~ medical advisor
3 as an independent medical examiner. The opinion of the
4 advisors acting as examiners shall not be afforded the
5 presumption set forth in paragraph (9)(c).

6 (e) No medical opinion other than the opinion of a
7 medical advisor appointed by the judge of compensation claims
8 or agency ~~division~~, an independent medical examiner, or an
9 authorized treating provider is admissible in proceedings
10 before the judges of compensation claims.

11 (6) UTILIZATION REVIEW.--Carriers shall review all
12 bills, invoices, and other claims for payment submitted by
13 health care providers in order to identify overutilization and
14 billing errors, and may hire peer review consultants or
15 conduct independent medical evaluations. Such consultants,
16 including peer review organizations, are immune from liability
17 in the execution of their functions under this subsection to
18 the extent provided in s. 766.101. If a carrier finds that
19 overutilization of medical services or a billing error has
20 occurred, it must disallow or adjust payment for such services
21 or error without order of a judge of compensation claims or
22 the agency ~~division~~, if the carrier, in making its
23 determination, has complied with this section and rules
24 adopted by the agency ~~division~~.

25 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

26 (a) Any health care provider, carrier, or employer who
27 elects to contest the disallowance or adjustment of payment by
28 a carrier under subsection (6) must, within 30 days after
29 receipt of notice of disallowance or adjustment of payment,
30 petition the agency ~~division~~ to resolve the dispute. The
31 petitioner must serve a copy of the petition on the carrier

1 and on all affected parties by certified mail. The petition
2 must be accompanied by all documents and records that support
3 the allegations contained in the petition. Failure of a
4 petitioner to submit such documentation to the agency ~~division~~
5 results in dismissal of the petition.

6 (b) The carrier must submit to the agency ~~division~~
7 within 10 days after receipt of the petition all documentation
8 substantiating the carrier's disallowance or adjustment.
9 Failure of the carrier to submit the requested documentation
10 to the agency ~~division~~ within 10 days constitutes a waiver of
11 all objections to the petition.

12 (c) Within 60 days after receipt of all documentation,
13 the agency ~~division~~ must provide to the petitioner, the
14 carrier, and the affected parties a written determination of
15 whether the carrier properly adjusted or disallowed payment.
16 The agency ~~division~~ must be guided by standards and policies
17 set forth in this chapter, including all applicable
18 reimbursement schedules, in rendering its determination.

19 (d) If the agency ~~division~~ finds an improper
20 disallowance or improper adjustment of payment by an insurer,
21 the insurer shall reimburse the health care provider,
22 facility, insurer, or employer within 30 days, subject to the
23 penalties provided in this subsection.

24 (e) The agency ~~division~~ shall adopt rules to carry out
25 this subsection. The rules may include provisions for
26 consolidating petitions filed by a petitioner and expanding
27 the timetable for rendering a determination upon a
28 consolidated petition.

29 (f) Any carrier that engages in a pattern or practice
30 of arbitrarily or unreasonably disallowing or reducing
31 payments to health care providers may be subject to one or

1 more of the following penalties imposed by the agency
2 ~~division~~:

3 1. Repayment of the appropriate amount to the health
4 care provider.

5 2. An administrative fine assessed by the agency
6 ~~division~~ in an amount not to exceed \$5,000 per instance of
7 improperly disallowing or reducing payments.

8 3. Award of the health care provider's costs,
9 including a reasonable attorney's fee, for prosecuting the
10 petition.

11 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

12 (a) Carriers must report to the agency ~~division~~ all
13 instances of overutilization including, but not limited to,
14 all instances in which the carrier disallows or adjusts
15 payment. The agency ~~division~~ shall determine whether a pattern
16 or practice of overutilization exists.

17 (b) If the agency ~~division~~ determines that a health
18 care provider has engaged in a pattern or practice of
19 overutilization or a violation of this chapter or rules
20 adopted by the agency ~~division~~, it may impose one or more of
21 the following penalties:

22 1. An order of the agency ~~division~~ barring the
23 provider from payment under this chapter;

24 2. Deauthorization of care under review;

25 3. Denial of payment for care rendered in the future;

26 4. Decertification of a health care provider certified
27 as an expert medical advisor under subsection (9) or of a
28 rehabilitation provider certified under s. 440.49;

29 5. An administrative fine assessed by the agency
30 ~~division~~ in an amount not to exceed \$5,000 per instance of
31 overutilization or violation; and

1 6. Notification of and review by the appropriate
2 licensing authority pursuant to s. 440.106(3).

3 (9) EXPERT MEDICAL ADVISORS.--

4 (a) The agency ~~division~~ shall certify expert medical
5 advisors in each specialty to assist the agency ~~division~~ and
6 the judges of compensation claims within the advisor's area of
7 expertise as provided in this section. The agency ~~division~~
8 shall, in a manner prescribed by rule, in certifying,
9 recertifying, or decertifying an expert medical advisor,
10 consider the qualifications, training, impartiality, and
11 commitment of the health care provider to the provision of
12 quality medical care at a reasonable cost. As a prerequisite
13 for certification or recertification, the agency ~~division~~
14 shall require, at a minimum, that an expert medical advisor
15 have specialized workers' compensation training or experience
16 under the workers' compensation system of this state and board
17 certification or board eligibility.

18 (b) The agency ~~division~~ shall contract with or employ
19 expert medical advisors to provide peer review or medical
20 consultation to the agency ~~division~~ or to a judge of
21 compensation claims in connection with resolving disputes
22 relating to reimbursement, differing opinions of health care
23 providers, and health care and physician services rendered
24 under this chapter. Expert medical advisors contracting with
25 the agency ~~division~~ shall, as a term of such contract, agree
26 to provide consultation or services in accordance with the
27 timetables set forth in this chapter and to abide by rules
28 adopted by the agency ~~division~~, including, but not limited to,
29 rules pertaining to procedures for review of the services
30 rendered by health care providers and preparation of reports
31 and recommendations for submission to the agency ~~division~~.

1 (c) If there is disagreement in the opinions of the
2 health care providers, if two health care providers disagree
3 on medical evidence supporting the employee's complaints or
4 the need for additional medical treatment, or if two health
5 care providers disagree that the employee is able to return to
6 work, the agency division may, and the judge of compensation
7 claims shall, upon his or her own motion or within 15 days
8 after receipt of a written request by either the injured
9 employee, the employer, or the carrier, order the injured
10 employee to be evaluated by an expert medical advisor. The
11 opinion of the expert medical advisor is presumed to be
12 correct unless there is clear and convincing evidence to the
13 contrary as determined by the judge of compensation claims.
14 The expert medical advisor appointed to conduct the evaluation
15 shall have free and complete access to the medical records of
16 the employee. An employee who fails to report to and cooperate
17 with such evaluation forfeits entitlement to compensation
18 during the period of failure to report or cooperate.

