

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5			ORIGINAL STAMP BELOW
6			
7			
8			
9			
10			

11 The Committee on Fiscal Policy & Resources offered the
12 following:

13
14 **Amendment (with title amendment)**

15 Remove everything after the enacting clause

16
17 and insert:

18 Section 1. Subsections (1), (2), and (3) of section
19 440.38, Florida Statutes, are amended to read:

20 440.38 Security for compensation; insurance carriers
21 and self-insurers.--

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

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

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

Amendment No. 1 (for drafter's use only)

1 ~~division of its financial ability to pay such compensation~~
2 individually and on behalf of its subsidiary and affiliated
3 companies with employees in this state and receiving an
4 authorization from the Department of Insurance ~~division~~ to pay
5 such compensation directly. The association shall review the
6 financial strength of applicants for membership, current
7 members, and former members and make recommendations to the
8 Department of Insurance regarding their qualifications to
9 self-insure in accordance with this section and ss. 440.385
10 and 440.386. The department shall act in accordance with the
11 recommendations unless it finds by clear and convincing
12 evidence that the recommendations are erroneous.~~the following~~
13 ~~provisions:~~

14 1. As a condition of authorization under paragraph
15 (a), the association ~~division~~ may recommend that the
16 Department of Insurance require an employer to deposit with
17 the association ~~division~~ a qualifying security deposit. The
18 association ~~division~~ shall recommend ~~determine~~ the type and
19 amount of the qualifying security deposit and shall prescribe
20 conditions for the qualifying security deposit, which shall
21 include authorization for the association ~~division~~ to call the
22 qualifying security deposit in the case of default to pay
23 compensation awards and related expenses of the association.
24 ~~In addition, the division shall require,~~As a condition to
25 authorization to self-insure, the employer shall provide proof
26 that the employer has provided for competent personnel with
27 whom to deliver benefits and to provide a safe working
28 environment. ~~Further,~~The employer ~~division~~ shall also provide
29 evidence of ~~require such employer to carry~~ reinsurance at
30 levels that will ensure the financial strength and actuarial
31 soundness of such employer in accordance with rules adopted

Amendment No. 1 (for drafter's use only)

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

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

Amendment No. 1 (for drafter's use only)

1 a certified opinion until such time as the employer meets the
2 requirements of subparagraph 1. The qualifying security
3 deposit shall be adjusted at the time of each such annual
4 report. Upon the failure of the employer to timely provide
5 such opinion or to timely provide a security deposit in an
6 amount equal to 1.5 times the value certified in the latest
7 opinion, the association shall provide that information to the
8 Department of Insurance along with a recommendation, and the
9 Department of Insurance division shall then revoke such
10 employer's authorization to self-insure, ~~and such Failure to~~
11 comply with this subparagraph constitutes ~~shall be deemed to~~
12 ~~constitute~~ an immediate serious danger to the public health,
13 safety, or welfare sufficient to justify the summary
14 suspension of the employer's authorization to self-insure
15 pursuant to s. 120.68.

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

Amendment No. 1 (for drafter's use only)

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

13 4. A qualifying security deposit shall consist, at the
14 option of the employer, of:

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

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

26 5. The qualifying security deposit shall be held by
27 the association ~~division~~ exclusively for the benefit of
28 workers' compensation claimants. The security shall not be
29 subject to assignment, execution, attachment, or any legal
30 process whatsoever, except as necessary to guarantee the
31 payment of compensation under this chapter. No surety bond may

Amendment No. 1 (for drafter's use only)

1 be terminated, and no letter of credit may be allowed to
2 expire, without 90 days' prior written notice to the
3 association division and the deposit by the self-insuring
4 employer of some other qualifying security deposit of equal
5 value within 10 business days after such notice. Failure to
6 provide such written notice or failure to timely provide
7 qualifying replacement security after such notice shall
8 constitute grounds for the association division to call or sue
9 upon the surety bond or to exercise its rights under a letter
10 of credit. Current self-insured employers must comply with
11 this section on or before December 31, 2001, or upon the
12 maturity of existing security deposits, whichever occurs
13 later. The Department of Insurance division may specify by
14 rule the amount of the qualifying security deposit required
15 prior to authorizing an employer to self-insure and the amount
16 of net worth required for an employer to qualify for
17 authorization to self-insure;

18 (c) By entering into a contract with a public utility
19 under an approved utility-provided self-insurance program as
20 set forth in s. 624.46225 in effect as of July 1, 1983. The
21 division shall adopt rules to implement this paragraph;

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

25 (e) In accordance with s. 440.135, an employer, other
26 than a local government unit, may elect coverage under the
27 Workers' Compensation Law and retain the benefit of the
28 exclusiveness of liability provided in s. 440.11 by obtaining
29 a 24-hour health insurance policy from an authorized property
30 and casualty insurance carrier or an authorized life and
31 health insurance carrier, or by participating in a fully or

