

As Introduced

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S. B. No. 227

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A B I L L

To amend sections 4123.35, 4123.93, and 4123.931 of 1
the Revised Code to modify the subrogation 2
provisions of the Workers' Compensation Law. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4123.35, 4123.93, and 4123.931 of 4
the Revised Code be amended to read as follows: 5

Sec. 4123.35. (A) Except as provided in this section, every 6
employer mentioned in division (B)(2) of section 4123.01 of the 7
Revised Code, and every publicly owned utility shall pay 8
semiannually in the months of January and July into the state 9
insurance fund the amount of annual premium the administrator of 10
workers' compensation fixes for the employment or occupation of 11
the employer, the amount of which premium to be paid by each 12
employer to be determined by the classifications, rules, and rates 13
made and published by the administrator. The employer shall pay 14
semiannually a further sum of money into the state insurance fund 15
as may be ascertained to be due from the employer by applying the 16
rules of the administrator, and a receipt or certificate 17
certifying that payment has been made shall be mailed immediately 18
to the employer by the bureau of workers' compensation. The 19

receipt or certificate is prima-facie evidence of the payment of 20
the premium. 21

The bureau of workers' compensation shall verify with the 22
secretary of state the existence of all corporations and 23
organizations making application for workers' compensation 24
coverage and shall require every such application to include the 25
employer's federal identification number. 26

An employer as defined in division (B)(2) of section 4123.01 27
of the Revised Code who has contracted with a subcontractor is 28
liable for the unpaid premium due from any subcontractor with 29
respect to that part of the payroll of the subcontractor that is 30
for work performed pursuant to the contract with the employer. 31

Division (A) of this section providing for the payment of 32
premiums semiannually does not apply to any employer who was a 33
subscriber to the state insurance fund prior to January 1, 1914, 34
or who may first become a subscriber to the fund in any month 35
other than January or July. Instead, the semiannual premiums shall 36
be paid by those employers from time to time upon the expiration 37
of the respective periods for which payments into the fund have 38
been made by them. 39

The administrator shall adopt rules to permit employers to 40
make periodic payments of the semiannual premium due under this 41
division. The rules shall include provisions for the assessment of 42
interest charges, where appropriate, and for the assessment of 43
penalties when an employer fails to make timely premium payments. 44
An employer who timely pays the amounts due under this division is 45
entitled to all of the benefits and protections of this chapter. 46
Upon receipt of payment, the bureau immediately shall mail a 47
receipt or certificate to the employer certifying that payment has 48
been made, which receipt is prima-facie evidence of payment. 49
Workers' compensation coverage under this chapter continues 50
uninterrupted upon timely receipt of payment under this division. 51

Every public employer, except public employers that are 52
self-insuring employers under this section, shall comply with 53
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 54
regard to the contribution of moneys to the public insurance fund. 55

(B) Employers who will abide by the rules of the 56
administrator and who may be of sufficient financial ability to 57
render certain the payment of compensation to injured employees or 58
the dependents of killed employees, and the furnishing of medical, 59
surgical, nursing, and hospital attention and services and 60
medicines, and funeral expenses, equal to or greater than is 61
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 62
to 4123.67 of the Revised Code, and who do not desire to insure 63
the payment thereof or indemnify themselves against loss sustained 64
by the direct payment thereof, upon a finding of such facts by the 65
administrator, may be granted the privilege to pay individually 66
compensation, and furnish medical, surgical, nursing, and hospital 67
services and attention and funeral expenses directly to injured 68
employees or the dependents of killed employees, thereby being 69
granted status as a self-insuring employer. The administrator may 70
charge employers who apply for the status as a self-insuring 71
employer a reasonable application fee to cover the bureau's costs 72
in connection with processing and making a determination with 73
respect to an application. 74

All employers granted such status shall demonstrate 75
sufficient financial and administrative ability to assure that all 76
obligations under this section are promptly met. The administrator 77
shall deny the privilege where the employer is unable to 78
demonstrate the employer's ability to promptly meet all the 79
obligations imposed on the employer by this section. 80

(1) The administrator shall consider, but is not limited to, 81
the following factors, where applicable, in determining the 82
employer's ability to meet all of the obligations imposed on the 83

employer by this section:	84
(a) The employer employs a minimum of five hundred employees in this state;	85 86
(b) The employer has operated in this state for a minimum of two years, provided that an employer who has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in this state that has operated for at least two years in this state, also shall qualify;	87 88 89 90 91
(c) Where the employer previously contributed to the state insurance fund or is a successor employer as defined by bureau rules, the amount of the buyout, as defined by bureau rules;	92 93 94
(d) The sufficiency of the employer's assets located in this state to insure the employer's solvency in paying compensation directly;	95 96 97
(e) The financial records, documents, and data, certified by a certified public accountant, necessary to provide the employer's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.	98 99 100 101 102
(f) The employer's organizational plan for the administration of the workers' compensation law;	103 104
(g) The employer's proposed plan to inform employees of the change from a state fund insurer to a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employees' rights to compensation and benefits; and	105 106 107 108
(h) The employer has either an account in a financial institution in this state, or if the employer maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will	109 110 111 112 113

be honored by a financial institution in this state. 114

The administrator may waive the requirements of divisions 115
(B)(1)(a) and (b) of this section and the requirement of division 116
(B)(1)(e) of this section that the financial records, documents, 117
and data be certified by a certified public accountant. The 118
administrator shall adopt rules establishing the criteria that an 119
employer shall meet in order for the administrator to waive the 120
requirement of division (B)(1)(e) of this section. Such rules may 121
require additional security of that employer pursuant to division 122
(E) of section 4123.351 of the Revised Code. 123