19 (d) The expert medical advisor must complete his or
20 her evaluation and issue his or her report to the agency
21 ~~division~~ or to the judge of compensation claims within 45 days
22 after receipt of all medical records. The expert medical
23 advisor must furnish a copy of the report to the carrier and
24 to the employee.

25 (e) An expert medical advisor is not liable under any
26 theory of recovery for evaluations performed under this
27 section without a showing of fraud or malice. The protections
28 of s. 766.101 apply to any officer, employee, or agent of the
29 agency division and to any officer, employee, or agent of any
30 entity with which the agency division has contracted under
31 this subsection.

1 (f) If the agency ~~division~~ or a judge of compensation
2 claims determines that the services of a certified expert
3 medical advisor are required to resolve a dispute under this
4 section, the carrier must compensate the advisor for his or
5 her time in accordance with a schedule adopted by the agency
6 division. The agency ~~division~~ may assess a penalty not to
7 exceed \$500 against any carrier that fails to timely
8 compensate an advisor in accordance with this section.

9 (11) AUDITS BY AGENCY ~~DIVISION~~; JURISDICTION.--

10 (a) The agency ~~Division of Workers' Compensation of~~
11 ~~the Department of Labor and Employment Security~~ may
12 investigate health care providers to determine whether
13 providers are complying with this chapter and with rules
14 adopted by the agency ~~division~~, whether the providers are
15 engaging in overutilization, and whether providers are
16 engaging in improper billing practices. If the agency ~~division~~
17 finds that a health care provider has improperly billed,
18 overutilized, or failed to comply with agency ~~division~~ rules
19 or the requirements of this chapter it must notify the
20 provider of its findings and may determine that the health
21 care provider may not receive payment from the carrier or may
22 impose penalties as set forth in subsection (8) or other
23 sections of this chapter. If the health care provider has
24 received payment from a carrier for services that were
25 improperly billed or for overutilization, it must return those
26 payments to the carrier. The agency ~~division~~ may assess a
27 penalty not to exceed \$500 for each overpayment that is not
28 refunded within 30 days after notification of overpayment by
29 the agency ~~division~~ or carrier.

30 (b) The agency ~~division~~ shall monitor and audit
31 carriers to determine if medical bills are paid in accordance

1 with this section and agency ~~division~~ rules. Any employer, if
2 self-insured, or carrier found by the agency ~~division~~ not to
3 be within 90 percent compliance as to the payment of medical
4 bills after July 1, 1994, must be assessed a fine not to
5 exceed 1 percent of the prior year's assessment levied against
6 such entity under s. 440.51 for every quarter in which the
7 entity fails to attain 90-percent compliance. The agency
8 ~~division~~ shall fine an employer or carrier, pursuant to rules
9 adopted by the agency ~~division~~, for each late payment of
10 compensation that is below the minimum 90-percent performance
11 standard. Any carrier that is found to be not in compliance in
12 subsequent consecutive quarters must implement a medical-bill
13 review program approved by the agency ~~division~~, and the
14 carrier is subject to disciplinary action by the Department of
15 Insurance.

16 (c) The agency ~~division~~ has exclusive jurisdiction to
17 decide any matters concerning reimbursement, to resolve any
18 overutilization dispute under subsection (7), and to decide
19 any question concerning overutilization under subsection (8),
20 which question or dispute arises after January 1, 1994.

21 (d) The following agency ~~division~~ actions do not
22 constitute agency action subject to review under ss. 120.569
23 and 120.57 and do not constitute actions subject to s. 120.56:
24 referral by the entity responsible for utilization review; a
25 decision by the agency ~~division~~ to refer a matter to a peer
26 review committee; establishment by a health care provider or
27 entity of procedures by which a peer review committee reviews
28 the rendering of health care services; and the review
29 proceedings, report, and recommendation of the peer review
30 committee.

31

1 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2 REIMBURSEMENT ALLOWANCES.--

3 (a) A three-member panel is created, consisting of the
4 Insurance Commissioner, or the Insurance Commissioner's
5 designee, and two members to be appointed by the Governor,
6 subject to confirmation by the Senate, one member who, on
7 account of present or previous vocation, employment, or
8 affiliation, shall be classified as a representative of
9 employers, the other member who, on account of previous
10 vocation, employment, or affiliation, shall be classified as a
11 representative of employees. The panel shall determine
12 statewide schedules of maximum reimbursement allowances for
13 medically necessary treatment, care, and attendance provided
14 by physicians, hospitals, ambulatory surgical centers,
15 work-hardening programs, pain programs, and durable medical
16 equipment. The maximum reimbursement allowances for inpatient
17 hospital care shall be based on a schedule of per diem rates,
18 to be approved by the three-member panel no later than March
19 1, 1994, to be used in conjunction with a precertification
20 manual as determined by the agency ~~division~~. All compensable
21 charges for hospital outpatient care shall be reimbursed at 75
22 percent of usual and customary charges. Until the three-member
23 panel approves a schedule of per diem rates for inpatient
24 hospital care and it becomes effective, all compensable
25 charges for hospital inpatient care must be reimbursed at 75
26 percent of their usual and customary charges. Annually, the
27 three-member panel shall adopt schedules of maximum
28 reimbursement allowances for physicians, hospital inpatient
29 care, hospital outpatient care, ambulatory surgical centers,
30 work-hardening programs, and pain programs. However, the
31 maximum percentage of increase in the individual reimbursement

1 allowance may not exceed the percentage of increase in the
2 Consumer Price Index for the previous year. An individual
3 physician, hospital, ambulatory surgical center, pain program,
4 or work-hardening program shall be reimbursed either the usual
5 and customary charge for treatment, care, and attendance, the
6 agreed-upon contract price, or the maximum reimbursement
7 allowance in the appropriate schedule, whichever is less.

8 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE
9 AUTHORIZED TO RENDER MEDICAL CARE.--The agency ~~division~~ shall
10 remove from the list of physicians or facilities authorized to
11 provide remedial treatment, care, and attendance under this
12 chapter the name of any physician or facility found after
13 reasonable investigation to have:

14 (e) Refused to appear before, or to answer upon
15 request of, the agency ~~division~~ or any duly authorized officer
16 of the state, any legal question, or to produce any relevant
17 book or paper concerning his or her conduct under any
18 authorization granted to him or her under this chapter;

19 (g) Engaged in a pattern of practice of
20 overutilization or a violation of this chapter or rules
21 adopted by the agency ~~division~~.

22 Section 7. Paragraph (c) of subsection (2) and
23 paragraph (a) of subsection (3) of section 440.15, Florida
24 Statutes, are amended to read:

25 440.15 Compensation for disability.--Compensation for
26 disability shall be paid to the employee, subject to the
27 limits provided in s. 440.12(2), as follows:

28 (2) TEMPORARY TOTAL DISABILITY.--

29 (c) Temporary total disability benefits paid pursuant
30 to this subsection shall include such period as may be
31 reasonably necessary for training in the use of artificial

1 members and appliances, and shall include such period as the
2 employee may be receiving training and education under a
3 program pursuant to s. 440.491. Notwithstanding s. 440.02~~(9)~~,
4 the date of maximum medical improvement for purposes of
5 paragraph (3)(b) shall be no earlier than the last day for
6 which such temporary disability benefits are paid.