Amendment No. 1 (for drafter's use only)

1 partially self-insured 24-hour health plan that is established
2 or maintained by or for two or more employers, so long as the
3 law of this state is not preempted by the Employee Retirement
4 Income Security Act of 1974, Pub. L. No. 93-406, or any
5 amendment to that law, which policy or plan must provide, for
6 at least occupational injuries and illnesses, medical benefits
7 that are comparable to those required by this chapter. A local
8 government unit, as a single employer, in accordance with s.
9 440.135, may participate in the 24-hour health insurance
10 coverage plan referenced in this paragraph. Disputes and
11 remedies arising under policies issued under this section are
12 governed by the terms and conditions of the policies and under
13 the applicable provisions of the Florida Insurance Code and
14 rules adopted under the insurance code and other applicable
15 laws of this state. The 24-hour health insurance policy may
16 provide for health care by a health maintenance organization
17 or a preferred provider organization. The premium for such
18 24-hour health insurance policy shall be paid entirely by the
19 employer. The 24-hour health insurance policy may use
20 deductibles and coinsurance provisions that require the
21 employee to pay a portion of the actual medical care received
22 by the employee. If an employer obtains a 24-hour health
23 insurance policy or self-insured plan to secure payment of
24 compensation as to medical benefits, the employer must also
25 obtain an insurance policy or policies that provide indemnity
26 benefits as follows:

- 27 1. If indemnity benefits are provided only for
28 occupational-related disability, such benefits must be
29 comparable to those required by this chapter.
- 30 2. If indemnity benefits are provided for both
31 occupational-related and nonoccupational-related disability,

Amendment No. 1 (for drafter's use only)

1 such benefits must be comparable to those required by this
2 chapter, except that they must be based on 60 percent of the
3 average weekly wages.

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

6 4. Policies providing coverage under this subsection
7 must use prescribed and acceptable underwriting standards,
8 forms, and policies approved by the Department of Insurance.
9 If any insurance policy that provides coverage under this
10 section is canceled, terminated, or nonrenewed for any reason,
11 the cancellation, termination, or nonrenewal is ineffective
12 until the self-insured employer or insurance carrier or
13 carriers notify the division and the Department of Insurance
14 of the cancellation, termination, or nonrenewal, and until the
15 division has actually received the notification. The division
16 must be notified of replacement coverage under a workers'
17 compensation and employer's liability insurance policy or plan
18 by the employer prior to the effective date of the
19 cancellation, termination, or nonrenewal; or

20 (f) By entering into a contract with an individual
21 self-insurer under an approved individual
22 self-insurer-provided self-insurance program as set forth in
23 s. 624.46225. The division may adopt rules to administer this
24 subsection.

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

29 (b) The Department of Insurance ~~division~~ shall adopt
30 rules requiring self-insurers to file any reports necessary to
31 fulfill the requirements of this chapter. Any self-insurer who

Amendment No. 1 (for drafter's use only)

1 fails to file any report as prescribed by the rules adopted by
2 the Department of Insurance ~~division~~ shall be subject to a
3 civil penalty ~~not to exceed \$100 for each such failure.~~

4 (3)(a) The license of any stock company or mutual
5 company or association or exchange authorized to do insurance
6 business in the state shall for good cause, upon
7 recommendation of the division, be suspended or revoked by the
8 Department of Insurance. No suspension or revocation shall
9 affect the liability of any carrier already incurred.

10 (b) The Department of Insurance ~~division~~ shall suspend
11 or revoke any authorization to a self-insurer for failure to
12 comply with this section or for good cause, as defined by rule
13 of the department ~~division~~. No suspension or revocation shall
14 affect the liability of any self-insurer already incurred.

15 (c) Violation of s. 440.381 by a self-insurance fund
16 shall result in the imposition of a fine not to exceed \$1,000
17 per audit if the self-insurance fund fails to act on said
18 audits by correcting errors in employee classification or
19 accepted applications for coverage where it knew employee
20 classifications were incorrect. Such fines shall be levied by
21 the division and deposited into the Workers' Compensation
22 Administration Trust Fund.

23 Section 2. Section 440.385, Florida Statutes, is
24 amended to read:

25 440.385 Florida Self-Insurers Guaranty Association,
26 Incorporated.--

27 (1) CREATION OF ASSOCIATION.--

28 (a) There is created a nonprofit corporation to be
29 known as the "Florida Self-Insurers Guaranty Association,
30 Incorporated," hereinafter referred to as "the association."
31 Upon incorporation of the association, all individual

Amendment No. 1 (for drafter's use only)

1 self-insurers as defined in ss. 440.02(23)(a) and
2 440.38(1)(b), other than individual self-insurers which are
3 public utilities or governmental entities, shall be members of
4 the association as a condition of their authority to
5 individually self-insure in this state. The association
6 ~~corporation~~ shall perform its functions under a plan of
7 operation as established and approved under subsection (5) and
8 shall exercise its powers and duties through a board of
9 directors as established under subsection (2). The association
10 ~~corporation~~ shall have those powers granted or permitted
11 associations ~~corporations~~ not for profit, as provided in
12 chapter 617. The activities of the association shall be
13 subject to review by the Department of Insurance. The
14 Department of Insurance shall have oversight responsibility as
15 set forth in this section. The association is specifically
16 authorized to enter into agreements with the State of Florida
17 to perform specified services.

