

**As Reported by the House Commerce and Labor Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Sub. H. B. No. 223**

**Representatives Gibbs, Cates, Schmidt, C. Evans, Calvert, Hagan, Aslanides,  
D. Evans, Buehrer, Setzer, Webster, McGregor, Raussen, Young, Faber,  
Peterson, Carmichael, Wolpert, Schlichter**

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**A B I L L**

To amend sections 4123.35 and 4123.54 of the Revised 1  
Code to specify conditions under which chemical 2  
testing of an employee may establish a rebuttable 3  
presumption that the employee's injury was 4  
proximately caused by use of alcohol or an 5  
unprescribed controlled substance. 6

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

**Section 1.** That sections 4123.35 and 4123.54 of the Revised 7  
Code be amended to read as follows: 8

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

as may be ascertained to be due from the employer by applying the 19  
rules of the administrator, and a receipt or certificate 20  
certifying that payment has been made, along with a written notice 21  
as is required in section 4123.54 of the Revised Code, shall be 22  
mailed immediately to the employer by the bureau of workers' 23  
compensation. The receipt or certificate is prima-facie evidence 24  
of the payment of the premium, and the proper posting of the 25  
notice constitutes the employer's compliance with the notice 26  
requirement mandated in section 4123.54 of the Revised Code. 27

The bureau of workers' compensation shall verify with the 28  
secretary of state the existence of all corporations and 29  
organizations making application for workers' compensation 30  
coverage and shall require every such application to include the 31  
employer's federal identification number. 32

An employer as defined in division (B)(2) of section 4123.01 33  
of the Revised Code who has contracted with a subcontractor is 34  
liable for the unpaid premium due from any subcontractor with 35  
respect to that part of the payroll of the subcontractor that is 36  
for work performed pursuant to the contract with the employer. 37

Division (A) of this section providing for the payment of 38  
premiums semiannually does not apply to any employer who was a 39  
subscriber to the state insurance fund prior to January 1, 1914, 40  
or who may first become a subscriber to the fund in any month 41  
other than January or July. Instead, the semiannual premiums shall 42  
be paid by those employers from time to time upon the expiration 43  
of the respective periods for which payments into the fund have 44  
been made by them. 45

The administrator shall adopt rules to permit employers to 46  
make periodic payments of the semiannual premium due under this 47  
division. The rules shall include provisions for the assessment of 48  
interest charges, where appropriate, and for the assessment of 49

penalties when an employer fails to make timely premium payments. 50  
An employer who timely pays the amounts due under this division is 51  
entitled to all of the benefits and protections of this chapter. 52  
Upon receipt of payment, the bureau immediately shall mail a 53  
receipt or certificate to the employer certifying that payment has 54  
been made, which receipt is prima-facie evidence of payment. 55  
Workers' compensation coverage under this chapter continues 56  
uninterrupted upon timely receipt of payment under this division. 57

Every public employer, except public employers that are 58  
self-insuring employers under this section, shall comply with 59  
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 60  
regard to the contribution of moneys to the public insurance fund. 61

(B) Employers who will abide by the rules of the 62  
administrator and who may be of sufficient financial ability to 63  
render certain the payment of compensation to injured employees or 64  
the dependents of killed employees, and the furnishing of medical, 65  
surgical, nursing, and hospital attention and services and 66  
medicines, and funeral expenses, equal to or greater than is 67  
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 68  
to 4123.67 of the Revised Code, and who do not desire to insure 69  
the payment thereof or indemnify themselves against loss sustained 70  
by the direct payment thereof, upon a finding of such facts by the 71  
administrator, may be granted the privilege to pay individually 72  
compensation, and furnish medical, surgical, nursing, and hospital 73  
services and attention and funeral expenses directly to injured 74  
employees or the dependents of killed employees, thereby being 75  
granted status as a self-insuring employer. The administrator may 76  
charge employers who apply for the status as a self-insuring 77  
employer a reasonable application fee to cover the bureau's costs 78  
in connection with processing and making a determination with 79  
respect to an application. 80

All employers granted status as self-insuring employers shall 81

demonstrate sufficient financial and administrative ability to 82  
assure that all obligations under this section are promptly met. 83  
The administrator shall deny the privilege where the employer is 84  
unable to demonstrate the employer's ability to promptly meet all 85  
the obligations imposed on the employer by this section. 86

(1) The administrator shall consider, but is not limited to, 87  
the following factors, where applicable, in determining the 88  
employer's ability to meet all of the obligations imposed on the 89  
employer by this section: 90

(a) The employer employs a minimum of five hundred employees 91  
in this state; 92

(b) The employer has operated in this state for a minimum of 93  
two years, provided that an employer who has purchased, acquired, 94  
or otherwise succeeded to the operation of a business, or any part 95  
thereof, situated in this state that has operated for at least two 96  
years in this state, also shall qualify; 97

(c) Where the employer previously contributed to the state 98  
insurance fund or is a successor employer as defined by bureau 99  
rules, the amount of the buyout, as defined by bureau rules; 100

(d) The sufficiency of the employer's assets located in this 101  
state to insure the employer's solvency in paying compensation 102  
directly; 103

(e) The financial records, documents, and data, certified by 104  
a certified public accountant, necessary to provide the employer's 105  
full financial disclosure. The records, documents, and data 106  
include, but are not limited to, balance sheets and profit and 107  
loss history for the current year and previous four years. 108

