

By the Council for Competitive Commerce and Committee on  
Insurance and Representative Clarke

1                                   A bill to be entitled  
2           An act relating to self-insurers; amending s.  
3           440.24, F.S.; providing for the sale of  
4           securities on deposit to satisfy a compensation  
5           order; 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 Insurance;  
12          revising and clarifying requirements and  
13          procedures; providing powers and duties of the  
14          association and the department; 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 the powers and duties of the  
24          Department of Labor and Employment Security  
25          relating to the association to the Department  
26          of Insurance and revising such powers and  
27          duties; providing additional powers and duties  
28          of the Department of Insurance; providing for  
29          oversight of the association by the department;  
30          deleting certain provisions relating to  
31          detection and prevention of employer

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

2           providing parity for the association with the

3           Department of Insurance relating to proceedings

4           for delinquency, liquidation, and conservation

5           of assets; amending s. 440.51, F.S.;

6           eliminating provisions authorizing the

7           Department of Insurance to require that

8           self-insurers make certain reports; eliminating

9           provisions authorizing certain audits;

10          transferring the powers, duties, functions,

11          rules, records, and property relating to the

12          regulation of individual, self-insured

13          employers by the Department of Labor and

14          Employment Security to the Department of

15          Insurance; providing an appropriation;

16          eliminating specified positions; providing an

17          effective date.

18

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

20

21           Section 1. Subsection (3) of section 440.24, Florida

22 Statutes, is amended to read:

23           440.24 Enforcement of compensation orders;

24 penalties.--

25           (3) In any case where the employer is a self-insurer

26 and fails to comply with any compensation order of a judge of

27 compensation claims or court within 10 days after such order

28 becomes final, the Department of Insurance ~~division~~ may

29 suspend or revoke any authorization previously given to the

30 employer to be ~~become~~ a self-insurer, and the Florida

31 Self-Insurers Guaranty Association, Incorporated, ~~division~~ may

1 call or sue upon the surety bond or exercise its rights under  
2 the letter of credit ~~sell such of the securities~~ deposited by  
3 ~~the~~ such self-insurer with the association as a qualifying  
4 security deposit ~~division~~ as may be necessary to satisfy the  
5 ~~such~~ order.

6 Section 2. Subsections (1), (2), and (3) of section  
7 440.38, Florida Statutes, are amended to read:

8 440.38 Security for compensation; insurance carriers  
9 and self-insurers.--

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

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

16 (b) By furnishing satisfactory proof to the Florida  
17 Self-Insurers Guaranty Association, Incorporated, created in  
18 s. 440.385, that it has the financial strength necessary to  
19 ensure timely payment of all current and future claims  
20 ~~division of its financial ability to pay such compensation~~  
21 individually and on behalf of its subsidiary and affiliated  
22 companies with employees in this state and receiving an  
23 authorization from the Department of Insurance ~~division~~ to pay  
24 such compensation directly. The association shall review the  
25 financial strength of applicants for membership, current  
26 members, and former members and make recommendations to the  
27 Department of Insurance regarding their qualifications to  
28 self-insure in accordance with this section and ss. 440.385  
29 and 440.386. The department shall act in accordance with the  
30 recommendations unless it finds by clear and convincing  
31

1 evidence that the recommendations are erroneous.~~the following~~  
2 ~~provisions:~~

