

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

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Sub. H. B. No. 223

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Daniels, DeBose, Flowers, Gilb, Hoops, Martin, Niehaus, Raga, Reidelbach,
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Senators Spada, Mumper, Wachtmann**

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 of the workers' compensation law; 109
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(g) The employer's proposed plan to inform employees of the change from a state fund insurer to a self-insuring employer, the procedures the employer will follow as a self-insuring employer, and the employees' rights to compensation and benefits; and 111
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(h) The employer has either an account in a financial institution in this state, or if the employer maintains an account with a financial institution outside this state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will be honored by a financial institution in this state. 115
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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. 121
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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. 130
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(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 135
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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 year. 171
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(g) On the date of application, the public employer holds a debt rating of Aa3 or higher according to Moody's investors service, inc., or a comparable rating by an independent rating agency similar to Moody's investors service, inc. 173
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(h) The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected claims under this chapter for the applicable period of time, as determined by the administrator. 177
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(i) For a public employer that is a hospital, the public employer shall submit audited financial statements showing the hospital's overall liquidity characteristics, and the administrator shall determine, on an individual basis, whether the public employer satisfies liquidity standards equivalent to the liquidity standards of other public employers. 182
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(j) Any additional criteria that the administrator adopts by rule pursuant to division (E) of this section. 188
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The administrator shall not approve the application of a public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or publicly owned utility, who does not satisfy all of the requirements listed in division (B)(2) of this section. 190
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(C) A board of county commissioners described in division (G) of section 4123.01 of the Revised Code, as an employer, that will abide by the rules of the administrator and that may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and 196
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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 492
organization. 493

A self-insuring employer may apply to self-insure the 494
employees of either of the following: 495

(1) All contractors and subcontractors who perform labor or 496
work or provide materials for the construction project; 497

(2) All contractors and, at the administrator's discretion, a 498
substantial number of all the subcontractors who perform labor or 499
work or provide materials for the construction project. 500

Upon approval of the application, the administrator shall 501
mail a certificate granting the privilege to self-insure the 502
construction project to the self-insuring employer. The 503
certificate shall contain the name of the self-insuring employer 504
and the name, address, and telephone number of the self-insuring 505
employer's representatives who are responsible for administering 506
workers' compensation claims for the construction project. The 507
self-insuring employer shall post the certificate in a conspicuous 508
place at the site of the construction project. 509

The administrator shall maintain a record of the contractors 510
and subcontractors whose employees are covered under the 511
certificate issued to the self-insured employer. A self-insuring 512
employer immediately shall notify the administrator when any 513
contractor or subcontractor is added or eliminated from inclusion 514
under the certificate. 515

Upon approval of the application, the self-insuring employer 516
is responsible for the administration and payment of all claims 517
under this chapter and Chapter 4121. of the Revised Code for the 518

employees of the contractor and subcontractors covered under the 519
certificate who receive injuries or are killed in the course of 520
and arising out of employment on the construction project, or who 521
contract an occupational disease in the course of employment on 522
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 professional and the ombudsperson and instructions for contacting the safety professional and the ombudsperson in a conspicuous place at the site of the construction project.

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

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

(2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, and has as 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 divisions (O), (P), and (Q), "self-insuring employer" includes the following employers, whether or not they

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 651
Revised Code. 652

(S) As used in this section: 653

(1) "Unvoted debt capacity" means the amount of money that a 654
public employer may borrow without voter approval of a tax levy; 655

(2) "State institution of higher education" means the state 656
universities listed in section 3345.011 of the Revised Code, 657
community colleges created pursuant to Chapter 3354. of the 658
Revised Code, university branches created pursuant to Chapter 659
3355. of the Revised Code, technical colleges created pursuant to 660
Chapter 3357. of the Revised Code, and state community colleges 661
created pursuant to Chapter 3358. of the Revised Code. 662

Sec. 4123.54. (A) Every employee, who is injured or who 663
contracts an occupational disease, and the dependents of each 664
employee who is killed, or dies as the result of an occupational 665
disease contracted in the course of employment, wherever such 666
injury has occurred or occupational disease has been contracted, 667
provided the same were not: 668

(1) Purposely self-inflicted; or 669

(2) Caused by the employee being intoxicated or under the 670
influence of a controlled substance not prescribed by a physician 671
where the intoxication or being under the influence of the 672
controlled substance not prescribed by a physician was the 673

proximate cause of the injury, is entitled to receive, either 674
directly from the employee's self-insuring employer as provided in 675
section 4123.35 of the Revised Code, or from the state insurance 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 milliliter of urine;	707 708
(b) (ii) For cannabinoids, fifty nanograms per milliliter of urine;	709 710
(c) (iii) For cocaine, including crack cocaine, three hundred nanograms per milliliter of urine;	711 712
(d) (iv) For opiates, two thousand nanograms per milliliter of urine;	713 714
(e) (v) For phencyclidine, twenty-five nanograms per milliliter of urine.	715 716
(3) (c) The employee, through a <u>qualifying</u> chemical test administered within thirty-two hours of an injury, is determined to have one of the following controlled substances not prescribed by the employee's physician in the employee's system that tests above the following levels by a gas chromatography mass spectrometry test:	717 718 719 720 721 722
(a) (i) For amphetamines, five hundred nanograms per milliliter of urine;	723 724
(b) (ii) For cannabinoids, fifteen nanograms per milliliter of urine;	725 726
(c) (iii) For cocaine, including crack cocaine, one hundred fifty nanograms per milliliter of urine;	727 728
(d) (iv) For opiates, two thousand nanograms per milliliter of urine;	729 730
(e) (v) For phencyclidine, twenty-five nanograms per milliliter of urine.	731 732
(4) (d) The employee, through a <u>qualifying</u> chemical test administered within thirty-two hours of an injury, is determined	733 734

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, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings; 766
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(b) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents, that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors; 772
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(c) The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance; 778
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(d) A report of use of alcohol or a controlled substance provided by a reliable and credible source; 781
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(e) Repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors. 783
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(D) Nothing in this section shall be construed to affect the rights of an employer to test employees for alcohol or controlled substance abuse. 789
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(E) For the purpose of this section, laboratories certified by the United States department of health and human services or laboratories that meet or exceed the standards of that department for laboratory certification shall be used for processing the test results of a qualifying chemical test. 792
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(F) The written notice required by division (B) of this section shall be the same size or larger than the certificate of premium payment notice furnished by the bureau of workers' compensation and shall be posted by the employer in the same location as the certificate of premium payment notice or the certificate of self-insurance.

(G) Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury

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
675 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