(f) The employer's organizational plan for the administration 109  
of the workers' compensation law; 110

(g) The employer's proposed plan to inform employees of the 111

change from a state fund insurer to a self-insuring employer, the 112  
procedures the employer will follow as a self-insuring employer, 113  
and the employees' rights to compensation and benefits; and 114

(h) The employer has either an account in a financial 115  
institution in this state, or if the employer maintains an account 116  
with a financial institution outside this state, ensures that 117  
workers' compensation checks are drawn from the same account as 118  
payroll checks or the employer clearly indicates that payment will 119  
be honored by a financial institution in this state. 120

The administrator may waive the requirements of divisions 121  
(B)(1)(a) and (b) of this section and the requirement of division 122  
(B)(1)(e) of this section that the financial records, documents, 123  
and data be certified by a certified public accountant. The 124  
administrator shall adopt rules establishing the criteria that an 125  
employer shall meet in order for the administrator to waive the 126  
requirement of division (B)(1)(e) of this section. Such rules may 127  
require additional security of that employer pursuant to division 128  
(E) of section 4123.351 of the Revised Code. 129

The administrator shall not grant the status of self-insuring 130  
employer to the state, except that the administrator may grant the 131  
status of self-insuring employer to a state institution of higher 132  
education, excluding its hospitals, that meets the requirements of 133  
division (B)(2) of this section. 134

(2) When considering the application of a public employer, 135  
except for a board of county commissioners described in division 136  
(G) of section 4123.01 of the Revised Code, a board of a county 137  
hospital, or a publicly owned utility, the administrator shall 138  
verify that the public employer satisfies all of the following 139  
requirements as the requirements apply to that public employer: 140

(a) For the two-year period preceding application under this 141  
section, the public employer has maintained an unvoted debt 142

capacity equal to at least two times the amount of the current 143  
annual premium established by the administrator under this chapter 144  
for that public employer for the year immediately preceding the 145  
year in which the public employer makes application under this 146  
section. 147

(b) For each of the two fiscal years preceding application 148  
under this section, the unreserved and undesignated year-end fund 149  
balance in the public employer's general fund is equal to at least 150  
five per cent of the public employer's general fund revenues for 151  
the fiscal year computed in accordance with generally accepted 152  
accounting principles. 153

(c) For the five-year period preceding application under this 154  
section, the public employer, to the extent applicable, has 155  
complied fully with the continuing disclosure requirements 156  
established in rules adopted by the United States securities and 157  
exchange commission under 17 C.F.R. 240.15c 2-12. 158

(d) For the five-year period preceding application under this 159  
section, the public employer has not had its local government fund 160  
distribution withheld on account of the public employer being 161  
indebted or otherwise obligated to the state. 162

(e) For the five-year period preceding application under this 163  
section, the public employer has not been under a fiscal watch or 164  
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 165  
of the Revised Code. 166

(f) For the public employer's fiscal year preceding 167  
application under this section, the public employer has obtained 168  
an annual financial audit as required under section 117.10 of the 169  
Revised Code, which has been released by the auditor of state 170  
within seven months after the end of the public employer's fiscal 171  
year. 172

(g) On the date of application, the public employer holds a 173

debt rating of Aa3 or higher according to Moody's investors 174  
service, inc., or a comparable rating by an independent rating 175  
agency similar to Moody's investors service, inc. 176

(h) The public employer agrees to generate an annual 177  
accumulating book reserve in its financial statements reflecting 178  
an actuarially generated reserve adequate to pay projected claims 179  
under this chapter for the applicable period of time, as 180  
determined by the administrator. 181

(i) For a public employer that is a hospital, the public 182  
employer shall submit audited financial statements showing the 183  
hospital's overall liquidity characteristics, and the 184  
administrator shall determine, on an individual basis, whether the 185  
public employer satisfies liquidity standards equivalent to the 186  
liquidity standards of other public employers. 187

(j) Any additional criteria that the administrator adopts by 188  
rule pursuant to division (E) of this section. 189

The administrator shall not approve the application of a 190  
public employer, except for a board of county commissioners 191  
described in division (G) of section 4123.01 of the Revised Code, 192  
a board of a county hospital, or publicly owned utility, who does 193  
not satisfy all of the requirements listed in division (B)(2) of 194  
this section. 195

(C) A board of county commissioners described in division (G) 196  
of section 4123.01 of the Revised Code, as an employer, that will 197  
abide by the rules of the administrator and that may be of 198  
sufficient financial ability to render certain the payment of 199  
compensation to injured employees or the dependents of killed 200  
employees, and the furnishing of medical, surgical, nursing, and 201  
hospital attention and services and medicines, and funeral 202  
expenses, equal to or greater than is provided for in sections 203  
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised 204