3       1. As a condition of authorization under paragraph  
4 (a), the association division may recommend that the  
5 Department of Insurance require an employer to deposit with  
6 the association division a qualifying security deposit. The  
7 association division shall recommend ~~determine~~ the type and  
8 amount of the qualifying security deposit and shall prescribe  
9 conditions for the qualifying security deposit, which shall  
10 include authorization for the association division to call the  
11 qualifying security deposit in the case of default to pay  
12 compensation awards and related expenses of the association.  
13 ~~In addition, the division shall require,~~As a condition to  
14 authorization to self-insure, the employer shall provide proof  
15 that the employer has provided for competent personnel with  
16 whom to deliver benefits and to provide a safe working  
17 environment. ~~Further,~~The employer division shall also  
18 provide evidence that it carries ~~require such employer to~~  
19 ~~carry~~ reinsurance at levels that will ensure the financial  
20 strength and actuarial soundness of such employer in  
21 accordance with rules adopted ~~promulgated~~ by the Department of  
22 Insurance division. The Department of Insurance division may  
23 by rule require that, in the event of an individual  
24 self-insurer's insolvency, such qualifying security deposits  
25 and reinsurance policies are payable to the ~~Florida~~  
26 ~~Self-Insurers Guaranty association, Incorporated, created~~  
27 ~~pursuant to s. 440.385~~. Any employer securing compensation in  
28 accordance with the provisions of this paragraph shall be  
29 known as a self-insurer and shall be classed as a carrier of  
30 her or his own insurance. The employer shall, if requested,  
31 provide the association an actuarial report signed by a member

1 of the American Academy of Actuaries providing an opinion of  
2 the appropriate present value of the reserves, using a  
3 4-percent discount rate, for current and future compensation  
4 claims. If any member or former member of the association  
5 refuses to timely provide such a report, the association may  
6 obtain an order from a circuit court requiring the member to  
7 produce such a report and ordering any other relief that the  
8 court determines is appropriate. The association may recover  
9 all reasonable costs and attorney's fees in such proceedings.

10         2. If the employer fails to maintain the foregoing  
11 requirements, the association ~~division~~ shall recommend to the  
12 Department of Insurance that the department revoke the  
13 employer's authority to self-insure, unless the employer  
14 provides to the association ~~division~~ the certified opinion of  
15 an independent actuary who is a member of the American Academy  
16 ~~Society~~ of Actuaries as to the actuarial present value of the  
17 employer's determined and estimated future compensation  
18 payments based on cash reserves, using a 4-percent discount  
19 rate, and a qualifying security deposit equal to 1.5 times the  
20 value so certified. The employer shall thereafter annually  
21 provide such a certified opinion until such time as the  
22 employer meets the requirements of subparagraph 1. The  
23 qualifying security deposit shall be adjusted at the time of  
24 each such annual report. Upon the failure of the employer to  
25 timely provide such opinion or to timely provide a security  
26 deposit in an amount equal to 1.5 times the value certified in  
27 the latest opinion, the association shall notify the  
28 Department of Insurance of such failure, together with a  
29 recommendation, and the Department of Insurance ~~division~~ shall  
30 then revoke such employer's authorization to self-insure, ~~and~~  
31 ~~such~~ Failure to comply with this subparagraph constitutes

1 ~~shall be deemed to constitute~~ an immediate serious danger to  
2 the public health, safety, or welfare sufficient to justify  
3 the summary suspension of the employer's authorization to  
4 self-insure pursuant to s. 120.68.

5         3. Upon the suspension or revocation of the employer's  
6 authorization to self-insure, the employer shall provide to  
7 ~~the division and to the Florida Self-Insurers Guaranty~~  
8 ~~association, Incorporated, created pursuant to s. 440.385~~ the  
9 certified opinion of an independent actuary who is a member of  
10 the American Academy ~~Society~~ of Actuaries of the actuarial  
11 present value of the determined and estimated future  
12 compensation payments of the employer for claims incurred  
13 while the member exercised the privilege of self-insurance,  
14 using a discount rate of 4 percent. The employer shall provide  
15 such an opinion at 6-month intervals thereafter until such  
16 time as the latest opinion shows no remaining value of claims.  
17 With each such opinion, the employer shall deposit with the  
18 association ~~division~~ a qualifying security deposit in an  
19 amount equal to the value certified by the actuary. The  
20 association has a cause of action against an employer, and  
21 against any successor of the employer, who fails to timely  
22 provide such opinion or who fails to timely maintain the  
23 required security deposit with the association ~~division~~. The  
24 association shall recover a judgment in the amount of the  
25 actuarial present value of the determined and estimated future  
26 compensation payments of the employer for claims incurred  
27 while the employer exercised the privilege of self-insurance,  
28 together with attorney's fees. For purposes of this section,  
29 the successor of an employer means any person, business  
30 entity, or group of persons or business entities, which holds  
31

1 or acquires legal or beneficial title to the majority of the  
2 assets or the majority of the shares of the employer.

