

**As Introduced**

**128th General Assembly  
Regular Session  
2009-2010**

**H. B. No. 576**

**Representative Morgan**

**Cosponsors: Representatives Uecker, Blair, Hite, Grossman, Jordan,  
Adams, R., Sears, Lehner**

—

**A B I L L**

To amend sections 1739.02, 4115.04, 4123.01, 4123.35, 1  
and 4123.82 and to enact sections 122.09 and 2  
4123.354 of the Revised Code to authorize the 3  
state and local governments to jointly offer tax 4  
and other incentives to businesses that establish 5  
operations within designated areas. 6

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

**Section 1.** That sections 1739.02, 4115.04, 4123.01, 4123.35, 7  
and 4123.82 be amended and sections 122.09 and 4123.354 of the 8  
Revised Code be enacted to read as follows: 9

**Sec. 122.09.** (A) As used in this section: 10

(1) "Subdivision" has the same meaning as in section 5705.01 11  
of the Revised Code and refers to the subdivision's taxing 12  
authority, as defined in that section, where the context requires. 13

(2) "Participating governmental authority" means a 14  
subdivision that enters into a contract under this section, and 15  
the state if the director of development is a party to such a 16  
contract. 17

(3) "Tax and other incentives" includes full or partial exemption from taxation of property in an area; exemptions, deductions, or credits from or against the taxes imposed under Chapter 322., 5725., 5729., 5733., 5739., 5741., 5747., or 5751. of the Revised Code; exemptions, deductions, or credits from or against municipal income taxes; assistance under Chapter 122., 165., 166., or 184. of the Revised Code; and any other assistance intended to promote or foster business development, increased employment, and general economic welfare.

(4) "Multiple employer welfare arrangement," "fully insured program," and "group self-insurance program" have the same meanings as in section 1739.01 of the Revised Code.

(B)(1) For the purpose of facilitating economic development, to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people in this state, the director of development or one or more subdivisions may enter into a contract to create an Ohio opportunity area. The area shall be comprised exclusively of territory zoned for commercial or agricultural use and shall be located within the boundaries of this state and two or more participating governmental authorities. The contract term may not exceed ten years, but it may be renewed upon agreement of the participating governmental authorities. The contract shall describe the area's boundaries, create a board of directors, and delineate the board's authority and duties.

Authority granted to the board of directors may include the following:

(a) Entering into agreements with businesses whereby a business commits to create or preserve jobs in the area and the board of directors provides tax and other incentives for the business;

(b) Accepting service payments in lieu of taxes from

contracting businesses and using them for any purpose of the area; 49

(c) Granting or guaranteeing loans to finance infrastructure 50  
improvements in the area and to acquire, construct, enlarge, 51  
improve, or equip, and to sell, lease, exchange, or otherwise 52  
dispose of property, structures, equipment, and facilities within 53  
the area for industry, commerce, distribution, and research and 54  
development purposes, pursuant to Sections 2p and 13 of Article 55  
VIII, Ohio Constitution; 56

(d) Levying an income tax to be used solely for the purposes 57  
of the area. A tax levied pursuant to division (B)(1)(d) of this 58  
section may be levied only upon written petition signed by all 59  
persons owning or leasing real property in the area for the 60  
purpose of conducting a trade or business. The tax may be based 61  
only on income earned by individuals for services performed within 62  
the area and on the net profits of businesses located in the area. 63  
The income tax is subject to the limitations of Chapter 718. of 64  
the Revised Code. The board of directors may prescribe the form of 65  
the petition. The board of directors shall publish or post public 66  
notice within the area of any resolution adopted by the board 67  
levying an income tax in the same manner required of municipal 68  
corporations under sections 731.21 and 731.25 of the Revised Code. 69

(e) Waiving the prevailing wage requirements under Chapter 70  
4115. of the Revised Code for public improvement projects in the 71  
area for a fixed period of time, for the duration of the project, 72  
or as otherwise determined by the board. 73

(2) If tax or other incentives are provided that reduce the 74  
revenue from a tax imposed by a taxing authority that is not a 75  
participating governmental authority, the taxing authority 76  
imposing the tax shall be reimbursed for the entire amount of the 77  
reduction unless it agrees otherwise. 78

(3)(a) A participating governmental authority may, by 79

resolution, issue on behalf of the board of directors 80  
self-supporting securities to finance improvements in the area for 81  
industry, commerce, distribution, and research and development 82  
purposes, pursuant to Sections 2p and 13 of Article VIII, Ohio 83  
Constitution. Securities shall be secured by a pledge of and a 84  
lien upon the revenues derived from ownership or operation of the 85  
improvements or amounts from taxes levied by the board of 86  
directors or from service payments in lieu of taxes received by 87  
the board of directors. 88

(b) A participating governmental authority may, by 89  
resolution, issue on behalf of the board of directors bonds to 90  
finance improvements in the area for industry, commerce, 91  
distribution, and research and development purposes, pursuant to 92  
Sections 2p and 13 of Article VIII, Ohio Constitution. The bonds 93  
shall be secured by a pledge of and lien on taxes levied by the 94  
board of directors or by service payments in lieu of taxes 95  
received by the board of directors. The bonds shall not be general 96  
obligations of the participating governmental authority, and shall 97  
not constitute a debt, or a pledge of the faith and credit, but 98  
shall be payable solely from the funds pledged for their payment 99  
as authorized by this section. 100

(C) Businesses located in an Ohio opportunity area may form a 101  
multiple employer welfare arrangement to provide health insurance 102  
to the employees of the businesses and the employees' dependents 103  
through a fully insured program or a group self-insurance program. 104  
If the multiple employer welfare arrangement provides health 105  
insurance through a group self-insurance program, the multiple 106  
employer welfare arrangement shall be subject to Chapter 1739. of 107  
the Revised Code. 108

(D) A board of directors created pursuant to this section is 109  
a body corporate and politic that may sue and be sued, plead and 110  
be impleaded, and has the powers and jurisdiction enumerated in 111

this section. The exercise by a board of the powers conferred upon 112  
it shall be essential governmental functions of this state but no 113  
authority is immune from liability by reason thereof. The 114  
provisions of Chapter 2744. and section 121.22 of the Revised Code 115  
apply to the board and the area. The board of directors is a 116  
governmental agency for the purposes of Chapter 166. of the 117  
Revised Code. 118

