

**As Reported by the Senate Insurance, Commerce and Labor  
Committee**

**124th General Assembly  
Regular Session  
2001-2002**

**Sub. S. B. No. 227**

**SENATORS Nein, Wachtmann, Jacobson, Goodman, White, Austria, Spada,  
Armbruster**

---

**A B I L L**

To amend sections 4123.35, 4123.66, 4123.93, and 1  
4123.931 of the Revised Code to modify the 2  
subrogation provisions of the Workers' Compensation 3  
Law and to increase the workers' compensation 4  
funeral expense benefit cap. 5

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

**Section 1.** That sections 4123.35, 4123.66, 4123.93, and 6  
4123.931 of the Revised Code be amended to read as follows: 7

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

## As Reported by the Senate Insurance, Commerce and Labor Committee

rules of the administrator, and a receipt or certificate 19  
certifying that payment has been made shall be mailed immediately 20  
to the employer by the bureau of workers' compensation. The 21  
receipt or certificate is prima-facie evidence of the payment of 22  
the premium. 23

The bureau of workers' compensation shall verify with the 24  
secretary of state the existence of all corporations and 25  
organizations making application for workers' compensation 26  
coverage and shall require every such application to include the 27  
employer's federal identification number. 28

An employer as defined in division (B)(2) of section 4123.01 29  
of the Revised Code who has contracted with a subcontractor is 30  
liable for the unpaid premium due from any subcontractor with 31  
respect to that part of the payroll of the subcontractor that is 32  
for work performed pursuant to the contract with the employer. 33

Division (A) of this section providing for the payment of 34  
premiums semiannually does not apply to any employer who was a 35  
subscriber to the state insurance fund prior to January 1, 1914, 36  
or who may first become a subscriber to the fund in any month 37  
other than January or July. Instead, the semiannual premiums shall 38  
be paid by those employers from time to time upon the expiration 39  
of the respective periods for which payments into the fund have 40  
been made by them. 41

The administrator shall adopt rules to permit employers to 42  
make periodic payments of the semiannual premium due under this 43  
division. The rules shall include provisions for the assessment of 44  
interest charges, where appropriate, and for the assessment of 45  
penalties when an employer fails to make timely premium payments. 46  
An employer who timely pays the amounts due under this division is 47  
entitled to all of the benefits and protections of this chapter. 48  
Upon receipt of payment, the bureau immediately shall mail a 49  
receipt or certificate to the employer certifying that payment has 50

As Reported by the Senate Insurance, Commerce and Labor Committee

been made, which receipt is prima-facie evidence of payment. 51  
Workers' compensation coverage under this chapter continues 52  
uninterrupted upon timely receipt of payment under this division. 53

Every public employer, except public employers that are 54  
self-insuring employers under this section, shall comply with 55  
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 56  
regard to the contribution of moneys to the public insurance fund. 57

(B) Employers who will abide by the rules of the 58  
administrator and who may be of sufficient financial ability to 59  
render certain the payment of compensation to injured employees or 60  
the dependents of killed employees, and the furnishing of medical, 61  
surgical, nursing, and hospital attention and services and 62  
medicines, and funeral expenses, equal to or greater than is 63  
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 64  
to 4123.67 of the Revised Code, and who do not desire to insure 65  
the payment thereof or indemnify themselves against loss sustained 66  
by the direct payment thereof, upon a finding of such facts by the 67  
administrator, may be granted the privilege to pay individually 68  
compensation, and furnish medical, surgical, nursing, and hospital 69  
services and attention and funeral expenses directly to injured 70  
employees or the dependents of killed employees, thereby being 71  
granted status as a self-insuring employer. The administrator may 72  
charge employers who apply for the status as a self-insuring 73  
employer a reasonable application fee to cover the bureau's costs 74  
in connection with processing and making a determination with 75  
respect to an application. 76

All employers granted such status shall demonstrate 77  
sufficient financial and administrative ability to assure that all 78  
obligations under this section are promptly met. The administrator 79  
shall deny the privilege where the employer is unable to 80  
demonstrate the employer's ability to promptly meet all the 81  
obligations imposed on the employer by this section. 82

## As Reported by the Senate Insurance, Commerce and Labor Committee

(1) The administrator shall consider, but is not limited to, 83  
the following factors, where applicable, in determining the 84  
employer's ability to meet all of the obligations imposed on the 85  
employer by this section: 86

(a) The employer employs a minimum of five hundred employees 87  
in this state; 88

(b) The employer has operated in this state for a minimum of 89  
two years, provided that an employer who has purchased, acquired, 90  
or otherwise succeeded to the operation of a business, or any part 91  
thereof, situated in this state that has operated for at least two 92  
years in this state, also shall qualify; 93

(c) Where the employer previously contributed to the state 94  
insurance fund or is a successor employer as defined by bureau 95  
rules, the amount of the buyout, as defined by bureau rules; 96

(d) The sufficiency of the employer's assets located in this 97  
state to insure the employer's solvency in paying compensation 98  
directly; 99

(e) The financial records, documents, and data, certified by 100  
a certified public accountant, necessary to provide the employer's 101  
full financial disclosure. The records, documents, and data 102  
include, but are not limited to, balance sheets and profit and 103  
loss history for the current year and previous four years. 104

(f) The employer's organizational plan for the administration 105  
of the workers' compensation law; 106

(g) The employer's proposed plan to inform employees of the 107  
change from a state fund insurer to a self-insuring employer, the 108  
procedures the employer will follow as a self-insuring employer, 109  
and the employees' rights to compensation and benefits; and 110

(h) The employer has either an account in a financial 111  
institution in this state, or if the employer maintains an account 112

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  
be honored by a financial institution in this state.