18 (b) A member may voluntarily withdraw from the
19 association when the member voluntarily terminates the
20 self-insurance privilege and pays all assessments due to the
21 date of such termination. However, the withdrawing member
22 shall continue to be bound by the provisions of this section
23 relating to the period of his or her membership and any claims
24 charged pursuant thereto. The withdrawing member who is a
25 member on or after January 1, 1991, shall also be required to
26 provide to the association ~~division~~ upon withdrawal, and at
27 12-month intervals thereafter, satisfactory proof, including,
28 if requested by the association, a report of known and
29 potential claims certified by a member of the American Academy
30 of Actuaries, that it continues to meet the standards of s.
31 440.38(1)(b)1. in relation to claims incurred while the

Amendment No. 1 (for drafter's use only)

1 withdrawing member exercised the privilege of self-insurance.
2 Such reporting shall continue until the withdrawing member
3 demonstrates to ~~satisfies~~ the association ~~division~~ that there
4 is no remaining value to claims incurred while the withdrawing
5 member was self-insured. If a withdrawing member fails or
6 refuses to timely provide an actuarial report to the
7 association, the association may obtain an order from a
8 circuit court requiring the member to produce such a report
9 and ordering any other relief that the court determines
10 appropriate. The association is entitled to recover all
11 reasonable costs and attorney's fees expended in such
12 proceedings. If during this reporting period the withdrawing
13 member fails to meet the standards of s. 440.38(1)(b)1., the
14 withdrawing member who is a member on or after January 1,
15 1991, shall thereupon, and at 6-month intervals thereafter,
16 provide to the ~~division and the~~ association the certified
17 opinion of an independent actuary who is a member of the
18 American Academy ~~Society~~ of Actuaries of the actuarial present
19 value of the determined and estimated future compensation
20 payments of the member for claims incurred while the member
21 was a self-insurer, using a discount rate of 4 percent. With
22 each such opinion, the withdrawing member shall deposit with
23 the association ~~division~~ security in an amount equal to the
24 value certified by the actuary and of a type that is
25 acceptable for qualifying security deposits under s.
26 440.38(1)(b). The withdrawing member shall continue to
27 provide such opinions and to provide such security until such
28 time as the latest opinion shows no remaining value of claims.
29 The association has a cause of action against a withdrawing
30 member, and against any successor of a withdrawing member, who
31 fails to timely provide the required opinion or who fails to

Amendment No. 1 (for drafter's use only)

1 maintain the required deposit with the association division.
2 The association shall be entitled to recover a judgment in the
3 amount of the actuarial present value of the determined and
4 estimated future compensation payments of the withdrawing
5 member for claims incurred during the time that the
6 withdrawing member exercised the privilege of self-insurance,
7 together with reasonable attorney's fees. The association is
8 also entitled to recover reasonable attorney's fees in any
9 action to compel production of any actuarial report required
10 by this statute. For purposes of this section, the successor
11 of a withdrawing member means any person, business entity, or
12 group of persons or business entities, which holds or acquires
13 legal or beneficial title to the majority of the assets or the
14 majority of the shares of the withdrawing member.

15 (2) BOARD OF DIRECTORS.--The board of directors of the
16 association shall consist of nine persons and shall be
17 organized as established in the plan of operation. All board
18 members shall be experienced in self-insurance in this state.
19 ~~With respect to initial appointments, the Secretary of Labor~~
20 ~~and Employment Security shall, by July 15, 1982, approve and~~
21 ~~appoint to the board persons who are experienced with~~
22 ~~self-insurance in this state and who are recommended by the~~
23 ~~individual self-insurers in this state required to become~~
24 ~~members of the association pursuant to the provisions of~~
25 ~~paragraph (1)(a). In the event the secretary finds that any~~
26 ~~person so recommended does not have the necessary~~
27 ~~qualifications for service on the board and a majority of the~~
28 ~~board has been appointed, the secretary shall request the~~
29 ~~directors thus far approved and appointed to recommend another~~
30 ~~person for appointment to the board.~~ Each director shall serve
31 for a 4-year term and may be reappointed. Appointments after

Amendment No. 1 (for drafter's use only)

1 January 1, 2002,~~other than initial appointments~~ shall be made
2 by the Department of Insurance ~~Secretary of Labor and~~
3 ~~Employment Security~~ upon recommendation of members of the
4 association. Any vacancy on the board shall be filled for the
5 remaining period of the term in the same manner as
6 appointments other than initial appointments are made. Each
7 director shall be reimbursed for expenses incurred in carrying
8 out the duties of the board on behalf of the association.