If the state is a participating governmental authority, the 119  
director of development or a designee of the director shall be a 120  
member of the board. Other members of the board shall be appointed 121  
as provided in the contract from among the other participating 122  
governmental authorities and the elected chief executive officers 123  
thereof, if any, provided that there shall be at least two members 124  
appointed from each of the participating governmental authorities. 125

Official actions of the board of directors require an 126  
affirmative vote of two-thirds of the board's members. The board's 127  
official actions bind the participating governmental authorities. 128

(E)(1) A contract entered into under division (B) of this 129  
section is not binding unless it is approved by each participating 130  
governmental authority. The director of development shall 131  
determine whether the state will be a party to the contract. All 132  
other participating governmental authorities shall approve the 133  
contract by ordinance or resolution. After all participating 134  
governmental authorities have approved the contract, a copy of the 135  
contract shall be filed with the director of development unless 136  
the state is a participating governmental authority. Upon creation 137  
of the area, no exemption from taxation may be granted or 138  
authorized for property in the area unless the exemption is first 139  
approved by official action of the board of directors before 140  
application is made to the tax commissioner. 141

(2) Before a subdivision approves a contract entered into 142  
under this section, each shall hold a public hearing concerning 143

the contract and shall provide thirty days' public notice of the 144  
time and place of the public hearing in a newspaper of general 145  
circulation in the county or counties in which the area is to be 146  
created, a summary of the terms of the contract, a statement that 147  
the entire text of the contract and area maps and plans are on 148  
file for public examination in the office of the fiscal officer of 149  
each subdivision, and information pertaining to any tax or debt 150  
changes that will or may occur as a result of the contract. 151

During the thirty-day period before the public hearing, a 152  
copy of the text of the contract together with copies of area maps 153  
and plans related to or part of the contract shall be on file, for 154  
public examination, in the office of the fiscal officer of each 155  
subdivision. The public hearing provided for in this division 156  
shall allow for public comment and recommendations from the public 157  
on the proposed contract. The participating governmental 158  
authorities may include in the contract any of those 159  
recommendations before approving the contract. 160

**Sec. 1739.02.** (A) A trade association, industry association, 161  
or professional association that has been organized and maintained 162  
in good faith for a continuous period of one year or more for 163  
purposes other than obtaining insurance may establish, maintain, 164  
or operate a group self-insurance program under a multiple 165  
employer welfare arrangement that is chartered and created in this 166  
state under sections 1739.01 to 1739.22 of the Revised Code. 167

(B) Except as provided in section 9.833 and sections 1739.01 168  
to 1739.22 of the Revised Code, no multiple employer welfare 169  
arrangement or other entity by which two or more employers jointly 170  
participate in a common employee welfare benefit plan shall 171  
operate a group self-insurance program in this state after four 172  
months after ~~the effective date of this section~~ April 9, 1993. 173

(C) Sections 1739.01 to 1739.22 of the Revised Code do not 174

apply to any entity that establishes, maintains, or operates a 175  
~~fully insured~~ fully insured program. 176

(D) No person shall establish, operate, or maintain a 177  
multiple employer welfare arrangement providing benefits through a 178  
group self-insurance program in this state unless the multiple 179  
employer welfare arrangement has a valid certificate of authority 180  
from the superintendent of insurance. 181

(E) This chapter shall not apply to a self-insuring 182  
consortium created for purposes of workers' compensation as 183  
described in section 4123.354 of the Revised Code. 184

**Sec. 4115.04.** (A)(1) Every public authority authorized to 185  
contract for or construct with its own forces a public 186  
improvement, before advertising for bids or undertaking such 187  
construction with its own forces, shall have the director of 188  
commerce determine the prevailing rates of wages of mechanics and 189  
laborers in accordance with section 4115.05 of the Revised Code 190  
for the class of work called for by the public improvement, in the 191  
locality where the work is to be performed. Except as provided in 192  
division (A)(2) of this section, that schedule of wages shall be 193  
attached to and made part of the specifications for the work, and 194  
shall be printed on the bidding blanks where the work is done by 195  
contract. A copy of the bidding blank shall be filed with the 196  
director before the contract is awarded. A minimum rate of wages 197  
for common laborers, on work coming under the jurisdiction of the 198  
department of transportation, shall be fixed in each county of the 199  
state by the department of transportation, in accordance with 200  
section 4115.05 of the Revised Code. 201

(2) In the case of contracts that are administered by the 202  
department of natural resources, the director of natural resources 203  
or the director's designee shall include language in the contracts 204  
requiring wage rate determinations and updates to be obtained 205

directly from the department of commerce through electronic or 206  
other means as appropriate. Contracts that include this 207  
requirement are exempt from the requirements established in 208  
division (A)(1) of this section that involve attaching the 209  
schedule of wages to the specifications for the work, making the 210  
schedule part of those specifications, and printing the schedule 211  
on the bidding blanks where the work is done by contract. 212

(B) Sections 4115.03 to 4115.16 of the Revised Code do not 213  
apply to: 214

(1) Public improvements in any case where the federal 215  
government or any of its agencies furnishes by loan or grant all 216  
or any part of the funds used in constructing such improvements, 217  
provided that the federal government or any of its agencies 218  
prescribes predetermined minimum wages to be paid to mechanics and 219  
laborers employed in the construction of such improvements; 220

(2) A participant in a work activity, developmental activity, 221  
or an alternative work activity under sections 5107.40 to 5107.69 222  
of the Revised Code when a public authority directly uses the 223  
labor of the participant to construct a public improvement if the 224  
participant is not engaged in paid employment or subsidized 225  
employment pursuant to the activity; 226

(3) Public improvements undertaken by, or under contract for, 227  
the board of education of any school district or the governing 228  
board of any educational service center; 229

(4) Public improvements undertaken by, or under contract for, 230  
a county hospital operated pursuant to Chapter 339. of the Revised 231  
Code or a municipal hospital operated pursuant to Chapter 749. of 232  
the Revised Code if none of the funds used in constructing the 233  
improvements are the proceeds of bonds or other obligations that 234  
are secured by the full faith and credit of the state, a county, a 235  
township, or a municipal corporation and none of the funds used in 236

constructing the improvements, including funds used to repay any 237  
amounts borrowed to construct the improvements, are funds that 238  
have been appropriated for that purpose by the state, a board of 239  
county commissioners, a township, or a municipal corporation from 240  
funds generated by the levy of a tax, provided that a county 241  
hospital or municipal hospital may elect to apply sections 4115.03 242  
to 4115.16 of the Revised Code to a public improvement undertaken 243  
by, or under contract for, the hospital; 244