113  
114  
115  
116

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

117  
118  
119  
120  
121  
122  
123  
124  
125

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

126  
127  
128  
129  
130

(2) When considering 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 a publicly owned utility, the administrator shall  
verify that the public employer satisfies all of the following  
requirements as the requirements apply to that public employer:

131  
132  
133  
134  
135  
136

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

137  
138  
139  
140  
141  
142  
143

## As Reported by the Senate Insurance, Commerce and Labor Committee

(b) For each of the two fiscal years preceding application 144  
under this section, the unreserved and undesignated year-end fund 145  
balance in the public employer's general fund is equal to at least 146  
five per cent of the public employer's general fund revenues for 147  
the fiscal year computed in accordance with generally accepted 148  
accounting principles. 149

(c) For the five-year period preceding application under this 150  
section, the public employer, to the extent applicable, has 151  
complied fully with the continuing disclosure requirements 152  
established in rules adopted by the United States securities and 153  
exchange commission under 17 C.F.R. 240.15c 2-12. 154

(d) For the five-year period preceding application under this 155  
section, the public employer has not had its local government fund 156  
distribution withheld on account of the public employer being 157  
indebted or otherwise obligated to the state. 158

(e) For the five-year period preceding application under this 159  
section, the public employer has not been under a fiscal watch or 160  
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 161  
of the Revised Code. 162

(f) For the public employer's fiscal year preceding 163  
application under this section, the public employer has obtained 164  
an annual financial audit as required under section 117.10 of the 165  
Revised Code, which has been released by the auditor of state 166  
within seven months after the end of the public employer's fiscal 167  
year. 168

(g) On the date of application, the public employer holds a 169  
debt rating of Aa3 or higher according to Moody's investors 170  
service, inc., or a comparable rating by an independent rating 171  
agency similar to Moody's investors service, inc. 172

(h) The public employer agrees to generate an annual 173  
accumulating book reserve in its financial statements reflecting 174

an actuarially generated reserve adequate to pay projected claims 175  
under this chapter for the applicable period of time, as 176  
determined by the administrator. 177

(i) For a public employer that is a hospital, the public 178  
employer shall submit audited financial statements showing the 179  
hospital's overall liquidity characteristics, and the 180  
administrator shall determine, on an individual basis, whether the 181  
public employer satisfies liquidity standards equivalent to the 182  
liquidity standards of other public employers. 183

(j) Any additional criteria that the administrator adopts by 184  
rule pursuant to division (E) of this section. 185

The administrator shall not approve the application of a 186  
public employer, except for a board of county commissioners 187  
described in division (G) of section 4123.01 of the Revised Code, 188  
a board of a county hospital, or publicly owned utility, who does 189  
not satisfy all of the requirements listed in division (B)(2) of 190  
this section. 191

(C) A board of county commissioners described in division (G) 192  
of section 4123.01 of the Revised Code, as an employer, that will 193  
abide by the rules of the administrator and that may be of 194  
sufficient financial ability to render certain the payment of 195  
compensation to injured employees or the dependents of killed 196  
employees, and the furnishing of medical, surgical, nursing, and 197  
hospital attention and services and medicines, and funeral 198  
expenses, equal to or greater than is provided for in sections 199  
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised 200  
Code, and that does not desire to insure the payment thereof or 201  
indemnify itself against loss sustained by the direct payment 202  
thereof, upon a finding of such facts by the administrator, may be 203  
granted the privilege to pay individually compensation, and 204  
furnish medical, surgical, nursing, and hospital services and 205  
attention and funeral expenses directly to injured employees or 206

As Reported by the Senate Insurance, Commerce and Labor Committee

the dependents of killed employees, thereby being granted status 207  
as a self-insuring employer. The administrator may charge a board 208  
of county commissioners described in division (G) of section 209  
4123.01 of the Revised Code that applies for the status as a 210  
self-insuring employer a reasonable application fee to cover the 211  
bureau's costs in connection with processing and making a 212  
determination with respect to an application. All employers 213  
granted such status shall demonstrate sufficient financial and 214  
administrative ability to assure that all obligations under this 215  
section are promptly met. The administrator shall deny the 216  
privilege where the employer is unable to demonstrate the 217  
employer's ability to promptly meet all the obligations imposed on 218  
the employer by this section. The administrator shall consider, 219  
but is not limited to, the following factors, where applicable, in 220  
determining the employer's ability to meet all of the obligations 221  
imposed on the board as an employer by this section: 222

(1) The board as an employer employs a minimum of five 223  
hundred employees in this state; 224

(2) The board has operated in this state for a minimum of two 225  
years; 226

(3) Where the board previously contributed to the state 227  
insurance fund or is a successor employer as defined by bureau 228  
rules, the amount of the buyout, as defined by bureau rules; 229

