

By Senator Latvala

19-249C-02

1 A bill to be entitled
 2 An act relating to self-insurers; amending s.
 3 440.38, F.S.; transferring operation of
 4 provisions requiring the securing of payment of
 5 compensation by employers from the Division of
 6 Workers' Compensation of the Department of
 7 Labor and Employment Security to the Florida
 8 Self-Insurer's Guaranty Association,
 9 Incorporated, and the Department of Revenue;
 10 revising and clarifying requirements and
 11 procedures; providing powers and duties of the
 12 association and the departments; providing for
 13 allocation or payment of state funds to the
 14 association for certain purposes; providing
 15 rulemaking authority; amending s. 440.385,
 16 F.S.; revising and clarifying provisions
 17 relating to the association's creation, board
 18 of directors, powers and duties, insolvency
 19 fund, and plan of operation; providing
 20 additional powers of the association;
 21 transferring the powers and duties of the
 22 Department of Labor and Employment Security
 23 relating to the association to the Department
 24 of Revenue and revising such powers and duties;
 25 providing additional powers and duties of the
 26 Department of Revenue; providing for oversight
 27 of the association by the department; deleting
 28 certain provisions relating to detection and
 29 prevention of employer insolvencies; amending
 30 s. 440.386, F.S.; providing parity for the
 31 association with the Department of Revenue

1 relating to proceedings for delinquency,
2 liquidation, and conservation of assets;
3 amending s. 440.24, F.S.; providing for the
4 sale of securities on deposit to satisfy a
5 compensation order; 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 providing an effective date.

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

13
14 Section 1. Subsections (1), (2), and (3) of section
15 440.38, Florida Statutes, are amended to read:

16 440.38 Security for compensation; insurance carriers
17 and self-insurers.--

18 (1) Every employer shall secure the payment of
19 compensation under this chapter:

20 (a) By insuring and keeping insured the payment of
21 such compensation with any stock company or mutual company or
22 association or exchange, authorized to do business in the
23 state;

24 (b) By furnishing satisfactory proof to the Florida
25 Self-Insurers Guaranty Association, Incorporated, created in
26 s. 440.385, that it has the financial strength necessary to
27 assure timely payment of all current and future claims
28 ~~division of its financial ability to pay such compensation~~
29 individually and on behalf of its subsidiary and affiliated
30 companies with employees in this state and receiving an
31 authorization from the Department of Revenue ~~division~~ to pay

1 such compensation directly. The association shall review the
2 financial strength of applicants for membership, current
3 members, and former members and make recommendations to the
4 Department of Revenue regarding their qualifications to
5 self-insure in accordance with this section and ss. 440.385
6 and 440.386. The department shall act in accordance with the
7 recommendations unless it finds by clear and convincing
8 evidence that the recommendations are erroneous.~~the following~~
9 ~~provisions:~~

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

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

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

1 such opinion or to timely provide a security deposit in an
2 amount equal to 1.5 times the value certified in the latest
3 opinion, the association shall provide that information to the
4 Department of Revenue along with a recommendation, and the
5 Department of Revenue ~~division~~ shall then revoke such
6 employer's authorization to self-insure, ~~and such Failure to~~
7 comply with this subparagraph constitutes ~~shall be deemed to~~
8 ~~constitute~~ an immediate serious danger to the public health,
9 safety, or welfare sufficient to justify the summary
10 suspension of the employer's authorization to self-insure
11 pursuant to s. 120.68.

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

1 actuarial present value of the determined and estimated future
2 compensation payments of the employer for claims incurred
3 while the employer exercised the privilege of self-insurance,
4 together with attorney's fees. For purposes of this section,
5 the successor of an employer means any person, business
6 entity, or group of persons or business entities, which holds
7 or acquires legal or beneficial title to the majority of the
8 assets or the majority of the shares of the employer.

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

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

18 b. Irrevocable letters of credit in favor of the
19 association division issued by financial institutions located
20 within this state, the deposits of which are insured through
21 the Federal Deposit Insurance Corporation.