9 (3) POWERS AND DUTIES.--

10 (a) Upon creation of the Insolvency Fund pursuant to
11 the provisions of subsection (4), the association is obligated
12 for payment of compensation under this chapter to insolvent
13 members' employees resulting from incidents and injuries
14 existing prior to the member becoming an insolvent member and
15 from incidents and injuries occurring within 30 days after the
16 member has become an insolvent member, provided the incidents
17 giving rise to claims for compensation under this chapter
18 occur during the year in which such insolvent member is a
19 member of the guaranty fund and was assessable pursuant to the
20 plan of operation, and provided the employee makes timely
21 claim for such payments according to procedures set forth by a
22 court of competent jurisdiction over the delinquency or
23 bankruptcy proceedings of the insolvent member. Such
24 obligation includes only that amount due the injured worker or
25 workers of the insolvent member under this chapter. In no
26 event is the association obligated to a claimant in an amount
27 in excess of the obligation of the insolvent member. The
28 association shall be deemed the insolvent employer for
29 purposes of this chapter to the extent of its obligation on
30 the covered claims and, to such extent, shall have all rights,
31 duties, and obligations of the insolvent employer as if the

Amendment No. 1 (for drafter's use only)

1 employer had not become insolvent. However, in no event shall
2 the association be liable for any penalties or interest.

3 (b) The association may:

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

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

8 3. Sue or be sued.

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

11 5. Purchase such reinsurance as is determined
12 necessary pursuant to the plan of operation.

13 6. Review all applicants for membership in the
14 association to determine whether the applicant is qualified
15 for membership under the law. The association shall recommend
16 to the Department of Insurance that the application be
17 accepted or rejected based on the criteria set forth in s.
18 440.38(1)(b). The Department of Insurance shall approve or
19 disapprove the application as provided in paragraph (6)(a).

20 ~~Prior to a final determination by the Division of Workers'~~
21 ~~Compensation as to whether or not to approve any applicant for~~
22 ~~membership in the association, the association may issue~~
23 ~~opinions to the division concerning any applicant, which~~
24 ~~opinions shall be considered by the division prior to any~~
25 ~~final determination.~~

26 7. Collect and review financial information from
27 employers and make recommendations to the Department of
28 Insurance regarding the appropriate security deposit and
29 reinsurance amounts necessary for an employer to demonstrate
30 that it has the financial strength necessary to assure the
31 timely payment of all current and future claims. The

Amendment No. 1 (for drafter's use only)

1 association may audit and examine an employer to verify the
2 financial strength of its current and former members. If the
3 association determines that a current or former self-insured
4 employer does not have the financial strength necessary to
5 assure the timely payment of all current and estimated future
6 claims, the association may recommend to the Department of
7 Insurance that the department:

8 a. Revoke the employer's self-insurance privilege.
9 b. Require the employer to provide a certified opinion
10 of an independent actuary who is a member of the American
11 Academy of Actuaries as to the actuarial present value of the
12 employer's estimated current and future compensation payments,
13 using a 4-percent discount rate.

14 c. Require an increase in the employer's security
15 deposit in an amount determined by the association to be
16 necessary to assure payment of compensation claims. The
17 Department of Insurance shall act on such recommendations as
18 provided in paragraph (6)(a). The association has a cause of
19 action against an employer, and against any successor of an
20 employer, who fails to provide an additional security deposit
21 required by the Department of Insurance. The association
22 shall recover a judgment in the amount of the requested
23 additional security deposit together with reasonable
24 attorney's fees. For the purposes of this section, the
25 successor of an employer is any person, business entity, or
26 group of persons or business entities which holds or acquires
27 legal or beneficial title to the majority of the assets or the
28 majority of the shares of the employer.

29 ~~8.7.~~ Charge fees to any member of the association to
30 cover the actual costs of examining the financial and safety
31 conditions of that member.

Amendment No. 1 (for drafter's use only)

1 9.8. Charge an applicant for membership in the
2 association a fee sufficient to cover the actual costs of
3 examining the financial condition of the applicant.

4 10. Implement any procedures necessary to ensure
5 compliance with regulatory actions taken by the Department of
6 Insurance.