(4) The sufficiency of the board's assets located in this 230  
state to insure the board's solvency in paying compensation 231  
directly; 232

(5) The financial records, documents, and data, certified by 233  
a certified public accountant, necessary to provide the board's 234  
full financial disclosure. The records, documents, and data 235  
include, but are not limited to, balance sheets and profit and 236  
loss history for the current year and previous four years. 237



## As Reported by the Senate Insurance, Commerce and Labor Committee

(6) The board's organizational plan for the administration of	238
the workers' compensation law;	239
(7) The board's proposed plan to inform employees of the	240
proposed self-insurance, the procedures the board will follow as a	241
self-insuring employer, and the employees' rights to compensation	242
and benefits;	243
(8) The board has either an account in a financial	244
institution in this state, or if the board maintains an account	245
with a financial institution outside this state, ensures that	246
workers' compensation checks are drawn from the same account as	247
payroll checks or the board clearly indicates that payment will be	248
honored by a financial institution in this state;	249
(9) The board shall provide the administrator a surety bond	250
in an amount equal to one hundred twenty-five per cent of the	251
projected losses as determined by the administrator.	252
(D) The administrator shall require a surety bond from all	253
self-insuring employers, issued pursuant to section 4123.351 of	254
the Revised Code, that is sufficient to compel, or secure to	255
injured employees, or to the dependents of employees killed, the	256
payment of compensation and expenses, which shall in no event be	257
less than that paid or furnished out of the state insurance fund	258
in similar cases to injured employees or to dependents of killed	259
employees whose employers contribute to the fund, except when an	260
employee of the employer, who has suffered the loss of a hand,	261
arm, foot, leg, or eye prior to the injury for which compensation	262
is to be paid, and thereafter suffers the loss of any other of the	263
members as the result of any injury sustained in the course of and	264
arising out of the employee's employment, the compensation to be	265
paid by the self-insuring employer is limited to the disability	266
suffered in the subsequent injury, additional compensation, if	267
any, to be paid by the bureau out of the surplus created by	268
section 4123.34 of the Revised Code.	269

## As Reported by the Senate Insurance, Commerce and Labor Committee

(E) In addition to the requirements of this section, the administrator shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify a finding of fact by the administrator as to granting the status of a self-insuring employer, which rules shall be general in their application, one of which rules shall provide that all self-insuring employers shall pay into the state insurance fund such amounts as are required to be credited to the surplus fund in division (B) of section 4123.34 of the Revised Code. The administrator may adopt rules establishing requirements in addition to the requirements described in division (B)(2) of this section that a public employer shall meet in order to qualify for self-insuring status.

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

(F) The bureau shall review completed applications within a reasonable time. If the bureau determines to grant an employer the status as a self-insuring employer, the bureau shall issue a

## As Reported by the Senate Insurance, Commerce and Labor Committee

statement, containing its findings of fact, that is prepared by 302  
the bureau and signed by the administrator. If the bureau 303  
determines not to grant the status as a self-insuring employer, 304  
the bureau shall notify the employer of the determination and 305  
require the employer to continue to pay its full premium into the 306  
state insurance fund. The administrator also shall adopt rules 307  
establishing a minimum level of performance as a criterion for 308  
granting and maintaining the status as a self-insuring employer 309  
and fixing time limits beyond which failure of the self-insuring 310  
employer to provide for the necessary medical examinations and 311  
evaluations may not delay a decision on a claim. 312

(G) The administrator shall adopt rules setting forth 313  
procedures for auditing the program of self-insuring employers. 314  
The bureau shall conduct the audit upon a random basis or whenever 315  
the bureau has grounds for believing that a self-insuring employer 316  
is not in full compliance with bureau rules or this chapter. 317

The administrator shall monitor the programs conducted by 318  
self-insuring employers, to ensure compliance with bureau 319  
requirements and for that purpose, shall develop and issue to 320  
self-insuring employers standardized forms for use by the 321  
self-insuring employer in all aspects of the self-insuring 322  
employers' direct compensation program and for reporting of 323  
information to the bureau. 324

The bureau shall receive and transmit to the self-insuring 325  
employer all complaints concerning any self-insuring employer. In 326  
the case of a complaint against a self-insuring employer, the 327  
administrator shall handle the complaint through the 328  
self-insurance division of the bureau. The bureau shall maintain a 329  
file by employer of all complaints received that relate to the 330  
employer. The bureau shall evaluate each complaint and take 331  
appropriate action. 332

The administrator shall adopt as a rule a prohibition against 333

## As Reported by the Senate Insurance, Commerce and Labor Committee

any self-insuring employer from harassing, dismissing, or 334  
otherwise disciplining any employee making a complaint, which rule 335  
shall provide for a financial penalty to be levied by the 336  
administrator payable by the offending self-insuring employer. 337

(H) For the purpose of making determinations as to whether to 338  
grant status as a self-insuring employer, the administrator may 339  
subscribe to and pay for a credit reporting service that offers 340  
financial and other business information about individual 341  
employers. The costs in connection with the bureau's subscription 342  
or individual reports from the service about an applicant may be 343  
included in the application fee charged employers under this 344  
section. 345

