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**DATE:** February 22, 2002

**HOUSE OF REPRESENTATIVES**  
**COUNCIL FOR COMPETITIVE COMMERCE**  
**ANALYSIS**

**BILL #:** CS/HB 319  
**RELATING TO:** Workers' Compensation Self-Insurers  
**SPONSOR(S):** The Committee on Insurance and Representative Clarke  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) INSURANCE YEAS 15 NAYS 0
  - (2) FISCAL POLICY & RESOURCES YEAS 10 NAYS 0
  - (3) COUNCIL FOR COMPETITIVE COMMERCE
  - (4)
  - (5)
- 

I. SUMMARY:

The Division of Workers' Compensation of the Department of Labor and Employment Security is responsible for reviewing the qualifications of employers seeking to individually self-insure their workers' compensation obligations and levying any applicable fines. It can approve, deny, suspend or revoke this privilege. The division also oversees the Florida Self-Insurers Guaranty Association (FSIGA), approving its plan of operation, levying necessary assessments, and commencing delinquency proceedings.

The bill transfers division authority to regulate workers' compensation individual self-insureds to the Department of Revenue. Regarding division authority to permit an employer to self-insure, the Department of Revenue would be required to accept the recommendation of FSIGA.

The bill provides the Department of Revenue with oversight authority over FSIGA, including the power to approve FSIGA's plan of operation. The bill transfers division authority to assess FSIGA members to the FSIGA, subject to approval by the department. The bill gives both the department and FSIGA power to commence delinquency proceedings and be appointed receiver. The bill requires the department to contract with FSIGA for certain services.

The bill would have budgetary implications for both the Department of Revenue and the Department of Labor and Employment Security, but provides for no appropriation or "type two" transfer. For fiscal year 2001-2002, the salary and benefits expense for the Division for transferred responsibilities is \$241,820.

**A strike-all amendment by the Committee on Fiscal Policy and Resources is traveling with the bill. The amendment adopts the language of CS/SB 398, which is substantively similar to the Committee Substitute by the Insurance Committee, except that it transfers authority to regulate worker's compensation individual self-insureds to the Department of Insurance. The amendment also makes an appropriation of \$183,750 and eliminates six full time equivalent positions.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Under Florida law, employers required to secure the payment of workers' compensation benefits must either purchase insurance from an insurer or, among other options, individually self-insure. Employers seeking to self-insure must be approved by the Division of Workers' Compensation (Division). The Division may require employers to post a qualifying security deposit. In the event a self-insured employer defaults on a payment, the Division is authorized to sell the security deposits of the self-insurer sufficient to pay compensation awards or to bring suit upon such bonds to ensure prompt payment of compensation.<sup>1</sup> The Division must suspend or revoke the privilege of an employer to self-insure for good cause as defined by rules adopted by the Department of Labor and Employment Security.

To guarantee payment of the covered claims of insolvent self-insurers, the Legislature created a private non-profit corporation known as the Florida Self-Insurers Guaranty Association (FSIGA).<sup>2</sup> It pays the covered claims of current and former members to the extent the self-insurer's assets are insufficient. All individual self-insurers, other than public utilities or government entities, must be members in order to be approved to individually self-insure in this state.

The FSIGA is regulated by the Division. The Division appoints the board of directors upon recommendations of the FSIGA members, approves the plan of operation for the administration of the FSIGA and its Insolvency Fund, levies assessments to pay covered claims when certified by the board, and examines the FSIGA. As of January 14, 2002, the FSIGA has 189 active members and 206 terminated members (members with outstanding reserves).

Responsibilities of the FSIGA include recommending board members, developing a plan of operation for administration of the FSIGA and the Insolvency Fund, certifying the levy of assessments to the Division, paying covered claims, purchasing reinsurance as needed, and reviewing all applications for membership and issuing opinions to the Division concerning prospective members (which the Division must consider before issuing any final determination as to their qualifications to self-insure).

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<sup>1</sup> s. 440.38, F.S.

<sup>2</sup> Three other guaranty associations, regulated by the Department of Insurance, exist specific to different lines of insurance: the Florida Insurance Guaranty Association, the Florida Life and Health Insurance Guaranty Association, and the Florida Workers' Compensation Insurance Guaranty Association.

The FSIGA is not a state agency and is prohibited from using state funds of any kind, including the Workers' Compensation Administration Trust Fund. It is funded by assessments levied against its members.

