

# 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 1140

SPONSOR: Banking and Insurance Committee and Senator Villalobos

SUBJECT: Self-Insurers/Workers' Compensation

DATE: April 11, 2001                      REVISED: \_\_\_\_\_

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

## I. Summary:

The bill transfers regulatory authority over individual employers that self-insure for purposes of workers' compensation from the Division of Workers' Compensation to the Department of Insurance and to the Florida Self-Insurance Guaranty Association. Currently, the Florida Self-Insurance Guaranty Association is organizationally located within the Department of Labor and Employment Security.

The bill also revises the workers' compensation security deposit requirements for individual self-insured employers by eliminating the use of certificates of deposit, U.S. Treasury Notes and Bonds, and securities issued by the State of Florida and backed by the full faith and credit of the state as types of qualifying security deposits. The bill also requires individual self-insured employers to comply with the revised workers' compensation security deposit requirements on or before December 31, 2001, or upon maturity of the security deposits, whichever occurs later.

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

## 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 an indemnity bond or securities in an amount determined by the division. The types of qualifying security deposits, at the option of the employer, include: (1) surety bonds, (2) certificates of deposit, (3) irrevocable letters of credit, (4) U.S. Treasury bonds and notes, and (5) securities issued and backed by the full faith and credit of the State of Florida.

Under the provisions of Rule 38F-5.103, Florida Administrative Code, a minimum initial security deposit of \$100,000 is required. However, if the last 3 years' losses are not fully funded by insurance, reinsurance, or subject to reimbursement exceed \$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 \$1,000,000, pursuant to Rule 38F-5.106, Florida Administrative Code.

Under the provisions of s. 440.38, F.S., in the event a self-insured employer defaults, the division is authorized to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds to ensure prompt payment of compensation. If an individual self-insurer becomes insolvent, the bonds and securities are payable to the Florida Self-Insurers Guaranty Association (FSIGA). However, under federal bankruptcy law, monies held as security by the Division of Workers' Compensation in the form of certificates of deposit and securities backed by the federal government and the State of Florida are deemed to be part of the bankrupt estate. Quite often, the certificates of deposit and direct obligations of the federal and state governments are settled for much less than the face value of the instrument. This precludes the division from transferring 100 percent of the face value of those assets to the Florida Self-Insurance Guaranty Association to assist in the payment of workers' compensation claims when a self-insured employer declares bankruptcy. Irrevocable letters of credit and surety bonds are agreements between a third party and the division, and therefore are not a part of the bankruptcy process.

FSIGA was created in 1985 under the provisions of s. 440.385, F.S., 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.

In 1998, the Senate Banking and Insurance Committee issued a 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 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.

### 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. (FSIGA or "association") to transfer duties and responsibilities from the Division of Workers' Compensation to the Department of Insurance and to FSIGA. The association would be required to evaluate the financial strength of applicants for membership, current and former members and make recommendations to the Department of Insurance regarding their qualifications to self-insure. The department is required to consult with the association on any recommendations before taking action.

The association is also authorized to recommend that the department require an employer to deposit with the association, rather than a depository, a qualifying deposit. The association would recommend the type and amount of the qualifying deposit and prescribe conditions for the qualifying security deposit.

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, the association may obtain an order from a circuit court requiring the production of such a report and be entitled to recover all reasonable costs and attorney's fees in such proceedings.

The association would recommend to the Department of Insurance that it revoke an employer's authority to self-insure, unless the employer provides the association with a certified actuarial report and qualifying security deposit meeting certain requirements. If the employer does not provide the annual actuarial report or fails to timely provide the security deposit requirements, the association would recommend and the department would revoke such employer's authority to self-insure.

In the event an individual self-insured employer ceases or suspends payment of compensation to its employees, the association would be authorized to call the qualifying security deposit to ensure payment of compensation.

The types of qualifying deposits that an employer would be required to deposit with the association are revised. Certificates of deposit, U.S. Treasury Notes and Bonds, and securities issued by the State of Florida and backed by the full faith and credit of the state are eliminated as types of qualifying security deposits due to the concern that these types of assets would be deemed general assets in the event of an employer's bankruptcy, which would prevent the division from having a priority claim to the assets and receiving less than face value from the proceeds of the bankruptcy. Other types of acceptable securities and bonds are delineated in the section.

