

By Representative Clarke

1                                   A bill to be entitled  
2           An act relating to self-insurers; amending s.  
3           440.24, F.S.; providing for sales of securities  
4           on deposit to satisfy a compensation order;  
5           amending s. 440.38, F.S.; transferring  
6           operation of provisions requiring the securing  
7           of payment of compensation by employers from  
8           the Division of Workers' Compensation of the  
9           Department of Labor and Employment Security to  
10          the Florida Self-Insurers Guaranty Association,  
11          Incorporated, and the Department of Revenue;  
12          revising and clarifying requirements and  
13          procedures; providing powers and duties of the  
14          association and the departments; providing for  
15          allocation or payment of state funds to the  
16          association for certain purposes; providing  
17          rulemaking authority; amending s. 440.385,  
18          F.S.; revising and clarifying provisions  
19          relating to the association's creation, board  
20          of directors, powers and duties, insolvency  
21          fund, and plan of operation; providing  
22          additional powers of the association;  
23          transferring powers and duties of the  
24          Department of Labor and Employment Security  
25          relating to the association to the Department  
26          of Revenue; revising such powers and duties;  
27          providing additional powers and duties of the  
28          Department of Revenue; providing for oversight  
29          of the association by the department; deleting  
30          certain provisions relating to detection and  
31          prevention of employer insolvencies; amending

1 s. 440.386, F.S.; providing parity for the  
2 association with the Department of Revenue  
3 relating to proceedings for delinquency,  
4 liquidation, and conservation of assets;  
5 repealing s. 440.51(6)(b), F.S., relating to  
6 certain reports required by the Department of  
7 Insurance; amending s. 440.515, F.S.;  
8 correcting a cross reference, to conform;  
9 providing an effective date.

10

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

12

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

15 440.24 Enforcement of compensation orders;  
16 penalties.--

17 (3) In any case where the employer is a self-insurer  
18 and fails to comply with any compensation order of a judge of  
19 compensation claims or court within 10 days after such order  
20 becomes final, the Department of Revenue ~~division~~ may suspend  
21 or revoke any authorization previously given to the employer  
22 to be become a self-insurer, and the Florida Self-Insurers  
23 Guaranty Association ~~division~~ may call or sue upon the surety  
24 bond or exercise its rights under a letter of credit ~~sell such~~  
25 ~~of the securities~~ deposited by the ~~such~~ self-insurer with the  
26 Florida Self-Insurers Guaranty Association as a qualifying  
27 security deposit ~~division~~ as may be necessary to satisfy the  
28 ~~such~~ order.

29 Section 2. Subsections (1), (2), and (3) of section  
30 440.38, Florida Statutes, are amended to read:

31

1           440.38 Security for compensation; insurance carriers  
2 and self-insurers.--

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

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

9           (b) By furnishing satisfactory proof to the Florida  
10 Self-Insurers Guaranty Association, Incorporated, created in  
11 s. 440.385, that the employer has the financial strength  
12 necessary to ensure timely payment of all current and future  
13 claims ~~division of its financial ability to pay such~~  
14 ~~compensation~~ individually and on behalf of its subsidiary and  
15 affiliated companies with employees in this state and  
16 receiving an authorization from the Department of Revenue  
17 division to pay such compensation directly. The association  
18 shall review the financial strength of applicants for  
19 membership, current members, and former members and make  
20 recommendations to the Department of Revenue regarding their  
21 qualifications to self-insure in accordance with this section  
22 and ss. 440.385 and 440.386. The Department of Revenue shall  
23 act in accordance with such recommendation unless the  
24 department determines by clear and convincing evidence that  
25 the recommendation is erroneous.~~the following provisions:~~

26           1. The association ~~division~~ may recommend that the  
27 Department of Revenue, as a condition to such authorization,  
28 require an employer to deposit with the association ~~division~~ a  
29 qualifying security deposit. The association ~~division~~ shall  
30 recommend ~~determine~~ the type and amount of the qualifying  
31 security deposit and shall prescribe conditions for the