7 (3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.--

8 (a) Impairment benefits.--

9 1. Once the employee has reached the date of maximum
10 medical improvement, impairment benefits are due and payable
11 within 20 days after the carrier has knowledge of the
12 impairment.

13 2. The three-member panel, in cooperation with the
14 agency division, shall establish and use a uniform permanent
15 impairment rating schedule. This schedule must be based on
16 medically or scientifically demonstrable findings as well as
17 the systems and criteria set forth in the American Medical
18 Association's Guides to the Evaluation of Permanent
19 Impairment; the Snellen Charts, published by American Medical
20 Association Committee for Eye Injuries; and the Minnesota
21 Department of Labor and Industry Disability Schedules. The
22 schedule should be based upon objective findings. The schedule
23 shall be more comprehensive than the AMA Guides to the
24 Evaluation of Permanent Impairment and shall expand the areas
25 already addressed and address additional areas not currently
26 contained in the guides. On August 1, 1979, and pending the
27 adoption, by rule, of a permanent schedule, Guides to the
28 Evaluation of Permanent Impairment, copyright 1977, 1971,
29 1988, by the American Medical Association, shall be the
30 temporary schedule and shall be used for the purposes hereof.
31 For injuries after July 1, 1990, pending the adoption by

1 division rule of a uniform disability rating schedule, the
2 Minnesota Department of Labor and Industry Disability Schedule
3 shall be used unless that schedule does not address an injury.
4 In such case, the Guides to the Evaluation of Permanent
5 Impairment by the American Medical Association shall be used.
6 Determination of permanent impairment under this schedule must
7 be made by a physician licensed under chapter 458, a doctor of
8 osteopathic medicine licensed under chapters 458 and 459, a
9 chiropractic physician licensed under chapter 460, a podiatric
10 physician licensed under chapter 461, an optometrist licensed
11 under chapter 463, or a dentist licensed under chapter 466, as
12 appropriate considering the nature of the injury. No other
13 persons are authorized to render opinions regarding the
14 existence of or the extent of permanent impairment.

15 3. All impairment income benefits shall be based on an
16 impairment rating using the impairment schedule referred to in
17 subparagraph 2. Impairment income benefits are paid weekly at
18 the rate of 50 percent of the employee's average weekly
19 temporary total disability benefit not to exceed the maximum
20 weekly benefit under s. 440.12. An employee's entitlement to
21 impairment income benefits begins the day after the employee
22 reaches maximum medical improvement or the expiration of
23 temporary benefits, whichever occurs earlier, and continues
24 until the earlier of:

25 a. The expiration of a period computed at the rate of
26 3 weeks for each percentage point of impairment; or

27 b. The death of the employee.

28 4. After the employee has been certified by a doctor
29 as having reached maximum medical improvement or 6 weeks
30 before the expiration of temporary benefits, whichever occurs
31 earlier, the certifying doctor shall evaluate the condition of

1 the employee and assign an impairment rating, using the
2 impairment schedule referred to in subparagraph 2.
3 Compensation is not payable for the mental, psychological, or
4 emotional injury arising out of depression from being out of
5 work. If the certification and evaluation are performed by a
6 doctor other than the employee's treating doctor, the
7 certification and evaluation must be submitted to the treating
8 doctor, and the treating doctor must indicate agreement or
9 disagreement with the certification and evaluation. The
10 certifying doctor shall issue a written report to the
11 division, the employee, and the carrier certifying that
12 maximum medical improvement has been reached, stating the
13 impairment rating, and providing any other information
14 required by the division. If the employee has not been
15 certified as having reached maximum medical improvement before
16 the expiration of 102 weeks after the date temporary total
17 disability benefits begin to accrue, the carrier shall notify
18 the treating doctor of the requirements of this section.

19 5. The carrier shall pay the employee impairment
20 income benefits for a period based on the impairment rating.

21 6. The agency ~~division~~ may by rule specify forms and
22 procedures governing the method of payment of wage loss and
23 impairment benefits for dates of accidents before January 1,
24 1994, and for dates of accidents on or after January 1, 1994.

25 Section 8. Subsection (1) of section 440.207, Florida
26 Statutes, is amended to read:

27 440.207 Workers' compensation system guide.--

28 (1) The Division of Workers' Compensation of the
29 Department of Revenue ~~Labor and Employment Security~~ shall
30 educate all persons providing or receiving benefits pursuant
31

1 to this chapter as to their rights and responsibilities under
2 this chapter.

3 Section 9. Paragraph (a) of subsection (1), subsection
4 (2), paragraph (c) of subsection (3), subsections (4), (5),
5 and (6), paragraph (a) of subsection (8), and subsections (9)
6 and (10) of section 440.385, Florida Statutes, are amended to
7 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(24)(~~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.

26 (2) BOARD OF DIRECTORS.--The board of directors of the
27 association shall consist of nine persons and shall be
28 organized as established in the plan of operation. ~~With~~
29 ~~respect to initial appointments, the Secretary of Labor and~~
30 ~~Employment Security shall, by July 15, 1982, approve and~~
31 ~~appoint to the board persons who are experienced with~~

1 ~~self-insurance in this state and who are recommended by the~~
2 ~~individual self-insurers in this state required to become~~
3 ~~members of the association pursuant to the provisions of~~
4 ~~paragraph (1)(a). In the event the secretary finds that any~~
5 ~~person so recommended does not have the necessary~~
6 ~~qualifications for service on the board and a majority of the~~
7 ~~board has been appointed, the secretary shall request the~~
8 ~~directors thus far approved and appointed to recommend another~~
9 ~~person for appointment to the board. Each director shall~~
10 ~~serve for a 4-year term and may be reappointed. Appointments~~
11 ~~other than initial appointments shall be made by the Executive~~
12 ~~Director of the Department of Revenue ~~Secretary of Labor and~~~~
13 ~~~~Employment Security~~ upon recommendation of members of the~~
14 ~~association. Any vacancy on the board shall be filled for the~~
15 ~~remaining period of the term in the same manner as~~
16 ~~appointments other than initial appointments are made. Each~~
17 ~~director shall be reimbursed for expenses incurred in carrying~~
18 ~~out the duties of the board on behalf of the association.~~

19 (3) POWERS AND DUTIES.--

20 (c)1. To the extent necessary to secure funds for the
21 payment of covered claims and also to pay the reasonable costs
22 to administer them, the Department of Revenue ~~Labor and~~
23 ~~Employment Security~~, upon certification of the board of
24 directors, shall levy assessments based on the annual normal
25 premium each employer would have paid had the employer not
26 been self-insured. Every assessment shall be made as a
27 uniform percentage of the figure applicable to all individual
28 self-insurers, provided that the assessment levied against any
29 self-insurer in any one year shall not exceed 1 percent of the
30 annual normal premium during the calendar year preceding the
31 date of the assessment. Assessments shall be remitted to and

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

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

15 3. No state funds of any kind shall be allocated or
16 paid to the association or any of its accounts except those
17 state funds accruing to the association by and through the
18 assignment of rights of an insolvent employer.