(5) Any project described in divisions (D)(1)(a) to (D)(1)(e) 245  
of section 176.05 of the Revised Code; 246

(6) Any project for which a waiver has been granted by a 247  
board of directors of an Ohio opportunity area pursuant to section 248  
122.09 of the Revised Code. 249

**Sec. 4123.01.** As used in this chapter: 250

(A)(1) "Employee" means: 251

(a) Every person in the service of the state, or of any 252  
county, municipal corporation, township, or school district 253  
therein, including regular members of lawfully constituted police 254  
and fire departments of municipal corporations and townships, 255  
whether paid or volunteer, and wherever serving within the state 256  
or on temporary assignment outside thereof, and executive officers 257  
of boards of education, under any appointment or contract of hire, 258  
express or implied, oral or written, including any elected 259  
official of the state, or of any county, municipal corporation, or 260  
township, or members of boards of education. 261

As used in division (A)(1)(a) of this section, the term 262  
"employee" includes the following persons when responding to an 263  
inherently dangerous situation that calls for an immediate 264  
response on the part of the person, regardless of whether the 265  
person is within the limits of the jurisdiction of the person's 266

regular employment or voluntary service when responding, on the 267  
condition that the person responds to the situation as the person 268  
otherwise would if the person were on duty in the person's 269  
jurisdiction: 270

(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 271  
of this section, "peace officer" has the same meaning as in 272  
section 2935.01 of the Revised Code. 273

(ii) Off-duty firefighters, whether paid or volunteer, of a 274  
lawfully constituted fire department. 275

(iii) Off-duty first responders, emergency medical 276  
technicians-basic, emergency medical technicians-intermediate, or 277  
emergency medical technicians-paramedic, whether paid or 278  
volunteer, of an ambulance service organization or emergency 279  
medical service organization pursuant to Chapter 4765. of the 280  
Revised Code. 281

(b) Every person in the service of any person, firm, or 282  
private corporation, including any public service corporation, 283  
that (i) employs one or more persons regularly in the same 284  
business or in or about the same establishment under any contract 285  
of hire, express or implied, oral or written, including aliens and 286  
minors, household workers who earn one hundred sixty dollars or 287  
more in cash in any calendar quarter from a single household and 288  
casual workers who earn one hundred sixty dollars or more in cash 289  
in any calendar quarter from a single employer, or (ii) is bound 290  
by any such contract of hire or by any other written contract, to 291  
pay into the state insurance fund the premiums provided by this 292  
chapter. 293

(c) Every person who performs labor or provides services 294  
pursuant to a construction contract, as defined in section 4123.79 295  
of the Revised Code, if at least ten of the following criteria 296  
apply: 297

(i) The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services;	298 299 300
(ii) The person is required by the other contracting party to have particular training;	301 302
(iii) The person's services are integrated into the regular functioning of the other contracting party;	303 304
(iv) The person is required to perform the work personally;	305
(v) The person is hired, supervised, or paid by the other contracting party;	306 307
(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;	308 309 310
(vii) The person's hours of work are established by the other contracting party;	311 312
(viii) The person is required to devote full time to the business of the other contracting party;	313 314
(ix) The person is required to perform the work on the premises of the other contracting party;	315 316
(x) The person is required to follow the order of work set by the other contracting party;	317 318
(xi) The person is required to make oral or written reports of progress to the other contracting party;	319 320
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	321 322
(xiii) The person's expenses are paid for by the other contracting party;	323 324
(xiv) The person's tools and materials are furnished by the other contracting party;	325 326

(xv) The person is provided with the facilities used to perform services;	327 328
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	329 330
(xvii) The person is not performing services for a number of employers at the same time;	331 332
(xviii) The person does not make the same services available to the general public;	333 334
(xix) The other contracting party has a right to discharge the person;	335 336
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	337 338 339
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.	340 341 342 343 344 345 346 347 348 349 350 351
(d) Every person to whom all of the following apply:	352
(i) The person is a resident of a state other than this state and is covered by that other state's workers' compensation law;	353 354
(ii) The person performs labor or provides services for that person's employer while temporarily within this state;	355 356

(iii) The laws of that other state do not include the provisions described in division (H)(4) of section 4123.54 of the Revised Code.

(2) "Employee" does not mean:

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation; or

(d) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code.

Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (A)(2) of this section. If an employer is a partnership, sole proprietorship, individual incorporated as a corporation, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, the individual incorporated as a corporation, or the officers of the family farm corporation. In the event of an election, the employer shall serve upon the bureau of workers' compensation written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no person excluded from the definition of "employee" pursuant to division (A)(2) of this section, proprietor, individual incorporated as a corporation, or partner shall be deemed an employee within this division until the employer has served such notice.

For informational purposes only, the bureau shall prescribe 388  
such language as it considers appropriate, on such of its forms as 389  
it considers appropriate, to advise employers of their right to 390  
elect to include as an "employee" within this chapter a sole 391  
proprietor, any member of a partnership, an individual 392  
incorporated as a corporation, the officers of a family farm 393  
corporation, or a person excluded from the definition of 394  
"employee" under division (A)(2) of this section, that they should 395  
check any health and disability insurance policy, or other form of 396  
health and disability plan or contract, presently covering them, 397  
or the purchase of which they may be considering, to determine 398  
whether such policy, plan, or contract excludes benefits for 399  
illness or injury that they might have elected to have covered by 400  
workers' compensation. 401

(B) "Employer" means: 402

(1) The state, including state hospitals, each county, 403  
municipal corporation, township, school district, and hospital 404  
owned by a political subdivision or subdivisions other than the 405  
state; 406

(2) Every person, firm, professional employer organization as 407  
defined in section 4125.01 of the Revised Code, and private 408  
corporation, including any public service corporation, that (a) 409  
has in service one or more employees or shared employees regularly 410  
in the same business or in or about the same establishment under 411  
any contract of hire, express or implied, oral or written, or (b) 412  
is bound by any such contract of hire or by any other written 413  
contract, to pay into the insurance fund the premiums provided by 414  
this chapter. 415

All such employers are subject to this chapter. Any member of 416  
a firm or association, who regularly performs manual labor in or 417  
about a mine, factory, or other establishment, including a 418  
household establishment, shall be considered an employee in 419

determining whether such person, firm, or private corporation, or 420  
public service corporation, has in its service, one or more 421  
employees and the employer shall report the income derived from 422  
such labor to the bureau as part of the payroll of such employer, 423  
and such member shall thereupon be entitled to all the benefits of 424  
an employee. 425

