

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 398

SPONSOR: Banking and Insurance Committee and Senator Latvala

SUBJECT: Self-Insurers

DATE: February 11, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute transfers regulatory authority over individual employers that self-insure for purposes of workers' compensation coverage from the Division of Workers' Compensation to the Department of Insurance and to the Florida Self-Insurers Guaranty Association (association), a not-for-profit corporation. Currently, the Florida Self-Insurers Guaranty Association is under the general supervision of the Department of Labor and Employment Security. The bill transfers powers, functions, duties, rules, records and property relating to the regulation of self-insured employers from the Department of Labor and Employment Security to the Department of Insurance.

The Department of Insurance would exercise oversight authority over the association, including approval of the plan of operation and appointment of the board members. Division authority to assess association members would be transferred to the association, subject to approval by the Department of Insurance. The Department of Insurance would be required to act in accordance with recommendations of the association regarding the qualifications of an applicant to be approved as a self-insured employer, and determining whether the financial strength of a current or former member, unless the department finds by clear and convincing evidence that the recommendations are erroneous. The authority to commence delinquency proceedings and be appointed receiver would be transferred from the Division of Workers' Compensation to the Department of Insurance and the association. The association would be given a number of additional responsibilities.

The Department of Insurance would be required to contract with the association for services which could include processing applications from self-insurers, collecting and reviewing financial statements, processing compliance documentation, and inspecting and auditing payroll

records of individual self-insurers. The Department of Insurance would be required to contract with attorneys recommended by the association, in certain instances.

The bill appropriates the sum of \$183,750 from the Workers' Compensation Administration Trust Fund to the Department of Insurance for the purpose of contracting with the association for fiscal year 2002-2003.

The prohibition against the use of state funds of any kind by or for the association would be removed. State funds could not be used for claims payments; however, state funds could be paid to the association under a contract for performing services required by law.

Six positions within the Division of Workers' Compensation responsible for the regulation and oversight of the individual self-insured employers are eliminated.

This bill substantially amends the following sections of the Florida Statutes: 440.24, 440.38, 440.385, 440.386, and 440.51.

## **II. Present Situation:**

The Division of Workers' Compensation within the Department of Labor and Employment Security may authorize an employer to self-insure, if the employer provides satisfactory proof of its ability to pay workers' compensation claims. The division is responsible for reviewing and approving or denying applications by employers to self-insure. In addition, the division monitors the financial condition of those employers authorized to self-insure to ensure that the employers comply with the applicable provisions of ch. 440, F.S., and to ensure that employers maintain adequate assets to pay workers' compensation claims.

As a condition to such authorization, the division may require an employer to deposit a qualifying security deposit in an amount determined by the division.<sup>1</sup> The division is also responsible for prescribing the conditions for calling the qualifying security deposit in the case of default. The types of qualifying security deposits, at the option of the employer, include: surety bonds and irrevocable letters of credit in favor of the division. The division is authorized to adopt rules requiring an employer to carry reinsurance at levels that will ensure the actuarial soundness of such employer. The division is authorized to adopt rules that, in the event of an insolvency, require that such qualifying security deposits and reinsurance policies are payable to the guaranty association.

A minimum initial security deposit of \$100,000 is required.<sup>2</sup> However, if the last 3 years' losses are not fully funded by insurance, reinsurance, or subject to reimbursement exceeding \$100,000, a security deposit equal to those losses must be posted. In addition, a self-insured employer must maintain a net worth of at least \$1 million, pursuant to Rule 38F-5.106, Florida Administrative Code.

The Florida Self-Insurers Guaranty Association was created in 1985 under the provisions of

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<sup>1</sup> Section 440.38(1)(b), F.S.

<sup>2</sup> Rule 38F-5.103, Florida Administrative Code.

s. 440.385, F.S., as a not for profit corporation, to provide financing for the settlement of covered workers= compensation claims of individual, insolvent self-insurers. Individual self-insurers, other than public utilities or governmental entities, are required to be members of the association and pay assessments as a condition of their authority to individually self-insure in Florida.<sup>3</sup> The board of directors consists of nine persons appointed by the Secretary of the Department of Labor and Employment Security upon recommendation of members of the association. The initial plan of operation and any amendments to the plan of the association requires prior approval by the department.<sup>4</sup>

Section 440.385, F.S., authorizes the association to charge certain fees and levy assessments under certain circumstances. The association is authorized to charge fees to any member of the association to cover the actual costs of examining the financial and safety conditions of that member. The association may charge an applicant for membership in the association, a fee sufficient to cover the actual costs of examining the financial condition of the applicant. The association is also authorized to levy assessments upon members to secure funds for covered claims and the costs to administer them. The assessment for an individual member in any 1-year may not exceed 1 percent of the annual normal premium during the calendar year preceding the date of the assessment.<sup>5</sup> Section 440.385, F.S., specifically prohibits the allocation or payment of any state funds to the association, except for those state funds accruing to the association through the assignment of rights of an insolvent employer.<sup>6</sup>