19 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
20 operation ~~or the adoption of rules by the Department of Labor~~
21 ~~and Employment Security~~ pursuant to subsection (5), there
22 shall be created an Insolvency Fund to be managed by the
23 association.

24 (a) The Insolvency Fund is created for purposes of
25 meeting the obligations of insolvent members incurred while
26 members of the association and after the exhaustion of any
27 bond, as required under this chapter. However, if such bond,
28 surety, or reinsurance policy is payable to the Florida
29 Self-Insurers Guaranty Association, the association shall
30 commence to provide benefits out of the Insolvency Fund and be
31 reimbursed from the bond, surety, or reinsurance policy. The

1 method of operation of the Insolvency Fund shall be defined in
2 the plan of operation as provided in subsection (5).

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

5 (c) The department may offer certain amendments to the
6 plan of operation to the board of directors of the association
7 for purposes of assuring the ongoing financial soundness of
8 the Insolvency Fund and its ability to meet the obligations of
9 this section.

10 (d) The department actuary may make certain
11 recommendations to improve the orderly payment of claims.

12 (5) PLAN OF OPERATION.--~~By September 15, 1982,~~The
13 board of directors shall use ~~submit to the Department of Labor~~
14 ~~and Employment Security~~ a proposed plan of operation for the
15 administration of the association and the Insolvency Fund.

16 (a) The purpose of the plan of operation shall be to
17 provide the association and the board of directors with the
18 authority and responsibility to establish the necessary
19 programs and to take the necessary actions to protect against
20 the insolvency of a member of the association. In addition,
21 the plan shall provide that the members of the association
22 shall be responsible for maintaining an adequate Insolvency
23 Fund to meet the obligations of insolvent members provided for
24 under this act and shall authorize the board of directors to
25 contract and employ those persons with the necessary expertise
26 to carry out this stated purpose.

27 ~~(b) The plan of operation, and any amendments thereto,~~
28 ~~shall take effect upon approval in writing by the department.~~
29 ~~If the board of directors fails to submit a plan by September~~
30 ~~15, 1982, or fails to make required amendments to the plan~~
31 ~~within 30 days thereafter, the department shall promulgate~~

1 ~~such rules as are necessary to effectuate the provisions of~~
2 ~~this subsection. Such rules shall continue in force until~~
3 ~~modified by the department or superseded by a plan submitted~~
4 ~~by the board of directors and approved by the department.~~

5 (b)~~(c)~~ All member employers shall comply with the plan
6 of operation.

7 (c)~~(d)~~ The plan of operation shall:

8 1. Establish the procedures whereby all the powers and
9 duties of the association under subsection (3) will be
10 performed.

11 2. Establish procedures for handling assets of the
12 association.

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

15 4. Establish procedures by which claims may be filed
16 with the association and establish acceptable forms of proof
17 of covered claims. Notice of claims to the receiver or
18 liquidator of the insolvent employer shall be deemed notice to
19 the association or its agent, and a list of such claims shall
20 be submitted periodically to the association or similar
21 organization in another state by the receiver or liquidator.

22 5. Establish regular places and times for meetings of
23 the board of directors.

24 6. Establish procedures for records to be kept of all
25 financial transactions of the association and its agents and
26 the board of directors.

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

30
31

1 8. Establish the procedures whereby recommendations of
2 candidates for the board of directors shall be submitted to
3 the department.

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

6 (d)~~(e)~~ The plan of operation may provide that any or
7 all of the powers and duties of the association, except those
8 specified under subparagraphs(c)~~(d)~~1. and 2., be delegated to
9 a corporation, association, or other organization which
10 performs or will perform functions similar to those of this
11 association or its equivalent in two or more states. Such a
12 corporation, association, or organization shall be reimbursed
13 as a servicing facility would be reimbursed and shall be paid
14 for its performance of any other functions of the association.
15 A delegation of powers or duties under this subsection shall
16 take effect only with the approval of both the board of
17 directors and the department and may be made only to a
18 corporation, association, or organization which extends
19 protection which is not substantially less favorable and
20 effective than the protection provided by this section.

21 (6) POWERS AND DUTIES OF DEPARTMENT OF REVENUE ~~LABOR~~
22 ~~AND EMPLOYMENT SECURITY.~~--

23 (a) The department shall:

24 1. Notify the association of the existence of an
25 insolvent employer not later than 3 days after it receives
26 notice of the determination of insolvency.

27 2. Upon request of the board of directors, provide the
28 association with a statement of the annual normal premiums of
29 each member employer.

30 (b) The department may:

31

1 1. 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 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 (8) PREVENTION OF INSOLVENCIES.--To aid in the
21 detection and prevention of employer insolvencies:

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

28 (9) EXAMINATION OF THE ASSOCIATION.--The association
29 shall be subject to examination and regulation by the
30 Department of Revenue ~~Labor and Employment Security~~. No later
31 than March 30 of each year, the board of directors shall

1 submit a financial report for the preceding calendar year in a
2 form approved by the department.

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

10 Section 10. Paragraph (e) of subsection (9) of section
11 440.49, Florida Statutes, is amended to read:

12 440.49 Limitation of liability for subsequent injury
13 through Special Disability Trust Fund.--

14 (9) SPECIAL DISABILITY TRUST FUND.--

15 (e) The Department of Revenue ~~Labor and Employment~~
16 ~~Security~~ or administrator shall report annually on the status
17 of the Special Disability Trust Fund. The report shall update
18 the estimated undiscounted and discounted fund liability, as
19 determined by an independent actuary, change in the total
20 number of notices of claim on file with the fund in addition
21 to the number of newly filed notices of claim, change in the
22 number of proofs of claim processed by the fund, the fee
23 revenues refunded and revenues applied to pay down the
24 liability of the fund, the average time required to reimburse
25 accepted claims, and the average administrative costs per
26 claim. The department or administrator shall submit its
27 report to the Governor, the President of the Senate, and the
28 Speaker of the House of Representatives by December 1 of each
29 year.

30 Section 11. Paragraphs (b) through (h) of subsection
31 (1) of section 440.491, Florida Statutes, are redesignated as

1 paragraphs (c) through (i), respectively, and a new paragraph
2 (b) is added to said subsection, and paragraph (a) of
3 subsection (3), paragraph (b) of subsection (4), paragraphs
4 (b) and (c) of subsection (5), and subsections (6), (7), and
5 (8) of said section are amended, to read:

6 440.491 Reemployment of injured workers;
7 rehabilitation.--

8 (1) DEFINITIONS.--As used in this section, the term:

9 (b) "Department" means the Department of Education.