(C) "Injury" includes any injury, whether caused by external 426  
accidental means or accidental in character and result, received 427  
in the course of, and arising out of, the injured employee's 428  
employment. "Injury" does not include: 429

(1) Psychiatric conditions except where the claimant's 430  
psychiatric conditions have arisen from an injury or occupational 431  
disease sustained by that claimant or where the claimant's 432  
psychiatric conditions have arisen from sexual conduct in which 433  
the claimant was forced by threat of physical harm to engage or 434  
participate; 435

(2) Injury or disability caused primarily by the natural 436  
deterioration of tissue, an organ, or part of the body; 437

(3) Injury or disability incurred in voluntary participation 438  
in an employer-sponsored recreation or fitness activity if the 439  
employee signs a waiver of the employee's right to compensation or 440  
benefits under this chapter prior to engaging in the recreation or 441  
fitness activity; 442

(4) A condition that pre-existed an injury unless that 443  
pre-existing condition is substantially aggravated by the injury. 444  
Such a substantial aggravation must be documented by objective 445  
diagnostic findings, objective clinical findings, or objective 446  
test results. Subjective complaints may be evidence of such a 447  
substantial aggravation. However, subjective complaints without 448  
objective diagnostic findings, objective clinical findings, or 449  
objective test results are insufficient to substantiate a 450

substantial aggravation. 451

(D) "Child" includes a posthumous child and a child legally 452  
adopted prior to the injury. 453

(E) "Family farm corporation" means a corporation founded for 454  
the purpose of farming agricultural land in which the majority of 455  
the voting stock is held by and the majority of the stockholders 456  
are persons or the spouse of persons related to each other within 457  
the fourth degree of kinship, according to the rules of the civil 458  
law, and at least one of the related persons is residing on or 459  
actively operating the farm, and none of whose stockholders are a 460  
corporation. A family farm corporation does not cease to qualify 461  
under this division where, by reason of any devise, bequest, or 462  
the operation of the laws of descent or distribution, the 463  
ownership of shares of voting stock is transferred to another 464  
person, as long as that person is within the degree of kinship 465  
stipulated in this division. 466

(F) "Occupational disease" means a disease contracted in the 467  
course of employment, which by its causes and the characteristics 468  
of its manifestation or the condition of the employment results in 469  
a hazard which distinguishes the employment in character from 470  
employment generally, and the employment creates a risk of 471  
contracting the disease in greater degree and in a different 472  
manner from the public in general. 473

(G) "Self-insuring employer" means an employer who is granted 474  
the privilege of paying compensation and benefits directly under 475  
section 4123.35 of the Revised Code, including a board of county 476  
commissioners for the sole purpose of constructing a sports 477  
facility as defined in section 307.696 of the Revised Code, 478  
provided that the electors of the county in which the sports 479  
facility is to be built have approved construction of a sports 480  
facility by ballot election no later than November 6, 1997, but 481  
does not include a self-insuring consortium. 482

(H) "Public employer" means an employer as defined in 483  
division (B)(1) of this section. 484

(I) "Sexual conduct" means vaginal intercourse between a male 485  
and female; anal intercourse, fellatio, and cunnilingus between 486  
persons regardless of gender; and, without privilege to do so, the 487  
insertion, however slight, of any part of the body or any 488  
instrument, apparatus, or other object into the vaginal or anal 489  
cavity of another. Penetration, however slight, is sufficient to 490  
complete vaginal or anal intercourse. 491

(J) "Other-states' insurer" means an insurance company that 492  
is authorized to provide workers' compensation insurance coverage 493  
in any of the states that permit employers to obtain insurance for 494  
workers' compensation claims through insurance companies. 495

(K) "Other-states' coverage" means insurance coverage 496  
purchased by an employer for workers' compensation claims that 497  
arise in a state or states other than this state and that are 498  
filed by the employees of the employer or those employee's 499  
dependents, as applicable, in that other state or those other 500  
states. 501

(L) "Self-insuring consortium" means a group of employers 502  
that is granted the privilege of paying compensation and benefits 503  
directly under section 4123.354 of the Revised Code. 504

**Sec. 4123.35.** (A) Except as provided in this section, every 505  
employer mentioned in division (B)(2) of section 4123.01 of the 506  
Revised Code, and every publicly owned utility shall pay 507  
semiannually in the months of January and July into the state 508  
insurance fund the amount of annual premium the administrator of 509  
workers' compensation fixes for the employment or occupation of 510  
the employer, the amount of which premium to be paid by each 511  
employer to be determined by the classifications, rules, and rates 512  
made and published by the administrator. The employer shall pay 513

semiannually a further sum of money into the state insurance fund 514  
as may be ascertained to be due from the employer by applying the 515  
rules of the administrator, and a receipt or certificate 516  
certifying that payment has been made, along with a written notice 517  
as is required in section 4123.54 of the Revised Code, shall be 518  
mailed immediately to the employer by the bureau of workers' 519  
compensation. The receipt or certificate is prima-facie evidence 520  
of the payment of the premium, and the proper posting of the 521  
notice constitutes the employer's compliance with the notice 522  
requirement mandated in section 4123.54 of the Revised Code. 523

The bureau of workers' compensation shall verify with the 524  
secretary of state the existence of all corporations and 525  
organizations making application for workers' compensation 526  
coverage and shall require every such application to include the 527  
employer's federal identification number. 528

An employer as defined in division (B)(2) of section 4123.01 529  
of the Revised Code who has contracted with a subcontractor is 530  
liable for the unpaid premium due from any subcontractor with 531  
respect to that part of the payroll of the subcontractor that is 532  
for work performed pursuant to the contract with the employer. 533

Division (A) of this section providing for the payment of 534  
premiums semiannually does not apply to any employer who was a 535  
subscriber to the state insurance fund prior to January 1, 1914, 536  
or who may first become a subscriber to the fund in any month 537  
other than January or July. Instead, the semiannual premiums shall 538  
be paid by those employers from time to time upon the expiration 539  
of the respective periods for which payments into the fund have 540  
been made by them. 541

The administrator shall adopt rules to permit employers to 542  
make periodic payments of the semiannual premium due under this 543  
division. The rules shall include provisions for the assessment of 544  
interest charges, where appropriate, and for the assessment of 545

penalties when an employer fails to make timely premium payments. 546  
An employer who timely pays the amounts due under this division is 547  
entitled to all of the benefits and protections of this chapter. 548  
Upon receipt of payment, the bureau immediately shall mail a 549  
receipt or certificate to the employer certifying that payment has 550  
been made, which receipt is prima-facie evidence of payment. 551  
Workers' compensation coverage under this chapter continues 552  
uninterrupted upon timely receipt of payment under this division. 553