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

5 a. Surety bonds, in a form and containing such terms  
6 as prescribed by the association ~~division~~, issued by a  
7 corporation surety authorized to transact surety business by  
8 the Department of Insurance, and whose policyholders' and  
9 financial ratings, as reported in A.M. Best's Insurance  
10 Reports, Property-Liability, are not less than "A" and "V",  
11 respectively.

12 b. Irrevocable letters of credit in favor of the  
13 association ~~division~~ issued by financial institutions located  
14 within this state, the deposits of which are insured through  
15 the Federal Deposit Insurance Corporation.

16 5. The qualifying security deposit shall be held by  
17 the association ~~division~~ exclusively for the benefit of  
18 workers' compensation claimants. The security shall not be  
19 subject to assignment, execution, attachment, or any legal  
20 process whatsoever, except as necessary to guarantee the  
21 payment of compensation under this chapter. No surety bond  
22 may be terminated, and no letter of credit may be allowed to  
23 expire, without 90 days' prior written notice to the  
24 association ~~division~~ and deposit by the self-insuring employer  
25 of some other qualifying security deposit of equal value  
26 within 10 business days after such notice. Failure to provide  
27 such written notice or failure to timely provide qualifying  
28 replacement security after such notice shall constitute  
29 grounds for the association ~~division~~ to call or sue upon the  
30 surety bond or to exercise its rights under a letter of  
31 credit. Current self-insured employers must comply with this

1 section on or before December 31, 2001, or upon the maturity  
2 of existing security deposits, whichever occurs later. The  
3 Department of Insurance ~~division~~ may specify by rule the  
4 amount of the qualifying security deposit required prior to  
5 authorizing an employer to self-insure and the amount of net  
6 worth required for an employer to qualify for authorization to  
7 self-insure;

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

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

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



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

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

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

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

27       4. Policies providing coverage under this subsection  
28 must use prescribed and acceptable underwriting standards,  
29 forms, and policies approved by the Department of Insurance.  
30 If any insurance policy that provides coverage under this  
31 section is canceled, terminated, or nonrenewed for any reason,

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

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

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

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

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

1           (b) The Department of Insurance ~~division~~ shall suspend  
2 or revoke any authorization to a self-insurer for failure to  
3 comply with this section or for good cause, as defined by rule  
4 of the Department of Insurance ~~division~~. No suspension or  
5 revocation shall affect the liability of any self-insurer  
6 already incurred.

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

15           Section 3. Section 440.385, Florida Statutes, is  
16 amended to read:

17           440.385 Florida Self-Insurers Guaranty Association,  
18 Incorporated.--

19           (1) CREATION OF ASSOCIATION.--

20           (a) There is created a nonprofit corporation to be  
21 known as the "Florida Self-Insurers Guaranty Association,  
22 Incorporated," hereinafter referred to as "the association."  
23 Upon incorporation of the association, all individual  
24 self-insurers as defined in ss. 440.02(23)(a) and  
25 440.38(1)(b), other than individual self-insurers which are  
26 public utilities or governmental entities, shall be members of  
27 the association as a condition of their authority to  
28 individually self-insure in this state. The association shall  
29 perform its functions under a plan of operation as established  
30 and approved under subsection (5) and shall exercise its  
31 powers and duties through a board of directors as established

1 under subsection (2). The association ~~corporation~~ shall have  
2 those powers granted or permitted associations ~~corporations~~  
3 ~~not for profit, as provided in chapter 617.~~ The activities of  
4 the association shall be subject to review by the Department  
5 of Insurance. The Department of Insurance shall have oversight  
6 responsibility as set forth in this section. The association  
7 is specifically authorized to enter into agreements with this  
8 state to perform specified services.