(I) The administrator, notwithstanding other provisions of 346  
this chapter, may permit a self-insuring employer to resume 347  
payment of premiums to the state insurance fund with appropriate 348  
credit modifications to the employer's basic premium rate as such 349  
rate is determined pursuant to section 4123.29 of the Revised 350  
Code. 351

(J) On the first day of July of each year, the administrator 352  
shall calculate separately each self-insuring employer's 353  
assessments for the safety and hygiene fund, administrative costs 354  
pursuant to section 4123.342 of the Revised Code, and for the 355  
portion of the surplus fund under division (B) of section 4123.34 356  
of the Revised Code that is not used for handicapped 357  
reimbursement, on the basis of the paid compensation attributable 358  
to the individual self-insuring employer according to the 359  
following calculation: 360

(1) The total assessment against all self-insuring employers 361  
as a class for each fund and for the administrative costs for the 362  
year that the assessment is being made, as determined by the 363  
administrator, divided by the total amount of paid compensation 364  
for the previous calendar year attributable to all amenable 365

## As Reported by the Senate Insurance, Commerce and Labor Committee

self-insuring employers; 366

(2) Multiply the quotient in division (J)(1) of this section 367  
by the total amount of paid compensation for the previous calendar 368  
year that is attributable to the individual self-insuring employer 369  
for whom the assessment is being determined. Each self-insuring 370  
employer shall pay the assessment that results from this 371  
calculation, unless the assessment resulting from this calculation 372  
falls below a minimum assessment, which minimum assessment the 373  
administrator shall determine on the first day of July of each 374  
year with the advice and consent of the workers' compensation 375  
oversight commission, in which event, the self-insuring employer 376  
shall pay the minimum assessment. 377

In determining the total amount due for the total assessment 378  
against all self-insuring employers as a class for each fund and 379  
the administrative assessment, the administrator shall reduce 380  
proportionately the total for each fund and assessment by the 381  
amount of money in the self-insurance assessment fund as of the 382  
date of the computation of the assessment. 383

The administrator shall calculate the assessment for the 384  
portion of the surplus fund under division (B) of section 4123.34 385  
of the Revised Code that is used for handicapped reimbursement in 386  
the same manner as set forth in divisions (J)(1) and (2) of this 387  
section except that the administrator shall calculate the total 388  
assessment for this portion of the surplus fund only on the basis 389  
of those self-insuring employers that retain participation in the 390  
handicapped reimbursement program and the individual self-insuring 391  
employer's proportion of paid compensation shall be calculated 392  
only for those self-insuring employers who retain participation in 393  
the handicapped reimbursement program. The administrator, as the 394  
administrator determines appropriate, may determine the total 395  
assessment for the handicapped portion of the surplus fund in 396  
accordance with sound actuarial principles. 397

## As Reported by the Senate Insurance, Commerce and Labor Committee

The administrator shall calculate the assessment for the 398  
portion of the surplus fund under division (B) of section 4123.34 399  
of the Revised Code that under division (D) of section 4121.66 of 400  
the Revised Code is used for rehabilitation costs in the same 401  
manner as set forth in divisions (J)(1) and (2) of this section, 402  
except that the administrator shall calculate the total assessment 403  
for this portion of the surplus fund only on the basis of those 404  
self-insuring employers who have not made the election to make 405  
payments directly under division (D) of section 4121.66 of the 406  
Revised Code and an individual self-insuring employer's proportion 407  
of paid compensation only for those self-insuring employers who 408  
have not made that election. 409

An employer who no longer is a self-insuring employer in this 410  
state or who no longer is operating in this state, shall continue 411  
to pay assessments for administrative costs and for the portion of 412  
the surplus fund under division (B) of section 4123.34 of the 413  
Revised Code that is not used for handicapped reimbursement, based 414  
upon paid compensation attributable to claims that occurred while 415  
the employer was a self-insuring employer within this state. 416

(K) There is hereby created in the state treasury the 417  
self-insurance assessment fund. All investment earnings of the 418  
fund shall be deposited in the fund. The administrator shall use 419  
the money in the self-insurance assessment fund only for 420  
administrative costs as specified in section 4123.341 of the 421  
Revised Code. 422

(L) Every self-insuring employer shall certify, in affidavit 423  
form subject to the penalty for perjury, to the bureau the amount 424  
of the self-insuring employer's paid compensation for the previous 425  
calendar year. In reporting paid compensation paid for the 426  
previous year, a self-insuring employer shall exclude from the 427  
total amount of paid compensation any reimbursement the 428  
self-insuring employer receives in the previous calendar year from 429

## As Reported by the Senate Insurance, Commerce and Labor Committee

the surplus fund pursuant to section 4123.512 of the Revised Code  
for any paid compensation. The self-insuring employer also shall  
exclude from the paid compensation reported any amount recovered  
under section ~~4123.93~~ 4123.931 of the Revised Code and any amount  
that is determined not to have been payable to or on behalf of a  
claimant in any final administrative or judicial proceeding. The  
self-insuring employer shall exclude such amounts from the paid  
compensation reported in the reporting period subsequent to the  
date the determination is made. The administrator shall adopt  
rules, in accordance with Chapter 119. of the Revised Code,  
establishing the date by which self-insuring employers must submit  
such information and the amount of the assessments provided for in  
division (J) of this section for employers who have been granted  
self-insuring status within the last calendar year.