10 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.--

11 (a) When an employee who has suffered an injury
12 compensable under this chapter is unemployed 60 days after the
13 date of injury and is receiving benefits for temporary total
14 disability, temporary partial disability, or wage loss, and
15 has not yet been provided medical care coordination and
16 reemployment services voluntarily by the carrier, the carrier
17 must determine whether the employee is likely to return to
18 work and must report its determination to the department
19 ~~division~~. The carrier must thereafter determine the
20 reemployment status of the employee at 90-day intervals as
21 long as the employee remains unemployed, is not receiving
22 medical care coordination or reemployment services, and is
23 receiving the benefits specified in this subsection.

24 (4) REEMPLOYMENT ASSESSMENTS.--

25 (b) The carrier shall authorize only a qualified
26 rehabilitation provider to provide the reemployment
27 assessment. The rehabilitation provider shall conduct its
28 assessment and issue a report to the carrier, the employee,
29 and the department ~~division~~ within 30 days after the time such
30 assessment is complete.

31

1 (5) MEDICAL CARE COORDINATION AND REEMPLOYMENT
2 SERVICES.--

3 (b) If the rehabilitation provider concludes that
4 training and education are necessary to return the employee to
5 suitable gainful employment, or if the employee has not
6 returned to suitable gainful employment within 180 days after
7 referral for reemployment services or receives \$2,500 in
8 reemployment services, whichever comes first, the carrier must
9 discontinue reemployment services and refer the employee to
10 the department ~~division~~ for a vocational evaluation.
11 Notwithstanding any provision of chapter 289 or chapter 627,
12 the cost of a reemployment assessment and the first \$2,500 in
13 reemployment services to an injured employee must not be
14 treated as loss adjustment expense for workers' compensation
15 ratemaking purposes.

16 (c) A carrier may voluntarily provide medical care
17 coordination or reemployment services to the employee at
18 intervals more frequent than those required in this section.
19 For the purpose of monitoring reemployment, the carrier or the
20 rehabilitation provider shall report to the department
21 ~~division~~, in the manner prescribed by the department ~~division~~,
22 the date of reemployment and wages of the employee. The
23 carrier shall report its voluntary service activity to the
24 department ~~division~~ as required by rule. Voluntary services
25 offered by the carrier for any of the following injuries must
26 be considered benefits for purposes of ratemaking: traumatic
27 brain injury; spinal cord injury; amputation, including loss
28 of an eye or eyes; burns of 5 percent or greater of the total
29 body surface.

30 (6) TRAINING AND EDUCATION.--

31

1 (a) Upon referral of an injured employee by the
2 carrier, or upon the request of an injured employee, the
3 department ~~division~~ shall conduct a training and education
4 screening to determine whether it should refer the employee
5 for a vocational evaluation and, if appropriate, approve
6 training and education or other vocational services for the
7 employee. The department ~~division~~ may not approve formal
8 training and education programs unless it determines, after
9 consideration of the reemployment assessment, pertinent
10 reemployment status reviews or reports, and such other
11 relevant factors as it prescribes by rule, that the
12 reemployment plan is likely to result in return to suitable
13 gainful employment. The department ~~division~~ is authorized to
14 expend moneys from the Workers' Compensation Administration
15 Trust Fund, established by s. 440.50, to secure appropriate
16 training and education or other vocational services when
17 necessary to satisfy the recommendation of a vocational
18 evaluator. The department ~~division~~ shall establish training
19 and education standards pertaining to employee eligibility,
20 course curricula and duration, and associated costs.

21 (b) When it appears that an employee who has attained
22 maximum medical improvement requires training and education to
23 obtain suitable gainful employment, the employer shall pay the
24 employee additional temporary total compensation while the
25 employee receives such training and education for a period not
26 to exceed 26 weeks, which period may be extended for an
27 additional 26 weeks or less, if such extended period is
28 determined to be necessary and proper by a judge of
29 compensation claims. However, a carrier or employer is not
30 precluded from voluntarily paying additional temporary total
31 disability compensation beyond that period. If an employee

1 requires temporary residence at or near a facility or an
2 institution providing training and education which is located
3 more than 50 miles away from the employee's customary
4 residence, the reasonable cost of board, lodging, or travel
5 must be borne by the department ~~division~~ from the Workers'
6 Compensation Administration Trust Fund established by s.
7 440.50. An employee who refuses to accept training and
8 education that is recommended by the vocational evaluator and
9 considered necessary by the department ~~division~~ is subject to
10 a 50-percent reduction in weekly compensation benefits,
11 including wage-loss benefits, as determined under s.
12 440.15(3)(b).

13 (7) PROVIDER QUALIFICATIONS.--

14 (a) The department ~~division~~ shall investigate and
15 maintain a directory of each qualified public and private
16 rehabilitation provider, facility, and agency, and shall
17 establish by rule the minimum qualifications, credentials, and
18 requirements that each rehabilitation service provider,
19 facility, and agency must satisfy to be eligible for listing
20 in the directory. These minimum qualifications and credentials
21 must be based on those generally accepted within the service
22 specialty for which the provider, facility, or agency is
23 approved.

24 (b) The department ~~division~~ shall impose a biennial
25 application fee of \$25 for each listing in the directory, and
26 all such fees must be deposited in the Workers' Compensation
27 Administration Trust Fund.

28 (c) The department ~~division~~ shall monitor and evaluate
29 each rehabilitation service provider, facility, and agency
30 qualified under this subsection to ensure its compliance with
31 the minimum qualifications and credentials established by the

1 department division. The failure of a qualified rehabilitation
2 service provider, facility, or agency to provide the
3 department division with information requested or access
4 necessary for the department division to satisfy its
5 responsibilities under this subsection is grounds for
6 disqualifying the provider, facility, or agency from further
7 referrals.

8 (d) A qualified rehabilitation service provider,
9 facility, or agency may not be authorized by an employer, a
10 carrier, or the department division to provide any services,
11 including expert testimony, under this section in this state
12 unless the provider, facility, or agency is listed or has been
13 approved for listing in the directory. This restriction does
14 not apply to services provided outside this state under this
15 section.

16 (e) The department division, after consultation with
17 representatives of employees, employers, carriers,
18 rehabilitation providers, and qualified training and education
19 providers, shall adopt rules governing professional practices
20 and standards.

21 (8) CARRIER PRACTICES.--The department division shall
22 monitor the selection of providers and the provision of
23 services by carriers under this section for consistency with
24 legislative intent set forth in subsection (2).

25 Section 12. Section 440.525, Florida Statutes, is
26 amended to read:

27 440.525 Examination of carriers.--~~Beginning July 1,~~
28 ~~1994,~~The Division of Workers' Compensation of the Department
29 of Revenue ~~Labor and Employment Security~~ may examine each
30 carrier as often as is warranted to ensure that carriers are
31 fulfilling their obligations under the law, and shall examine

1 each carrier not less frequently than once every 3 years. The
2 examination must cover the preceding 3 fiscal years of the
3 carrier's operations and must commence within 12 months after
4 the end of the most recent fiscal year being covered by the
5 examination. The examination may cover any period of the
6 carrier's operations since the last previous examination.