The administrator shall not grant the status of self-insuring 124
employer to the state, except that the administrator may grant the 125
status of self-insuring employer to a state institution of higher 126
education, excluding its hospitals, that meets the requirements of 127
division (B)(2) of this section. 128

(2) When considering the application of a public employer, 129
except for a board of county commissioners described in division 130
(G) of section 4123.01 of the Revised Code, a board of a county 131
hospital, or a publicly owned utility, the administrator shall 132
verify that the public employer satisfies all of the following 133
requirements as the requirements apply to that public employer: 134

(a) For the two-year period preceding application under this 135
section, the public employer has maintained an unvoted debt 136
capacity equal to at least two times the amount of the current 137
annual premium established by the administrator under this chapter 138
for that public employer for the year immediately preceding the 139
year in which the public employer makes application under this 140
section. 141

(b) For each of the two fiscal years preceding application 142
under this section, the unreserved and undesignated year-end fund 143
balance in the public employer's general fund is equal to at least 144

five per cent of the public employer's general fund revenues for 145
the fiscal year computed in accordance with generally accepted 146
accounting principles. 147

(c) For the five-year period preceding application under this 148
section, the public employer, to the extent applicable, has 149
complied fully with the continuing disclosure requirements 150
established in rules adopted by the United States securities and 151
exchange commission under 17 C.F.R. 240.15c 2-12. 152

(d) For the five-year period preceding application under this 153
section, the public employer has not had its local government fund 154
distribution withheld on account of the public employer being 155
indebted or otherwise obligated to the state. 156

(e) For the five-year period preceding application under this 157
section, the public employer has not been under a fiscal watch or 158
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 159
of the Revised Code. 160

(f) For the public employer's fiscal year preceding 161
application under this section, the public employer has obtained 162
an annual financial audit as required under section 117.10 of the 163
Revised Code, which has been released by the auditor of state 164
within seven months after the end of the public employer's fiscal 165
year. 166

(g) On the date of application, the public employer holds a 167
debt rating of Aa3 or higher according to Moody's investors 168
service, inc., or a comparable rating by an independent rating 169
agency similar to Moody's investors service, inc. 170

(h) The public employer agrees to generate an annual 171
accumulating book reserve in its financial statements reflecting 172
an actuarially generated reserve adequate to pay projected claims 173
under this chapter for the applicable period of time, as 174
determined by the administrator. 175

(i) For a public employer that is a hospital, the public employer shall submit audited financial statements showing the hospital's overall liquidity characteristics, and the administrator shall determine, on an individual basis, whether the public employer satisfies liquidity standards equivalent to the liquidity standards of other public employers.

(j) Any additional criteria that the administrator adopts by rule pursuant to division (E) of this section.

The administrator shall not approve the application of a public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or publicly owned utility, who does not satisfy all of the requirements listed in division (B)(2) of this section.

(C) A board of county commissioners described in division (G) of section 4123.01 of the Revised Code, as an employer, that will abide by the rules of the administrator and that may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and that does not desire to insure the payment thereof or indemnify itself against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge a board of county commissioners described in division (G) of section

4123.01 of the Revised Code that applies for the status as a 208
self-insuring employer a reasonable application fee to cover the 209
bureau's costs in connection with processing and making a 210
determination with respect to an application. All employers 211
granted such status shall demonstrate sufficient financial and 212
administrative ability to assure that all obligations under this 213
section are promptly met. The administrator shall deny the 214
privilege where the employer is unable to demonstrate the 215
employer's ability to promptly meet all the obligations imposed on 216
the employer by this section. The administrator shall consider, 217
but is not limited to, the following factors, where applicable, in 218
determining the employer's ability to meet all of the obligations 219
imposed on the board as an employer by this section: 220

(1) The board as an employer employs a minimum of five 221
hundred employees in this state; 222

(2) The board has operated in this state for a minimum of two 223
years; 224

(3) Where the board previously contributed to the state 225
insurance fund or is a successor employer as defined by bureau 226
rules, the amount of the buyout, as defined by bureau rules; 227

(4) The sufficiency of the board's assets located in this 228
state to insure the board's solvency in paying compensation 229
directly; 230

(5) The financial records, documents, and data, certified by 231
a certified public accountant, necessary to provide the board's 232
full financial disclosure. The records, documents, and data 233
include, but are not limited to, balance sheets and profit and 234
loss history for the current year and previous four years. 235