In the case of an insolvent self-insurer, the Department of Labor and Employment Security can commence a delinquency proceeding. The FSIGA may not commence such a proceeding, but can force the Department of Labor and Employment Security to do so through petition. The Department, but not the FSIGA, may apply to the court to be appointed receiver and be directed to liquidate the business of an individual self-insurer.

C. EFFECT OF PROPOSED CHANGES:

**Qualifying to Individually Self-Insure**

The authority to permit employers to individually self-insure for the payment of workers' compensation benefits would no longer rest with the Division. Division authority would be transferred to the FSIGA and the Department of Revenue. The FSIGA would review employer applications and make a recommendation to the Department of Revenue. The recommendation would be binding upon the Department of Revenue, unless the Department of Revenue could show by clear and convincing evidence that FSIGA erred.

The authority to require employers to post a qualifying security deposit would be transferred from the Division to the Department of Revenue, again acting on the recommendation of the FSIGA. The security deposit would be deposited with the FSIGA rather than the Division. Division authority to approve the forms and terms of qualifying security deposits, such as surety bonds and letters of credit, would be transferred to the FSIGA. Division rulemaking authority for setting the amount of the security deposit would be transferred to the Department of Revenue, as would all other Division rulemaking authority relating to self-insurance.

If requested by the FSIGA, individually self-insured employers would be required to submit an actuarial report describing the appropriate present value of reserves. This could be in addition to any required security deposit. The FSIGA could obtain a court order requiring the member to produce the requested report and would be entitled to recover incurred costs and attorney's fees. Division authority to suspend or revoke the self-insured status of an employer would be transferred to the Department of Revenue; however, Division authority to revoke the self-insured status of an employer for not maintaining a required security deposit or actuarial opinion concerning cash reserves would be transferred to the Department of Revenue. In this instance, the Department of Revenue could act only on the recommendation of the FSIGA. Division authority to levy fines for violations of the requirements for self-insurers would be transferred to the Department of Revenue.

**FSIGA**

As for the FSIGA, Department of Revenue authority would be characterized as "oversight" authority, although authority to "examine and regulate" the FSIGA would be transferred to the Department of Revenue from the Division. The FSIGA would operate under the plan of operation approved by the Division until one is approved by the Department of Revenue. The FSIGA would have until January 1, 2003, to submit a proposed plan. Division authority to assess member employers to pay claims would be transferred to the FSIGA, subject to approval by the Department of Revenue.

The FSIGA would be expressly authorized to recommend employers for membership and, absent clear and convincing evidence to the contrary, its recommendation would be binding on the Department of Revenue. Additionally, the FSIGA would collect and review financial information from employers and recommend an appropriate security deposit, if any, to the Department of

Revenue. The FSIGA could recommend that an employer's self-insured privilege be revoked, require employers to submit actuarial opinions concerning current and future compensation payments, and implement any procedures necessary to ensure compliance with Department of Revenue regulatory actions. The authority to audit the FSIGA's Insolvency Fund would be transferred from the Department of Labor and Employment Security to the Department of Revenue.

Authority to commence delinquency proceedings would be transferred from the Division to both the Department of Revenue and the FSIGA. The FSIGA would no longer have to petition to have the agency commence the proceedings. Either also could apply to the court to be appointed receiver.

The Department of Revenue would be required to contract with the FSIGA for services which could include processing applications from self-insurers, collecting and reviewing financial statements and loss reserve information from individual self-insurers, processing compliance documentation for individual self-insurers, and inspecting and auditing payroll records of individual self-insurers. The Department of Revenue would be required to contract with attorneys recommended by the FSIGA for representation of the Department of Revenue in any legal proceedings "necessitated by the recommended regulation of the individual self-insurers." Finally, the Department of Revenue would be required to direct the FSIGA to obtain certain reports from self-insurers concerning wages paid and compensation benefits paid. Provisions of law granting the Department of Insurance the authority to require wage, premium, and compensation benefits information from self-insurers would be repealed.

The blanket prohibition against the use of state funds of any kind by or for the FSIGA would be lifted and apply only to the payment of claims or related expenses. Funds from the Workers' Compensation Administration Trust Fund could be paid to the FSIGA under a contract for performing "services required by law."

If requested, members withdrawing from the FSIGA would be required to submit upon withdrawal and annually thereafter, a report of known and potential claims. The FSIGA could obtain a court order requiring the member to produce the requested report and would be entitled to recover incurred costs and attorney's fees.