22 5. The qualifying security deposit shall be held by
23 the association division exclusively for the benefit of
24 workers' compensation claimants. The security shall not be
25 subject to assignment, execution, attachment, or any legal
26 process whatsoever, except as necessary to guarantee the
27 payment of compensation under this chapter. No surety bond may
28 be terminated, and no letter of credit may be allowed to
29 expire, without 90 days' prior written notice to the
30 association division and the deposit by the self-insuring
31 employer of some other qualifying security deposit of equal

1 value within 10 business days after such notice. Failure to
2 provide such written notice or failure to timely provide
3 qualifying replacement security after such notice shall
4 constitute grounds for the association ~~division~~ to call or sue
5 upon the surety bond or to exercise its rights under a letter
6 of credit. Current self-insured employers must comply with
7 this section on or before December 31, 2001, or upon the
8 maturity of existing security deposits, whichever occurs
9 later. The Department of Revenue ~~division~~ may specify by rule
10 the amount of the qualifying security deposit required prior
11 to authorizing an employer to self-insure and the amount of
12 net worth required for an employer to qualify for
13 authorization to self-insure;

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

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

21 (e) In accordance with s. 440.135, an employer, other
22 than a local government unit, may elect coverage under the
23 Workers' Compensation Law and retain the benefit of the
24 exclusiveness of liability provided in s. 440.11 by obtaining
25 a 24-hour health insurance policy from an authorized property
26 and casualty insurance carrier or an authorized life and
27 health insurance carrier, or by participating in a fully or
28 partially self-insured 24-hour health plan that is established
29 or maintained by or for two or more employers, so long as the
30 law of this state is not preempted by the Employee Retirement
31 Income Security Act of 1974, Pub. L. No. 93-406, or any

1 amendment to that law, which policy or plan must provide, for
2 at least occupational injuries and illnesses, medical benefits
3 that are comparable to those required by this chapter. A local
4 government unit, as a single employer, in accordance with s.
5 440.135, may participate in the 24-hour health insurance
6 coverage plan referenced in this paragraph. Disputes and
7 remedies arising under policies issued under this section are
8 governed by the terms and conditions of the policies and under
9 the applicable provisions of the Florida Insurance Code and
10 rules adopted under the insurance code and other applicable
11 laws of this state. The 24-hour health insurance policy may
12 provide for health care by a health maintenance organization
13 or a preferred provider organization. The premium for such
14 24-hour health insurance policy shall be paid entirely by the
15 employer. The 24-hour health insurance policy may use
16 deductibles and coinsurance provisions that require the
17 employee to pay a portion of the actual medical care received
18 by the employee. If an employer obtains a 24-hour health
19 insurance policy or self-insured plan to secure payment of
20 compensation as to medical benefits, the employer must also
21 obtain an insurance policy or policies that provide indemnity
22 benefits as follows:

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

26 2. If indemnity benefits are provided for both
27 occupational-related and nonoccupational-related disability,
28 such benefits must be comparable to those required by this
29 chapter, except that they must be based on 60 percent of the
30 average weekly wages.

31

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

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

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

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

26 (b) The Department of Revenue ~~division~~ shall adopt
27 rules requiring self-insurers to file any reports necessary to
28 fulfill the requirements of this chapter. Any self-insurer who
29 fails to file any report as prescribed by the rules adopted by
30 the Department of Revenue ~~division~~ shall be subject to a civil
31 penalty ~~not to exceed \$100 for each such failure.~~

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

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

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

20 Section 2. Section 440.385, Florida Statutes, is
21 amended to read:

22 440.385 Florida Self-Insurers Guaranty Association,
23 Incorporated.--

24 (1) CREATION OF ASSOCIATION.--

25 (a) There is created a nonprofit corporation to be
26 known as the "Florida Self-Insurers Guaranty Association,
27 Incorporated," hereinafter referred to as "the association."
28 Upon incorporation of the association, all individual
29 self-insurers as defined in ss. 440.02(23)(a) and
30 440.38(1)(b), other than individual self-insurers which are
31 public utilities or governmental entities, shall be members of

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

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

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

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

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

1 Any vacancy on the board shall be filled for the remaining
2 period of the term in the same manner as appointments other
3 than initial appointments are made. Each director shall be
4 reimbursed for expenses incurred in carrying out the duties of
5 the board on behalf of the association.