(6) The board's organizational plan for the administration of 236
the workers' compensation law; 237

(7) The board's proposed plan to inform employees of the 238

proposed self-insurance, the procedures the board will follow as a 239
self-insuring employer, and the employees' rights to compensation 240
and benefits; 241

(8) The board has either an account in a financial 242
institution in this state, or if the board maintains an account 243
with a financial institution outside this state, ensures that 244
workers' compensation checks are drawn from the same account as 245
payroll checks or the board clearly indicates that payment will be 246
honored by a financial institution in this state; 247

(9) The board shall provide the administrator a surety bond 248
in an amount equal to one hundred twenty-five per cent of the 249
projected losses as determined by the administrator. 250

(D) The administrator shall require a surety bond from all 251
self-insuring employers, issued pursuant to section 4123.351 of 252
the Revised Code, that is sufficient to compel, or secure to 253
injured employees, or to the dependents of employees killed, the 254
payment of compensation and expenses, which shall in no event be 255
less than that paid or furnished out of the state insurance fund 256
in similar cases to injured employees or to dependents of killed 257
employees whose employers contribute to the fund, except when an 258
employee of the employer, who has suffered the loss of a hand, 259
arm, foot, leg, or eye prior to the injury for which compensation 260
is to be paid, and thereafter suffers the loss of any other of the 261
members as the result of any injury sustained in the course of and 262
arising out of the employee's employment, the compensation to be 263
paid by the self-insuring employer is limited to the disability 264
suffered in the subsequent injury, additional compensation, if 265
any, to be paid by the bureau out of the surplus created by 266
section 4123.34 of the Revised Code. 267

(E) In addition to the requirements of this section, the 268
administrator shall make and publish rules governing the manner of 269
making application and the nature and extent of the proof required 270

to justify a finding of fact by the administrator as to granting 271
the status of a self-insuring employer, which rules shall be 272
general in their application, one of which rules shall provide 273
that all self-insuring employers shall pay into the state 274
insurance fund such amounts as are required to be credited to the 275
surplus fund in division (B) of section 4123.34 of the Revised 276
Code. The administrator may adopt rules establishing requirements 277
in addition to the requirements described in division (B)(2) of 278
this section that a public employer shall meet in order to qualify 279
for self-insuring status. 280

Employers shall secure directly from the bureau central 281
offices application forms upon which the bureau shall stamp a 282
designating number. Prior to submission of an application, an 283
employer shall make available to the bureau, and the bureau shall 284
review, the information described in division (B)(1) of this 285
section, and public employers shall make available, and the bureau 286
shall review, the information necessary to verify whether the 287
public employer meets the requirements listed in division (B)(2) 288
of this section. An employer shall file the completed application 289
forms with an application fee, which shall cover the costs of 290
processing the application, as established by the administrator, 291
by rule, with the bureau at least ninety days prior to the 292
effective date of the employer's new status as a self-insuring 293
employer. The application form is not deemed complete until all 294
the required information is attached thereto. The bureau shall 295
only accept applications that contain the required information. 296

(F) The bureau shall review completed applications within a 297
reasonable time. If the bureau determines to grant an employer the 298
status as a self-insuring employer, the bureau shall issue a 299
statement, containing its findings of fact, that is prepared by 300
the bureau and signed by the administrator. If the bureau 301
determines not to grant the status as a self-insuring employer, 302

the bureau shall notify the employer of the determination and 303
require the employer to continue to pay its full premium into the 304
state insurance fund. The administrator also shall adopt rules 305
establishing a minimum level of performance as a criterion for 306
granting and maintaining the status as a self-insuring employer 307
and fixing time limits beyond which failure of the self-insuring 308
employer to provide for the necessary medical examinations and 309
evaluations may not delay a decision on a claim. 310

(G) The administrator shall adopt rules setting forth 311
procedures for auditing the program of self-insuring employers. 312
The bureau shall conduct the audit upon a random basis or whenever 313
the bureau has grounds for believing that a self-insuring employer 314
is not in full compliance with bureau rules or this chapter. 315

The administrator shall monitor the programs conducted by 316
self-insuring employers, to ensure compliance with bureau 317
requirements and for that purpose, shall develop and issue to 318
self-insuring employers standardized forms for use by the 319
self-insuring employer in all aspects of the self-insuring 320
employers' direct compensation program and for reporting of 321
information to the bureau. 322

The bureau shall receive and transmit to the self-insuring 323
employer all complaints concerning any self-insuring employer. In 324
the case of a complaint against a self-insuring employer, the 325
administrator shall handle the complaint through the 326
self-insurance division of the bureau. The bureau shall maintain a 327
file by employer of all complaints received that relate to the 328
employer. The bureau shall evaluate each complaint and take 329
appropriate action. 330