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

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

1 by this section. For purposes of this section, the successor  
2 of a withdrawing member means any person, business entity, or  
3 group of persons or business entities, which holds or acquires  
4 legal or beneficial title to the majority of the assets or the  
5 majority of the shares of the withdrawing member.

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

- 1           (3) POWERS AND DUTIES.--
- 2           (a) Upon creation of the Insolvency Fund pursuant to
- 3 the provisions of subsection (4), the association is obligated
- 4 for payment of compensation under this chapter to insolvent
- 5 members' employees resulting from incidents and injuries
- 6 existing prior to the member becoming an insolvent member and
- 7 from incidents and injuries occurring within 30 days after the
- 8 member has become an insolvent member, provided the incidents
- 9 giving rise to claims for compensation under this chapter
- 10 occur during the year in which such insolvent member is a
- 11 member of the guaranty fund and was assessable pursuant to the
- 12 plan of operation, and provided the employee makes timely
- 13 claim for such payments according to procedures set forth by a
- 14 court of competent jurisdiction over the delinquency or
- 15 bankruptcy proceedings of the insolvent member. Such
- 16 obligation includes only that amount due the injured worker or
- 17 workers of the insolvent member under this chapter. In no
- 18 event is the association obligated to a claimant in an amount
- 19 in excess of the obligation of the insolvent member. The
- 20 association shall be deemed the insolvent employer for
- 21 purposes of this chapter to the extent of its obligation on
- 22 the covered claims and, to such extent, shall have all rights,
- 23 duties, and obligations of the insolvent employer as if the
- 24 employer had not become insolvent. However, in no event shall
- 25 the association be liable for any penalties or interest.
- 26           (b) The association may:
- 27           1. Employ or retain such persons as are necessary to
- 28 handle claims and perform other duties of the association.
- 29           2. Borrow funds necessary to effect the purposes of
- 30 this section in accord with the plan of operation.
- 31           3. Sue or be sued.

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

3           5. Purchase such reinsurance as is determined  
4 necessary pursuant to the plan of operation.

5           6. Review all applicants for membership in the  
6 association to determine whether the applicant is qualified  
7 for membership under the law. The association shall recommend  
8 to the Department of Insurance that the application be  
9 accepted or rejected based on the criteria set forth in s.  
10 440.38(1)(b). The Department of Insurance shall approve or  
11 disapprove the application as provided in paragraph (6)(a).  
12 ~~Prior to a final determination by the Division of Workers'~~  
13 ~~Compensation as to whether or not to approve any applicant for~~  
14 ~~membership in the association, the association may issue~~  
15 ~~opinions to the division concerning any applicant, which~~  
16 ~~opinions shall be considered by the division prior to any~~  
17 ~~final determination.~~

18           7. Collect and review financial information from  
19 employers and make recommendations to the Department of  
20 Insurance regarding the appropriate security deposit and  
21 reinsurance amounts necessary for an employer to demonstrate  
22 that it has the financial strength necessary to ensure the  
23 timely payment of all current and future claims. The  
24 association may audit and examine an employer to verify the  
25 financial strength of its current and former members. If the  
26 association determines that a current or former self-insured  
27 employer does not have the financial strength necessary to  
28 ensure the timely payment of all current and estimated future  
29 claims, the association may recommend to the Department of  
30 Insurance that the department:

31           a. Revoke the employer's self-insurance privilege.



1           b. Require the employer to provide a certified opinion  
2 of an independent actuary who is a member of the American  
3 Academy of Actuaries as to the actuarial present value of the  
4 employer's estimated current and future compensation payments,  
5 using a 4-percent discount rate.

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

22           ~~8.7.~~ Charge fees to any member of the association to  
23 cover the actual costs of examining the financial and safety  
24 conditions of that member.

25           ~~9.8.~~ Charge an applicant for membership in the  
26 association a fee sufficient to cover the actual costs of  
27 examining the financial condition of the applicant.