Code, and that does not desire to insure the payment thereof or 205  
indemnify itself against loss sustained by the direct payment 206  
thereof, upon a finding of such facts by the administrator, may be 207  
granted the privilege to pay individually compensation, and 208  
furnish medical, surgical, nursing, and hospital services and 209  
attention and funeral expenses directly to injured employees or 210  
the dependents of killed employees, thereby being granted status 211  
as a self-insuring employer. The administrator may charge a board 212  
of county commissioners described in division (G) of section 213  
4123.01 of the Revised Code that applies for the status as a 214  
self-insuring employer a reasonable application fee to cover the 215  
bureau's costs in connection with processing and making a 216  
determination with respect to an application. All employers 217  
granted such status shall demonstrate sufficient financial and 218  
administrative ability to assure that all obligations under this 219  
section are promptly met. The administrator shall deny the 220  
privilege where the employer is unable to demonstrate the 221  
employer's ability to promptly meet all the obligations imposed on 222  
the employer by this section. The administrator shall consider, 223  
but is not limited to, the following factors, where applicable, in 224  
determining the employer's ability to meet all of the obligations 225  
imposed on the board as an employer by this section: 226

(1) The board as an employer employs a minimum of five 227  
hundred employees in this state; 228

(2) The board has operated in this state for a minimum of two 229  
years; 230

(3) Where the board previously contributed to the state 231  
insurance fund or is a successor employer as defined by bureau 232  
rules, the amount of the buyout, as defined by bureau rules; 233

(4) The sufficiency of the board's assets located in this 234  
state to insure the board's solvency in paying compensation 235  
directly; 236

(5) The financial records, documents, and data, certified by	237
a certified public accountant, necessary to provide the board's	238
full financial disclosure. The records, documents, and data	239
include, but are not limited to, balance sheets and profit and	240
loss history for the current year and previous four years.	241
(6) The board's organizational plan for the administration of	242
the workers' compensation law;	243
(7) The board's proposed plan to inform employees of the	244
proposed self-insurance, the procedures the board will follow as a	245
self-insuring employer, and the employees' rights to compensation	246
and benefits;	247
(8) The board has either an account in a financial	248
institution in this state, or if the board maintains an account	249
with a financial institution outside this state, ensures that	250
workers' compensation checks are drawn from the same account as	251
payroll checks or the board clearly indicates that payment will be	252
honored by a financial institution in this state;	253
(9) The board shall provide the administrator a surety bond	254
in an amount equal to one hundred twenty-five per cent of the	255
projected losses as determined by the administrator.	256
(D) The administrator shall require a surety bond from all	257
self-insuring employers, issued pursuant to section 4123.351 of	258
the Revised Code, that is sufficient to compel, or secure to	259
injured employees, or to the dependents of employees killed, the	260
payment of compensation and expenses, which shall in no event be	261
less than that paid or furnished out of the state insurance fund	262
in similar cases to injured employees or to dependents of killed	263
employees whose employers contribute to the fund, except when an	264
employee of the employer, who has suffered the loss of a hand,	265
arm, foot, leg, or eye prior to the injury for which compensation	266
is to be paid, and thereafter suffers the loss of any other of the	267

members as the result of any injury sustained in the course of and 268  
arising out of the employee's employment, the compensation to be 269  
paid by the self-insuring employer is limited to the disability 270  
suffered in the subsequent injury, additional compensation, if 271  
any, to be paid by the bureau out of the surplus created by 272  
section 4123.34 of the Revised Code. 273

(E) In addition to the requirements of this section, the 274  
administrator shall make and publish rules governing the manner of 275  
making application and the nature and extent of the proof required 276  
to justify a finding of fact by the administrator as to granting 277  
the status of a self-insuring employer, which rules shall be 278  
general in their application, one of which rules shall provide 279  
that all self-insuring employers shall pay into the state 280  
insurance fund such amounts as are required to be credited to the 281  
surplus fund in division (B) of section 4123.34 of the Revised 282  
Code. The administrator may adopt rules establishing requirements 283  
in addition to the requirements described in division (B)(2) of 284  
this section that a public employer shall meet in order to qualify 285  
for self-insuring status. 286

Employers shall secure directly from the bureau central 287  
offices application forms upon which the bureau shall stamp a 288  
designating number. Prior to submission of an application, an 289  
employer shall make available to the bureau, and the bureau shall 290  
review, the information described in division (B)(1) of this 291  
section, and public employers shall make available, and the bureau 292  
shall review, the information necessary to verify whether the 293  
public employer meets the requirements listed in division (B)(2) 294  
of this section. An employer shall file the completed application 295  
forms with an application fee, which shall cover the costs of 296  
processing the application, as established by the administrator, 297  
by rule, with the bureau at least ninety days prior to the 298  
effective date of the employer's new status as a self-insuring 299

employer. The application form is not deemed complete until all 300  
the required information is attached thereto. The bureau shall 301  
only accept applications that contain the required information. 302

(F) The bureau shall review completed applications within a 303  
reasonable time. If the bureau determines to grant an employer the 304  
status as a self-insuring employer, the bureau shall issue a 305  
statement, containing its findings of fact, that is prepared by 306  
the bureau and signed by the administrator. If the bureau 307  
determines not to grant the status as a self-insuring employer, 308  
the bureau shall notify the employer of the determination and 309  
require the employer to continue to pay its full premium into the 310  
state insurance fund. The administrator also shall adopt rules 311  
establishing a minimum level of performance as a criterion for 312  
granting and maintaining the status as a self-insuring employer 313  
and fixing time limits beyond which failure of the self-insuring 314  
employer to provide for the necessary medical examinations and 315  
evaluations may not delay a decision on a claim. 316