7 (c)1. To the extent necessary to secure funds for the
8 payment of covered claims and also to pay the reasonable costs
9 to administer them, the association, subject to approval by
10 the Department of Insurance Labor and Employment Security,
11 upon certification of the board of directors, shall levy
12 assessments based on the annual written normal premium each
13 employer would have paid had the employer not been
14 self-insured. Every assessment shall be made as a uniform
15 percentage of the figure applicable to all individual
16 self-insurers, provided that the assessment levied against any
17 self-insurer in any one year shall not exceed 1 percent of the
18 annual written normal premium during the calendar year
19 preceding the date of the assessment. Assessments shall be
20 remitted to and administered by the board of directors in the
21 manner specified by the approved plan. Each employer so
22 assessed shall have at least 30 days' written notice as to the
23 date the assessment is due and payable. The association shall
24 levy assessments against any newly admitted member of the
25 association so that the basis of contribution of any newly
26 admitted member is the same as previously admitted members,
27 provision for which shall be contained in the plan of
28 operation.

29 2. If, in any one year, funds available from such
30 assessments, together with funds previously raised, are not
31 sufficient to make all the payments or reimbursements then

Amendment No. 1 (for drafter's use only)

1 owing, the funds available shall be prorated, and the unpaid
2 portion shall be paid as soon thereafter as sufficient
3 additional funds become available.

4 3. Funds may be allocated or paid from the Workers'
5 Compensation Administration Trust Fund to contract with the
6 association to perform services required by law. However, no
7 state funds of any kind shall be allocated or paid to the
8 association or any of its accounts for payment of covered
9 claims or related expenses except those state funds accruing
10 to the association by and through the assignment of rights of
11 an insolvent employer. The Department of Insurance may not
12 levy any assessment on the Florida Self-Insurance Guaranty
13 Association.

14 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
15 operation ~~or the adoption of rules by the Department of Labor~~
16 ~~and Employment Security pursuant to subsection (5)~~, there
17 shall be created an Insolvency Fund to be managed by the
18 association.

19 (a) The Insolvency Fund is created for purposes of
20 meeting the obligations of insolvent members incurred while
21 members of the association and after the exhaustion of any
22 security deposit bond, as required under this chapter.
23 However, if such security deposit bond, surety, or reinsurance
24 policy is payable to the Florida Self-Insurers Guaranty
25 Association, the association shall commence to provide
26 benefits out of the Insolvency Fund and be reimbursed from the
27 security deposit bond, surety, or reinsurance policy. The
28 method of operation of the Insolvency Fund shall be defined in
29 the plan of operation as provided in subsection (5).

30 (b) The Department of Insurance shall have the
31 authority to audit the financial soundness of the Insolvency

Amendment No. 1 (for drafter's use only)

1 Fund annually.

2 (c) The Department of Insurance may offer certain
3 amendments to the plan of operation to the board of directors
4 of the association for purposes of assuring the ongoing
5 financial soundness of the Insolvency Fund and its ability to
6 meet the obligations of this section.

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

9 (5) PLAN OF OPERATION.--The association shall operate
10 pursuant to a plan of operation approved by the board of
11 directors. The plan of operation in effect on January 1,
12 2002, and approved by the Department of Labor and Employment
13 Security shall remain in effect. However, any amendments to
14 the plan shall not become effective until approved by the
15 Department of Insurance.~~By September 15, 1982, the board of~~
16 ~~directors shall submit to the Department of Labor and~~
17 ~~Employment Security a proposed plan of operation for the~~
18 ~~administration of the association and the Insolvency Fund.~~

19 (a) The purpose of the plan of operation shall be to
20 provide the association and the board of directors with the
21 authority and responsibility to establish the necessary
22 programs and to take the necessary actions to protect against
23 the insolvency of a member of the association. In addition,
24 the plan shall provide that the members of the association
25 shall be responsible for maintaining an adequate Insolvency
26 Fund to meet the obligations of insolvent members provided for
27 under this act and shall authorize the board of directors to
28 contract and employ those persons with the necessary expertise
29 to carry out this stated purpose. By January 1, 2003, the
30 board of directors shall submit to the Department of Insurance
31 a proposed plan of operation for the administration of the

Amendment No. 1 (for drafter's use only)

1 association. The Department of Insurance shall approve the
2 plan by order, consistent with this section. The Department of
3 Insurance shall approve any amendments to the plan, consistent
4 with this section, which are determined appropriate to carry
5 out the duties and responsibilities of the association.

6 ~~(b) The plan of operation, and any amendments thereto,~~
7 ~~shall take effect upon approval in writing by the department.~~
8 ~~If the board of directors fails to submit a plan by September~~
9 ~~15, 1982, or fails to make required amendments to the plan~~
10 ~~within 30 days thereafter, the department shall promulgate~~
11 ~~such rules as are necessary to effectuate the provisions of~~
12 ~~this subsection. Such rules shall continue in force until~~
13 ~~modified by the department or superseded by a plan submitted~~
14 ~~by the board of directors and approved by the department.~~

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

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

18 1. Establish the procedures whereby all the powers and
19 duties of the association under subsection (3) will be
20 performed.

21 2. Establish procedures for handling assets of the
22 association.