28           10. Implement any procedures necessary to ensure  
29 compliance with regulatory actions taken by the Department of  
30 Insurance.

31

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

23           2. If, in any one year, funds available from such  
24 assessments, together with funds previously raised, are not  
25 sufficient to make all the payments or reimbursements then  
26 owing, the funds available shall be prorated, and the unpaid  
27 portion shall be paid as soon thereafter as sufficient  
28 additional funds become available.

29           3. Funds may be allocated or paid from the Workers'  
30 Compensation Administration Trust Fund to contract with the  
31 association to perform services required by law. However, no

1 state funds of any kind shall be allocated or paid to the  
2 association or any of its accounts for payment of covered  
3 claims or related expenses except those state funds accruing  
4 to the association by and through the assignment of rights of  
5 an insolvent employer. The Department of Insurance may not  
6 levy any assessment on the association.

7 (4) INSOLVENCY FUND.--Upon the adoption of a plan of  
8 operation ~~or the adoption of rules by the Department of Labor~~  
9 ~~and Employment Security pursuant to subsection (5)~~, there  
10 shall be created an Insolvency Fund to be managed by the  
11 association.

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

23 (b) The Department of Insurance shall have the  
24 authority to audit the financial soundness of the Insolvency  
25 Fund annually.

26 (c) The Department of Insurance may offer certain  
27 amendments to the plan of operation to the board of directors  
28 of the association for purposes of assuring the ongoing  
29 financial soundness of the Insolvency Fund and its ability to  
30 meet the obligations of this section.

31

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

3           (5) PLAN OF OPERATION.--The association shall operate  
4 pursuant to a plan of operation approved by the board of  
5 directors. The plan of operation in effect on January 1,  
6 2002, and approved by the Department of Labor and Employment  
7 Security shall remain in effect. However, any amendments to  
8 the plan shall not become effective until approved by the  
9 Department of Insurance.~~By September 15, 1982, the board of~~  
10 ~~directors shall submit to the Department of Labor and~~  
11 ~~Employment Security a proposed plan of operation for the~~  
12 ~~administration of the association and the Insolvency Fund.~~

13           (a) The purpose of the plan of operation shall be to  
14 provide the association and the board of directors with the  
15 authority and responsibility to establish the necessary  
16 programs and to take the necessary actions to protect against  
17 the insolvency of a member of the association. In addition,  
18 the plan shall provide that the members of the association  
19 shall be responsible for maintaining an adequate Insolvency  
20 Fund to meet the obligations of insolvent members provided for  
21 under this act and shall authorize the board of directors to  
22 contract and employ those persons with the necessary expertise  
23 to carry out this stated purpose. By January 1, 2003, the  
24 board of directors shall submit to the Department of Insurance  
25 a proposed plan of operation for the administration of the  
26 association. The Department of Insurance shall approve the  
27 plan by order, consistent with this section. The Department of  
28 Insurance shall approve any amendments to the plan, consistent  
29 with this section, which are determined appropriate to carry  
30 out the duties and responsibilities of the association.

1           ~~(b) The plan of operation, and any amendments thereto,~~  
2 ~~shall take effect upon approval in writing by the department.~~  
3 ~~If the board of directors fails to submit a plan by September~~  
4 ~~15, 1982, or fails to make required amendments to the plan~~  
5 ~~within 30 days thereafter, the department shall promulgate~~  
6 ~~such rules as are necessary to effectuate the provisions of~~  
7 ~~this subsection. Such rules shall continue in force until~~  
8 ~~modified by the department or superseded by a plan submitted~~  
9 ~~by the board of directors and approved by the department.~~

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

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

13           1. Establish the procedures whereby all the powers and  
14 duties of the association under subsection (3) will be  
15 performed.

16           2. Establish procedures for handling assets of the  
17 association.

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

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

27           5. Establish regular places and times for meetings of  
28 the board of directors.

29           6. Establish procedures for records to be kept of all  
30 financial transactions of the association and its agents and  
31 the board of directors.