7 Section 13. Subsections (1), (4), and (5) of section
8 443.012, Florida Statutes, are amended to read:

9 443.012 Unemployment Appeals Commission.--

10 (1) There is created within the Agency for Workforce
11 Innovation ~~Department of Labor and Employment Security~~ an
12 Unemployment Appeals Commission, hereinafter referred to as
13 the "commission." The commission shall consist of a chair and
14 two other members to be appointed by the Governor, subject to
15 confirmation by the Senate. Not more than one appointee must
16 be a person who, on account of previous vocation, employment,
17 or affiliation, is classified as a representative of
18 employers; and not more than one such appointee must be a
19 person who, on account of previous vocation, employment, or
20 affiliation, is classified as a representative of employees.

21 (a) The chair shall devote his or her entire time to
22 commission duties and shall be responsible for the
23 administrative functions of the commission.

24 (b) The chair shall have the authority to appoint a
25 general counsel and such other personnel as may be necessary
26 to carry out the duties and responsibilities of the
27 commission.

28 (c) The chair shall have the qualifications required
29 by law for a judge of the circuit court and shall not engage
30 in any other business vocation or employment. Notwithstanding
31 any other provisions of existing law, the chair shall be paid

1 a salary equal to that paid under state law to a judge of the
2 circuit court.

3 (d) The remaining members shall be paid a stipend of
4 \$100 for each day they are engaged in the work of the
5 commission. The chair and other members shall also be
6 reimbursed for travel expenses, as provided in s. 112.061.

7 (e) The total salary and travel expenses of each
8 member of the commission shall be paid from the Employment
9 Security Administration Trust Fund.

10 (4) The property, personnel, and appropriations
11 relating to the specified authority, powers, duties, and
12 responsibilities of the commission shall be provided to the
13 commission by the Agency for Workforce Innovation ~~Department~~
14 ~~of Labor and Employment Security~~.

15 (5) The commission shall not be subject to control,
16 supervision, or direction by the Agency for Workforce
17 Innovation ~~Department of Labor and Employment Security~~ in the
18 performance of its powers and duties under this chapter.

19 Section 14. Subsection (12) of section 443.036,
20 Florida Statutes, is amended to read:

21 443.036 Definitions.--As used in this chapter, unless
22 the context clearly requires otherwise:

23 (12) COMMISSION.--"Commission" means the Unemployment
24 Appeals Commission ~~of the Department of Labor and Employment~~
25 ~~Security~~.

26 Section 15. Subsection (3) of section 447.02, Florida
27 Statutes, is amended to read:

28 447.02 Definitions.--The following terms, when used in
29 this chapter, shall have the meanings ascribed to them in this
30 section:

31

1 (3) The term "department" means the Department of
2 Business and Professional Regulation ~~Labor and Employment~~
3 ~~Security~~.

4 Section 16. Subsection (4) of section 447.305, Florida
5 Statutes, is amended to read:

6 447.305 Registration of employee organization.--

7 (4) Notification of registrations and renewals of
8 registration shall be furnished at regular intervals by the
9 commission to the Department of Business and Professional
10 Regulation ~~Labor and Employment Security~~.

11 Section 17. Subsection (4) of section 450.012, Florida
12 Statutes, is amended to read:

13 450.012 Definitions.--For the purpose of this chapter,
14 the word, phrase, or term:

15 (4) "Department" means the Department of Business and
16 Professional Regulation ~~Labor and Employment Security~~.

17 Section 18. Paragraph (j) of subsection (1) of section
18 450.191, Florida Statutes, is amended to read:

19 450.191 Executive Office of the Governor; powers and
20 duties.--

21 (1) The Executive Office of the Governor is authorized
22 and directed to:

23 (j) Cooperate with the farm labor office of the
24 Department of Business and Professional Regulation ~~Labor and~~
25 ~~Employment Security~~ in the recruitment and referral of migrant
26 laborers and other persons for the planting, cultivation, and
27 harvesting of agricultural crops in Florida.

28 Section 19. Subsection (2) of section 450.28, Florida
29 Statutes, is amended to read:

30 450.28 Definitions.--

31

1 (2) "Department" means the Department of Business and
2 Professional Regulation ~~Labor and Employment Security~~.

3 Section 20. Section 627.0915, Florida Statutes, is
4 amended to read:

5 627.0915 Rate filings; workers' compensation,
6 drug-free workplace, and safe employers.--The Department of
7 Insurance shall approve rating plans for workers' compensation
8 insurance that give specific identifiable consideration in the
9 setting of rates to employers that either implement a
10 drug-free workplace program pursuant to rules adopted by the
11 Division of Workers' Compensation of the Department of Revenue
12 ~~Labor and Employment Security~~ or implement a safety program
13 pursuant to provisions of the rating plan or implement both a
14 drug-free workplace program and a safety program. The plans
15 must be actuarially sound and must state the savings
16 anticipated to result from such drug-testing and safety
17 programs.

18 Section 21. Paragraph (m) of subsection (2) of section
19 110.205, Florida Statutes, is amended to read:

20 110.205 Career service; exemptions.--

21 (2) EXEMPT POSITIONS.--The exempt positions that are
22 not covered by this part include the following:

23 (m) All assistant division director, deputy division
24 director, and bureau chief positions in any department, and
25 those positions determined by the department to have
26 managerial responsibilities comparable to such positions,
27 which positions include, but are not limited to, positions in
28 the Department of Health, the Department of Children and
29 Family Services, and the Department of Corrections that are
30 assigned primary duties of serving as the superintendent or
31 assistant superintendent, or warden or assistant warden, of an

1 institution; positions in the Department of Corrections that
2 are assigned primary duties of serving as the circuit
3 administrator or deputy circuit administrator; positions in
4 the Department of Transportation that are assigned primary
5 duties of serving as regional toll managers and managers of
6 offices as defined in s. 20.23(3)(d)3. and (4)(d); positions
7 in the Department of Environmental Protection that are
8 assigned the duty of an Environmental Administrator or program
9 administrator; ~~those positions described in s. 20.171 as~~
10 ~~included in the Senior Management Service~~ and positions in
11 the Department of Health that are assigned the duties of
12 Environmental Administrator, Assistant County Health
13 Department Director, and County Health Department Financial
14 Administrator. Unless otherwise fixed by law, the department
15 shall set the salary and benefits of these positions in
16 accordance with the rules established for the Selected Exempt
17 Service.