In 1998, the Senate Banking and Insurance Committee issued a staff report entitled, *Privatization of Functions Within the Division of Workers' Compensation*, which recommended that consideration should be given to transferring many of the routine, administrative responsibilities of those presently conducted by the individual self-insurers section of the Bureau of Operations Support to the Florida Self-Insurers Guaranty Association, Inc., to eliminate duplication of effort in the oversight of the individual, self-insurers. In recent years, the Bureau of Monitoring and the Bureau of the Division of Workers' Compensation has been evaluating the feasibility of outsourcing many of the responsibilities relating to the individual self-insurers, including the calculation of experience modifications and evaluation of payroll information for individual self-insurers. Presently, this is a very labor intensive and time-consuming process.

The staff report also noted that the Department of Insurance had two positions in 1999 assigned to the responsibility of auditing the payroll and classification codes of individual self-insured employers to determine whether the amounts reported to the Division of Workers' Compensation was accurate for purposes of calculating and collecting the Workers' Compensation Administration Trust Fund assessment. For the period of fiscal years 1994-1998, the auditors conducted on average, 20 audits per year. As of February 2002, the department has only one position assigned to this auditing function. On average, the auditor conducts 24 audits per year.

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<sup>3</sup> Section 440.385, F.S.

<sup>4</sup> Section 440.385(5), F.S.

<sup>5</sup> Section 440.385(3), F.S.

<sup>6</sup> Section 440.385(3)(b)3., F.S.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 440.38, F.S., to revise provisions relating to the regulation of individual, self-insurers and the Florida Self-Insurers Guaranty Association, Inc. to transfer duties and responsibilities from the Division of Workers' Compensation to the Department of Insurance (department) and to the FSIGA. The association would be required to evaluate the financial strength of applicants for membership and current and former members, and make recommendations to the Department of Insurance regarding their qualifications to self-insure. The department is required to act in accordance with the recommendations of FSIGA, unless the department determines by clear and convincing evidence that the recommendations are erroneous.

The association is also authorized to recommend that the department require an employer to deposit with the association, rather than the department, a qualifying security deposit. The association, rather than the department, would recommend the type and amount of the qualifying deposit and prescribe conditions for the association to call the qualifying security deposit in the case of default to pay compensation awards and related expenses of the association. An employer would be required to provide evidence of reinsurance levels that would ensure the financial strength and actuarial soundness of such employer, in accordance with rules adopted by the department.

The section also requires employers to provide to the association, if requested, an actuarial report providing an opinion regarding the appropriateness of the present value of the reserves for current and future compensation claims. If a member or former member refuses to provide the report, the association may obtain an order from a circuit court requiring the production of such a report. If an employer fails to maintain and provide certain reports, the association would recommend to the Department of Insurance the revocation of an employer's authority to self-insure, and the department would be required to revoke such authorization to self insure.

The association would be authorized to call or sue upon the surety bond or to exercise its rights under a letter of credit to ensure payment of compensation if an employer terminates a surety bond or allows the letter of credit to expire without providing a qualifying replacement security and 90-days' prior written notice to the association.

The department is authorized to adopt rules requiring self-insurers to file any reports necessary to fulfill the requirements of ch. 440, F.S., and to assess an unspecified civil penalty against a self-insured employer that fails to file such report. Presently, the civil penalty is capped at \$100 for each such failure.

**Section 2.** Amends s. 440.385, F.S., to provide that the activities of the association would be subject to review and oversight by the Department of Insurance, as provided in this section. The association would be specifically authorized to enter into agreements with the State of Florida to perform specified services.

In the event a withdrawing member fails or refuses to timely provide an actuarial report, the association would be authorized to obtain an order from a circuit court requiring the production

of such a report. The association would be entitled to recover all reasonable costs and attorney's fees expended in such proceedings.

This section would also require that members of the board be experienced in self-insurance in Florida. Appointments to the board after January 1, 2002, would be made by the Department of Insurance.

The association would be responsible for reviewing all applicants for membership to determine whether the applicant is qualified for membership under the law and recommend to the department that the application be accepted or rejected based on criteria established in s. 440.38(1)(b), F.S. Presently, the association is authorized to issue opinions to the Division of Workers' Compensation regarding any applicant; however, the Division of Workers' Compensation makes the final determination as to whether or not any applicant will be approved for membership.

The association would be authorized to collect financial information from employers and audit an employer to verify the financial strength of its current and former members. If the association determines that an employer does not have the financial strength necessary to ensure the timely payment of all current and estimated future claims, the association may recommend that the department: 1) revoke the employer's self-insurance privilege; 2) require the employer to submit a certified opinion of an independent actuary as to the present value of the employer's current and future estimated compensation payments; and 3) require an increase in the employer's security deposit in an amount determined by the association to be necessary to assure payment of claims. Currently, the Division of Workers' Compensation is authorized to revoke the authorization of an employer to self insure, if the employer fails to maintain the necessary qualified security deposit.