(G) The administrator shall adopt rules setting forth 317  
procedures for auditing the program of self-insuring employers. 318  
The bureau shall conduct the audit upon a random basis or whenever 319  
the bureau has grounds for believing that a self-insuring employer 320  
is not in full compliance with bureau rules or this chapter. 321

The administrator shall monitor the programs conducted by 322  
self-insuring employers, to ensure compliance with bureau 323  
requirements and for that purpose, shall develop and issue to 324  
self-insuring employers standardized forms for use by the 325  
self-insuring employer in all aspects of the self-insuring 326  
employers' direct compensation program and for reporting of 327  
information to the bureau. 328

The bureau shall receive and transmit to the self-insuring 329  
employer all complaints concerning any self-insuring employer. In 330  
the case of a complaint against a self-insuring employer, the 331

administrator shall handle the complaint through the 332  
self-insurance division of the bureau. The bureau shall maintain a 333  
file by employer of all complaints received that relate to the 334  
employer. The bureau shall evaluate each complaint and take 335  
appropriate action. 336

The administrator shall adopt as a rule a prohibition against 337  
any self-insuring employer from harassing, dismissing, or 338  
otherwise disciplining any employee making a complaint, which rule 339  
shall provide for a financial penalty to be levied by the 340  
administrator payable by the offending self-insuring employer. 341

(H) For the purpose of making determinations as to whether to 342  
grant status as a self-insuring employer, the administrator may 343  
subscribe to and pay for a credit reporting service that offers 344  
financial and other business information about individual 345  
employers. The costs in connection with the bureau's subscription 346  
or individual reports from the service about an applicant may be 347  
included in the application fee charged employers under this 348  
section. 349

(I) The administrator, notwithstanding other provisions of 350  
this chapter, may permit a self-insuring employer to resume 351  
payment of premiums to the state insurance fund with appropriate 352  
credit modifications to the employer's basic premium rate as such 353  
rate is determined pursuant to section 4123.29 of the Revised 354  
Code. 355

(J) On the first day of July of each year, the administrator 356  
shall calculate separately each self-insuring employer's 357  
assessments for the safety and hygiene fund, administrative costs 358  
pursuant to section 4123.342 of the Revised Code, and for the 359  
portion of the surplus fund under division (B) of section 4123.34 360  
of the Revised Code that is not used for handicapped 361  
reimbursement, on the basis of the paid compensation attributable 362  
to the individual self-insuring employer according to the 363

following calculation: 364

(1) The total assessment against all self-insuring employers 365  
as a class for each fund and for the administrative costs for the 366  
year that the assessment is being made, as determined by the 367  
administrator, divided by the total amount of paid compensation 368  
for the previous calendar year attributable to all amenable 369  
self-insuring employers; 370

(2) Multiply the quotient in division (J)(1) of this section 371  
by the total amount of paid compensation for the previous calendar 372  
year that is attributable to the individual self-insuring employer 373  
for whom the assessment is being determined. Each self-insuring 374  
employer shall pay the assessment that results from this 375  
calculation, unless the assessment resulting from this calculation 376  
falls below a minimum assessment, which minimum assessment the 377  
administrator shall determine on the first day of July of each 378  
year with the advice and consent of the workers' compensation 379  
oversight commission, in which event, the self-insuring employer 380  
shall pay the minimum assessment. 381

In determining the total amount due for the total assessment 382  
against all self-insuring employers as a class for each fund and 383  
the administrative assessment, the administrator shall reduce 384  
proportionately the total for each fund and assessment by the 385  
amount of money in the self-insurance assessment fund as of the 386  
date of the computation of the assessment. 387

The administrator shall calculate the assessment for the 388  
portion of the surplus fund under division (B) of section 4123.34 389  
of the Revised Code that is used for handicapped reimbursement in 390  
the same manner as set forth in divisions (J)(1) and (2) of this 391  
section except that the administrator shall calculate the total 392  
assessment for this portion of the surplus fund only on the basis 393  
of those self-insuring employers that retain participation in the 394  
handicapped reimbursement program and the individual self-insuring 395

employer's proportion of paid compensation shall be calculated 396  
only for those self-insuring employers who retain participation in 397  
the handicapped reimbursement program. The administrator, as the 398  
administrator determines appropriate, may determine the total 399  
assessment for the handicapped portion of the surplus fund in 400  
accordance with sound actuarial principles. 401

The administrator shall calculate the assessment for the 402  
portion of the surplus fund under division (B) of section 4123.34 403  
of the Revised Code that under division (D) of section 4121.66 of 404  
the Revised Code is used for rehabilitation costs in the same 405  
manner as set forth in divisions (J)(1) and (2) of this section, 406  
except that the administrator shall calculate the total assessment 407  
for this portion of the surplus fund only on the basis of those 408  
self-insuring employers who have not made the election to make 409  
payments directly under division (D) of section 4121.66 of the 410  
Revised Code and an individual self-insuring employer's proportion 411  
of paid compensation only for those self-insuring employers who 412  
have not made that election. 413

An employer who no longer is a self-insuring employer in this 414  
state or who no longer is operating in this state, shall continue 415  
to pay assessments for administrative costs and for the portion of 416  
the surplus fund under division (B) of section 4123.34 of the 417  
Revised Code that is not used for handicapped reimbursement, based 418  
upon paid compensation attributable to claims that occurred while 419  
the employer was a self-insuring employer within this state. 420