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

25 4. Establish procedures by which claims may be filed
26 with the association and establish acceptable forms of proof
27 of covered claims. Notice of claims to the receiver or
28 liquidator of the insolvent employer shall be deemed notice to
29 the association or its agent, and a list of such claims shall
30 be submitted periodically to the association or similar
31 organization in another state by the receiver or liquidator.

Amendment No. 1 (for drafter's use only)

1 5. Establish regular places and times for meetings of
2 the board of directors.

3 6. Establish procedures for records to be kept of all
4 financial transactions of the association and its agents and
5 the board of directors.

6 7. Provide that any member employer aggrieved by any
7 final action or decision of the association may appeal to the
8 Department of Insurance within 30 days after the action or
9 decision.

10 8. Establish the procedures whereby recommendations of
11 candidates for the board of directors shall be submitted to
12 the Department of Insurance.

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

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

30 (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~
31 ~~AND EMPLOYMENT SECURITY.--~~

Amendment No. 1 (for drafter's use only)

1 ~~(a)~~ The Department of Insurance shall:
2 (a) Review recommendations of the association
3 concerning whether current or former self-insured employers or
4 members of the association have the financial strength
5 necessary to ensure the timely payment of all current and
6 estimated future claims. If the association determines an
7 employer does not have the financial strength necessary to
8 ensure the timely payment of all current and future claims and
9 recommends action pursuant to paragraph (3)(b), the Department
10 of Insurance shall take such action as necessary to order the
11 employer to comply with the recommendation, unless the
12 department finds by clear and convincing evidence that the
13 recommendation is erroneous.
14 (b) Contract with the association for services, which
15 may include, but are not limited to:
16 1. Processing applications for self-insurance.
17 2. Collecting and reviewing financial statements and
18 loss reserve information from individual self-insurers.
19 3. Collecting and maintaining files for original
20 security deposit documents and reinsurance policies from
21 individual self-insurers and, if necessary, perfecting
22 security interests in security deposits.
23 4. Processing compliance documentation for individual
24 self-insurers and providing the same to the department.
25 5. Collecting all data necessary to calculate annual
26 premium for all individual self-insurers, including individual
27 self-insurers that are public utilities or governmental
28 entities, and providing such calculated annual premium to the
29 division for assessment purposes.
30 6. Inspecting and auditing annually, if necessary, the
31 payroll and other records of each individual self-insurer,

Amendment No. 1 (for drafter's use only)

1 including individual self-insurers that are public utilities
2 or governmental entities, in order to determine the wages paid
3 by each individual self-insurer, the premium such individual
4 self-insurer would have to pay if insured, and all payments of
5 compensation made by such individual self-insurer during each
6 prior period with the results of such audit provided to the
7 division. For the purposes of this section, the payroll
8 records of each individual self-insurer shall be open to
9 inspection and audit by the association and the Department of
10 Insurance, or their authorized representatives, during regular
11 business hours.

12 7. Processing applications and making recommendations
13 with respect to the qualification of a business to be approved
14 to provide, or to continue to provide, services to individual
15 self-insurers in the areas of underwriting, claims adjusting,
16 loss control, and safety engineering.

17 8. Providing legal representation to implement the
18 administration and audit of individual self-insurers and
19 making recommendations regarding prosecution of any
20 administrative or legal proceedings necessitated by the
21 regulation of the individual self-insurers by the Department
22 of Insurance.

23 (c) Contract with an attorney or attorneys recommended
24 by the association for representation of the Department of
25 Insurance in any administrative or legal proceedings
26 necessitated by the recommended regulation of the individual
27 self-insurers.

28 ~~1. Notify the association of the existence of an~~
29 ~~insolvent employer not later than 3 days after it receives~~
30 ~~notice of the determination of insolvency.~~

31 ~~2. Upon request of the board of directors, provide the~~

Amendment No. 1 (for drafter's use only)

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

Amendment No. 1 (for drafter's use only)

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

9 ~~(g)3.~~ Revoke the designation of any servicing facility
10 if the Department of Insurance finds that claims are being
11 handled unsatisfactorily.

12 (7) EFFECT OF PAID CLAIMS.--

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

29 (b) The receiver, liquidator, or statutory successor
30 of an insolvent member shall be bound by settlements of
31 covered claims by the association or a similar organization in

Amendment No. 1 (for drafter's use only)

1 another state. The court having jurisdiction shall grant such
2 claims priority against the assets of the insolvent member
3 equal to that to which the claimant would have been entitled
4 in the absence of this section. The expense of the association
5 or similar organization in handling claims shall be accorded
6 the same priority as the expenses of the liquidator.

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

13 (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid
14 in the detection and prevention of employer insolvencies+
15 ~~(a)~~ upon determination by majority vote that any
16 member employer may be insolvent or in a financial condition
17 hazardous to the employees thereof or to the public, it shall
18 be the duty of the board of directors to notify the Department
19 of Insurance ~~Labor and Employment Security~~ of any information
20 indicating such condition.