1 qualifying security deposit, which shall include authorization  
2 for the association ~~division~~ to call the qualifying security  
3 deposit in the case of default to pay compensation awards and  
4 related expenses of the association. ~~In addition, the division~~  
5 ~~shall require,~~As a condition to authorization to self-insure,  
6 the employer shall provide proof that the employer has  
7 provided for competent personnel with whom to deliver benefits  
8 and to provide a safe working environment. ~~Further,~~The  
9 employer ~~division~~ shall also provide evidence of ~~require such~~  
10 ~~employer to carry~~ reinsurance at levels that will ensure the  
11 financial strength and actuarial soundness of such employer in  
12 accordance with rules adopted ~~promulgated~~ by the Department of  
13 Revenue ~~division~~. The Department of Revenue ~~division~~ may by  
14 rule require that, in the event of an individual  
15 self-insurer's insolvency, such qualifying security deposits  
16 and reinsurance policies are payable to the ~~Florida~~  
17 ~~Self-Insurers Guaranty~~ association, ~~Incorporated, created~~  
18 ~~pursuant to s. 440.385.~~ Any employer securing compensation in  
19 accordance with the provisions of this paragraph shall be  
20 known as a self-insurer and shall be classed as a carrier of  
21 her or his own insurance. All such employers shall, if  
22 requested, provide to the association an actuarial report  
23 signed by a member of the American Academy of Actuaries  
24 providing an opinion of the appropriate present value of the  
25 reserves, using a 4-percent discount rate, for current and  
26 future compensation claims. If any member or former member of  
27 the association refuses to timely provide such report, the  
28 association may obtain an order from a circuit court requiring  
29 the member to produce such report and ordering such other  
30 relief as the court determines appropriate. The association  
31

1 shall be entitled to recover all reasonable costs and  
2 attorney's fees in such proceedings.

3           2. If the employer fails to maintain the foregoing  
4 requirements, the association ~~division~~ shall recommend to the  
5 Department of Revenue that the department revoke the  
6 employer's authority to self-insure, unless the employer  
7 provides to the association ~~division~~ the certified opinion of  
8 an independent actuary who is a member of the American Academy  
9 ~~Society~~ of Actuaries as to the actuarial present value of the  
10 employer's determined and estimated future compensation  
11 payments based on cash reserves, using a 4-percent discount  
12 rate, and a qualifying security deposit equal to 1.5 times the  
13 value so certified. The employer shall thereafter annually  
14 provide such a certified opinion until such time as the  
15 employer meets the requirements of subparagraph 1. The  
16 qualifying security deposit shall be adjusted at the time of  
17 each such annual report. Upon the failure of the employer to  
18 timely provide such opinion or to timely provide a security  
19 deposit in an amount equal to 1.5 times the value certified in  
20 the latest opinion, the association shall provide such  
21 information to the Department of Revenue, together with a  
22 recommendation, and the department ~~division~~ shall then revoke  
23 the ~~such~~ employer's authorization to self-insure., ~~and such~~  
24 Failure to comply with this provision shall be deemed to  
25 constitute an immediate serious danger to the public health,  
26 safety, or welfare sufficient to justify the summary  
27 suspension of the employer's authorization to self-insure  
28 pursuant to s. 120.68.

29           3. Upon the suspension or revocation of the employer's  
30 authorization to self-insure, the employer shall provide to  
31 ~~the division and to the Florida Self-Insurers Guaranty~~

1 association, ~~Incorporated, created pursuant to s. 440.385~~ the  
2 certified opinion of an independent actuary who is a member of  
3 the American Academy ~~Society~~ of Actuaries of the actuarial  
4 present value of the determined and estimated future  
5 compensation payments of the employer for claims incurred  
6 while the member exercised the privilege of self-insurance,  
7 using a discount rate of 4-percent. The employer shall provide  
8 such an opinion at 6-month intervals thereafter until such  
9 time as the latest opinion shows no remaining value of claims.  
10 With each such opinion, the employer shall deposit with the  
11 association ~~division~~ a qualifying security deposit in an  
12 amount equal to the value certified by the actuary. The  
13 association has a cause of action against an employer, and  
14 against any successor of the employer, who fails to timely  
15 provide such opinion or who fails to timely maintain the  
16 required security deposit with the association ~~division~~. The  
17 association shall recover a judgment in the amount of the  
18 actuarial present value of the determined and estimated future  
19 compensation payments of the employer for claims incurred  
20 while the employer exercised the privilege of self-insurance,  
21 together with attorney's fees. For purposes of this section,  
22 the successor of an employer means any person, business  
23 entity, or group of persons or business entities, which holds  
24 or acquires legal or beneficial title to the majority of the  
25 assets or the majority of the shares of the employer.

26 4. A qualifying security deposit shall consist, at the  
27 option of the employer, of:

28 a. Surety bonds, in a form and containing such terms  
29 as prescribed by the association ~~division~~, issued by a  
30 corporation surety authorized to transact surety business by  
31 the Department of Insurance, and whose policyholders' and

1 financial ratings, as reported in A.M. Best's Insurance  
2 Reports, Property-Liability, are not less than "A" and "V",  
3 respectively.