(K) There is hereby created in the state treasury the 421  
self-insurance assessment fund. All investment earnings of the 422  
fund shall be deposited in the fund. The administrator shall use 423  
the money in the self-insurance assessment fund only for 424  
administrative costs as specified in section 4123.341 of the 425  
Revised Code. 426

(L) Every self-insuring employer shall certify, in affidavit 427

form subject to the penalty for perjury, to the bureau the amount 428  
of the self-insuring employer's paid compensation for the previous 429  
calendar year. In reporting paid compensation paid for the 430  
previous year, a self-insuring employer shall exclude from the 431  
total amount of paid compensation any reimbursement the 432  
self-insuring employer receives in the previous calendar year from 433  
the surplus fund pursuant to section 4123.512 of the Revised Code 434  
for any paid compensation. The self-insuring employer also shall 435  
exclude from the paid compensation reported any amount recovered 436  
under section 4123.931 of the Revised Code and any amount that is 437  
determined not to have been payable to or on behalf of a claimant 438  
in any final administrative or judicial proceeding. The 439  
self-insuring employer shall exclude such amounts from the paid 440  
compensation reported in the reporting period subsequent to the 441  
date the determination is made. The administrator shall adopt 442  
rules, in accordance with Chapter 119. of the Revised Code, 443  
establishing the date by which self-insuring employers must submit 444  
such information and the amount of the assessments provided for in 445  
division (J) of this section for employers who have been granted 446  
self-insuring status within the last calendar year. 447

The administrator shall include any assessment that remains 448  
unpaid for previous assessment periods in the calculation and 449  
collection of any assessments due under this division or division 450  
(J) of this section. 451

(M) As used in this section, "paid compensation" means all 452  
amounts paid by a self-insuring employer for living maintenance 453  
benefits, all amounts for compensation paid pursuant to sections 454  
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and 455  
4123.64 of the Revised Code, all amounts paid as wages in lieu of 456  
such compensation, all amounts paid in lieu of such compensation 457  
under a nonoccupational accident and sickness program fully funded 458  
by the self-insuring employer, and all amounts paid by a 459

self-insuring employer for a violation of a specific safety 460  
standard pursuant to Section 35 of Article II, Ohio Constitution 461  
and section 4121.47 of the Revised Code. 462

(N) Should any section of this chapter or Chapter 4121. of 463  
the Revised Code providing for self-insuring employers' 464  
assessments based upon compensation paid be declared 465  
unconstitutional by a final decision of any court, then that 466  
section of the Revised Code declared unconstitutional shall revert 467  
back to the section in existence prior to November 3, 1989, 468  
providing for assessments based upon payroll. 469

(O) The administrator may grant a self-insuring employer the 470  
privilege to self-insure a construction project entered into by 471  
the self-insuring employer that is scheduled for completion within 472  
six years after the date the project begins, and the total cost of 473  
which is estimated to exceed one hundred million dollars or, for 474  
employers described in division (R) of this section, if the 475  
construction project is estimated to exceed twenty-five million 476  
dollars. The administrator may waive such cost and time criteria 477  
and grant a self-insuring employer the privilege to self-insure a 478  
construction project regardless of the time needed to complete the 479  
construction project and provided that the cost of the 480  
construction project is estimated to exceed fifty million dollars. 481  
A self-insuring employer who desires to self-insure a construction 482  
project shall submit to the administrator an application listing 483  
the dates the construction project is scheduled to begin and end, 484  
the estimated cost of the construction project, the contractors 485  
and subcontractors whose employees are to be self-insured by the 486  
self-insuring employer, the provisions of a safety program that is 487  
specifically designed for the construction project, and a 488  
statement as to whether a collective bargaining agreement 489  
governing the rights, duties, and obligations of each of the 490  
parties to the agreement with respect to the construction project 491

exists between the self-insuring employer and a labor organization. 492  
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A self-insuring employer may apply to self-insure the employees of either of the following: 494  
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(1) All contractors and subcontractors who perform labor or work or provide materials for the construction project; 496  
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(2) All contractors and, at the administrator's discretion, a substantial number of all the subcontractors who perform labor or work or provide materials for the construction project. 498  
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Upon approval of the application, the administrator shall mail a certificate granting the privilege to self-insure the construction project to the self-insuring employer. The certificate shall contain the name of the self-insuring employer and the name, address, and telephone number of the self-insuring employer's representatives who are responsible for administering workers' compensation claims for the construction project. The self-insuring employer shall post the certificate in a conspicuous place at the site of the construction project. 501  
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The administrator shall maintain a record of the contractors and subcontractors whose employees are covered under the certificate issued to the self-insured employer. A self-insuring employer immediately shall notify the administrator when any contractor or subcontractor is added or eliminated from inclusion under the certificate. 510  
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Upon approval of the application, the self-insuring employer is responsible for the administration and payment of all claims under this chapter and Chapter 4121. of the Revised Code for the employees of the contractor and subcontractors covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the construction project, or who contract an occupational disease in the course of employment on 516  
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the construction project. For purposes of this chapter and Chapter 523  
4121. of the Revised Code, a claim that is administered and paid 524  
in accordance with this division is considered a claim against the 525  
self-insuring employer listed in the certificate. A contractor or 526  
subcontractor included under the certificate shall report to the 527  
self-insuring employer listed in the certificate, all claims that 528  
arise under this chapter and Chapter 4121. of the Revised Code in 529  
connection with the construction project for which the certificate 530  
is issued. 531