18 Section 22. Paragraph (h) of subsection (2) of section
19 112.19, Florida Statutes, is amended to read:

20 112.19 Law enforcement, correctional, and correctional
21 probation officers; death benefits.--

22 (2)

23 (h)1. Any employer who employs a full-time law
24 enforcement, correctional, or correctional probation officer
25 who, on or after January 1, 1995, suffers a catastrophic
26 injury, as defined in s. 440.02~~(37)~~, in the line of duty shall
27 pay the entire premium of the employer's health insurance plan
28 for the injured employee, the injured employee's spouse, and
29 for each dependent child of the injured employee until the
30 child reaches the age of majority or until the end of the
31 calendar year in which the child reaches the age of 25 if the

1 child continues to be dependent for support, or the child is a
2 full-time or part-time student and is dependent for support.
3 The term "health insurance plan" does not include supplemental
4 benefits that are not part of the basic group health insurance
5 plan. If the injured employee subsequently dies, the employer
6 shall continue to pay the entire health insurance premium for
7 the surviving spouse until remarried, and for the dependent
8 children, under the conditions outlined in this paragraph.

9 However:

10 a. Health insurance benefits payable from any other
11 source shall reduce benefits payable under this section.

12 b. It is unlawful for a person to willfully and
13 knowingly make, or cause to be made, or to assist, conspire
14 with, or urge another to make, or cause to be made, any false,
15 fraudulent, or misleading oral or written statement to obtain
16 health insurance coverage as provided under this paragraph. A
17 person who violates this sub-subparagraph commits a
18 misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083.

20 c. In addition to any applicable criminal penalty,
21 upon conviction for a violation as described in
22 sub-subparagraph b., a law enforcement, correctional, or
23 correctional probation officer or other beneficiary who
24 receives or seeks to receive health insurance benefits under
25 this paragraph shall forfeit the right to receive such health
26 insurance benefits, and shall reimburse the employer for all
27 benefits paid due to the fraud or other prohibited activity.
28 For purposes of this sub-subparagraph, "conviction" means a
29 determination of guilt that is the result of a plea or trial,
30 regardless of whether adjudication is withheld.

31

1 2. In order for the officer, spouse, and dependent
2 children to be eligible for such insurance coverage, the
3 injury must have occurred as the result of the officer's
4 response to fresh pursuit, the officer's response to what is
5 reasonably believed to be an emergency, or an unlawful act
6 perpetrated by another. Except as otherwise provided herein,
7 nothing in this paragraph shall be construed to limit health
8 insurance coverage for which the officer, spouse, or dependent
9 children may otherwise be eligible, except that a person who
10 qualifies under this section shall not be eligible for the
11 health insurance subsidy provided under chapter 121, chapter
12 175, or chapter 185.

13 Section 23. Paragraph (g) of subsection (2) of section
14 112.191, Florida Statutes, is amended to read:

15 112.191 Firefighters; death benefits.--

16 (2)

17 (g)1. Any employer who employs a full-time firefighter
18 who, on or after January 1, 1995, suffers a catastrophic
19 injury, as defined in s. 440.02~~(37)~~, in the line of duty shall
20 pay the entire premium of the employer's health insurance plan
21 for the injured employee, the injured employee's spouse, and
22 for each dependent child of the injured employee until the
23 child reaches the age of majority or until the end of the
24 calendar year in which the child reaches the age of 25 if the
25 child continues to be dependent for support, or the child is a
26 full-time or part-time student and is dependent for support.
27 The term "health insurance plan" does not include supplemental
28 benefits that are not part of the basic group health insurance
29 plan. If the injured employee subsequently dies, the employer
30 shall continue to pay the entire health insurance premium for
31 the surviving spouse until remarried, and for the dependent

1 children, under the conditions outlined in this paragraph.

2 However:

3 a. Health insurance benefits payable from any other
4 source shall reduce benefits payable under this section.

5 b. It is unlawful for a person to willfully and
6 knowingly make, or cause to be made, or to assist, conspire
7 with, or urge another to make, or cause to be made, any false,
8 fraudulent, or misleading oral or written statement to obtain
9 health insurance coverage as provided under this paragraph. A
10 person who violates this sub-subparagraph commits a
11 misdemeanor of the first degree, punishable as provided in s.
12 775.082 or s. 775.083.

13 c. In addition to any applicable criminal penalty,
14 upon conviction for a violation as described in
15 sub-subparagraph b., a firefighter or other beneficiary who
16 receives or seeks to receive health insurance benefits under
17 this paragraph shall forfeit the right to receive such health
18 insurance benefits, and shall reimburse the employer for all
19 benefits paid due to the fraud or other prohibited activity.
20 For purposes of this sub-subparagraph, "conviction" means a
21 determination of guilt that is the result of a plea or trial,
22 regardless of whether adjudication is withheld.

23 2. In order for the firefighter, spouse, and dependent
24 children to be eligible for such insurance coverage, the
25 injury must have occurred as the result of the firefighter's
26 response to what is reasonably believed to be an emergency
27 involving the protection of life or property, or an unlawful
28 act perpetrated by another. Except as otherwise provided
29 herein, nothing in this paragraph shall be construed to limit
30 health insurance coverage for which the firefighter, spouse,
31 or dependent children may otherwise be eligible, except that a

1 person who qualifies for benefits under this section shall not
2 be eligible for the health insurance subsidy provided under
3 chapter 121, chapter 175, or chapter 185.

4
5 Notwithstanding any provision of this section to the contrary,
6 the death benefits provided in paragraphs (b), (c), and (f)
7 shall also be applicable and paid in cases where a firefighter
8 received bodily injury prior to July 1, 1993, and subsequently
9 died on or after July 1, 1993, as a result of such
10 in-line-of-duty injury.

11 Section 24. Section 121.125, Florida Statutes, is
12 amended to read:

13 121.125 Credit for workers' compensation payment
14 periods.--A member of the retirement system created by this
15 chapter who has been eligible or becomes eligible to receive
16 workers' compensation payments for an injury or illness
17 occurring during his or her employment while a member of any
18 state retirement system shall, upon return to active
19 employment with a covered employer for 1 calendar month or
20 upon approval for disability retirement in accordance with s.
21 121.091(4), receive full retirement credit for the period
22 prior to such return to active employment or disability
23 retirement for which the workers' compensation payments were
24 received. However, no member may receive retirement credit
25 for any such period occurring after the earlier of the date of
26 maximum medical improvement ~~has been attained~~ as defined in s.
27 440.02(9) or the date termination has occurred as defined in
28 s. 121.021(39). The employer of record at the time of the
29 worker's compensation injury or illness shall make the
30 required retirement contributions based on the member's rate
31 of monthly compensation immediately prior to his or her

1 receiving workers' compensation payments for retirement credit
2 received by the member.