4           b. Irrevocable letters of credit in favor of the  
5 association ~~division~~ issued by financial institutions located  
6 within this state, the deposits of which are insured through  
7 the Federal Deposit Insurance Corporation.

8           5. The qualifying security deposit shall be held by  
9 the association ~~division~~ exclusively for the benefit of  
10 workers' compensation claimants. The security shall not be  
11 subject to assignment, execution, attachment, or any legal  
12 process whatsoever, except as necessary to guarantee the  
13 payment of compensation under this chapter. No surety bond  
14 may be terminated, and no letter of credit may be allowed to  
15 expire, without 90 days' prior written notice to the  
16 association ~~division~~ and the deposit by the self-insuring  
17 employer of some other qualifying security deposit of equal  
18 value within 10 business days after such notice. Failure to  
19 provide such written notice or failure to timely provide  
20 qualifying replacement security after such notice shall  
21 constitute grounds for the association ~~division~~ to call or sue  
22 upon the surety bond or to exercise its rights under a letter  
23 of credit. Current self-insured employers must comply with  
24 this section on or before December 31, 2002 ~~2001~~, or upon the  
25 maturity of existing security deposits, whichever occurs  
26 later. The Department of Revenue ~~division~~ may specify by rule  
27 the amount of the qualifying security deposit required prior  
28 to authorizing an employer to self-insure and the amount of  
29 net worth required for an employer to qualify for  
30 authorization to self-insure;

31

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

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

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



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

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

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

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

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

1 notified of replacement coverage under a workers' compensation  
2 and employer's liability insurance policy or plan by the  
3 employer prior to the effective date of the cancellation,  
4 termination, or nonrenewal; or

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

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

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

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

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

31

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

9 Section 3. Section 440.385, Florida Statutes, is  
10 amended to read:

11 440.385 Florida Self-Insurers Guaranty Association,  
12 Incorporated.--

13 (1) CREATION OF ASSOCIATION.--

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

1 authorized to enter into agreements with this state to perform  
2 specified services.

3 (b) A member may voluntarily withdraw from the  
4 association when the member voluntarily terminates the  
5 self-insurance privilege and pays all assessments due to the  
6 date of such termination. However, the withdrawing member  
7 shall continue to be bound by the provisions of this section  
8 relating to the period of his or her membership and any claims  
9 charged pursuant thereto. The withdrawing member who is a  
10 member on or after January 1, 1991, shall also be required to  
11 provide to the association ~~division~~ upon withdrawal, and at  
12 12-month intervals thereafter, satisfactory proof, including,  
13 if requested by the association, a report of known and  
14 potential claims certified by a member of the American Academy  
15 of Actuaries, that it continues to meet the standards of s.  
16 440.38(1)(b)1. in relation to claims incurred while the  
17 withdrawing member exercised the privilege of self-insurance.  
18 Such reporting shall continue until the withdrawing member  
19 demonstrates to the association ~~satisfies the division~~ that  
20 there is no remaining value to claims incurred while the  
21 withdrawing member was self-insured. If a withdrawing member  
22 fails or refuses to timely provide an actuarial report to the  
23 association, the association may obtain an order from a  
24 circuit court requiring the member to produce such report and  
25 ordering such other relief as the court determines  
26 appropriate. The association shall be entitled to recover all  
27 reasonable costs and attorney's fees expended in such  
28 proceedings. If during this reporting period the withdrawing  
29 member fails to meet the standards of s. 440.38(1)(b)1., the  
30 withdrawing member who is a member on or after January 1,  
31 1991, shall thereupon, and at 6-month intervals thereafter,