Every public employer, except public employers that are 554  
self-insuring employers under this section, shall comply with 555  
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 556  
regard to the contribution of moneys to the public insurance fund. 557

(B) Employers who will abide by the rules of the 558  
administrator and who may be of sufficient financial ability to 559  
render certain the payment of compensation to injured employees or 560  
the dependents of killed employees, and the furnishing of medical, 561  
surgical, nursing, and hospital attention and services and 562  
medicines, and funeral expenses, equal to or greater than is 563  
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 564  
to 4123.67 of the Revised Code, and who do not desire to insure 565  
the payment thereof or indemnify themselves against loss sustained 566  
by the direct payment thereof, upon a finding of such facts by the 567  
administrator, may be granted the privilege to pay individually 568  
compensation, and furnish medical, surgical, nursing, and hospital 569  
services and attention and funeral expenses directly to injured 570  
employees or the dependents of killed employees, thereby being 571  
granted status as a self-insuring employer. The administrator may 572  
charge employers who apply for the status as a self-insuring 573  
employer a reasonable application fee to cover the bureau's costs 574  
in connection with processing and making a determination with 575  
respect to an application. 576

All employers granted status as self-insuring employers shall 577

demonstrate sufficient financial and administrative ability to 578  
assure that all obligations under this section are promptly met. 579  
The administrator shall deny the privilege where the employer is 580  
unable to demonstrate the employer's ability to promptly meet all 581  
the obligations imposed on the employer by this section. 582

(1) The administrator shall consider, but is not limited to, 583  
the following factors, where applicable, in determining the 584  
employer's ability to meet all of the obligations imposed on the 585  
employer by this section: 586

(a) The employer employs a minimum of five hundred employees 587  
in this state; 588

(b) The employer has operated in this state for a minimum of 589  
two years, provided that an employer who has purchased, acquired, 590  
or otherwise succeeded to the operation of a business, or any part 591  
thereof, situated in this state that has operated for at least two 592  
years in this state, also shall qualify; 593

(c) Where the employer previously contributed to the state 594  
insurance fund or is a successor employer as defined by bureau 595  
rules, the amount of the buyout, as defined by bureau rules; 596

(d) The sufficiency of the employer's assets located in this 597  
state to insure the employer's solvency in paying compensation 598  
directly; 599

(e) The financial records, documents, and data, certified by 600  
a certified public accountant, necessary to provide the employer's 601  
full financial disclosure. The records, documents, and data 602  
include, but are not limited to, balance sheets and profit and 603  
loss history for the current year and previous four years. 604

(f) The employer's organizational plan for the administration 605  
of the workers' compensation law; 606

(g) The employer's proposed plan to inform employees of the 607

change from a state fund insurer to a self-insuring employer, the 608  
procedures the employer will follow as a self-insuring employer, 609  
and the employees' rights to compensation and benefits; and 610

(h) The employer has either an account in a financial 611  
institution in this state, or if the employer maintains an account 612  
with a financial institution outside this state, ensures that 613  
workers' compensation checks are drawn from the same account as 614  
payroll checks or the employer clearly indicates that payment will 615  
be honored by a financial institution in this state. 616

The Except as otherwise provided in section 4123.354 of the 617  
Revised Code, the administrator may waive the requirements of 618  
divisions (B)(1)(a) and (b) of this section and the requirement of 619  
division (B)(1)(e) of this section that the financial records, 620  
documents, and data be certified by a certified public accountant. 621  
The administrator shall adopt rules establishing the criteria that 622  
an employer shall meet in order for the administrator to waive the 623  
requirement of division (B)(1)(e) of this section. Such rules may 624  
require additional security of that employer pursuant to division 625  
(E) of section 4123.351 of the Revised Code. 626

The administrator shall not grant the status of self-insuring 627  
employer to the state, except that the administrator may grant the 628  
status of self-insuring employer to a state institution of higher 629  
education, excluding its hospitals, that meets the requirements of 630  
division (B)(2) of this section. 631

(2) When considering the application of a public employer, 632  
except for a board of county commissioners described in division 633  
(G) of section 4123.01 of the Revised Code, a board of a county 634  
hospital, or a publicly owned utility, the administrator shall 635  
verify that the public employer satisfies all of the following 636  
requirements as the requirements apply to that public employer: 637

(a) For the two-year period preceding application under this 638

section, the public employer has maintained an unvoted debt 639  
capacity equal to at least two times the amount of the current 640  
annual premium established by the administrator under this chapter 641  
for that public employer for the year immediately preceding the 642  
year in which the public employer makes application under this 643  
section. 644

(b) For each of the two fiscal years preceding application 645  
under this section, the unreserved and undesignated year-end fund 646  
balance in the public employer's general fund is equal to at least 647  
five per cent of the public employer's general fund revenues for 648  
the fiscal year computed in accordance with generally accepted 649  
accounting principles. 650

(c) For the five-year period preceding application under this 651  
section, the public employer, to the extent applicable, has 652  
complied fully with the continuing disclosure requirements 653  
established in rules adopted by the United States securities and 654  
exchange commission under 17 C.F.R. 240.15c 2-12. 655

(d) For the five-year period preceding application under this 656  
section, the public employer has not had its local government fund 657  
distribution withheld on account of the public employer being 658  
indebted or otherwise obligated to the state. 659

(e) For the five-year period preceding application under this 660  
section, the public employer has not been under a fiscal watch or 661  
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 662  
of the Revised Code. 663

(f) For the public employer's fiscal year preceding 664  
application under this section, the public employer has obtained 665  
an annual financial audit as required under section 117.10 of the 666  
Revised Code, which has been released by the auditor of state 667  
within seven months after the end of the public employer's fiscal 668  
year. 669

(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.

(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.