A self-insuring employer who complies with this division is 532  
entitled to the protections provided under this chapter and 533  
Chapter 4121. of the Revised Code with respect to the employees of 534  
the contractors and subcontractors covered under a certificate 535  
issued under this division for death or injuries that arise out 536  
of, or death, injuries, or occupational diseases that arise in the 537  
course of, those employees' employment on that construction 538  
project, as if the employees were employees of the self-insuring 539  
employer, provided that the self-insuring employer also complies 540  
with this section. No employee of the contractors and 541  
subcontractors covered under a certificate issued under this 542  
division shall be considered the employee of the self-insuring 543  
employer listed in that certificate for any purposes other than 544  
this chapter and Chapter 4121. of the Revised Code. Nothing in 545  
this division gives a self-insuring employer authority to control 546  
the means, manner, or method of employment of the employees of the 547  
contractors and subcontractors covered under a certificate issued 548  
under this division. 549

The contractors and subcontractors included under a 550  
certificate issued under this division are entitled to the 551  
protections provided under this chapter and Chapter 4121. of the 552  
Revised Code with respect to the contractor's or subcontractor's 553  
employees who are employed on the construction project which is 554

the subject of the certificate, for death or injuries that arise 555  
out of, or death, injuries, or occupational diseases that arise in 556  
the course of, those employees' employment on that construction 557  
project. 558

The contractors and subcontractors included under a 559  
certificate issued under this division shall identify in their 560  
payroll records the employees who are considered the employees of 561  
the self-insuring employer listed in that certificate for purposes 562  
of this chapter and Chapter 4121. of the Revised Code, and the 563  
amount that those employees earned for employment on the 564  
construction project that is the subject of that certificate. 565  
Notwithstanding any provision to the contrary under this chapter 566  
and Chapter 4121. of the Revised Code, the administrator shall 567  
exclude the payroll that is reported for employees who are 568  
considered the employees of the self-insuring employer listed in 569  
that certificate, and that the employees earned for employment on 570  
the construction project that is the subject of that certificate, 571  
when determining those contractors' or subcontractors' premiums or 572  
assessments required under this chapter and Chapter 4121. of the 573  
Revised Code. A self-insuring employer issued a certificate under 574  
this division shall include in the amount of paid compensation it 575  
reports pursuant to division (L) of this section, the amount of 576  
paid compensation the self-insuring employer paid pursuant to this 577  
division for the previous calendar year. 578

Nothing in this division shall be construed as altering the 579  
rights of employees under this chapter and Chapter 4121. of the 580  
Revised Code as those rights existed prior to September 17, 1996. 581  
Nothing in this division shall be construed as altering the rights 582  
devolved under sections 2305.31 and 4123.82 of the Revised Code as 583  
those rights existed prior to September 17, 1996. 584

As used in this division, "privilege to self-insure a 585  
construction project" means privilege to pay individually 586

compensation, and to furnish medical, surgical, nursing, and 587  
hospital services and attention and funeral expenses directly to 588  
injured employees or the dependents of killed employees. 589

(P) A self-insuring employer whose application is granted 590  
under division (O) of this section shall designate a safety 591  
professional to be responsible for the administration and 592  
enforcement of the safety program that is specifically designed 593  
for the construction project that is the subject of the 594  
application. 595

A self-insuring employer whose application is granted under 596  
division (O) of this section shall employ an ombudsperson for the 597  
construction project that is the subject of the application. The 598  
ombudsperson shall have experience in workers' compensation or the 599  
construction industry, or both. The ombudsperson shall perform all 600  
of the following duties: 601

(1) Communicate with and provide information to employees who 602  
are injured in the course of, or whose injury arises out of 603  
employment on the construction project, or who contract an 604  
occupational disease in the course of employment on the 605  
construction project; 606

(2) Investigate the status of a claim upon the request of an 607  
employee to do so; 608

(3) Provide information to claimants, third party 609  
administrators, employers, and other persons to assist those 610  
persons in protecting their rights under this chapter and Chapter 611  
4121. of the Revised Code. 612

A self-insuring employer whose application is granted under 613  
division (O) of this section shall post the name of the safety 614  
professional and the ombudsperson and instructions for contacting 615  
the safety professional and the ombudsperson in a conspicuous 616  
place at the site of the construction project. 617

(Q) The administrator may consider all of the following when 618  
deciding whether to grant a self-insuring employer the privilege 619  
to self-insure a construction project as provided under division 620  
(O) of this section: 621

(1) Whether the self-insuring employer has an organizational 622  
plan for the administration of the workers' compensation law; 623

(2) Whether the safety program that is specifically designed 624  
for the construction project provides for the safety of employees 625  
employed on the construction project, is applicable to all 626  
contractors and subcontractors who perform labor or work or 627  
provide materials for the construction project, and has as a 628  
component, a safety training program that complies with standards 629  
adopted pursuant to the "Occupational Safety and Health Act of 630  
1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing 631  
management and employee involvement; 632

(3) Whether granting the privilege to self-insure the 633  
construction project will reduce the costs of the construction 634  
project; 635

(4) Whether the self-insuring employer has employed an 636  
ombudsperson as required under division (P) of this section; 637