State funds (allocated or paid from the Workers' Compensation Administration Trust Fund) could be paid to the association for services performed under contract and required to be performed by the association, as required by law. Currently, no state funds can be allocated or paid to the association, except those state funds accruing to the association by and through the assignment of rights of an insolvent employer. This section also provides that no state funds could be used for the payment of claims or related expenses. Currently, the association is authorized to assess member employers for the payment of covered claims. The department would be prohibited from levying any type of assessment on the Florida Self-Insurers Guaranty Association.

The plan of operation in effect, as of January 1, 2002, would remain in effect until the board of directors submits a plan of operation to the Department of Insurance on or before January 1, 2003. The department would be required to approve the plan by order, consistent with s. 440.385(5), F.S.

The department is required to review recommendations of the association and take such actions as deemed necessary to order the employer to comply with the recommendation, unless the department determines by clear and convincing evidence that the recommendation is erroneous. The department is also required to contract with the association for the audit and administration of the individual self-insurers, including individual self-insurers that are public utilities or

governmental entities. The department is also required to contract with attorneys recommended by the association for representation in any administrative or legal proceeding necessitated by the recommended regulation of the individual self-insurers.

The department would also be required to direct the association to obtain certain payroll records of individual self-insurers. Such payroll records would be open for inspection and audit by the association and the department. In the event any such audit discloses a deficiency in the amount paid to the Division of Workers' Compensation by an employer for its assessment for the Workers' Compensation Administration Trust Fund, the Department of Insurance or the association would be authorized to assess the cost of such audit against the individual self-insurer.

**Section 3.** Amends s. 440.386, F.S., to authorize the association or the department to initiate a delinquency proceeding. The association may also apply to the court for an order appointing a receiver and directing the receiver to liquidate the business of a domestic individual self-insurer if such individual self-insurer is insolvent. Currently, the association may petition to the department to apply to the court for such an order and upon the receipt of such order, the department must apply to the court for such order. The association would also be authorized to apply to the court for an order appointing a receiver and directing the receiver to conserve the assets within this state, of a foreign individual self-insurer, if such individual self-insurer is insolvent. Currently the association may petition the department to apply to the court for such an order, and upon the receipt of such order, the department must apply to the court for such order.

**Section 4.** Amends s. 440.24, F.S., relating to the enforcement of compensation orders, to authorize the association to call or sue upon the surety bond or exercise the rights under the letter of credit deposited by a self-insurer as a qualifying security deposit as may be necessary to satisfy the order. Presently, the Division of Workers' Compensation has the authority to call or sue upon the surety bond or exercise the rights under the letter of credit to satisfy a compensation order.

**Section 5.** Amends s. 440.51, F.S., to eliminate the authority of the Department of Insurance to audit and assess the costs of such audits of self-insured employers, and to require a self-insured employer to produce certain payroll records. See Section 3 of the bill which transfers this authority to the Department of Insurance and the association.

**Section 6.** Transfers powers, duties, functions, rules, records, and property of the Division of Workers' Compensation of the Department of Labor and Employment Security related to the regulation of individual self-insured employers to the Department of Insurance.

**Section 7.** Appropriates the sum of \$183,750 from the Workers' Compensation Trust Fund of the Department of Labor and Employment Security to the Department of Insurance for the purpose of contracting with the Florida Self-Insurers Guaranty Association to carry out the provisions of this act during fiscal year 2002-2003. This amount is calculated by prorating the sum of \$245,000 for 9 months, since the bill's effective date is October 1, 2002.

**Section 8.** Eliminates six full-time equivalent positions within the Division of Workers' Compensation of the Department of Labor and Employment Security responsible for the regulation of individual self-insured employers.

**Section 9.** Provides that this act would take effect October 1, 2002.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Self-Insured Guaranty Association, a not-for-profit corporation, would receive the sum of \$183,750 from the Department of Insurance for the purpose of providing services pursuant to a contract for fiscal year 2002-2003.

C. Government Sector Impact:

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

The bill eliminates six full-time equivalent positions within the Division of Workers' Compensation allocated for the oversight and regulation of individual self-insured employers. These six positions have annual salaries, benefits, and expenses totaling \$337,038. Presently, the Department of Insurance has one position assigned to auditing

the payroll and classification codes of individual self-insured employers. The results of such audits (approximately 24 per year) are submitted to the Division of Workers' Compensation for follow-up, if necessary. The salaries, benefits, expenses, and capital expenditures for this position presently totals approximately \$55,000. It is unclear how the continued funding of this position would impact the association's estimated additional funding.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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