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

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

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

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

4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and that does not desire to insure the payment thereof or indemnify itself against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge a board of county commissioners described in division (G) of section 4123.01 of the Revised Code that applies for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application. All employers granted such status shall demonstrate sufficient financial and administrative ability to assure that all obligations under this section are promptly met. The administrator shall deny the privilege where the employer is unable to demonstrate the employer's ability to promptly meet all the obligations imposed on the employer by this section. The administrator shall consider, but is not limited to, the following factors, where applicable, in determining the employer's ability to meet all of the obligations imposed on the board as an employer by this section:

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

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

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

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

directly; 733

(5) The financial records, documents, and data, certified by 734  
a certified public accountant, necessary to provide the board's 735  
full financial disclosure. The records, documents, and data 736  
include, but are not limited to, balance sheets and profit and 737  
loss history for the current year and previous four years. 738

(6) The board's organizational plan for the administration of 739  
the workers' compensation law; 740

(7) The board's proposed plan to inform employees of the 741  
proposed self-insurance, the procedures the board will follow as a 742  
self-insuring employer, and the employees' rights to compensation 743  
and benefits; 744

(8) The board has either an account in a financial 745  
institution in this state, or if the board maintains an account 746  
with a financial institution outside this state, ensures that 747  
workers' compensation checks are drawn from the same account as 748  
payroll checks or the board clearly indicates that payment will be 749  
honored by a financial institution in this state; 750

(9) The board shall provide the administrator a surety bond 751  
in an amount equal to one hundred twenty-five per cent of the 752  
projected losses as determined by the administrator. 753

(D) The administrator shall require a surety bond from all 754  
self-insuring employers, issued pursuant to section 4123.351 of 755  
the Revised Code, that is sufficient to compel, or secure to 756  
injured employees, or to the dependents of employees killed, the 757  
payment of compensation and expenses, which shall in no event be 758  
less than that paid or furnished out of the state insurance fund 759  
in similar cases to injured employees or to dependents of killed 760  
employees whose employers contribute to the fund, except when an 761  
employee of the employer, who has suffered the loss of a hand, 762  
arm, foot, leg, or eye prior to the injury for which compensation 763

is to be paid, and thereafter suffers the loss of any other of the 764  
members as the result of any injury sustained in the course of and 765  
arising out of the employee's employment, the compensation to be 766  
paid by the self-insuring employer is limited to the disability 767  
suffered in the subsequent injury, additional compensation, if 768  
any, to be paid by the bureau out of the surplus created by 769  
section 4123.34 of the Revised Code. 770

(E) In addition to the requirements of this section, the 771  
administrator shall make and publish rules governing the manner of 772  
making application and the nature and extent of the proof required 773  
to justify a finding of fact by the administrator as to granting 774  
the status of a self-insuring employer, which rules shall be 775  
general in their application, one of which rules shall provide 776  
that all self-insuring employers shall pay into the state 777  
insurance fund such amounts as are required to be credited to the 778  
surplus fund in division (B) of section 4123.34 of the Revised 779  
Code. The administrator may adopt rules establishing requirements 780  
in addition to the requirements described in division (B)(2) of 781  
this section that a public employer shall meet in order to qualify 782  
for self-insuring status. 783

Employers shall secure directly from the bureau central 784  
offices application forms upon which the bureau shall stamp a 785  
designating number. Prior to submission of an application, an 786  
employer shall make available to the bureau, and the bureau shall 787  
review, the information described in division (B)(1) of this 788  
section, and public employers shall make available, and the bureau 789  
shall review, the information necessary to verify whether the 790  
public employer meets the requirements listed in division (B)(2) 791  
of this section. An employer shall file the completed application 792  
forms with an application fee, which shall cover the costs of 793  
processing the application, as established by the administrator, 794  
by rule, with the bureau at least ninety days prior to the 795

effective date of the employer's new status as a self-insuring 796  
employer. The application form is not deemed complete until all 797  
the required information is attached thereto. The bureau shall 798  
only accept applications that contain the required information. 799

(F) The bureau shall review completed applications within a 800  
reasonable time. If the bureau determines to grant an employer the 801  
status as a self-insuring employer, the bureau shall issue a 802  
statement, containing its findings of fact, that is prepared by 803  
the bureau and signed by the administrator. If the bureau 804  
determines not to grant the status as a self-insuring employer, 805  
the bureau shall notify the employer of the determination and 806  
require the employer to continue to pay its full premium into the 807  
state insurance fund. The administrator also shall adopt rules 808  
establishing a minimum level of performance as a criterion for 809  
granting and maintaining the status as a self-insuring employer 810  
and fixing time limits beyond which failure of the self-insuring 811  
employer to provide for the necessary medical examinations and 812  
evaluations may not delay a decision on a claim. 813

(G) The administrator shall adopt rules setting forth 814  
procedures for auditing the program of self-insuring employers. 815  
The bureau shall conduct the audit upon a random basis or whenever 816  
the bureau has grounds for believing that a self-insuring employer 817  
is not in full compliance with bureau rules or this chapter. 818

The administrator shall monitor the programs conducted by 819  
self-insuring employers, to ensure compliance with bureau 820  
requirements and for that purpose, shall develop and issue to 821  
self-insuring employers standardized forms for use by the 822  
self-insuring employer in all aspects of the self-insuring 823  
employers' direct compensation program and for reporting of 824  
information to the bureau. 825

The bureau shall receive and transmit to the self-insuring 826  
employer all complaints concerning any self-insuring employer. In 827

the case of a complaint against a self-insuring employer, the 828  
administrator shall handle the complaint through the 829  
self-insurance division of the bureau. The bureau shall maintain a 830  
file by employer of all complaints received that relate to the 831  
employer. The bureau shall evaluate each complaint and take 832  
appropriate action. 833

The administrator shall adopt as a rule a prohibition against 834  
any self-insuring employer from harassing, dismissing, or 835  
otherwise disciplining any employee making a complaint, which rule 836  
shall provide for a financial penalty to be levied by the 837  
administrator payable by the offending self-insuring employer. 838

(H) For the purpose of making determinations as to whether to 839  
grant status as a self-insuring employer, the administrator may 840  
subscribe to and pay for a credit reporting service that offers 841  
financial and other business information about individual 842  
employers. The costs in connection with the bureau's subscription 843  
or individual reports from the service about an applicant may be 844  
included in the application fee charged employers under this 845  
section. 846

(I) The administrator, notwithstanding other provisions of 847  
this chapter, may permit a self-insuring employer to resume 848  
payment of premiums to the state insurance fund with appropriate 849  
credit modifications to the employer's basic premium rate as such 850  
rate is determined pursuant to section 4123.29 of the Revised 851  
Code. 852

(J) On the first day of July of each year, the administrator 853  
shall calculate separately each self-insuring employer's 854  
assessments for the safety and hygiene fund, administrative costs 855  
pursuant to section 4123.342 of the Revised Code, and for the 856  
portion of the surplus fund under division (B) of section 4123.34 857  
of the Revised Code that is not used for handicapped 858  
reimbursement, on the basis of the paid compensation attributable 859

to the individual self-insuring employer according to the 860  
following calculation: 861