Responsibility for making FSIGA board appointments after January 1, 2002, would be transferred from the Division to the Department of Revenue.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends s. 440.24, F.S., concerning the enforcement of compensation orders.

**Section 2:** Amends s. 440.38, F.S., concerning security for the payment of compensation.

**Section 3:** Amends s. 440.385, F.S., concerning the Florida Self-Insurers Guaranty Association.

**Section 4:** Amends s. 440.386, F.S., concerning individual self-insurers' insolvency.

**Section 5:** Repeals s. 440.51(6)(b), F.S., requiring employers to submit certain reports to the Department of Insurance concerning wages paid, premiums, and compensation benefits paid.

**Section 6:** Amends s. 440.515, F.S., to correct a cross-reference.

**Section 7:** Provides that this act shall take effect October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See III.D., FISCAL COMMENTS.

2. Expenditures:

See III.D., FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The bill makes no provision for the transfer of authority from the Division to the Department of Revenue to be a type two transfer under s. 20.06, F.S. Therefore, it would appear that existing unexpended fund balances and personnel of the Division would not be transferred to the Department of Revenue. In the alternative, the bill also makes no provision for an appropriation to the Department of Revenue for responsibilities to be received from the Division. Currently, the Self-Insurance Section of the Division has six full-time equivalent positions. Three of the six are proposed for elimination on June 30, 2002. Total salary and benefits for the Self-Insurance Section are \$241,820. The salary and benefits of the three positions proposed for elimination are \$108,896.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill is not anticipated to reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

The bill does not make provision for a type two transfer under s. 20.06(2), F.S. Under a Type Two transfer, existing unexpended fund balances, rules, powers, duties, functions, personnel, and records of the Department of Labor and Employment Security associated with the functions being transferred would be transferred to the Department of Revenue. Without specifying the type of transfer, balances, rules, powers, duties, functions, personnel, and records of the Department of Labor and Employment Security not otherwise expressly transferred by the bill would remain with the Department, except as otherwise provided in the bill.

CS/SB 398, a similar proposal introduced in the Senate, transfers power from the Division to the Department of Insurance. The bill authorizes and appropriates \$183,750 in state funds (from the Workers' Compensation Administration Trust Fund) for the payment of contractual services performed by the association, on behalf of the Department of Insurance, and required by law. This amount is calculated by prorating the sum of \$245,000 for 9 months, since the bill's effective date is October 1, 2002. The association has estimated that the additional costs for the association would be \$244,000 (salaries for 3.5 positions, benefits, and additional overhead) on a recurring basis and \$52,000 for FY 2002-03 only for file systems and computer systems. Currently, no state funds can be allocated or paid to the association except for those state funds accruing to the association by and through the assignment of rights of an insolvent employer.

CS/SB 398 eliminates six full-time equivalent positions within the Division of Workers' Compensation allocated for the oversight and regulation of individual self-insured employers. These six positions have annual salaries, benefits, and expenses totaling \$337,038. Presently, the Department of Insurance has one position assigned to auditing the payroll and classification codes of individual self-insured employers. The results of such audits (approximately 24 per year) are submitted to the Division of Workers' Compensation for follow-up, if necessary. The salaries, benefits, expenses, and capital expenditures for this position presently totals approximately \$55,000. It is unclear how the continued funding of this position would impact the association's estimated additional funding.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Insurance adopted several amendments to HB 319 on January 23, 2002, and reported the bill as a committee substitute. The committee substitute differs from the original bill in that the committee substitute:

- Makes several technical drafting and conforming changes to the bill;
- Restores a cap on civil penalties of \$100 per violation for failure to meet reporting requirements;
- Specifies that the Department's determination of an employer's eligibility to self-insure for workers' compensation is subject to review on the Florida Administrative Procedures Act;
- Requires the Department to contract with the FSIGA for certain services necessary to the authorization and regulation of workers' compensation self-insurance.

On February 19, 2002, the committee on Fiscal Policy and Resources adopted one amendment. This amendment is a strike-everything amendment that adopts the language specified in CS/SB 398. The concept is similar to CS/HB 319; however, authority to regulate worker's compensation individual self-insured is transferred to the Department of Insurance. See section V.C. "Other Comments" for a fiscal analysis of this amendment.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Katherine Scott

Stephen Hogge

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Adam Shamy

Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Council Director:

Leonard Schulte

Matthew M. Carter II