(5) Whether the self-insuring employer has sufficient surety 638  
to secure the payment of claims for which the self-insuring 639  
employer would be responsible pursuant to the granting of the 640  
privilege to self-insure a construction project under division (O) 641  
of this section. 642

(R) As used in divisions (O), (P), and (Q), "self-insuring 643  
employer" includes the following employers, whether or not they 644  
have been granted the status of being a self-insuring employer 645  
under division (B) of this section: 646

(1) A state institution of higher education; 647

(2) A school district;	648
(3) A county school financing district;	649
(4) An educational service center;	650
(5) A community school established under Chapter 3314. of the Revised Code.	651 652
(S) As used in this section:	653
(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;	654 655
(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.	656 657 658 659 660 661 662
<b>Sec. 4123.54.</b> (A) Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not:	663 664 665 666 667 668
(1) Purposely self-inflicted; or	669
(2) Caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, is entitled to receive, either directly from the employee's self-insuring employer as provided in section 4123.35 of the Revised Code, or from the state insurance	670 671 672 673 674 675 676

fund, the compensation for loss sustained on account of the 677  
injury, occupational disease, or death, and the medical, nurse, 678  
and hospital services and medicines, and the amount of funeral 679  
expenses in case of death, as are provided by this chapter. 680

(B) For the purpose of this section, provided that an 681  
~~employee is given or has been given~~ employer has posted written 682  
notice to employees that the results of, or the employee's refusal 683  
to submit to, any chemical test described under this division may 684  
affect the employee's eligibility for compensation and benefits 685  
pursuant to this chapter and Chapter 4121. of the Revised Code, 686  
there is a rebuttable presumption that an employee is intoxicated 687  
or under the influence of a controlled substance not prescribed by 688  
a the employee's physician and that being intoxicated or under the 689  
influence of a controlled substance not prescribed by a the 690  
employee's physician is the proximate cause of an injury ~~when~~ 691  
under either of the following conditions: 692

(1) When any one or more of the following is true: 693

~~(1)~~(a) The employee, through a qualifying chemical test 694  
administered within eight hours of an injury, is determined to 695  
have an alcohol concentration level equal to or in excess of the 696  
levels established in divisions (A)(2) to (7) of section 4511.19 697  
of the Revised Code; 698

~~(2)~~(b) The employee, through a qualifying chemical test 699  
administered within thirty-two hours of an injury, is determined 700  
to have one of the following controlled substances not prescribed 701  
by the employee's physician in the employee's system that tests 702  
above the following levels in an enzyme multiplied immunoassay 703  
technique screening test and above the levels established in 704  
division (B)(3) of this section in a gas chromatography mass 705  
spectrometry test: 706

~~(a)~~(i) For amphetamines, one thousand nanograms per 707

milliliter of urine; 708

~~(b)~~(ii) For cannabinoids, fifty nanograms per milliliter of 709  
urine; 710

~~(e)~~(iii) For cocaine, including crack cocaine, three hundred 711  
nanograms per milliliter of urine; 712

~~(d)~~(iv) For opiates, two thousand nanograms per milliliter of 713  
urine; 714

~~(e)~~(v) For phencyclidine, twenty-five nanograms per 715  
milliliter of urine. 716

~~(3)~~(c) The employee, through a qualifying chemical test 717  
administered within thirty-two hours of an injury, is determined 718  
to have one of the following controlled substances not prescribed 719  
by the employee's physician in the employee's system that tests 720  
above the following levels by a gas chromatography mass 721  
spectrometry test: 722

~~(a)~~(i) For amphetamines, five hundred nanograms per 723  
milliliter of urine; 724

~~(b)~~(ii) For cannabinoids, fifteen nanograms per milliliter of 725  
urine; 726

~~(e)~~(iii) For cocaine, including crack cocaine, one hundred 727  
fifty nanograms per milliliter of urine; 728

~~(d)~~(iv) For opiates, two thousand nanograms per milliliter of 729  
urine; 730

~~(e)~~(v) For phencyclidine, twenty-five nanograms per 731  
milliliter of urine. 732

~~(4)~~(d) The employee, through a qualifying chemical test 733  
administered within thirty-two hours of an injury, is determined 734  
to have barbiturates, benzodiazepines, methadone, or propoxyphene 735  
in the employee's system that tests above levels established by 736  
laboratories certified by the United States department of health 737

and human services. 738

~~(5) The (2) When the employee refuses to submit to a 739  
requested chemical test, on the condition that that employee is or 740  
was given notice that the refusal to submit to any chemical test 741  
described in division (B)(1) may affect the employee's eligibility 742  
for compensation and benefits under this chapter and Chapter 4121. 743  
of the Revised Code. 744~~

(C)(1) For purposes of division (B) of this section, a 745  
chemical test is a qualifying chemical test if it is administered 746  
to an employee after an injury under at least one of the following 747  
conditions: 748

(a) When the employee's employer had reasonable cause to 749  
suspect that the employee may be intoxicated or under the 750  
influence of a controlled substance not prescribed by the 751  
employee's physician; 752

(b) At the request of a police officer pursuant to section 753  
4511.191 of the Revised Code, and not at the request of the 754  
employee's employer; 755

(c) At the request of a licensed physician who is not 756  
employed by the employee's employer, and not at the request of the 757  
employee's employer. 758