6 (3) POWERS AND DUTIES.--

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

31 (b) The association may:

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

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

5 3. Sue or be sued.

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

8 5. Purchase such reinsurance as is determined
9 necessary pursuant to the plan of operation.

10 6. Review all applicants for membership in the
11 association to determine whether the applicant is qualified
12 for membership under the law. The association shall recommend
13 to the Department of Revenue that the application be accepted
14 or rejected based on the criteria set forth in s.

15 440.38(1)(b). The Department of Revenue shall approve or
16 disapprove the application as provided in paragraph (6)(a).

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

23 7. Collect and review financial information from
24 employers and make recommendations to the Department of
25 Revenue regarding the appropriate security deposit and
26 reinsurance amounts necessary for an employer to demonstrate
27 that it has the financial strength necessary to assure the
28 timely payment of all current and future claims. The
29 association may audit and examine an employer to verify the
30 financial strength of its current and former members. If the
31 association determines that a current or former self-insured

1 employer does not have the financial strength necessary to
2 assure the timely payment of all current and estimated future
3 claims, the association may recommend to the Department of
4 Revenue that the department:

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

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

26 ~~8.7.~~ Charge fees to any member of the association to
27 cover the actual costs of examining the financial and safety
28 conditions of that member.

29 ~~9.8.~~ Charge an applicant for membership in the
30 association a fee sufficient to cover the actual costs of
31 examining the financial condition of the applicant.

1 10. Implement any procedures necessary to ensure
2 compliance with regulatory actions taken by the Department of
3 Revenue.

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

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

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

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

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

27 (b) The Department of Revenue shall have the authority
28 to audit the financial soundness of the Insolvency Fund
29 annually.

30 (c) The Department of Revenue may offer certain
31 amendments to the plan of operation to the board of directors

1 of the association for purposes of assuring the ongoing
2 financial soundness of the Insolvency Fund and its ability to
3 meet the obligations of this section.

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

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

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

1 with this section, which are determined appropriate to carry
2 out the duties and responsibilities of the association.

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

12 (b)(c) All member employers shall comply with the plan
13 of operation.

14 (c)(d) The plan of operation shall:

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

18 2. Establish procedures for handling assets of the
19 association.

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

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

29 5. Establish regular places and times for meetings of
30 the board of directors.

31

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

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

8 8. Establish the procedures whereby recommendations of
9 candidates for the board of directors shall be submitted to
10 the Department of Revenue.

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

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

28 (6) POWERS AND DUTIES OF DEPARTMENT OF REVENUE ~~LABOR~~
29 ~~AND EMPLOYMENT SECURITY~~.--

30 ~~(a)~~ The Department of Revenue shall:
31

1 (a) Review recommendations of the association
2 concerning whether current or former self-insured employers or
3 members of the association have the financial strength
4 necessary to ensure the timely payment of all current and
5 estimated future claims. If the association determines an
6 employer does not have the financial strength necessary to
7 ensure the timely payment of all current and future claims and
8 recommends action pursuant to paragraph (3)(b), the Department
9 of Revenue shall take such action as necessary to order the
10 employer to comply with the recommendation, unless the
11 department finds by clear and convincing evidence that the
12 recommendation is erroneous.

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

15 1. Processing applications for self-insurance.

16 2. Collecting and reviewing financial statements and
17 loss reserve information from individual self-insurers.

18 3. Collecting and maintaining files for original
19 security deposit documents and reinsurance policies from
20 individual self-insurers and, if necessary, perfecting
21 security interests in security deposits.

22 4. Processing compliance documentation for individual
23 self-insurers and providing the same to the division.