(1) The total assessment against all self-insuring employers 862  
as a class for each fund and for the administrative costs for the 863  
year that the assessment is being made, as determined by the 864  
administrator, divided by the total amount of paid compensation 865  
for the previous calendar year attributable to all amenable 866  
self-insuring employers; 867

(2) Multiply the quotient in division (J)(1) of this section 868  
by the total amount of paid compensation for the previous calendar 869  
year that is attributable to the individual self-insuring employer 870  
for whom the assessment is being determined. Each self-insuring 871  
employer shall pay the assessment that results from this 872  
calculation, unless the assessment resulting from this calculation 873  
falls below a minimum assessment, which minimum assessment the 874  
administrator shall determine on the first day of July of each 875  
year with the advice and consent of the bureau of workers' 876  
compensation board of directors, in which event, the self-insuring 877  
employer shall pay the minimum assessment. 878

In determining the total amount due for the total assessment 879  
against all self-insuring employers as a class for each fund and 880  
the administrative assessment, the administrator shall reduce 881  
proportionately the total for each fund and assessment by the 882  
amount of money in the self-insurance assessment fund as of the 883  
date of the computation of the assessment. 884

The administrator shall calculate the assessment for the 885  
portion of the surplus fund under division (B) of section 4123.34 886  
of the Revised Code that is used for handicapped reimbursement in 887  
the same manner as set forth in divisions (J)(1) and (2) of this 888  
section except that the administrator shall calculate the total 889  
assessment for this portion of the surplus fund only on the basis 890  
of those self-insuring employers that retain participation in the 891

handicapped reimbursement program and the individual self-insuring 892  
employer's proportion of paid compensation shall be calculated 893  
only for those self-insuring employers who retain participation in 894  
the handicapped reimbursement program. The administrator, as the 895  
administrator determines appropriate, may determine the total 896  
assessment for the handicapped portion of the surplus fund in 897  
accordance with sound actuarial principles. 898

The administrator shall calculate the assessment for the 899  
portion of the surplus fund under division (B) of section 4123.34 900  
of the Revised Code that under division (D) of section 4121.66 of 901  
the Revised Code is used for rehabilitation costs in the same 902  
manner as set forth in divisions (J)(1) and (2) of this section, 903  
except that the administrator shall calculate the total assessment 904  
for this portion of the surplus fund only on the basis of those 905  
self-insuring employers who have not made the election to make 906  
payments directly under division (D) of section 4121.66 of the 907  
Revised Code and an individual self-insuring employer's proportion 908  
of paid compensation only for those self-insuring employers who 909  
have not made that election. 910

The administrator shall calculate the assessment for the 911  
portion of the surplus fund under division (B) of section 4123.34 912  
of the Revised Code that is used for reimbursement to a 913  
self-insuring employer under division (H) of section 4123.512 of 914  
the Revised Code in the same manner as set forth in divisions 915  
(J)(1) and (2) of this section except that the administrator shall 916  
calculate the total assessment for this portion of the surplus 917  
fund only on the basis of those self-insuring employers that 918  
retain participation in reimbursement to the self-insuring 919  
employer under division (H) of section 4123.512 of the Revised 920  
Code and the individual self-insuring employer's proportion of 921  
paid compensation shall be calculated only for those self-insuring 922  
employers who retain participation in reimbursement to the 923

self-insuring employer under division (H) of section 4123.512 of 924  
the Revised Code. 925

An employer who no longer is a self-insuring employer in this 926  
state or who no longer is operating in this state, shall continue 927  
to pay assessments for administrative costs and for the portion of 928  
the surplus fund under division (B) of section 4123.34 of the 929  
Revised Code that is not used for handicapped reimbursement, based 930  
upon paid compensation attributable to claims that occurred while 931  
the employer was a self-insuring employer within this state. 932

(K) The administrator shall deposit any moneys received from 933  
a self-insuring employer for the self-insuring employer's 934  
assessment to pay the costs solely attributable to the workers' 935  
compensation council into the administrative assessment account 936  
described in division (B) of section 4123.342 of the Revised Code 937  
for the administrative cost assessment collected by the 938  
administrator for the council. There is hereby created in the 939  
state treasury the self-insurance assessment fund. All investment 940  
earnings of the fund shall be deposited in the fund. The 941  
administrator shall use the money in the self-insurance assessment 942  
fund only for administrative costs as specified in section 943  
4123.341 of the Revised Code. 944

(L) Every self-insuring employer shall certify, in affidavit 945  
form subject to the penalty for perjury, to the bureau the amount 946  
of the self-insuring employer's paid compensation for the previous 947  
calendar year. In reporting paid compensation paid for the 948  
previous year, a self-insuring employer shall exclude from the 949  
total amount of paid compensation any reimbursement the 950  
self-insuring employer receives in the previous calendar year from 951  
the surplus fund pursuant to section 4123.512 of the Revised Code 952  
for any paid compensation. The self-insuring employer also shall 953  
exclude from the paid compensation reported any amount recovered 954  
under section 4123.931 of the Revised Code and any amount that is 955

determined not to have been payable to or on behalf of a claimant 956  
in any final administrative or judicial proceeding. The 957  
self-insuring employer shall exclude such amounts from the paid 958  
compensation reported in the reporting period subsequent to the 959  
date the determination is made. The administrator shall adopt 960  
rules, in accordance with Chapter 119. of the Revised Code, that 961  
provide for all of the following: 962

(1) Establishing the date by which self-insuring employers 963  
must submit such information and the amount of the assessments 964  
provided for in division (J) of this section for employers who 965  
have been granted self-insuring status within the last calendar 966  
year; 967

(2) If an employer fails to pay the assessment when due, the 968  
administrator may add a late fee penalty of not more than five 969  
hundred dollars to the assessment plus an additional penalty 970  
amount as follows: 971

(a) For an assessment from sixty-one to ninety days past due, 972  
the prime interest rate, multiplied by the assessment due; 973

(b) For an assessment from ninety-one to one hundred twenty 974  
days past due, the prime interest rate plus two per cent, 975  
multiplied by the assessment due; 976

(c) For an assessment from one hundred twenty-one to one 977  
hundred fifty days past due, the prime interest rate plus four per 978  
cent, multiplied by the assessment due; 979

(d) For an assessment from one hundred fifty-one to one 980  
hundred eighty days past due, the prime interest rate plus six per 981  
cent, multiplied by the assessment due; 982