1 provide to the ~~division and the~~ association the certified  
2 opinion of an independent actuary who is a member of the  
3 American Academy ~~Society~~ of Actuaries of the actuarial present  
4 value of the determined and estimated future compensation  
5 payments of the member for claims incurred while the member  
6 was a self-insurer, using a discount rate of 4 percent. With  
7 each such opinion, the withdrawing member shall deposit with  
8 the association ~~division~~ security in an amount equal to the  
9 value certified by the actuary and of a type that is  
10 acceptable for qualifying security deposits under s.  
11 440.38(1)(b). The withdrawing member shall continue to  
12 provide such opinions and to provide such security until such  
13 time as the latest opinion shows no remaining value of claims.  
14 The association has a cause of action against a withdrawing  
15 member, and against any successor of a withdrawing member, who  
16 fails to timely provide the required opinion or who fails to  
17 maintain the required deposit with the association ~~division~~.  
18 The association shall be entitled to recover a judgment in the  
19 amount of the actuarial present value of the determined and  
20 estimated future compensation payments of the withdrawing  
21 member for claims incurred during the time that the  
22 withdrawing member exercised the privilege of self-insurance,  
23 together with reasonable attorney's fees. The association is  
24 also entitled to recover reasonable attorney's fees in any  
25 action to compel production of any actuarial report required  
26 by this section. For purposes of this section, the successor  
27 of a withdrawing member means any person, business entity, or  
28 group of persons or business entities, which holds or acquires  
29 legal or beneficial title to the majority of the assets or the  
30 majority of the shares of the withdrawing member.  
31

1           (2) BOARD OF DIRECTORS.--The board of directors of the  
2 association shall consist of nine persons and shall be  
3 organized as established in the plan of operation. All board  
4 members shall be experienced in self-insurance in this state.  
5 ~~With respect to initial appointments, the Secretary of Labor~~  
6 ~~and Employment Security shall, by July 15, 1982, approve and~~  
7 ~~appoint to the board persons who are experienced with~~  
8 ~~self-insurance in this state and who are recommended by the~~  
9 ~~individual self-insurers in this state required to become~~  
10 ~~members of the association pursuant to the provisions of~~  
11 ~~paragraph (1)(a). In the event the secretary finds that any~~  
12 ~~person so recommended does not have the necessary~~  
13 ~~qualifications for service on the board and a majority of the~~  
14 ~~board has been appointed, the secretary shall request the~~  
15 ~~directors thus far approved and appointed to recommend another~~  
16 ~~person for appointment to the board.~~Each director shall serve  
17 for a 4-year term and may be reappointed. Appointments after  
18 January 1, 2002,~~other than initial appointments~~ shall be made  
19 by the Department of Revenue ~~Secretary of Labor and Employment~~  
20 ~~Security~~ upon recommendation of members of the association.  
21 Any vacancy on the board shall be filled for the remaining  
22 period of the term in the same manner as appointments other  
23 than initial appointments are made. Each director shall be  
24 reimbursed for expenses incurred in carrying out the duties of  
25 the board on behalf of the association.

26           (3) POWERS AND DUTIES.--

27           (a) Upon creation of the Insolvency Fund pursuant to  
28 the provisions of subsection (4), the association is obligated  
29 for payment of compensation under this chapter to insolvent  
30 members' employees resulting from incidents and injuries  
31 existing prior to the member becoming an insolvent member and

1 from incidents and injuries occurring within 30 days after the  
2 member has become an insolvent member, provided the incidents  
3 giving rise to claims for compensation under this chapter  
4 occur during the year in which such insolvent member is a  
5 member of the guaranty fund and was assessable pursuant to the  
6 plan of operation, and provided the employee makes timely  
7 claim for such payments according to procedures set forth by a  
8 court of competent jurisdiction over the delinquency or  
9 bankruptcy proceedings of the insolvent member. Such  
10 obligation includes only that amount due the injured worker or  
11 workers of the insolvent member under this chapter. In no  
12 event is the association obligated to a claimant in an amount  
13 in excess of the obligation of the insolvent member. The  
14 association shall be deemed the insolvent employer for  
15 purposes of this chapter to the extent of its obligation on  
16 the covered claims and, to such extent, shall have all rights,  
17 duties, and obligations of the insolvent employer as if the  
18 employer had not become insolvent. However, in no event shall  
19 the association be liable for any penalties or interest.

20 (b) The association may:

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

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

25 3. Sue or be sued.

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

28 5. Purchase such reinsurance as is determined  
29 necessary pursuant to the plan of operation.

30 6. Review all applicants for membership in the  
31 association to determine whether the applicant is qualified

1 for membership under the law. The association shall recommend  
2 to the Department of Revenue that the application be accepted  
3 or rejected based on the criteria set forth in s.  
4 440.38(1)(b). The department shall approve or disapprove the  
5 application as provided in paragraph (6)(a). ~~Prior to a final~~  
6 determination by the Division of Workers' Compensation as to  
7 whether or not to approve any applicant for membership in the  
8 association, the association may issue opinions to the  
9 division concerning any applicant, which opinions shall be  
10 considered by the division prior to any final determination.