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

29 6. Inspecting and auditing annually, if necessary, the
30 payroll and other records of each individual self-insurer,
31 including individual self-insurers that are public utilities

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

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

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

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

27 ~~1. Notify the association of the existence of an~~
28 ~~insolvent employer not later than 3 days after it receives~~
29 ~~notice of the determination of insolvency.~~
30
31

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

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

5 (d)†. Direct the association to require from each
6 individual self-insurer, at such time and in accordance with
7 such regulations as the Department of Revenue prescribes,
8 reports in respect to wages paid, the amount of premiums such
9 individual self-insurer would have to pay if insured, and all
10 payments of compensation made by such individual self-insurer
11 during each prior period and determine the amounts paid by
12 each individual self-insurer and the amounts paid by all
13 individual self-insurers during such period. For the purposes
14 of this section, the payroll records of each individual
15 self-insurer shall be open to annual inspection and audit by
16 the association and the Department of Revenue, or their
17 authorized representative, during regular business hours, and
18 if any audit of such records of an individual self-insurer
19 discloses a deficiency in the amount reported to the
20 association or in the amounts paid to the division by an
21 individual self-insurer for its assessment for the Workers'
22 Compensation Administration Trust Fund, the Department of
23 Insurance or the association may assess the cost of such audit
24 against the individual self-insurer.

25 (e) Require that the association notify the member
26 employers and any other interested parties of the
27 determination of insolvency and of their rights under this
28 section. Such notification shall be by mail at the last known
29 address thereof when available; but, if sufficient information
30 for notification by mail is not available, notice by
31

1 publication in a newspaper of general circulation shall be
2 sufficient.

3 ~~(f)2.~~ Suspend or revoke the authority of any member
4 employer failing to pay an assessment when due or failing to
5 comply with the plan of operation to self-insure in this
6 state. As an alternative, the Department of Revenue may levy a
7 fine on any member employer failing to pay an assessment when
8 due. Such fine shall not exceed 5 percent of the unpaid
9 assessment per month, except that no fine shall be less than
10 \$100 per month.

11 ~~(g)3.~~ Revoke the designation of any servicing facility
12 if the Department of Revenue finds that claims are being
13 handled unsatisfactorily.

14 (7) EFFECT OF PAID CLAIMS.--

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

31

1 (b) The receiver, liquidator, or statutory successor
2 of an insolvent member shall be bound by settlements of
3 covered claims by the association or a similar organization in
4 another state. The court having jurisdiction shall grant such
5 claims priority against the assets of the insolvent member
6 equal to that to which the claimant would have been entitled
7 in the absence of this section. The expense of the association
8 or similar organization in handling claims shall be accorded
9 the same priority as the expenses of the liquidator.

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

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

18 ~~(a)~~ upon determination by majority vote that any
19 member employer may be insolvent or in a financial condition
20 hazardous to the employees thereof or to the public, it shall
21 be the duty of the board of directors to notify the Department
22 of Revenue ~~Labor and Employment Security~~ of any information
23 indicating such condition.

24 ~~(b) The board of directors may, upon majority vote,~~
25 ~~request that the department determine the condition of any~~
26 ~~member employer which the board in good faith believes may no~~
27 ~~longer be qualified to be a member of the association. Within~~
28 ~~30 days of the receipt of such request or, for good cause~~
29 ~~shown, within a reasonable time thereafter, the department~~
30 ~~shall make such determination and shall forthwith advise the~~
31 ~~board of its findings. Each request for a determination shall~~

1 ~~be kept on file by the department, but the request shall not~~
2 ~~be open to public inspection prior to the release of the~~
3 ~~determination to the public.~~

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

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

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

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

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

31

1 (10) IMMUNITY.--There shall be no liability on the
2 part of, and no cause of action of any nature shall arise
3 against, any member employer, the association or its agents or
4 employees, the board of directors, or the Department of
5 Revenue ~~Labor and Employment Security~~ or its representatives
6 for any action taken by them in the performance of their
7 powers and duties under this section.