The administrator shall adopt as a rule a prohibition against 331
any self-insuring employer from harassing, dismissing, or 332
otherwise disciplining any employee making a complaint, which rule 333
shall provide for a financial penalty to be levied by the 334

administrator payable by the offending self-insuring employer. 335

(H) For the purpose of making determinations as to whether to 336
grant status as a self-insuring employer, the administrator may 337
subscribe to and pay for a credit reporting service that offers 338
financial and other business information about individual 339
employers. The costs in connection with the bureau's subscription 340
or individual reports from the service about an applicant may be 341
included in the application fee charged employers under this 342
section. 343

(I) The administrator, notwithstanding other provisions of 344
this chapter, may permit a self-insuring employer to resume 345
payment of premiums to the state insurance fund with appropriate 346
credit modifications to the employer's basic premium rate as such 347
rate is determined pursuant to section 4123.29 of the Revised 348
Code. 349

(J) On the first day of July of each year, the administrator 350
shall calculate separately each self-insuring employer's 351
assessments for the safety and hygiene fund, administrative costs 352
pursuant to section 4123.342 of the Revised Code, and for the 353
portion of the surplus fund under division (B) of section 4123.34 354
of the Revised Code that is not used for handicapped 355
reimbursement, on the basis of the paid compensation attributable 356
to the individual self-insuring employer according to the 357
following calculation: 358

(1) The total assessment against all self-insuring employers 359
as a class for each fund and for the administrative costs for the 360
year that the assessment is being made, as determined by the 361
administrator, divided by the total amount of paid compensation 362
for the previous calendar year attributable to all amenable 363
self-insuring employers; 364

(2) Multiply the quotient in division (J)(1) of this section 365

by the total amount of paid compensation for the previous calendar 366
year that is attributable to the individual self-insuring employer 367
for whom the assessment is being determined. Each self-insuring 368
employer shall pay the assessment that results from this 369
calculation, unless the assessment resulting from this calculation 370
falls below a minimum assessment, which minimum assessment the 371
administrator shall determine on the first day of July of each 372
year with the advice and consent of the workers' compensation 373
oversight commission, in which event, the self-insuring employer 374
shall pay the minimum assessment. 375

In determining the total amount due for the total assessment 376
against all self-insuring employers as a class for each fund and 377
the administrative assessment, the administrator shall reduce 378
proportionately the total for each fund and assessment by the 379
amount of money in the self-insurance assessment fund as of the 380
date of the computation of the assessment. 381

The administrator shall calculate the assessment for the 382
portion of the surplus fund under division (B) of section 4123.34 383
of the Revised Code that is used for handicapped reimbursement in 384
the same manner as set forth in divisions (J)(1) and (2) of this 385
section except that the administrator shall calculate the total 386
assessment for this portion of the surplus fund only on the basis 387
of those self-insuring employers that retain participation in the 388
handicapped reimbursement program and the individual self-insuring 389
employer's proportion of paid compensation shall be calculated 390
only for those self-insuring employers who retain participation in 391
the handicapped reimbursement program. The administrator, as the 392
administrator determines appropriate, may determine the total 393
assessment for the handicapped portion of the surplus fund in 394
accordance with sound actuarial principles. 395

The administrator shall calculate the assessment for the 396
portion of the surplus fund under division (B) of section 4123.34 397

of the Revised Code that under division (D) of section 4121.66 of
the Revised Code is used for rehabilitation costs in the same
manner as set forth in divisions (J)(1) and (2) of this section,
except that the administrator shall calculate the total assessment
for this portion of the surplus fund only on the basis of those
self-insuring employers who have not made the election to make
payments directly under division (D) of section 4121.66 of the
Revised Code and an individual self-insuring employer's proportion
of paid compensation only for those self-insuring employers who
have not made that election.

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An employer who no longer is a self-insuring employer in this
state or who no longer is operating in this state, shall continue
to pay assessments for administrative costs and for the portion of
the surplus fund under division (B) of section 4123.34 of the
Revised Code that is not used for handicapped reimbursement, based
upon paid compensation attributable to claims that occurred while
the employer was a self-insuring employer within this state.

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(K) There is hereby created in the state treasury the
self-insurance assessment fund. All investment earnings of the
fund shall be deposited in the fund. The administrator shall use
the money in the self-insurance assessment fund only for
administrative costs as specified in section 4123.341 of the
Revised Code.

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(L) Every self-insuring employer shall certify, in affidavit
form subject to the penalty for perjury, to the bureau the amount
of the self-insuring employer's paid compensation for the previous
calendar year. In reporting paid compensation paid for the
previous year, a self-insuring employer shall exclude from the
total amount of paid compensation any reimbursement the
self-insuring employer receives in the previous calendar year from
the surplus fund pursuant to section 4123.512 of the Revised Code
for any paid compensation. The self-insuring employer also shall

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exclude from the paid compensation reported any amount recovered 430
under section ~~4123.93~~ 4123.931 of the Revised Code and any amount 431
that is determined not to have been payable to or on behalf of a 432
claimant in any final administrative or judicial proceeding. The 433
self-insuring employer shall exclude such amounts from the paid 434
compensation reported in the reporting period subsequent to the 435
date the determination is made. The administrator shall adopt 436
rules, in accordance with Chapter 119. of the Revised Code, 437
establishing the date by which self-insuring employers must submit 438
such information and the amount of the assessments provided for in 439
division (J) of this section for employers who have been granted 440
self-insuring status within the last calendar year. 441