11 7. Collect and review financial information from  
12 employers and make recommendations to the Department of  
13 Revenue regarding the appropriate security deposit and  
14 reinsurance amounts necessary for an employer to demonstrate  
15 that the employer has the financial strength necessary to  
16 ensure the timely payment of all current and future claims.  
17 The association may audit and examine an employer to verify  
18 the financial strength of the employer's current and former  
19 members. If the association determines that a current or  
20 former self-insured employer does not have the financial  
21 strength necessary to assure the timely payment of all current  
22 and estimated future claims, the association may recommend to  
23 the department that the department:

- 24 a. Revoke the employer's self-insurance privilege.  
25 b. Require the employer to provide a certified opinion  
26 of an independent actuary who is a member of the American  
27 Academy of Actuaries as to the actuarial present value of the  
28 employer's estimated current and future compensation payments,  
29 using a 4-percent discount rate.  
30 c. Require an increase in the employer's security  
31 deposit in an amount determined by the association to be



1 necessary to ensure payment of compensation claims. The  
2 Department of Revenue shall act on such recommendations as  
3 provided in paragraph (6)(a). The association has a cause of  
4 action against an employer, and against any successor of an  
5 employer, who fails to provide an additional security deposit  
6 required by the department. The association shall recover a  
7 judgment in the amount of the requested additional security  
8 deposit together with reasonable attorney's fees. For the  
9 purposes of this section, the successor of an employer is any  
10 person or business entity or group of persons or business  
11 entities that holds or acquires legal or beneficial title to  
12 the majority of the assets or the majority of the shares of  
13 the employer.

14 8.7. Charge fees to any member of the association to  
15 cover the actual costs of examining the financial and safety  
16 conditions of that member.

17 9.8. Charge an applicant for membership in the  
18 association a fee sufficient to cover the actual costs of  
19 examining the financial condition of the applicant.

20 10. Implement any and all procedures necessary to  
21 ensure compliance with regulatory actions taken by the  
22 Department of Revenue.

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

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

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

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

30           (4) INSOLVENCY FUND.--Upon the adoption of a plan of  
31 operation or the adoption of rules by the Department of Labor

1 ~~and Employment Security pursuant to subsection (5), there~~  
2 shall be created an Insolvency Fund to be managed by the  
3 association.

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

15 (b) The Department of Revenue shall have the authority  
16 to audit the financial soundness of the Insolvency Fund  
17 annually.

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

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

25 (5) PLAN OF OPERATION.--The association shall operate  
26 pursuant to a plan of operation approved by the board of  
27 directors. The plan of operation in effect on January 1,  
28 2002, and approved by the Department of Labor and Employment  
29 Security shall remain in effect. However, any amendments to  
30 the plan shall not become effective until approved by the  
31 Department of Revenue.~~By September 15, 1982, the board of~~

1 ~~directors shall submit to the Department of Labor and~~  
2 ~~Employment Security a proposed plan of operation for the~~  
3 ~~administration of the association and the Insolvency Fund.~~

4 (a) The purpose of the plan of operation shall be to  
5 provide the association and the board of directors with the  
6 authority and responsibility to establish the necessary  
7 programs and to take the necessary actions to protect against  
8 the insolvency of a member of the association. In addition,  
9 the plan shall provide that the members of the association  
10 shall be responsible for maintaining an adequate Insolvency  
11 Fund to meet the obligations of insolvent members provided for  
12 under this act and shall authorize the board of directors to  
13 contract and employ those persons with the necessary expertise  
14 to carry out this stated purpose. By January 1, 2003, the  
15 board of directors shall submit to the Department of Revenue a  
16 proposed plan of operation for the administration of the  
17 association. The department shall approve the plan by order,  
18 consistent with this act. The department shall approve any  
19 amendments to the plan, by order consistent with this act,  
20 determined appropriate to carry out the duties and  
21 responsibilities of the association.

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

31

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

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

16           (6) POWERS AND DUTIES OF DEPARTMENT OF REVENUE ~~LABOR~~  
17 ~~AND EMPLOYMENT SECURITY~~.--

18           ~~(a)~~ The Department of Revenue shall:

19           (a) Review recommendations of the association  
20 concerning whether current or former self-insured employers or  
21 members of the association have the financial strength  
22 necessary to ensure the timely payment of all current and  
23 estimated future claims. If the association determines an  
24 employer does not have the financial strength necessary to  
25 ensure the timely payment of all current and future claims and  
26 recommends action pursuant to paragraph (3)(b), the department  
27 may take such action as necessary to order the employer to  
28 comply with the recommendation unless the department  
29 determines by clear and convincing evidence that the  
30 recommendation is erroneous.