3 Section 25. Subsection (7) of section 122.03, Florida
4 Statutes, is amended to read:

5 122.03 Contributions; participants; prior service
6 credit.--

7 (7) A member of the retirement system created by this
8 chapter who has been eligible or becomes eligible to receive
9 workers' compensation payments for an injury or illness
10 occurring during his or her employment while a member of any
11 state retirement system shall, upon his or her return to
12 active employment with a covered employer for 1 calendar month
13 or upon his or her approval for disability retirement in
14 accordance with s. 122.09, receive full retirement credit for
15 the period prior to such return to active employment or
16 disability retirement for which the workers' compensation
17 payments were received. However, no member may receive
18 retirement credit for any such period occurring after the
19 earlier of the date of maximum medical improvement ~~has been~~
20 ~~attained~~ as defined in s. 440.02~~(9)~~ or the date termination
21 has occurred as defined in s. 121.021(39). The employer of
22 record at the time of the worker's compensation injury or
23 illness shall make the required employee and employer
24 retirement contributions based on the member's rate of monthly
25 compensation immediately prior to receipt of workers'
26 compensation payments.

27 Section 26. Subsection (10) of section 238.06, Florida
28 Statutes, is amended to read:

29 238.06 Membership application, creditable service, and
30 time for making contributions.--

31

1 (10) A member of the retirement system created by this
2 chapter who has been eligible or becomes eligible to receive
3 workers' compensation payments for an injury or illness
4 occurring during his or her employment while a member of any
5 state retirement system shall, upon his or her return to
6 active employment with a covered employer for 1 calendar month
7 or upon his or her approval for disability retirement in
8 accordance with s. 238.07, receive full retirement credit for
9 the period prior to such return to active employment or
10 disability retirement for which the workers' compensation
11 payments were received. However, no member may receive
12 retirement credit for any such period occurring after the
13 earlier of the date of maximum medical improvement ~~has been~~
14 ~~attained~~ as defined in s. 440.02~~(9)~~ or the date termination
15 has occurred as defined in s. 121.021(39). The employer of
16 record at the time of the worker's compensation injury or
17 illness shall make the required employee and employer
18 retirement contributions based on the member's rate of monthly
19 compensation immediately prior to his or her receiving
20 workers' compensation payments.

21 Section 27. Subsection (1) of section 440.10, Florida
22 Statutes, is amended to read:

23 440.10 Liability for compensation.--

24 (1)(a) Every employer coming within the provisions of
25 this chapter, including any brought within the chapter by
26 waiver of exclusion or of exemption, shall be liable for, and
27 shall secure, the payment to his or her employees, or any
28 physician, surgeon, or pharmacist providing services under the
29 provisions of s. 440.13, of the compensation payable under ss.
30 440.13, 440.15, and 440.16. Any contractor or subcontractor
31 who engages in any public or private construction in the state

1 shall secure and maintain compensation for his or her
2 employees under this chapter as provided in s. 440.38.

3 (b) In case a contractor sublets any part or parts of
4 his or her contract work to a subcontractor or subcontractors,
5 all of the employees of such contractor and subcontractor or
6 subcontractors engaged on such contract work shall be deemed
7 to be employed in one and the same business or establishment;
8 and the contractor shall be liable for, and shall secure, the
9 payment of compensation to all such employees, except to
10 employees of a subcontractor who has secured such payment.

11 (c) A contractor may require a subcontractor to
12 provide evidence of workers' compensation insurance or a copy
13 of his or her certificate of election. A subcontractor
14 electing to be exempt as a sole proprietor, partner, or
15 officer of a corporation shall provide a copy of his or her
16 certificate of election to the contractor.

17 (d)1. If a contractor becomes liable for the payment
18 of compensation to the employees of a subcontractor who has
19 failed to secure such payment in violation of s. 440.38, the
20 contractor or other third-party payor shall be entitled to
21 recover from the subcontractor all benefits paid or payable
22 plus interest unless the contractor and subcontractor have
23 agreed in writing that the contractor will provide coverage.

24 2. If a contractor or third-party payor becomes liable
25 for the payment of compensation to the employee of a
26 subcontractor who is actively engaged in the construction
27 industry and has elected to be exempt from the provisions of
28 this chapter, but whose election is invalid, the contractor or
29 third-party payor may recover from the claimant, partnership,
30 or corporation all benefits paid or payable plus interest,
31

1 unless the contractor and the subcontractor have agreed in
2 writing that the contractor will provide coverage.

3 (e) A subcontractor is not liable for the payment of
4 compensation to the employees of another subcontractor on such
5 contract work and is not protected by the
6 exclusiveness-of-liability provisions of s. 440.11 from action
7 at law or in admiralty on account of injury of such employee
8 of another subcontractor.

9 (f) If an employer willfully fails to secure
10 compensation as required by this chapter, the division may
11 assess against the employer a penalty not to exceed \$5,000 for
12 each employee of that employer who is classified by the
13 employer as an independent contractor but who is found by the
14 division to not meet the criteria for an independent
15 contractor that are set forth in s. 440.02.

16 (g) For purposes of this section, a person is
17 conclusively presumed to be an independent contractor if:

18 1. The independent contractor provides the general
19 contractor with an affidavit stating that he or she meets all
20 the requirements of s. 440.02~~(15)~~(14)(d); and

21 2. The independent contractor provides the general
22 contractor with a valid certificate of workers' compensation
23 insurance or a valid certificate of exemption issued by the
24 division.

25
26 A sole proprietor, partner, or officer of a corporation who
27 elects exemption from this chapter by filing a certificate of
28 election under s. 440.05 may not recover benefits or
29 compensation under this chapter. An independent contractor
30 who provides the general contractor with both an affidavit
31 stating that he or she meets the requirements of s.

1 440.02(15)(14)(d) and a certificate of exemption is not an
2 employee under s. 440.02(15)(14)(c) and may not recover
3 benefits under this chapter. For purposes of determining the
4 appropriate premium for workers' compensation coverage,
5 carriers may not consider any person who meets the
6 requirements of this paragraph to be an employee.

7 Section 28. Subsection (1) of section 440.104, Florida
8 Statutes, is amended to read:

9 440.104 Competitive bidder; civil actions.--

10 (1) Any person engaged in the construction industry,
11 as provided in s. 440.02(7), who loses a competitive bid for a
12 contract shall have a cause of action for damages against the
13 person awarded the contract for which the bid was made, if the
14 person making the losing bid establishes that the winning
15 bidder knew or should have known that he or she was in
16 violation of s. 440.10, s. 440.105, or s. 440.38 while
17 performing the work under the contract.

18 Section 29. Subsection (4) of section 440.14, Florida
19 Statutes, is amended to read:

20 440.14 Determination of pay.--

21 (4) Upon termination of the employee or upon
22 termination of the payment of fringe benefits of any employee
23 who is collecting indemnity benefits pursuant to s. 440.15(2)
24 or (3)(b), the employer shall within 7 days of such
25 termination file a corrected 13-week wage statement reflecting
26 the wages paid and the fringe benefits that had been paid to
27 the injured employee, as provided ~~defined~~ in s.
28 440.02(28)(27).

29 Section 30. Sections 20.171 and 440.4416, Florida
30 Statutes, are repealed.

31