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

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

(N) Should any section of this chapter or Chapter 4121. of  
the Revised Code providing for self-insuring employers'  
assessments based upon compensation paid be declared

## As Reported by the Senate Insurance, Commerce and Labor Committee

unconstitutional by a final decision of any court, then that 462  
section of the Revised Code declared unconstitutional shall revert 463  
back to the section in existence prior to November 3, 1989, 464  
providing for assessments based upon payroll. 465

(O) The administrator may grant a self-insuring employer the 466  
privilege to self-insure a construction project entered into by 467  
the self-insuring employer that is scheduled for completion within 468  
six years after the date the project begins, and the total cost of 469  
which is estimated to exceed one hundred million dollars. The 470  
administrator may waive such cost and time criteria and grant a 471  
self-insuring employer the privilege to self-insure a construction 472  
project regardless of the time needed to complete the construction 473  
project and provided that the cost of the construction project is 474  
estimated to exceed fifty million dollars. A self-insuring 475  
employer who desires to self-insure a construction project shall 476  
submit to the administrator an application listing the dates the 477  
construction project is scheduled to begin and end, the estimated 478  
cost of the construction project, the contractors and 479  
subcontractors whose employees are to be self-insured by the 480  
self-insuring employer, the provisions of a safety program that is 481  
specifically designed for the construction project, and a 482  
statement as to whether a collective bargaining agreement 483  
governing the rights, duties, and obligations of each of the 484  
parties to the agreement with respect to the construction project 485  
exists between the self-insuring employer and a labor 486  
organization. 487

A self-insuring employer may apply to self-insure the 488  
employees of either of the following: 489

(1) All contractors and subcontractors who perform labor or 490  
work or provide materials for the construction project; 491

(2) All contractors and, at the administrator's discretion, a 492  
substantial number of all the subcontractors who perform labor or 493



## As Reported by the Senate Insurance, Commerce and Labor Committee

work or provide materials for the construction project. 494

Upon approval of the application, the administrator shall 495  
mail a certificate granting the privilege to self-insure the 496  
construction project to the self-insuring employer. The 497  
certificate shall contain the name of the self-insuring employer 498  
and the name, address, and telephone number of the self-insuring 499  
employer's representatives who are responsible for administering 500  
workers' compensation claims for the construction project. The 501  
self-insuring employer shall post the certificate in a conspicuous 502  
place at the site of the construction project. 503

The administrator shall maintain a record of the contractors 504  
and subcontractors whose employees are covered under the 505  
certificate issued to the self-insured employer. A self-insuring 506  
employer immediately shall notify the administrator when any 507  
contractor or subcontractor is added or eliminated from inclusion 508  
under the certificate. 509

Upon approval of the application, the self-insuring employer 510  
is responsible for the administration and payment of all claims 511  
under this chapter and Chapter 4121. of the Revised Code for the 512  
employees of the contractor and subcontractors covered under the 513  
certificate who receive injuries or are killed in the course of 514  
and arising out of employment on the construction project, or who 515  
contract an occupational disease in the course of employment on 516  
the construction project. For purposes of this chapter and Chapter 517  
4121. of the Revised Code, a claim that is administered and paid 518  
in accordance with this division is considered a claim against the 519  
self-insuring employer listed in the certificate. A contractor or 520  
subcontractor included under the certificate shall report to the 521  
self-insuring employer listed in the certificate, all claims that 522  
arise under this chapter and Chapter 4121. of the Revised Code in 523  
connection with the construction project for which the certificate 524  
is issued. 525

## As Reported by the Senate Insurance, Commerce and Labor Committee

A self-insuring employer who complies with this division is 526  
entitled to the protections provided under this chapter and 527  
Chapter 4121. of the Revised Code with respect to the employees of 528  
the contractors and subcontractors covered under a certificate 529  
issued under this division for death or injuries that arise out 530  
of, or death, injuries, or occupational diseases that arise in the 531  
course of, those employees' employment on that construction 532  
project, as if the employees were employees of the self-insuring 533  
employer, provided that the self-insuring employer also complies 534  
with this section. No employee of the contractors and 535  
subcontractors covered under a certificate issued under this 536  
division shall be considered the employee of the self-insuring 537  
employer listed in that certificate for any purposes other than 538  
this chapter and Chapter 4121. of the Revised Code. Nothing in 539  
this division gives a self-insuring employer authority to control 540  
the means, manner, or method of employment of the employees of the 541  
contractors and subcontractors covered under a certificate issued 542  
under this division. 543

The contractors and subcontractors included under a 544  
certificate issued under this division are entitled to the 545  
protections provided under this chapter and Chapter 4121. of the 546  
Revised Code with respect to the contractor's or subcontractor's 547  
employees who are employed on the construction project which is 548  
the subject of the certificate, for death or injuries that arise 549  
out of, or death, injuries, or occupational diseases that arise in 550  
the course of, those employees' employment on that construction 551  
project. 552

The contractors and subcontractors included under a 553  
certificate issued under this division shall identify in their 554  
payroll records the employees who are considered the employees of 555  
the self-insuring employer listed in that certificate for purposes 556  
of this chapter and Chapter 4121. of the Revised Code, and the 557