31

- 1           ~~1. Notify the association of the existence of an~~  
2 ~~insolvent employer not later than 3 days after it receives~~  
3 ~~notice of the determination of insolvency.~~
- 4           ~~2. Upon request of the board of directors, provide the~~  
5 ~~association with a statement of the annual normal premiums of~~  
6 ~~each member employer.~~
- 7           (b) Contract with the association for services, which  
8 may include, but need not be limited to, the following:
- 9           1. Process applications for self-insurance.
- 10          2. Collect and review financial statements and loss  
11 reserve information from individual self-insurers.
- 12          3. Collect and maintain files for original security  
13 deposit documents and reinsurance policies from individual  
14 self-insurers and, if necessary, perfect security interests in  
15 security deposits.
- 16          4. Process compliance documentation for individual  
17 self-insurers and provide such documentation to the Division  
18 of Workers' Compensation.
- 19          5. Collect all data necessary to calculate annual  
20 premium for all individual self-insurers, including individual  
21 self-insurers that are public utilities or governmental  
22 entities, and provide such calculated annual premium to the  
23 Division of Workers' Compensation for assessment purposes.
- 24          6. Inspect and audit annually, if necessary, the  
25 payroll and other records of each individual self-insurer,  
26 including individual self-insurers that are public utilities  
27 or governmental entities, in order to determine the wages paid  
28 by each individual self-insurer, the premium such individual  
29 self-insurer would have to pay if insured, and all payments of  
30 compensation made by such individual self-insurer during each  
31 prior period, and provide the results of such audit to the

1 Division of Workers' Compensation. For the purposes of this  
2 section, the payroll records of each individual self-insurer  
3 shall be open to inspection and audit by the association, an  
4 authorized representative of the association, or the  
5 Department of Revenue during regular business hours.

6 7. Process applications and make recommendations  
7 regarding the qualifications of businesses to be approved to  
8 provide or continue to provide underwriting, claims adjusting,  
9 loss control, and safety engineering services to individual  
10 self-insurers.

11 8. Provide legal representation to implement the  
12 administration and audit of individual self-insurers and make  
13 recommendations regarding prosecution of any administrative or  
14 legal proceedings necessitated by the department's regulation  
15 of the individual self-insurers.

16 (c) Contract with an attorney or attorneys recommended  
17 by the association for representation of the department in any  
18 administrative or legal proceedings necessitated by the  
19 recommended regulation of the individual self-insurers.

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



1 of the association or department, during regular business  
2 hours and, if any audit of such records of an individual  
3 self-insurer discloses a deficiency in the amount reported to  
4 the association or in the amounts paid to the Division of  
5 Workers' Compensation by an individual self-insurer for its  
6 assessment for the Workers' Compensation Administration Trust  
7 Fund, the Department of Revenue or the association may assess  
8 the cost of such audit against the individual self-insurer.

9 ~~The department may:~~

10 (e)1- Require that the association notify the member  
11 employers and any other interested parties of the  
12 determination of insolvency and of their rights under this  
13 section. Such notification shall be by mail at the last known  
14 address thereof when available; but, if sufficient information  
15 for notification by mail is not available, notice by  
16 publication in a newspaper of general circulation shall be  
17 sufficient.

18 (f)2- Suspend or revoke the authority of any member  
19 employer failing to pay an assessment when due or failing to  
20 comply with the plan of operation to self-insure in this  
21 state. As an alternative, the department may levy a fine on  
22 any member employer failing to pay an assessment when due.  
23 Such fine shall not exceed 5 percent of the unpaid assessment  
24 per month, except that no fine shall be less than \$100 per  
25 month.

26 (g)3- Revoke the designation of any servicing facility  
27 if the department finds that claims are being handled  
28 unsatisfactorily.

29 (7) EFFECT OF PAID CLAIMS.--

30 (a) Any person who recovers from the association under  
31 this section shall be deemed to have assigned his or her

1 rights to the association to the extent of such recovery.  
2 Every claimant seeking the protection of this section shall  
3 cooperate with the association to the same extent as such  
4 person would have been required to cooperate with the  
5 insolvent member. The association shall have no cause of  
6 action against the employee of the insolvent member for any  
7 sums the association has paid out, except such causes of  
8 action as the insolvent member would have had if such sums had  
9 been paid by the insolvent member. In the case of an  
10 insolvent member operating on a plan with assessment  
11 liability, payments of claims by the association shall not  
12 operate to reduce the liability of the insolvent member to the  
13 receiver, liquidator, or statutory successor for unpaid  
14 assessments.