The administrator shall include any assessment that remains 442
unpaid for previous assessment periods in the calculation and 443
collection of any assessments due under this division or division 444
(J) of this section. 445

(M) As used in this section, "paid compensation" means all 446
amounts paid by a self-insuring employer for living maintenance 447
benefits, all amounts for compensation paid pursuant to sections 448
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and 449
4123.64 of the Revised Code, all amounts paid as wages in lieu of 450
such compensation, all amounts paid in lieu of such compensation 451
under a nonoccupational accident and sickness program fully funded 452
by the self-insuring employer, and all amounts paid by a 453
self-insuring employer for a violation of a specific safety 454
standard pursuant to Section 35 of Article II, Ohio Constitution 455
and section 4121.47 of the Revised Code. 456

(N) Should any section of this chapter or Chapter 4121. of 457
the Revised Code providing for self-insuring employers' 458
assessments based upon compensation paid be declared 459
unconstitutional by a final decision of any court, then that 460
section of the Revised Code declared unconstitutional shall revert 461

back to the section in existence prior to November 3, 1989, 462
providing for assessments based upon payroll. 463

(O) The administrator may grant a self-insuring employer the 464
privilege to self-insure a construction project entered into by 465
the self-insuring employer that is scheduled for completion within 466
six years after the date the project begins, and the total cost of 467
which is estimated to exceed one hundred million dollars. The 468
administrator may waive such cost and time criteria and grant a 469
self-insuring employer the privilege to self-insure a construction 470
project regardless of the time needed to complete the construction 471
project and provided that the cost of the construction project is 472
estimated to exceed fifty million dollars. A self-insuring 473
employer who desires to self-insure a construction project shall 474
submit to the administrator an application listing the dates the 475
construction project is scheduled to begin and end, the estimated 476
cost of the construction project, the contractors and 477
subcontractors whose employees are to be self-insured by the 478
self-insuring employer, the provisions of a safety program that is 479
specifically designed for the construction project, and a 480
statement as to whether a collective bargaining agreement 481
governing the rights, duties, and obligations of each of the 482
parties to the agreement with respect to the construction project 483
exists between the self-insuring employer and a labor 484
organization. 485

A self-insuring employer may apply to self-insure the 486
employees of either of the following: 487

(1) All contractors and subcontractors who perform labor or 488
work or provide materials for the construction project; 489

(2) All contractors and, at the administrator's discretion, a 490
substantial number of all the subcontractors who perform labor or 491
work or provide materials for the construction project. 492

Upon approval of the application, the administrator shall 493
mail a certificate granting the privilege to self-insure the 494
construction project to the self-insuring employer. The 495
certificate shall contain the name of the self-insuring employer 496
and the name, address, and telephone number of the self-insuring 497
employer's representatives who are responsible for administering 498
workers' compensation claims for the construction project. The 499
self-insuring employer shall post the certificate in a conspicuous 500
place at the site of the construction project. 501

The administrator shall maintain a record of the contractors 502
and subcontractors whose employees are covered under the 503
certificate issued to the self-insured employer. A self-insuring 504
employer immediately shall notify the administrator when any 505
contractor or subcontractor is added or eliminated from inclusion 506
under the certificate. 507

Upon approval of the application, the self-insuring employer 508
is responsible for the administration and payment of all claims 509
under this chapter and Chapter 4121. of the Revised Code for the 510
employees of the contractor and subcontractors covered under the 511
certificate who receive injuries or are killed in the course of 512
and arising out of employment on the construction project, or who 513
contract an occupational disease in the course of employment on 514
the construction project. For purposes of this chapter and Chapter 515
4121. of the Revised Code, a claim that is administered and paid 516
in accordance with this division is considered a claim against the 517
self-insuring employer listed in the certificate. A contractor or 518
subcontractor included under the certificate shall report to the 519
self-insuring employer listed in the certificate, all claims that 520
arise under this chapter and Chapter 4121. of the Revised Code in 521
connection with the construction project for which the certificate 522
is issued. 523

A self-insuring employer who complies with this division is 524

entitled to the protections provided under this chapter and 525
Chapter 4121. of the Revised Code with respect to the employees of 526
the contractors and subcontractors covered under a certificate 527
issued under this division for death or injuries that arise out 528
of, or death, injuries, or occupational diseases that arise in the 529
course of, those employees' employment on that construction 530
project, as if the employees were employees of the self-insuring 531
employer, provided that the self-insuring employer also complies 532
with this section. No employee of the contractors and 533
subcontractors covered under a certificate issued under this 534
division shall be considered the employee of the self-insuring 535
employer listed in that certificate for any purposes other than 536
this chapter and Chapter 4121. of the Revised Code. Nothing in 537
this division gives a self-insuring employer authority to control 538
the means, manner, or method of employment of the employees of the 539
contractors and subcontractors covered under a certificate issued 540
under this division. 541