1           7. Provide that any member employer aggrieved by any  
2 final action or decision of the association may appeal to the  
3 Department of Insurance within 30 days after the action or  
4 decision.

5           8. Establish the procedures whereby recommendations of  
6 candidates for the board of directors shall be submitted to  
7 the Department of Insurance.

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

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

25           (6) POWERS AND DUTIES OF DEPARTMENT OF INSURANCE ~~LABOR~~  
26 ~~AND EMPLOYMENT SECURITY~~.--

27           ~~(a)~~ The Department of Insurance shall:

28           (a) Review recommendations of the association  
29 concerning whether current or former self-insured employers or  
30 members of the association have the financial strength  
31 necessary to ensure the timely payment of all current and

1 estimated future claims. If the association determines an  
2 employer does not have the financial strength necessary to  
3 ensure the timely payment of all current and future claims and  
4 recommends action pursuant to paragraph (3)(b), the department  
5 shall take such action as necessary to order the employer to  
6 comply with the recommendation, unless the department finds by  
7 clear and convincing evidence that the recommendation is  
8 erroneous.

9 (b) Contract with the association for services, which  
10 may include, but are not limited to:

11 1. Processing applications for self-insurance.

12 2. Collecting and reviewing financial statements and  
13 loss reserve information from individual self-insurers.

14 3. Collecting and maintaining files for original  
15 security deposit documents and reinsurance policies from  
16 individual self-insurers and, if necessary, perfecting  
17 security interests in security deposits.

18 4. Processing compliance documentation for individual  
19 self-insurers and providing copies of such documentation to  
20 the department.

21 5. Collecting all data necessary to calculate annual  
22 premium for all individual self-insurers, including individual  
23 self-insurers that are public utilities or governmental  
24 entities, and providing such calculated annual premium to the  
25 division for assessment purposes.

26 6. Inspecting and auditing annually, if necessary, the  
27 payroll and other records of each individual self-insurer,  
28 including individual self-insurers that are public utilities  
29 or governmental entities, in order to determine the wages paid  
30 by each individual self-insurer, the premium such individual  
31 self-insurer would have to pay if insured, and all payments of

1 compensation made by such individual self-insurer during each  
2 prior period with the results of such audit provided to the  
3 division. For purposes of this section, the payroll records of  
4 each individual self-insurer shall be open to inspection and  
5 audit by the association and the department, or their  
6 authorized representatives, during regular business hours.

7 7. Processing applications and making recommendations  
8 with respect to the qualification of a business to be approved  
9 to provide or continue to provide services to individual  
10 self-insurers in the areas of underwriting, claims adjusting,  
11 loss control, and safety engineering.

12 8. Providing legal representation to implement the  
13 administration and audit of individual self-insurers and  
14 making recommendations regarding prosecution of any  
15 administrative or legal proceedings necessitated by the  
16 regulation of the individual self-insurers by the department.

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

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



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

10 ~~1. Notify the association of the existence of an~~  
11 ~~insolvent employer not later than 3 days after it receives~~  
12 ~~notice of the determination of insolvency.~~

13 ~~2. Upon request of the board of directors, provide the~~  
14 ~~association with a statement of the annual normal premiums of~~  
15 ~~each member employer.~~

16 ~~(b) The department may:~~

17 (e)1. Require that the association notify the member  
18 employers and any other interested parties of the  
19 determination of insolvency and of their rights under this  
20 section. Such notification shall be by mail at the last known  
21 address thereof when available; but, if sufficient information  
22 for notification by mail is not available, notice by  
23 publication in a newspaper of general circulation shall be  
24 sufficient.

25 ~~(f)2.~~ Suspend or revoke the authority of any member  
26 employer failing to pay an assessment when due or failing to  
27 comply with the plan of operation to self-insure in this  
28 state. As an alternative, the department may levy a fine on  
29 any member employer failing to pay an assessment when due.  
30 Such fine shall not exceed 5 percent of the unpaid assessment  
31

1 per month, except that no fine shall be less than \$100 per  
2 month.