(2) As used in division (C)(1)(a) of this section, 759  
"reasonable cause" means, but is not limited to, evidence that an 760  
employee is or was using alcohol or a controlled substance drawn 761  
from specific, objective facts and reasonable inferences drawn 762  
from these facts in light of experience and training. These facts 763  
and inferences may be based on, but are not limited to, any of the 764  
following: 765

(a) Observable phenomena, such as direct observation of use, 766  
possession, or distribution of alcohol or a controlled substance, 767  
or of the physical symptoms of being under the influence of 768

alcohol or a controlled substance, such as but not limited to 769  
slurred speech, dilated pupils, odor of alcohol or a controlled 770  
substance, changes in affect, or dynamic mood swings; 771

(b) A pattern of abnormal conduct, erratic or aberrant 772  
behavior, or deteriorating work performance such as frequent 773  
absenteeism, excessive tardiness, or recurrent accidents, that 774  
appears to be related to the use of alcohol or a controlled 775  
substance, and does not appear to be attributable to other 776  
factors; 777

(c) The identification of an employee as the focus of a 778  
criminal investigation into unauthorized possession, use, or 779  
trafficking of a controlled substance; 780

(d) A report of use of alcohol or a controlled substance 781  
provided by a reliable and credible source; 782

(e) Repeated or flagrant violations of the safety or work 783  
rules of the employee's employer, that are determined by the 784  
employee's supervisor to pose a substantial risk of physical 785  
injury or property damage and that appear to be related to the use 786  
of alcohol or a controlled substance and that do not appear 787  
attributable to other factors. 788

(D) Nothing in this section shall be construed to affect the 789  
rights of an employer to test employees for alcohol or controlled 790  
substance abuse. 791

(E) For the purpose of this section, laboratories certified 792  
by the United States department of health and human services or 793  
laboratories that meet or exceed the standards of that department 794  
for laboratory certification shall be used for processing the test 795  
results of a qualifying chemical test. 796

(F) The written notice required by division (B) of this 797  
section shall be the same size or larger than the certificate of 798

premium payment notice furnished by the bureau of workers' 799  
compensation and shall be posted by the employer in the same 800  
location as the certificate of premium payment notice or the 801  
certificate of self-insurance. 802

(G) Whenever, with respect to an employee of an employer who 803  
is subject to and has complied with this chapter, there is 804  
possibility of conflict with respect to the application of 805  
workers' compensation laws because the contract of employment is 806  
entered into and all or some portion of the work is or is to be 807  
performed in a state or states other than Ohio, the employer and 808  
the employee may agree to be bound by the laws of this state or by 809  
the laws of some other state in which all or some portion of the 810  
work of the employee is to be performed. The agreement shall be in 811  
writing and shall be filed with the bureau of workers' 812  
compensation within ten days after it is executed and shall remain 813  
in force until terminated or modified by agreement of the parties 814  
similarly filed. If the agreement is to be bound by the laws of 815  
this state and the employer has complied with this chapter, then 816  
the employee is entitled to compensation and benefits regardless 817  
of where the injury occurs or the disease is contracted and the 818  
rights of the employee and the employee's dependents under the 819  
laws of this state are the exclusive remedy against the employer 820  
on account of injury, disease, or death in the course of and 821  
arising out of the employee's employment. If the agreement is to 822  
be bound by the laws of another state and the employer has 823  
complied with the laws of that state, the rights of the employee 824  
and the employee's dependents under the laws of that state are the 825  
exclusive remedy against the employer on account of injury, 826  
disease, or death in the course of and arising out of the 827  
employee's employment without regard to the place where the injury 828  
was sustained or the disease contracted. 829

If any employee or the employee's dependents are awarded 830

workers' compensation benefits or recover damages from the 831  
employer under the laws of another state, the amount awarded or 832  
recovered, whether paid or to be paid in future installments, 833  
shall be credited on the amount of any award of compensation or 834  
benefits made to the employee or the employee's dependents by the 835  
bureau. 836

If an employee is a resident of a state other than this state 837  
and is insured under the workers' compensation law or similar laws 838  
of a state other than this state, the employee and the employee's 839  
dependents are not entitled to receive compensation or benefits 840  
under this chapter, on account of injury, disease, or death 841  
arising out of or in the course of employment while temporarily 842  
within this state, and the rights of the employee and the 843  
employee's dependents under the laws of the other state are the 844  
exclusive remedy against the employer on account of the injury, 845  
disease, or death. 846

(H) Compensation or benefits are not payable to a claimant 847  
during the period of confinement of the claimant in any state or 848  
federal correctional institution whether in this or any other 849  
state for conviction of violation of any state or federal criminal 850  
law. 851

**Section 2.** That existing sections 4123.35 and 4123.54 of the 852  
Revised Code are hereby repealed. 853

**Section 3.** Section 4123.35 of the Revised Code is presented 854  
in this act as a composite of the section as amended by both H.B. 855  
657 and Sub. S.B. 227 of the 124th General Assembly. The General 856  
Assembly, applying the principle stated in division (B) of section 857  
1.52 of the Revised Code that amendments are to be harmonized if 858  
reasonably capable of simultaneous operation, finds that the 859  
composite is the resulting version of the section in effect prior 860  
to the effective date of the section as presented in this act. 861