The contractors and subcontractors included under a 542
certificate issued under this division are entitled to the 543
protections provided under this chapter and Chapter 4121. of the 544
Revised Code with respect to the contractor's or subcontractor's 545
employees who are employed on the construction project which is 546
the subject of the certificate, for death or injuries that arise 547
out of, or death, injuries, or occupational diseases that arise in 548
the course of, those employees' employment on that construction 549
project. 550

The contractors and subcontractors included under a 551
certificate issued under this division shall identify in their 552
payroll records the employees who are considered the employees of 553
the self-insuring employer listed in that certificate for purposes 554
of this chapter and Chapter 4121. of the Revised Code, and the 555
amount that those employees earned for employment on the 556

construction project that is the subject of that certificate. 557
Notwithstanding any provision to the contrary under this chapter 558
and Chapter 4121. of the Revised Code, the administrator shall 559
exclude the payroll that is reported for employees who are 560
considered the employees of the self-insuring employer listed in 561
that certificate, and that the employees earned for employment on 562
the construction project that is the subject of that certificate, 563
when determining those contractors' or subcontractors' premiums or 564
assessments required under this chapter and Chapter 4121. of the 565
Revised Code. A self-insuring employer issued a certificate under 566
this division shall include in the amount of paid compensation it 567
reports pursuant to division (L) of this section, the amount of 568
paid compensation the self-insuring employer paid pursuant to this 569
division for the previous calendar year. 570

Nothing in this division shall be construed as altering the 571
rights of employees under this chapter and Chapter 4121. of the 572
Revised Code as those rights existed prior to September 17, 1996. 573
Nothing in this division shall be construed as altering the rights 574
devolved under sections 2305.31 and 4123.82 of the Revised Code as 575
those rights existed prior to September 17, 1996. 576

As used in this division, "privilege to self-insure a 577
construction project" means privilege to pay individually 578
compensation, and to furnish medical, surgical, nursing, and 579
hospital services and attention and funeral expenses directly to 580
injured employees or the dependents of killed employees. 581

(P) A self-insuring employer whose application is granted 582
under division (O) of this section shall designate a safety 583
professional to be responsible for the administration and 584
enforcement of the safety program that is specifically designed 585
for the construction project that is the subject of the 586
application. 587

A self-insuring employer whose application is granted under 588

division (O) of this section shall employ an ombudsperson for the
construction project that is the subject of the application. The
ombudsperson shall have experience in workers' compensation or the
construction industry, or both. The ombudsperson shall perform all
of the following duties:

(1) Communicate with and provide information to employees who
are injured in the course of, or whose injury arises out of
employment on the construction project, or who contract an
occupational disease in the course of employment on the
construction project;

(2) Investigate the status of a claim upon the request of an
employee to do so;

(3) Provide information to claimants, third party
administrators, employers, and other persons to assist those
persons in protecting their rights under this chapter and Chapter
4121. of the Revised Code.

A self-insuring employer whose application is granted under
division (O) of this section shall post the name of the safety
professional and the ombudsperson and instructions for contacting
the safety professional and the ombudsperson in a conspicuous
place at the site of the construction project.

(Q) The administrator may consider all of the following when
deciding whether to grant a self-insuring employer the privilege
to self-insure a construction project as provided under division
(O) of this section:

(1) Whether the self-insuring employer has an organizational
plan for the administration of the workers' compensation law;

(2) Whether the safety program that is specifically designed
for the construction project provides for the safety of employees
employed on the construction project, is applicable to all
contractors and subcontractors who perform labor or work or

provide materials for the construction project, and has a
component, a safety training program that complies with standards
adopted pursuant to the "Occupational Safety and Health Act of
1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing
management and employee involvement;

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(3) Whether granting the privilege to self-insure the
construction project will reduce the costs of the construction
project;

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(4) Whether the self-insuring employer has employed an
ombudsperson as required under division (P) of this section;

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(5) Whether the self-insuring employer has sufficient surety
to secure the payment of claims for which the self-insuring
employer would be responsible pursuant to the granting of the
privilege to self-insure a construction project under division (O)
of this section.

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(R) As used in this section:

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(1) "Unvoted debt capacity" means the amount of money that a
public employer may borrow without voter approval of a tax levy;

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(2) "State institution of higher education" means the state
universities listed in section 3345.011 of the Revised Code,
community colleges created pursuant to Chapter 3354. of the
Revised Code, university branches created pursuant to Chapter
3355. of the Revised Code, technical colleges created pursuant to
Chapter 3357. of the Revised Code, and state community colleges
created pursuant to Chapter 3358. of the Revised Code.