3 (g)~~3~~. Revoke the designation of any servicing facility  
4 if the department finds that claims are being handled  
5 unsatisfactorily.

6 (7) EFFECT OF PAID CLAIMS.--

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

23 (b) The receiver, liquidator, or statutory successor  
24 of an insolvent member shall be bound by settlements of  
25 covered claims by the association or a similar organization in  
26 another state. The court having jurisdiction shall grant such  
27 claims priority against the assets of the insolvent member  
28 equal to that to which the claimant would have been entitled  
29 in the absence of this section. The expense of the association  
30 or similar organization in handling claims shall be accorded  
31 the same priority as the expenses of the liquidator.

1           (c) The association shall file periodically with the  
2 receiver or liquidator of the insolvent member statements of  
3 the covered claims paid by the association and estimates of  
4 anticipated claims on the association, which shall preserve  
5 the rights of the association against the assets of the  
6 insolvent member.

7           (8) NOTIFICATION ~~PREVENTION~~ OF INSOLVENCIES.--To aid  
8 in the detection and prevention of employer insolvencies:

9           (a) Upon determination by majority vote that any  
10 member employer may be insolvent or in a financial condition  
11 hazardous to the employees thereof or to the public, it shall  
12 be the duty of the board of directors to notify the Department  
13 of Insurance Labor and Employment Security of any information  
14 indicating such condition.

15           ~~(b) The board of directors may, upon majority vote,~~  
16 ~~request that the department determine the condition of any~~  
17 ~~member employer which the board in good faith believes may no~~  
18 ~~longer be qualified to be a member of the association. Within~~  
19 ~~30 days of the receipt of such request or, for good cause~~  
20 ~~shown, within a reasonable time thereafter, the department~~  
21 ~~shall make such determination and shall forthwith advise the~~  
22 ~~board of its findings. Each request for a determination shall~~  
23 ~~be kept on file by the department, but the request shall not~~  
24 ~~be open to public inspection prior to the release of the~~  
25 ~~determination to the public.~~

26           ~~(c) It shall also be the duty of the department to~~  
27 ~~report to the board of directors when it has reasonable cause~~  
28 ~~to believe that a member employer may be in such a financial~~  
29 ~~condition as to be no longer qualified to be a member of the~~  
30 ~~association.~~

31

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

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

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

16           (9) EXAMINATION OF THE ASSOCIATION.--The association  
17 shall be subject to examination and regulation by the  
18 Department of Insurance ~~Labor and Employment Security~~. No  
19 later than March 30 of each year, the board of directors shall  
20 submit an audited a financial statement report for the  
21 preceding calendar year in a form approved by the department.

22           (10) IMMUNITY.--There shall be no liability on the  
23 part of, and no cause of action of any nature shall arise  
24 against, any member employer, the association or its agents or  
25 employees, the board of directors, or the Department of  
26 Insurance ~~Labor and Employment Security~~ or its representatives  
27 for any action taken by them in the performance of their  
28 powers and duties under this section.

29           (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT  
30 JUDGMENTS.--All proceedings in which an insolvent employer is  
31 a party, or is obligated to defend a party, in any court or

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

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

24 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired  
25 by a member by refund, dividend, or otherwise from the  
26 association shall be payable within 30 days of receipt to the  
27 Department of Insurance Revenue for deposit with the Treasurer  
28 to the credit of the General Revenue Fund. All provisions of  
29 chapter 220 relating to penalties and interest on delinquent  
30 corporate income tax payments apply to payments due under this  
31 subsection.