## As Reported by the Senate Insurance, Commerce and Labor Committee

amount that those employees earned for employment on the 558  
construction project that is the subject of that certificate. 559  
Notwithstanding any provision to the contrary under this chapter 560  
and Chapter 4121. of the Revised Code, the administrator shall 561  
exclude the payroll that is reported for employees who are 562  
considered the employees of the self-insuring employer listed in 563  
that certificate, and that the employees earned for employment on 564  
the construction project that is the subject of that certificate, 565  
when determining those contractors' or subcontractors' premiums or 566  
assessments required under this chapter and Chapter 4121. of the 567  
Revised Code. A self-insuring employer issued a certificate under 568  
this division shall include in the amount of paid compensation it 569  
reports pursuant to division (L) of this section, the amount of 570  
paid compensation the self-insuring employer paid pursuant to this 571  
division for the previous calendar year. 572

Nothing in this division shall be construed as altering the 573  
rights of employees under this chapter and Chapter 4121. of the 574  
Revised Code as those rights existed prior to September 17, 1996. 575  
Nothing in this division shall be construed as altering the rights 576  
devolved under sections 2305.31 and 4123.82 of the Revised Code as 577  
those rights existed prior to September 17, 1996. 578

As used in this division, "privilege to self-insure a 579  
construction project" means privilege to pay individually 580  
compensation, and to furnish medical, surgical, nursing, and 581  
hospital services and attention and funeral expenses directly to 582  
injured employees or the dependents of killed employees. 583

(P) A self-insuring employer whose application is granted 584  
under division (O) of this section shall designate a safety 585  
professional to be responsible for the administration and 586  
enforcement of the safety program that is specifically designed 587  
for the construction project that is the subject of the 588  
application. 589

## As Reported by the Senate Insurance, Commerce and Labor Committee

A self-insuring employer whose application is granted under 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

## As Reported by the Senate Insurance, Commerce and Labor Committee

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;

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

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

(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.

(R) As used in this section:

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

(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.

**Sec. 4123.66.** (A) In addition to the compensation provided  
for in this chapter, the administrator of workers' compensation  
shall disburse and pay from the state insurance fund the amounts  
for medical, nurse, and hospital services and medicine as ~~he~~ the

## As Reported by the Senate Insurance, Commerce and Labor Committee

administrator deems proper and, in case death ensues from the 651  
injury or occupational disease, ~~he~~ the administrator shall 652  
disburse and pay from the fund reasonable funeral expenses in an 653  
amount not to exceed ~~thirty-two~~ fifty-five hundred dollars. The 654  
bureau of workers' compensation shall reimburse anyone, whether 655  
dependent, volunteer, or otherwise, who pays the funeral expenses 656  
of any employee whose death ensues from any injury or occupational 657  
disease as provided in this section. The administrator may adopt 658  
rules, with the advice and consent of the workers' compensation 659  
oversight commission, with respect to furnishing medical, nurse, 660  
and hospital service and medicine to injured or disabled employees 661  
entitled thereto, and for the payment therefor. In case an injury 662  
or industrial accident that injures an employee also causes damage 663  
to the employee's eyeglasses, artificial teeth or other denture, 664  
or hearing aid, or in the event an injury or occupational disease 665  
makes it necessary or advisable to replace, repair, or adjust the 666  
same, the bureau shall disburse and pay a reasonable amount to 667  
repair or replace the same. 668

(B)(1) If an employer or a welfare plan has provided to or on 669  
behalf of an employee any benefits or compensation for an injury 670  
or occupational disease and that injury or occupational disease is 671  
determined compensable under this chapter, the employer or a 672  
welfare plan may request that the administrator reimburse the 673  
employer or welfare plan for the amount the employer or welfare 674  
plan paid to or on behalf of the employee in compensation or 675  
benefits. The administrator shall reimburse the employer or 676  
welfare plan for the compensation and benefits paid if, at the 677  
time the employer or welfare plan provides the benefits or 678  
compensation to or on behalf of employee, the injury or 679  
occupational disease had not been determined to be compensable 680  
under this chapter and if the employee was not receiving 681  
compensation or benefits under this chapter for that injury or 682  
occupational disease. The administrator shall reimburse the 683

## As Reported by the Senate Insurance, Commerce and Labor Committee

employer or welfare plan in the amount that the administrator  
 would have paid to or on behalf of the employee under this chapter  
 if the injury or occupational disease originally would have been  
 determined compensable under this chapter. If the employer is a  
 merit-rated employer, the administrator shall adjust the amount of  
 premium next due from the employer according to the amount the  
 administrator pays the employer. The administrator shall adopt  
 rules, in accordance with Chapter 119. of the Revised Code, to  
 implement this division.

(2) As used in this division, "welfare plan" has the same  
 meaning as in division (1) of 29 U.S.C.A. 1002.

