

1 5. Purchase such reinsurance as is determined
2 necessary pursuant to the plan of operation.

3 6. Review all applicants for membership in the
4 association to determine whether the applicant is qualified
5 for membership under the law. The board association shall
6 recommend to the department that the application be accepted
7 or rejected based on the criteria set forth in s.
8 440.38(1)(b). The department shall approve or disapprove the
9 application as provided in paragraph (6)(a).

10 7. Collect and review, as prescribed in subparagraph
11 (6)(b)2., financial information from employers and make
12 recommendations to the department regarding the appropriate
13 security deposit and reinsurance amounts needed due to
14 necessary for an employer being potentially insolvent and
15 unable to make to demonstrate that it has the financial
16 strength necessary to ensure the timely payment of all current
17 and future claims, which power shall be held by the board of
18 directors and may not be delegated. The association shall
19 establish by rule the definition and financial criteria that
20 must be considered in evaluating the solvency of any member.
21 The ~~board association~~ may audit and examine an employer to
22 verify the ability to pay benefits to injured workers
23 ~~financial strength~~ of its current and former members. If the
24 association determines, based on a majority vote of the board
25 of directors, that a current or former self-insured employer
26 is potentially insolvent and cannot make does not have the
27 financial strength necessary to ensure the timely payment of
28 benefits to injured workers all current and estimated future
29 ~~claims,~~ the association may recommend to the department that
30 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 not to exceed the maximum amount of all unpaid claims
8 or in an amount determined by the board ~~association~~ to be
9 necessary to ensure payment of compensation claims due to
10 potential insolvency as defined in sub-subparagraph e. or due
11 to a continuing failure to pay benefits to injured workers in
12 a timely manner. The department shall act on such
13 recommendations as provided in paragraph (6)(a). The
14 association has a cause of action against an employer, and
15 against any successor of an employer, who fails to provide an
16 additional security deposit required by the department. The
17 association shall file an action in circuit court to recover a
18 judgment in the amount of the requested additional security
19 deposit together with reasonable attorney's fees. For the
20 purposes of this section, the successor of an employer is any
21 person, business entity, or group of persons or business
22 entities which holds or acquires legal or beneficial title to
23 the majority of the assets or the majority of the shares of
24 the employer.

25 d. Upon a determination by majority vote that any
26 member employer may be insolvent and unable to pay benefits to
27 injured workers in a timely manner, the board of directors
28 shall notify the Department of Financial Services of any
29 information indicating such condition.

30 e. For purposes of this section, the term "insolvency"
31 means that a member ceases doing business as a going concern;

1 admits in writing its inability to pay its debts as they
2 become due; files a voluntary petition; files a petition for
3 any reorganization, liquidation, dissolution, or similar
4 arrangement under any present or future law; sells or
5 transfers substantially all of its assets or property; or is
6 adjudicated as bankrupt or insolvent or that the member's
7 shareholders take action to cause its dissolution or
8 liquidation.

9 8. Charge fees to any member of the association to
10 cover the actual costs of examining the financial and safety
11 conditions of that member.

12 9. Charge an applicant for membership in the
13 association a fee sufficient to cover the actual costs of
14 examining the financial condition of the applicant.

15 10. Implement any procedures necessary to ensure
16 compliance with regulatory actions taken by the department.

17 (c)1. To the extent necessary to secure funds for the
18 payment of covered claims and also to pay the reasonable costs
19 to administer them, the association, subject to approval by
20 the department, shall levy assessments based on the annual
21 written premium each employer would have paid had the employer
22 not been self-insured. Every assessment shall be made as a
23 uniform percentage of the figure applicable to all individual
24 self-insurers, provided that the assessment levied against any
25 self-insurer in any one year shall not exceed 1 percent of the
26 annual written premium during the calendar year preceding the
27 date of the assessment. Assessments shall be remitted to and
28 administered by the board of directors in the manner specified
29 by the approved plan. Each employer so assessed shall have at
30 least 30 days' written notice as to the date the assessment is
31 due and payable. The ~~board association~~ shall levy assessments

1 against any newly admitted member of the association so that
2 the basis of contribution of any newly admitted member is the
3 same as previously admitted members, provision for which shall
4 be contained in the plan of operation.

5 2. If, in any one year, funds available from such
6 assessments, together with funds previously raised, are not
7 sufficient to make all the payments or reimbursements then
8 owing, the funds available shall be prorated, and the unpaid
9 portion shall be paid as soon thereafter as sufficient
10 additional funds become available.

11 3. Funds may be allocated or paid from the Workers'
12 Compensation Administration Trust Fund to contract with the
13 association to perform services required by law. However, no
14 state funds of any kind shall be allocated or paid to the
15 association or any of its accounts for payment of covered
16 claims or related expenses except those state funds accruing
17 to the association by and through the assignment of rights of
18 an insolvent employer. The department may not levy any
19 assessment on the association.

20 (6) POWERS AND DUTIES OF DEPARTMENT.--The department
21 shall:

22 (a) Review recommendations of the board association
23 concerning whether current or former self-insured employers or
24 members of the association have the ability financial strength
25 necessary to ensure the timely payment of all benefits to
26 injured workers current and estimated future claims. If the
27 board association determines an employer does not have the
28 ability to pay benefits to injured workers financial strength
29 necessary to ensure the timely payment of all current and
30 future claims and recommends action pursuant to paragraph
31 (3)(b), the department shall take such action as necessary to

1 order the employer to comply with the recommendation, unless
2 the department finds by clear and convincing evidence that the
3 recommendation is erroneous.

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

6 1. Processing applications for self-insurance.

7 2. Collecting and reviewing financial statements and
8 loss reserve information from individual self-insurers. The
9 board shall ensure that such review is completed by an
10 individual who is a certified public accountant with more than
11 5 years of experience as a certified turnaround professional,
12 certified insolvency and restructuring advisor, certified
13 valuation analyst, or accredited valuation analyst.

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 department 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 department. For purposes of this section, the payroll records
4 of each individual self-insurer shall be open to inspection
5 and 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 Section 2. This act shall take effect July 1, 2005.

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20 SENATE SUMMARY

21 Reassigns certain powers and duties currently within the
22 Florida Self-Insurance Guaranty Association to,
23 specifically, the association board of directors. Revises
24 the duties of both with respect to assurance of
employers' and members' financial condition. Defines the
term "insolvency," for purposes of the association's
powers and duties.