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Sec. 4123.93. As used in sections 4123.93 and 4123.931 of the
Revised Code:

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(A) "Claimant" means a person who is eligible to receive
compensation ~~or~~, medical benefits, or death benefits under this
chapter or Chapter 4121., 4127., or 4131. of the Revised Code;

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~~including any dependent or person whose eligibility is the result of an injury to or occupational disease of another person.~~

~~(B) "Statutory subrogee" means the administrator of the bureau of workers' compensation, a self-insuring employer, or an employer that contracts for the direct payment of medical services pursuant to division (L) of section 4121.44 of the Revised Code.~~

~~(C) "Subrogated amounts" include, but are not limited to, the following:~~

~~(1) Amounts recoverable from any third party, notwithstanding any limitations by the third party concerning its responsibility to make payments in cases involving workers' compensation under Chapter 4121., 4123., 4127., or 4131. of the Revised Code;~~

~~(2) Amounts recoverable from a claimant's insurer in connection with underinsured or uninsured motorist coverage, notwithstanding any limitation contained in Chapter 3937. of the Revised Code;~~

~~(3) Amounts that a claimant would be entitled to recover from a political subdivision, notwithstanding any limitations contained in Chapter 2744. of the Revised Code.~~

~~(D) "Third party" means an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.~~

(D) "Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs or expenses paid by the statutory subrogee pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code.

(E) "Net amount recovered" means the amount of any award,

settlement, compromise, or recovery by a claimant against a third party, minus the attorney's fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. 681
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(F) "Uncompensated damages" means the claimant's demonstrated or proven damages minus the statutory subrogee's subrogation interest. 685
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Sec. 4123.931. (A) The payment of compensation or benefits pursuant to this chapter or Chapter 4121., 4127., or 4131., of the Revised Code creates a right of subrogation recovery in favor of a statutory subrogee against a third party. ~~A statutory subrogee's subrogation interest includes past payments of compensation and medical benefits and estimated future values of compensation and medical benefits arising out of an injury to or disability or disease of a claimant, and the statutory subrogee is subrogated to the rights of a claimant against that third party. The net amount recovered is subject to a statutory subrogee's right of recovery.~~ 688
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(B) If a claimant, statutory subrogee, and third party settle or attempt to settle a claimant's claim against a third party, the net amount recovered shall be divided and paid to the claimant and the statutory subrogee on a basis that is proportional to the claimant's uncompensated damages and the statutory subrogee's subrogation interest unless it is divided and paid on a more fair and reasonable basis that is agreed to by the claimant and statutory subrogee. If while attempting to settle, the claimant and statutory subrogee cannot agree to the allocation of the net amount recovered, the claimant and statutory subrogee may file a request with the administrator of workers' compensation for a conference to be conducted by a designee appointed by the administrator, or the claimant and statutory subrogee may agree to utilize any other binding or non-binding alternative dispute 698
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resolution process. 712

The claimant and statutory subrogee shall pay equal shares of 713
the fees and expenses of utilizing an alternative dispute 714
resolution process, unless they agree to pay those fees and 715
expenses in another manner. The administrator shall not assess any 716
fees to a claimant or statutory subrogee for a conference 717
conducted by the administrator's designee. 718

(C) If a claimant and statutory subrogee request that a 719
conference be conducted by the administrator's designee pursuant 720
to division (B) of this section, both of the following apply: 721

(1) The administrator's designee shall schedule a conference 722
on or before sixty days after the date that the claimant and 723
statutory subrogee filed a request for the conference. 724

(2) The determination made by the administrator's designee is 725
not subject to Chapter 119. of the Revised Code. 726

(D) When a claimant's action against a third party proceeds 727
to trial and damages are awarded, both of the following apply: 728

(1) The net amount recovered shall be divided and paid to the 729
claimant and the statutory subrogee on a basis that is 730
proportional to the claimant's uncompensated damages and the 731
statutory subrogee's subrogation interest. 732

(2) The court in a nonjury action shall make findings of 733
fact, and the jury in a jury action shall return a general verdict 734
accompanied by answers to interrogatories that specify the 735
following: 736

(a) The total amount of the compensatory damages; 737

(b) The portion of the compensatory damages specified 738
pursuant to division (D)(2)(a) of this section that represents 739
economic loss; 740

(c) The portion of the compensatory damages specified 741

pursuant to division (D)(2)(a) of this section that represents 742
noneconomic loss. 743

(E)(1) After a claimant and statutory subrogee know the net 744
amount recovered, and after the means for dividing it has been 745
determined under division (B) or (D) of this section, a claimant 746
may establish an interest-bearing trust account for the full 747
amount of the subrogation interest that represents estimated 748
future payments of compensation, medical benefits, rehabilitation 749
costs, or death benefits, reduced to present value, from which the 750
claimant shall make reimbursement payments to the statutory 751
subrogee for the future payments of compensation, medical 752
benefits, rehabilitation costs, or death benefits. If the workers' 753
compensation claim associated with the subrogation interest is 754
settled, or if the claimant dies, or if any other circumstance 755
occurs that would preclude any future payments of compensation, 756
medical benefits, rehabilitation costs, and death benefits by the 757
statutory subrogee, any amount remaining in the trust account 758
after final reimbursement is paid to the statutory subrogee for 759
all payments made by the statutory subrogee before the ending of 760
future payments shall be paid to the claimant or the claimant's 761
estate. 762