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

(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,  
~~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~~

## As Reported by the Senate Insurance, Commerce and Labor Committee

~~connection with underinsured or uninsured motorist coverage,~~ 714  
~~notwithstanding any limitation contained in Chapter 3937. of the~~ 715  
~~Revised Code.~~ 716

~~(3) Amounts that a claimant would be entitled to recover from~~ 717  
~~a political subdivision, notwithstanding any limitations contained~~ 718  
~~in Chapter 2744. of the Revised Code.~~ 719

~~(D) "Third party" means an individual, private insurer,~~ 720  
~~public or private entity, or public or private program that is or~~ 721  
~~may be liable to make payments to a person without regard to any~~ 722  
~~statutory duty contained in this chapter or Chapter 4121., 4127.,~~ 723  
~~or 4131. of the Revised Code.~~ 724

(D) "Subrogation interest" includes past, present, and 725  
estimated future payments of compensation, medical benefits, 726  
rehabilitation costs, or death benefits, and any other costs or 727  
expenses paid to or on behalf of the claimant by the statutory 728  
subrogee pursuant to this chapter or Chapter 4121., 4127., or 729  
4131. of the Revised Code. 730

(E) "Net amount recovered" means the amount of any award, 731  
settlement, compromise, or recovery by a claimant against a third 732  
party, minus the attorney's fees, costs, or other expenses 733  
incurred by the claimant in securing the award, settlement, 734  
compromise, or recovery. 735

(F) "Uncompensated damages" means the claimant's demonstrated 736  
or proven damages minus the statutory subrogee's subrogation 737  
interest. 738

**Sec. 4123.931.** (A) The payment of compensation or benefits 739  
pursuant to this chapter or Chapter 4121., 4127., or 4131., of the 740  
Revised Code creates a right of subrogation recovery in favor of a 741  
statutory subrogee against a third party. ~~A statutory subrogee's~~ 742  
~~subrogation interest includes past payments of compensation and~~ 743



## As Reported by the Senate Insurance, Commerce and Labor Committee

~~medical benefits and estimated future values of compensation and 744  
medical benefits arising out of an injury to or disability or 745  
disease of a claimant, and the statutory subrogee is subrogated to 746  
the rights of a claimant against that third party. The net amount 747  
recovered is subject to a statutory subrogee's right of recovery. 748~~

(B) If a claimant, statutory subrogee, and third party settle 749  
or attempt to settle a claimant's claim against a third party, the 750  
claimant shall receive an amount equal to the uncompensated 751  
damages divided by the sum of the subrogation interest plus the 752  
uncompensated damages, multiplied by the net amount recovered, and 753  
the statutory subrogee shall receive an amount equal to the 754  
subrogation interest divided by the sum of the subrogation 755  
interest plus the uncompensated damages, multiplied by the net 756  
amount recovered, except that the net amount recovered may instead 757  
be divided and paid on a more fair and reasonable basis that is 758  
agreed to by the claimant and statutory subrogee. If while 759  
attempting to settle, the claimant and statutory subrogee cannot 760  
agree to the allocation of the net amount recovered, the claimant 761  
and statutory subrogee may file a request with the administrator 762  
of workers' compensation for a conference to be conducted by a 763  
designee appointed by the administrator, or the claimant and 764  
statutory subrogee may agree to utilize any other binding or 765  
non-binding alternative dispute resolution process. 766

The claimant and statutory subrogee shall pay equal shares of 767  
the fees and expenses of utilizing an alternative dispute 768  
resolution process, unless they agree to pay those fees and 769  
expenses in another manner. The administrator shall not assess any 770  
fees to a claimant or statutory subrogee for a conference 771  
conducted by the administrator's designee. 772

(C) If a claimant and statutory subrogee request that a 773  
conference be conducted by the administrator's designee pursuant 774  
to division (B) of this section, both of the following apply: 775

As Reported by the Senate Insurance, Commerce and Labor Committee

(1) The administrator's designee shall schedule a conference on or before sixty days after the date that the claimant and statutory subrogee filed a request for the conference. 776  
777  
778

(2) The determination made by the administrator's designee is not subject to Chapter 119. of the Revised Code. 779  
780

(D) When a claimant's action against a third party proceeds to trial and damages are awarded, both of the following apply: 781  
782

(1) The claimant shall receive an amount equal to the uncompensated damages divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered, and the statutory subrogee shall receive an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered. 783  
784  
785  
786  
787  
788  
789

(2) The court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories that specify the following: 790  
791  
792  
793

(a) The total amount of the compensatory damages; 794

(b) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents economic loss; 795  
796  
797

(c) The portion of the compensatory damages specified pursuant to division (D)(2)(a) of this section that represents noneconomic loss. 798  
799  
800

(E)(1) After a claimant and statutory subrogee know the net amount recovered, and after the means for dividing it has been determined under division (B) or (D) of this section, a claimant may establish an interest-bearing trust account for the full amount of the subrogation interest that represents estimated 801  
802  
803  
804  
805

## As Reported by the Senate Insurance, Commerce and Labor Committee

future payments of compensation, medical benefits, rehabilitation costs, or death benefits, reduced to present value, from which the claimant shall make reimbursement payments to the statutory subrogee for the future payments of compensation, medical benefits, rehabilitation costs, or death benefits. If the workers' compensation claim associated with the subrogation interest is settled, or if the claimant dies, or if any other circumstance occurs that would preclude any future payments of compensation, medical benefits, rehabilitation costs, and death benefits by the statutory subrogee, any amount remaining in the trust account after final reimbursement is paid to the statutory subrogee for all payments made by the statutory subrogee before the ending of future payments shall be paid to the claimant or the claimant's estate.