Currently authorized self-insured employers must comply with the revised qualifying security deposit requirements on or before December 31, 2001, or upon maturity of existing security deposits, whichever occurs later.

The bill deletes the maximum \$100 fine (“for each failure”) that applies if a self-insurer fails to file any report required by rule. As amended, the employer would be subject to a civil penalty. The bill does not state the amount of the civil penalty, which would be specified by department rule.

The section corrects statutory cross-references to reflect the transfer of the regulation of self-insurance funds from the Division of Workers' Compensation to the Department of Insurance in 1993.

**Section 2.** Amends s. 440.385, F.S., to provide that the activities of the association would be subject to review by the Department of Insurance and authorizes the association to enter into agreements with the State of Florida to perform specified services.

The association, as well as the department, would be authorized to audit and examine a self-insured employer to verify the financial strength of its current and former members. The association is authorized to assess the cost of an audit against the individual, self-insurer examined. The payroll records of each individual self-insurer must be open to annual inspection and audit by the association, the department, or their authorized representative, during regular business hours, and if any audit discloses a deficiency in the amount reported to the association or in the amounts paid the department by an individual self-insurer for its assessment, the department or the association may assess the cost of such audit against the individual self-insurer. However, the bill (and current law) also provides that the association may charge fees to any member to cover the actual costs of examining the financial and safety conditions of that member.

The nine-member board of directors of the association would be appointed by the Insurance Commissioner, rather than the Secretary of the Department of Labor and Employment Security. The bill provides that appointments made after March 21, 2001, shall be made by the Insurance Commissioner (however, the bill does not take effect until October 1, 2001).

Funds may be paid from the Workers' Compensation Administration Trust Fund to contract with the association to perform services required by law. However, no state funds can be allocated to the association for payment of covered claims or related expenses except those state funds accruing to the association through the assignment of rights of an insolvent employer. The department may not levy an assessment on the association.

The department is required to review recommendations of the association concerning whether self-insured employers have the financial strength necessary to ensure the timely payment of claims and take such actions as deemed necessary to order compliance with the recommendations. The department is authorized to contract with the association to process applications for self-insurance, collect and review financial statements, collect security deposit documents and reinsurance policies, and collect all data necessary to calculate annual premiums, including individual self-insurers that are public utilities or governmental entities, and provide such premium to the department for assessment purposes. The department may also contract with the association for the audit and administration of the individual, self-insurers. The department may 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 plan of operation of the association in effect on March 1, 2001, and approved by the Department of Labor and Employment Security shall remain in effect, but any amendments do not become effective until approved by the Department of Insurance. By January 1, 2001, the board must submit to the Department of Insurance a proposed plan of operation.

**Section 3.** Amends s. 440.386, F.S., to authorize the association or the department to initiate a delinquency proceeding against a self-insured employer. 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 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., to authorize the Department of Insurance (rather than the Department of Labor and Employment Security) to suspend or revoke any authorization of an employer to self-insure if the employer fails to comply with any compensation order of a judge of compensation claims or court within 10 days after the order becomes final. The bill further authorizes the association (rather than the Division of Workers' Compensation) to sell such securities deposited by the self-insurer with the association as may be necessary to satisfy the order.

**Section 5.** The act would take effect October 1, 2001.

#### **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:**

Indeterminate.

**C. Government Sector Impact:**

The Department of Insurance may realize some indeterminate amount of savings to the extent that duplicative functions within the department are eliminated by transferring responsibilities from the department to the Florida Self-Insurers Guaranty Association.

**VI. Technical Deficiencies:**

The bill provides that appointments to the board of the association after March 21, 2001, shall be made by the Insurance Commissioner, rather than the Secretary of the Department of Labor and Employment Security. However, the bill does not take effect until October 1, 2001.

**VII. Related Issues:**

A separate bill, CS/SB 2224, by Banking and Insurance and Senator Clary, transfers the functions of the Division of Workers' Compensation from the Department of Labor and Employment Security to the Department of Insurance.

**VIII. Amendments:**

None.