15 (b) The receiver, liquidator, or statutory successor  
16 of an insolvent member shall be bound by settlements of  
17 covered claims by the association or a similar organization in  
18 another state. The court having jurisdiction shall grant such  
19 claims priority against the assets of the insolvent member  
20 equal to that to which the claimant would have been entitled  
21 in the absence of this section. The expense of the association  
22 or similar organization in handling claims shall be accorded  
23 the same priority as the expenses of the liquidator.

24 (c) The association shall file periodically with the  
25 receiver or liquidator of the insolvent member statements of  
26 the covered claims paid by the association and estimates of  
27 anticipated claims on the association, which shall preserve  
28 the rights of the association against the assets of the  
29 insolvent member.

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

1           (a) upon determination by majority vote that any  
2 member employer may be insolvent or in a financial condition  
3 hazardous to the employees thereof or to the public, it shall  
4 be the duty of the board of directors to notify the Department  
5 of Revenue ~~Labor and Employment Security~~ of any information  
6 indicating such condition.

7           ~~(b) The board of directors may, upon majority vote,~~  
8 ~~request that the department determine the condition of any~~  
9 ~~member employer which the board in good faith believes may no~~  
10 ~~longer be qualified to be a member of the association. Within~~  
11 ~~30 days of the receipt of such request or, for good cause~~  
12 ~~shown, within a reasonable time thereafter, the department~~  
13 ~~shall make such determination and shall forthwith advise the~~  
14 ~~board of its findings. Each request for a determination shall~~  
15 ~~be kept on file by the department, but the request shall not~~  
16 ~~be open to public inspection prior to the release of the~~  
17 ~~determination to the public.~~

18           ~~(c) It shall also be the duty of the department to~~  
19 ~~report to the board of directors when it has reasonable cause~~  
20 ~~to believe that a member employer may be in such a financial~~  
21 ~~condition as to be no longer qualified to be a member of the~~  
22 ~~association.~~

23           ~~(d) The board of directors may, upon majority vote,~~  
24 ~~make reports and recommendations to the department upon any~~  
25 ~~matter which is germane to the solvency, liquidation,~~  
26 ~~rehabilitation, or conservation of any member employer. Such~~  
27 ~~reports and recommendations shall not be considered public~~  
28 ~~documents.~~

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

1           ~~(f) The board of directors shall, at the conclusion of~~  
2 ~~any member's insolvency in which the association was obligated~~  
3 ~~to pay covered claims, prepare a report on the history and~~  
4 ~~cause of such insolvency, based on the information available~~  
5 ~~to the association, and shall submit such report to the~~  
6 ~~department.~~

7           (9) EXAMINATION OF THE ASSOCIATION.--The association  
8 shall be subject to examination and regulation by the  
9 Department of Revenue ~~Labor and Employment Security~~. No later  
10 than March 30 of each year, the board of directors shall  
11 submit an audited ~~a~~ financial statement ~~report~~ for the  
12 preceding calendar year in a form approved by the department.

13           (10) IMMUNITY.--There shall be no liability on the  
14 part of, and no cause of action of any nature shall arise  
15 against, any member employer, the association or its agents or  
16 employees, the board of directors, or the Department of  
17 Revenue ~~Labor and Employment Security~~ or its representatives  
18 for any action taken by them in the performance of their  
19 powers and duties under this section.

20           (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT  
21 JUDGMENTS.--All proceedings in which an insolvent employer is  
22 a party, or is obligated to defend a party, in any court or  
23 before any quasi-judicial body or administrative board in this  
24 state shall be stayed for up to 6 months, or for such  
25 additional period from the date the employer becomes an  
26 insolvent member, as is deemed necessary by a court of  
27 competent jurisdiction to permit proper defense by the  
28 association of all pending causes of action as to any covered  
29 claims arising from a judgment under any decision, verdict, or  
30 finding based on the default of the insolvent member. The  
31 association, either on its own behalf or on behalf of the

1 insolvent member, may apply to have such judgment, order,  
2 decision, verdict, or finding set aside by the same court or  
3 administrator that made such judgment, order, decision,  
4 verdict, or finding and shall be permitted to defend against  
5 such claim on the merits. If requested by the association,  
6 the stay of proceedings may be shortened or waived.