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

(3) If a claimant establishes a trust account, the statutory subrogee shall provide payment notices to the claimant on or before the thirtieth day of June and the thirty-first day of December every year listing the total amount that the statutory subrogee has paid for compensation, medical benefits, rehabilitation costs, or death benefits during the half of the year preceding the notice. The claimant shall make reimbursement payments to the statutory subrogee from the trust account on or before the thirty-first day of July every year for a notice provided by the thirtieth day of June, and on or before the thirty-first day of January every year for a notice provided by the thirty-first day of December. The claimant's reimbursement payment shall be in an amount that equals the total amount listed on the notice the claimant receives from the statutory subrogee.

## As Reported by the Senate Insurance, Commerce and Labor Committee

(F) If a claimant does not establish a trust account as described in division (E)(1) of this section, the claimant shall pay to the statutory subrogee, on or before thirty days after receipt of funds from the third party, the full amount of the subrogation interest that represents estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits. 838  
839  
840  
841  
842  
843  
844

(G) A claimant shall notify a statutory subrogee and the attorney general of the identity of all third parties against whom the claimant has or may have a right of recovery, except that when the statutory subrogee is a self-insuring employer, the claimant need not notify the attorney general. No settlement, compromise, judgment, award, or other recovery in any action or claim by a claimant shall be final unless the claimant provides the statutory subrogee and, when required, the attorney general, with prior notice and a reasonable opportunity to assert its subrogation rights. If a statutory subrogee ~~is~~ and, when required, the attorney general are not given that notice, or if a settlement or compromise excludes any amount paid by the statutory subrogee, the third party and the claimant shall be jointly and severally liable to pay the statutory subrogee the full amount of the subrogation interest. 845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859

~~(E)~~(H) The right of subrogation under this chapter is automatic, regardless of whether a statutory subrogee is joined as a party in an action by a claimant against a third party. A statutory subrogee may assert its subrogation rights through correspondence with the claimant and the third party or their legal representatives. A statutory subrogee may institute and pursue legal proceedings against a third party either by itself or in conjunction with a claimant. If a statutory subrogee institutes legal proceedings against a third party, the statutory subrogee shall provide notice of that fact to the claimant. If the 860  
861  
862  
863  
864  
865  
866  
867  
868  
869

## As Reported by the Senate Insurance, Commerce and Labor Committee

statutory subrogee joins the claimant as a necessary party, or if 870  
the claimant elects to participate in the proceedings as a party, 871  
the claimant may present the claimant's case first if the matter 872  
proceeds to trial. If a claimant disputes the validity or amount 873  
of an asserted subrogation interest, the claimant shall join the 874  
statutory subrogee as a necessary party to the action against the 875  
third party. 876

~~(D) The entire amount of any settlement or compromise of an~~ 877  
~~action or claim is subject to the subrogation right of a statutory~~ 878  
~~subrogee, regardless of the manner in which the settlement or~~ 879  
~~compromise is characterized. Any settlement or compromise that~~ 880  
~~excludes the amount of compensation or medical benefits shall not~~ 881  
~~preclude a statutory subrogee from enforcing its rights under this~~ 882  
~~section. The entire amount of any award or judgment is presumed to~~ 883  
~~represent compensation and medical benefits and future estimated~~ 884  
~~values of compensation and medical benefits that are subject to a~~ 885  
~~statutory subrogee's subrogation rights unless the claimant~~ 886  
~~obtains a special verdict or jury interrogatories indicating that~~ 887  
~~the award or judgment represents different types of damages.~~ 888

~~(E) Subrogation does not apply to the portion of any~~ 890  
~~judgment, award, settlement, or compromise of a claim to the~~ 891  
~~extent of a claimant's attorney's fees, costs, or other expenses~~ 892  
~~incurred by a claimant in securing the judgment, award,~~ 893  
~~settlement, or compromise, or the extent of medical, surgical, and~~ 894  
~~hospital expenses paid by a claimant from the claimant's own~~ 895  
~~resources for which reimbursement is not sought. No additional~~ 896  
~~attorney's fees, costs, or other expenses in securing any recovery~~ 897  
~~may be assessed against any subrogated claims of a statutory~~ 898  
~~subrogee (I) The statutory subrogation right of recovery applies~~ 899  
to, but is not limited to, all of the following: 900

(1) Amounts recoverable from a claimant's insurer in 901

## As Reported by the Senate Insurance, Commerce and Labor Committee

connection with underinsured or uninsured motorist coverage, 902  
notwithstanding any limitation contained in Chapter 3937. of the 903  
Revised Code; 904

(2) Amounts that a claimant would be entitled to recover from 905  
a political subdivision, notwithstanding any limitations contained 906  
in Chapter 2744. of the Revised Code; 907

(3) Amounts recoverable from an intentional tort action. 908

(J) If a claimant's claim against a third party is for 909  
wrongful death or the claim involves any minor beneficiaries, 910  
amounts allocated under this section are subject to the approval 911  
of probate court. 912

**Section 2.** That existing sections 4123.35, 4123.66, 4123.93, 913  
and 4123.931 of the Revised Code are hereby repealed. 914