21 ~~(b) The board of directors may, upon majority vote,~~
22 ~~request that the department determine the condition of any~~
23 ~~member employer which the board in good faith believes may no~~
24 ~~longer be qualified to be a member of the association. Within~~
25 ~~30 days of the receipt of such request or, for good cause~~
26 ~~shown, within a reasonable time thereafter, the department~~
27 ~~shall make such determination and shall forthwith advise the~~
28 ~~board of its findings. Each request for a determination shall~~
29 ~~be kept on file by the department, but the request shall not~~
30 ~~be open to public inspection prior to the release of the~~
31 ~~determination to the public.~~

Amendment No. 1 (for drafter's use only)

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

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

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

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

21 (9) EXAMINATION OF THE ASSOCIATION.--The association
22 shall be subject to examination and regulation by the
23 Department of Insurance ~~labor and Employment Security~~. No
24 later than March 30 of each year, the board of directors shall
25 submit an audited a financial statement report for the
26 preceding calendar year in a form approved by the Department
27 of Insurance.

28 (10) IMMUNITY.--There shall be no liability on the
29 part of, and no cause of action of any nature shall arise
30 against, any member employer, the association or its agents or
31 employees, the board of directors, or the Department of

Amendment No. 1 (for drafter's use only)

1 ~~Insurance Labor and Employment Security~~ or its representatives
2 for any action taken by them in the performance of their
3 powers and duties under this section.

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

22 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
23 any other provision of this chapter, a covered claim, as
24 defined herein, with respect to which settlement is not
25 effected and pursuant to which suit is not instituted against
26 the insured of an insolvent member or the association within 1
27 year after the deadline for filing claims with the receiver of
28 the insolvent member, or any extension of the deadline, shall
29 thenceforth be barred as a claim against the association.

30 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired
31 by a member by refund, dividend, or otherwise from the

Amendment No. 1 (for drafter's use only)

1 association shall be payable within 30 days of receipt to the
2 Department of Insurance ~~insurance~~ for deposit with the
3 Treasurer to the credit of the General Insurance Fund. All
4 provisions of chapter 220 relating to penalties and interest
5 on delinquent corporate income tax payments apply to payments
6 due under this subsection.

7 Section 3. Subsections (2), (3), and (4) of section
8 440.386, Florida Statutes, are amended to read:

9 440.386 Individual self-insurers' insolvency;
10 conservation; liquidation.--

11 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
12 Department of Insurance or the Florida Self-Insurers Guaranty
13 Association, Incorporated, may commence a delinquency ~~any such~~
14 proceeding by application to the court for an order directing
15 the individual self-insurer to show cause why the Department
16 of Insurance or association should not have the relief sought
17 ~~prayed for. The Florida Self-Insurers Guaranty Association,~~
18 ~~incorporated, may petition the department to commence such~~
19 ~~proceedings, and upon receipt of such petition, the department~~
20 ~~shall commence such proceeding.~~ On the return of such order
21 to show cause, and after a full hearing, the court shall
22 either deny the application or grant the application, together
23 with such other relief as the nature of the case and the
24 interests of the claimants, creditors, stockholders, members,
25 subscribers, or public may require. The Department of
26 Insurance and the association shall give Florida Self-Insurers
27 ~~Guaranty Association, Incorporated, shall be given~~ reasonable
28 written notice to each other ~~by the department~~ of all hearings
29 which pertain to an adjudication of insolvency of a member
30 individual self-insurer.

31 (3) GROUNDS FOR LIQUIDATION.--The Department of

Amendment No. 1 (for drafter's use only)

1 Insurance or the association Insurance may apply to the court
2 for an order appointing a receiver and directing the receiver
3 to liquidate the business of a domestic individual
4 self-insurer if such individual self-insurer is insolvent.
5 ~~Florida Self-Insurers Guaranty Association, Incorporated, may~~
6 ~~petition the department to apply to the court for such order.~~
7 ~~Upon receipt of such petition, the department shall apply to~~
8 ~~the court for such order.~~

9 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
10 SELF-INSURERS.--

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

20 (b) An order to conserve the assets of an individual
21 self-insurer shall require the receiver forthwith to take
22 possession of the property of the receiver within the state
23 and to conserve it, subject to the further direction of the
24 court.

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

27 440.24 Enforcement of compensation orders;
28 penalties.--

29 (3) In any case where the employer is a self-insurer
30 and fails to comply with any compensation order of a judge of
31 compensation claims or court within 10 days after such order

Amendment No. 1 (for drafter's use only)

1 becomes final, the Department of Insurance ~~division~~ may
2 suspend or revoke any authorization previously given to the
3 employer to be ~~become~~ a self-insurer, and the Florida
4 Self-Insurer's Guaranty Association ~~division~~ may call or sue
5 upon the surety bond or exercise its rights under the letter
6 of credit ~~sell such of the securities~~ deposited by the ~~such~~
7 self-insurer with the Florida Self-Insurer's Guaranty
8 Association as a qualifying security deposit ~~division~~ as may
9 be necessary to satisfy the ~~such~~ order.