7 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding  
8 any other provision of this chapter, a covered claim, as  
9 defined herein, with respect to which settlement is not  
10 effected and pursuant to which suit is not instituted against  
11 the insured of an insolvent member or the association within 1  
12 year after the deadline for filing claims with the receiver of  
13 the insolvent member, or any extension of the deadline, shall  
14 thenceforth be barred as a claim against the association.

15 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired  
16 by a member by refund, dividend, or otherwise from the  
17 association shall be payable within 30 days of receipt to the  
18 Department of Revenue for deposit with the Treasurer to the  
19 credit of the General Revenue Fund. All provisions of chapter  
20 220 relating to penalties and interest on delinquent corporate  
21 income tax payments apply to payments due under this  
22 subsection.

23 Section 4. Subsections (2), (3), and (4) of section  
24 440.386, Florida Statutes, are amended to read:

25 440.386 Individual self-insurers' insolvency;  
26 conservation; liquidation.--

27 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
28 Department of Revenue or the Florida Self-Insurers Guaranty  
29 Association, Incorporated, may commence a delinquency ~~any such~~  
30 proceeding by application to the court for an order directing  
31 the individual self-insurer to show cause why the department

1 or association should not have the relief prayed for. ~~The~~  
2 ~~Florida Self-Insurers Guaranty Association, Incorporated, may~~  
3 ~~petition the department to commence such proceedings, and upon~~  
4 ~~receipt of such petition, the department shall commence such~~  
5 ~~proceeding.~~ On the return of such order to show cause, and  
6 after a full hearing, the court shall either deny the  
7 application or grant the application, together with such other  
8 relief as the nature of the case and the interests of the  
9 claimants, creditors, stockholders, members, subscribers, or  
10 public may require. The department and the Florida  
11 ~~Self-Insurers Guaranty association, Incorporated,~~ shall give  
12 ~~be given~~ reasonable written notice to each other ~~by the~~  
13 ~~department~~ of all hearings which pertain to an adjudication of  
14 insolvency of a member individual self-insurer.

15 (3) GROUNDS FOR LIQUIDATION.--The Department of  
16 Revenue or the association may apply to the court for an order  
17 appointing a receiver and directing the receiver to liquidate  
18 the business of a domestic individual self-insurer if such  
19 individual self-insurer is insolvent. ~~Florida Self-Insurers~~  
20 ~~Guaranty Association, Incorporated, may petition the~~  
21 ~~department to apply to the court for such order. Upon receipt~~  
22 ~~of such petition, the department shall apply to the court for~~  
23 ~~such order.~~

24 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL  
25 SELF-INSURERS.--

26 (a) The Department of Revenue or the association may  
27 apply to the court for an order appointing a receiver or  
28 ancillary receiver, and directing the receiver to conserve the  
29 assets within this state, of a foreign individual self-insurer  
30 if such individual self-insurer is insolvent. ~~Florida~~  
31 ~~Self-Insurers Guaranty Association, Incorporated, may petition~~

1 ~~the department to apply for such order, and, upon receipt of~~  
2 ~~such petition, the department shall apply to the court for~~  
3 ~~such order.~~

4 (b) An order to conserve the assets of an individual  
5 self-insurer shall require the receiver forthwith to take  
6 possession of the property of the receiver within the state  
7 and to conserve it, subject to the further direction of the  
8 court.

9 Section 5. Paragraph (b) of subsection (6) of section  
10 440.51, Florida Statutes, is repealed.

11 Section 6. Section 440.515, Florida Statutes, is  
12 amended to read:

13 440.515 Reports from self-insurers;  
14 confidentiality.--The Department of Insurance shall maintain  
15 the reports filed in accordance with s. 440.51(6)~~(b)~~as  
16 confidential and exempt from the provisions of s. 119.07(1),  
17 and such reports shall be released only for bona fide research  
18 or educational purposes or after receipt of consent from the  
19 employer.

20 Section 7. This act shall take effect October 1, 2002.

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HOUSE SUMMARY

Revises provisions governing self-insurers and the Florida Self-Insurers Guaranty Association, Incorporated. Transfers operation of workers' compensation provisions, requiring the securing of payment of compensation by employers, from the Division of Workers' Compensation of the Department of Labor and Employment Security to the association and the Department of Revenue. Revises provisions governing the association's creation, board of directors, powers and duties, insolvency fund, and plan of operation. Transfers the powers and duties of the Department of Labor and Employment Security relating to the association to the Department of Revenue. Requires the Department of Revenue to oversee certain operations of the association. Authorizes the association or the Department of Revenue to institute proceedings against a self-insurer for delinquency, liquidation, and conservation of assets. See bill for details.