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

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

1 the insolvent member, or any extension of the deadline, shall
2 thenceforth be barred as a claim against the association.

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

11 Section 3. Subsections (2), (3), and (4) of section
12 440.386, Florida Statutes, are amended to read:

13 440.386 Individual self-insurers' insolvency;
14 conservation; liquidation.--

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

1 ~~notice to each other by the department~~ of all hearings which
2 pertain to an adjudication of insolvency of a member
3 individual self-insurer.

4 (3) GRUNDS FOR LIQUIDATION.--The Department of
5 Revenue or the association ~~insurance~~ may apply to the court
6 for an order appointing a receiver and directing the receiver
7 to liquidate the business of a domestic individual
8 self-insurer if such individual self-insurer is insolvent.
9 ~~Florida Self-Insurers Guaranty Association, Incorporated, may~~
10 ~~petition the department to apply to the court for such order.~~
11 ~~Upon receipt of such petition, the department shall apply to~~
12 ~~the court for such order.~~

13 (4) GRUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
14 SELF-INSURERS.--

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

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

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

31

1 440.24 Enforcement of compensation orders;
2 penalties.--

3 (3) In any case where the employer is a self-insurer
4 and fails to comply with any compensation order of a judge of
5 compensation claims or court within 10 days after such order
6 becomes final, the Department of Revenue ~~division~~ may suspend
7 or revoke any authorization previously given to the employer
8 to be ~~become~~ a self-insurer, and the Florida Self-Insurer's
9 Guaranty Association ~~division~~ may call or sue upon the surety
10 bond or exercise its rights under the letter of credit ~~sell~~
11 ~~such of the securities~~ deposited by the ~~such~~ self-insurer with
12 the Florida Self-Insurer's Guaranty Association as a
13 qualifying security deposit ~~division~~ as may be necessary to
14 satisfy the ~~such~~ order.

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

17 440.51 Expenses of administration.--

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

25 ~~(b) The Department of Insurance may require from each~~
26 ~~self-insurer, at such time and in accordance with such~~
27 ~~regulations as the Department of Insurance prescribes, reports~~
28 ~~in respect to wages paid, the amount of premiums such~~
29 ~~self-insurer would have to pay if insured, and all payments of~~
30 ~~compensation made by such self-insurer during each prior~~
31 ~~period, and may determine the amounts paid by each~~

1 ~~self-insurer and the amounts paid by all self-insurers during~~
2 ~~such period. For the purposes of this section, the payroll~~
3 ~~records of each self-insurer shall be open to annual~~
4 ~~inspection and audit by the Department of Insurance or its~~
5 ~~authorized representative, during regular business hours; and~~
6 ~~if any audit of such records of a self-insurer discloses a~~
7 ~~deficiency in the amounts reported to the Department of~~
8 ~~Insurance or in the amounts paid to the Department of~~
9 ~~Insurance by a self-insurer pursuant to this section, the~~
10 ~~Department of Insurance may assess the cost of such audit~~
11 ~~against the self-insurer.~~

12 Section 6. This act shall take effect October 1, 2002.

13
14 *****

15 SENATE SUMMARY

16 Revises provisions governing self-insurers and the
17 Florida Self-Insurers Guaranty Association, Incorporated.
18 Transfers operation of provisions requiring the securing
19 of payment of compensation by employers from the Division
20 of Workers' Compensation of the Department of Labor and
21 Employment Security to the association and the Department
22 of Revenue. Revises provisions governing the
23 association's creation, board of directors, powers and
24 duties, insolvency fund, and plan of operation. Transfers
25 the powers and duties of the Department of Labor and
26 Employment Security relating to the association to the
27 Department of Revenue. Requires that the Department of
28 Revenue oversee certain operations of the association.
29 Authorizes the association or the Department of Revenue
30 to institute proceedings against a self-insurer for
31 delinquency, liquidation, and conservation of assets.
(See bill for details.)