1           Section 4. Subsections (2), (3), and (4) of section  
2 440.386, Florida Statutes, are amended to read:  
3           440.386 Individual self-insurers' insolvency;  
4 conservation; liquidation.--  
5           (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The  
6 Department of Insurance or the Florida Self-Insurers Guaranty  
7 Association, Incorporated, may commence a delinquency ~~any such~~  
8 proceeding by application to the court for an order directing  
9 the individual self-insurer to show cause why the department  
10 or association should not have the relief sought ~~prayed for~~.  
11 ~~The Florida Self-Insurers Guaranty Association, Incorporated,~~  
12 ~~may petition the department to commence such proceedings, and~~  
13 ~~upon receipt of such petition, the department shall commence~~  
14 ~~such proceeding.~~ On the return of such order to show cause,  
15 and after a full hearing, the court shall either deny the  
16 application or grant the application, together with such other  
17 relief as the nature of the case and the interests of the  
18 claimants, creditors, stockholders, members, subscribers, or  
19 public may require. The department and the Florida  
20 Self-Insurers Guaranty ~~association, Incorporated,~~ shall give  
21 ~~be given~~ reasonable written notice to each other ~~by the~~  
22 ~~department~~ of all hearings which pertain to an adjudication of  
23 insolvency of a member individual self-insurer.  
24           (3) GROUNDS FOR LIQUIDATION.--The Department of  
25 Insurance or the association may apply to the court for an  
26 order appointing a receiver and directing the receiver to  
27 liquidate the business of a domestic individual self-insurer  
28 if such individual self-insurer is insolvent. Florida  
29 ~~Self-Insurers Guaranty Association, Incorporated,~~ may petition  
30 ~~the department to apply to the court for such order.~~ Upon  
31

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

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

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

14 (b) An order to conserve the assets of an individual  
15 self-insurer shall require the receiver forthwith to take  
16 possession of the property of the receiver within the state  
17 and to conserve it, subject to the further direction of the  
18 court.

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

21 440.51 Expenses of administration.--

22 (6)~~(a)~~ The division may require from each carrier, at  
23 such time and in accordance with such regulations as the  
24 division may prescribe, reports in respect to all gross earned  
25 premiums and of all payments of compensation made by such  
26 carrier during each prior period, and may determine the  
27 amounts paid by each carrier and the amounts paid by all  
28 carriers during such period.

29 ~~(b) The Department of Insurance may require from each~~  
30 ~~self-insurer, at such time and in accordance with such~~  
31 ~~regulations as the Department of Insurance prescribes, reports~~

1 ~~in respect to wages paid, the amount of premiums such~~  
2 ~~self-insurer would have to pay if insured, and all payments of~~  
3 ~~compensation made by such self-insurer during each prior~~  
4 ~~period, and may determine the amounts paid by each~~  
5 ~~self-insurer and the amounts paid by all self-insurers during~~  
6 ~~such period. For the purposes of this section, the payroll~~  
7 ~~records of each self-insurer shall be open to annual~~  
8 ~~inspection and audit by the Department of Insurance or its~~  
9 ~~authorized representative, during regular business hours; and~~  
10 ~~if any audit of such records of a self-insurer discloses a~~  
11 ~~deficiency in the amounts reported to the Department of~~  
12 ~~Insurance or in the amounts paid to the Department of~~  
13 ~~Insurance by a self-insurer pursuant to this section, the~~  
14 ~~Department of Insurance may assess the cost of such audit~~  
15 ~~against the self-insurer.~~

16       Section 6. All powers, duties, functions, rules,  
17 records, and property of the Division of Workers' Compensation  
18 of the Department of Labor and Employment Security related to  
19 the regulation of individual, self-insured employers under  
20 chapter 440, Florida Statutes, are transferred to the  
21 Department of Insurance.

22       Section 7. The sum of \$183,750 is appropriated from  
23 the Workers' Compensation Administration Trust Fund of the  
24 Department of Labor and Employment Security to the Department  
25 of Insurance for the purpose of contracting with the Florida  
26 Self-Insurers Guaranty Association, Incorporated, to carry out  
27 the provisions of this act during the 2002-2003 fiscal year.

28       Section 8. Six full-time equivalent positions within  
29 the Division of Workers' Compensation of the Department of  
30 Labor and Employment Security responsible for the regulation  
31 and oversight of self-insured employers are eliminated.



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