10 Section 5. Subsection (6) of section 440.51, Florida
11 Statutes, is amended to read:

12 440.51 Expenses of administration.--

13 (6)(a) The division may require from each carrier, at
14 such time and in accordance with such regulations as the
15 division may prescribe, reports in respect to all gross earned
16 premiums and of all payments of compensation made by such
17 carrier during each prior period, and may determine the
18 amounts paid by each carrier and the amounts paid by all
19 carriers during such period.

20 ~~(b) The Department of Insurance may require from each~~
21 ~~self-insurer, at such time and in accordance with such~~
22 ~~regulations as the Department of Insurance prescribes, reports~~
23 ~~in respect to wages paid, the amount of premiums such~~
24 ~~self-insurer would have to pay if insured, and all payments of~~
25 ~~compensation made by such self-insurer during each prior~~
26 ~~period, and may determine the amounts paid by each~~
27 ~~self-insurer and the amounts paid by all self-insurers during~~
28 ~~such period. For the purposes of this section, the payroll~~
29 ~~records of each self-insurer shall be open to annual~~
30 ~~inspection and audit by the Department of Insurance or its~~
31 ~~authorized representative, during regular business hours; and~~

Amendment No. 1 (for drafter's use only)

~~1 if any audit of such records of a self-insurer discloses a
2 deficiency in the amounts reported to the Department of
3 Insurance or in the amounts paid to the Department of
4 Insurance by a self-insurer pursuant to this section, the
5 Department of Insurance may assess the cost of such audit
6 against the self-insurer.~~

7 Section 6. All powers, duties, functions, rules,
8 records, and property of the Division of Workers' Compensation
9 of the Department of Labor and Employment Security related to
10 the regulation of individual, self-insured employers under
11 chapter 440, Florida Statutes, are transferred to the
12 Department of Insurance.

13 Section 7. The sum of \$183,750 is appropriated from
14 the Workers' Compensation Administration Trust Fund of the
15 Department of Labor and Employment Security to the Department
16 of Insurance for the purpose of contracting with the Florida
17 Self-Insured Guaranty Association to carry out the provisions
18 of this act during the 2002-2003 fiscal year.

19 Section 8. Six full-time equivalent positions within
20 the Division of Workers' Compensation of the Department of
21 Labor and Employment Security responsible for the regulation
22 and oversight of self-insured employers are eliminated.

23 Section 9. This act shall take effect October 1, 2002.
24
25

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

27 And the title is amended as follows:

28 On page 1, line 2,
29 remove: all of said lines,
30

31 and insert:

Amendment No. 1 (for drafter's use only)

1 self-insurers; amending s. 440.38, F.S.;

2 transferring operation of provisions requiring

3 the securing of payment of compensation by

4 employers from the Division of Workers'

5 Compensation of the Department of Labor and

6 Employment Security to the Florida

7 Self-Insurer's Guaranty Association,

8 Incorporated, and the Department of Insurance;

9 revising and clarifying requirements and

10 procedures; providing powers and duties of the

11 association and the departments; providing for

12 allocation or payment of state funds to the

13 association for certain purposes; providing

14 rulemaking authority; amending s. 440.385,

15 F.S.; revising and clarifying provisions

16 relating to the association's creation, board

17 of directors, powers and duties, insolvency

18 fund, and plan of operation; providing

19 additional powers of the association;

20 transferring the powers and duties of the

21 Department of Labor and Employment Security

22 relating to the association to the Department

23 of Insurance and revising such powers and

24 duties; providing additional powers and duties

25 of the Department of Insurance; providing for

26 oversight of the association by the department;

27 deleting certain provisions relating to

28 detection and prevention of employer

29 insolvencies; amending s. 440.386, F.S.;

30 providing parity for the association with the

31 Department of Insurance relating to proceedings

Amendment No. 1 (for drafter's use only)

1 for delinquency, liquidation, and conservation
2 of assets; amending s. 440.24, F.S.; providing
3 for the sale of securities on deposit to
4 satisfy a compensation order; amending s.
5 440.51, F.S.; eliminating provisions
6 authorizing the Department of Insurance to
7 require that self-insurers make certain
8 reports; eliminating provisions authorizing
9 certain audits; transferring the powers,
10 duties, functions, rules, records, and property
11 relating to the regulation of individual,
12 self-insured employers by the Department of
13 Labor and Employment Security to the Department
14 of Insurance; providing an appropriation;
15 eliminating specified positions; providing an
16 effective date.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31