(2) A claimant may use interest that accrues on the trust 763
account to pay the expenses of establishing and maintaining the 764
trust account, and all remaining interest shall be credited to the 765
trust account. 766

(3) If a claimant establishes a trust account, the statutory 767
subrogee shall provide payment notices to the claimant on or 768
before the thirtieth day of June and the thirty-first day of 769
December every year listing the total amount that the statutory 770
subrogee has paid for compensation, medical benefits, 771
rehabilitation costs, or death benefits during the half of the 772
year preceding the notice. The claimant shall make reimbursement 773

payments to the statutory subrogee from the trust account on or 774
before the thirty-first day of July every year for a notice 775
provided by the thirtieth day of June, and on or before the 776
thirty-first day of January every year for a notice provided by 777
the thirty-first day of December. The claimant's reimbursement 778
payment shall be in an amount that equals the total amount listed 779
on the notice the claimant receives from the statutory subrogee. 780

(F) If a claimant does not establish a trust account as 781
described in division (E)(1) of this section, the claimant shall 782
pay to the statutory subrogee, on or before thirty days after 783
receipt of funds from the third party, the full amount of the 784
subrogation interest that represents estimated future payments of 785
compensation, medical benefits, rehabilitation costs, or death 786
benefits. 787

(G) A claimant shall notify a statutory subrogee and the 788
attorney general of the identity of all third parties against whom 789
the claimant has or may have a right of recovery, except that when 790
the statutory subrogee is a self-insuring employer, the claimant 791
need not notify the attorney general. No settlement, compromise, 792
judgment, award, or other recovery in any action or claim by a 793
claimant shall be final unless the claimant provides the statutory 794
subrogee and, when required, the attorney general, with prior 795
notice and a reasonable opportunity to assert its subrogation 796
rights. If a statutory subrogee ~~is~~ and, when required, the 797
attorney general are not given that notice, or if a settlement or 798
compromise excludes any amount paid by the statutory subrogee, the 799
third party and the claimant shall be jointly and severally liable 800
to pay the statutory subrogee the full amount of the subrogation 801
interest. 802

~~(E)~~(H) The right of subrogation under this chapter is 803
automatic, regardless of whether a statutory subrogee is joined as 804
a party in an action by a claimant against a third party. A 805

statutory subrogee may assert its subrogation rights through 806
correspondence with the claimant and the third party or their 807
legal representatives. A statutory subrogee may institute and 808
pursue legal proceedings against a third party either by itself or 809
in conjunction with a claimant. If a statutory subrogee institutes 810
legal proceedings against a third party, the statutory subrogee 811
shall provide notice of that fact to the claimant. If the 812
statutory subrogee joins the claimant as a necessary party, or if 813
the claimant elects to participate in the proceedings as a party, 814
the claimant may present the claimant's case first if the matter 815
proceeds to trial. If a claimant disputes the validity or amount 816
of an asserted subrogation interest, the claimant shall join the 817
statutory subrogee as a necessary party to the action against the 818
third party. 819

~~(D) The entire amount of any settlement or compromise of an 820
action or claim is subject to the subrogation right of a statutory 821
subrogee, regardless of the manner in which the settlement or 822
compromise is characterized. Any settlement or compromise that 823
excludes the amount of compensation or medical benefits shall not 824
preclude a statutory subrogee from enforcing its rights under this 825
section. The entire amount of any award or judgment is presumed to 826
represent compensation and medical benefits and future estimated 827
values of compensation and medical benefits that are subject to a 828
statutory subrogee's subrogation rights unless the claimant 829
obtains a special verdict or jury interrogatories indicating that 830
the award or judgment represents different types of damages. 831~~

~~(E) Subrogation does not apply to the portion of any 833
judgment, award, settlement, or compromise of a claim to the 834
extent of a claimant's attorney's fees, costs, or other expenses 835
incurred by a claimant in securing the judgment, award, 836
settlement, or compromise, or the extent of medical, surgical, and 837~~

~~hospital expenses paid by a claimant from the claimant's own~~ 838
~~resources for which reimbursement is not sought. No additional~~ 839
~~attorney's fees, costs, or other expenses in securing any recovery~~ 840
~~may be assessed against any subrogated claims of a statutory~~ 841
~~subrogee (I) The statutory subrogation right of recovery applies~~ 842
~~to, but is not limited to, all of the following:~~ 843

(1) Amounts recoverable from a claimant's insurer in 844
connection with underinsured or uninsured motorist coverage, 845
notwithstanding any limitation contained in Chapter 3937. of the 846
Revised Code; 847

(2) Amounts that a claimant would be entitled to recover from 848
a political subdivision, notwithstanding any limitations contained 849
in Chapter 2744. of the Revised Code; 850

(3) Amounts recoverable from an intentional tort action. 851

(J) If a claimant's claim against a third party is for 852
wrongful death or the claim involves any minor beneficiaries, 853
amounts allocated under this section are subject to the approval 854
of probate court. 855

Section 2. That existing sections 4123.35, 4123.93, and 856
4123.931 of the Revised Code are hereby repealed. 857