(e) For an assessment from one hundred eighty-one to two 983  
hundred ten days past due, the prime interest rate plus eight per 984  
cent, multiplied by the assessment due; 985

(f) For each additional thirty-day period or portion thereof 986  
that an assessment remains past due after it has remained past due 987  
for more than two hundred ten days, the prime interest rate plus 988  
eight per cent, multiplied by the assessment due. 989

(3) An employer may appeal a late fee penalty and penalty 990  
assessment to the administrator. 991

For purposes of division (L)(2) of this section, "prime 992  
interest rate" means the average bank prime rate, and the 993  
administrator shall determine the prime interest rate in the same 994  
manner as a county auditor determines the average bank prime rate 995  
under section 929.02 of the Revised Code. 996

The administrator shall include any assessment and penalties 997  
that remain unpaid for previous assessment periods in the 998  
calculation and collection of any assessments due under this 999  
division or division (J) of this section. 1000

(M) As used in this section, "paid compensation" means all 1001  
amounts paid by a self-insuring employer for living maintenance 1002  
benefits, all amounts for compensation paid pursuant to sections 1003  
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and 1004  
4123.64 of the Revised Code, all amounts paid as wages in lieu of 1005  
such compensation, all amounts paid in lieu of such compensation 1006  
under a nonoccupational accident and sickness program fully funded 1007  
by the self-insuring employer, and all amounts paid by a 1008  
self-insuring employer for a violation of a specific safety 1009  
standard pursuant to Section 35 of Article II, Ohio Constitution 1010  
and section 4121.47 of the Revised Code. 1011

(N) Should any section of this chapter or Chapter 4121. of 1012  
the Revised Code providing for self-insuring employers' 1013  
assessments based upon compensation paid be declared 1014  
unconstitutional by a final decision of any court, then that 1015  
section of the Revised Code declared unconstitutional shall revert 1016

back to the section in existence prior to November 3, 1989, 1017  
providing for assessments based upon payroll. 1018

(O) The administrator may grant a self-insuring employer the 1019  
privilege to self-insure a construction project entered into by 1020  
the self-insuring employer that is scheduled for completion within 1021  
six years after the date the project begins, and the total cost of 1022  
which is estimated to exceed one hundred million dollars or, for 1023  
employers described in division (R) of this section, if the 1024  
construction project is estimated to exceed twenty-five million 1025  
dollars. The administrator may waive such cost and time criteria 1026  
and grant a self-insuring employer the privilege to self-insure a 1027  
construction project regardless of the time needed to complete the 1028  
construction project and provided that the cost of the 1029  
construction project is estimated to exceed fifty million dollars. 1030  
A self-insuring employer who desires to self-insure a construction 1031  
project shall submit to the administrator an application listing 1032  
the dates the construction project is scheduled to begin and end, 1033  
the estimated cost of the construction project, the contractors 1034  
and subcontractors whose employees are to be self-insured by the 1035  
self-insuring employer, the provisions of a safety program that is 1036  
specifically designed for the construction project, and a 1037  
statement as to whether a collective bargaining agreement 1038  
governing the rights, duties, and obligations of each of the 1039  
parties to the agreement with respect to the construction project 1040  
exists between the self-insuring employer and a labor 1041  
organization. 1042

A self-insuring employer may apply to self-insure the 1043  
employees of either of the following: 1044

(1) All contractors and subcontractors who perform labor or 1045  
work or provide materials for the construction project; 1046

(2) All contractors and, at the administrator's discretion, a 1047  
substantial number of all the subcontractors who perform labor or 1048

work or provide materials for the construction project. 1049

Upon approval of the application, the administrator shall 1050  
mail a certificate granting the privilege to self-insure the 1051  
construction project to the self-insuring employer. The 1052  
certificate shall contain the name of the self-insuring employer 1053  
and the name, address, and telephone number of the self-insuring 1054  
employer's representatives who are responsible for administering 1055  
workers' compensation claims for the construction project. The 1056  
self-insuring employer shall post the certificate in a conspicuous 1057  
place at the site of the construction project. 1058

The administrator shall maintain a record of the contractors 1059  
and subcontractors whose employees are covered under the 1060  
certificate issued to the self-insured employer. A self-insuring 1061  
employer immediately shall notify the administrator when any 1062  
contractor or subcontractor is added or eliminated from inclusion 1063  
under the certificate. 1064

Upon approval of the application, the self-insuring employer 1065  
is responsible for the administration and payment of all claims 1066  
under this chapter and Chapter 4121. of the Revised Code for the 1067  
employees of the contractor and subcontractors covered under the 1068  
certificate who receive injuries or are killed in the course of 1069  
and arising out of employment on the construction project, or who 1070  
contract an occupational disease in the course of employment on 1071  
the construction project. For purposes of this chapter and Chapter 1072  
4121. of the Revised Code, a claim that is administered and paid 1073  
in accordance with this division is considered a claim against the 1074  
self-insuring employer listed in the certificate. A contractor or 1075  
subcontractor included under the certificate shall report to the 1076  
self-insuring employer listed in the certificate, all claims that 1077  
arise under this chapter and Chapter 4121. of the Revised Code in 1078  
connection with the construction project for which the certificate 1079  
is issued. 1080

A self-insuring employer who complies with this division is 1081  
entitled to the protections provided under this chapter and 1082  
Chapter 4121. of the Revised Code with respect to the employees of 1083  
the contractors and subcontractors covered under a certificate 1084  
issued under this division for death or injuries that arise out 1085  
of, or death, injuries, or occupational diseases that arise in the 1086  
course of, those employees' employment on that construction 1087  
project, as if the employees were employees of the self-insuring 1088  
employer, provided that the self-insuring employer also complies 1089  
with this section. No employee of the contractors and 1090  
subcontractors covered under a certificate issued under this 1091  
division shall be considered the employee of the self-insuring 1092  
employer listed in that certificate for any purposes other than 1093  
this chapter and Chapter 4121. of the Revised Code. Nothing in 1094  
this division gives a self-insuring employer authority to control 1095  
the means, manner, or method of employment of the employees of the 1096  
contractors and subcontractors covered under a certificate issued 1097  
under this division. 1098

The contractors and subcontractors included under a 1099  
certificate issued under this division are entitled to the 1100  
protections provided under this chapter and Chapter 4121. of the 1101  
Revised Code with respect to the contractor's or subcontractor's 1102  
employees who are employed on the construction project which is 1103  
the subject of the certificate, for death or injuries that arise 1104  
out of, or death, injuries, or occupational diseases that arise in 1105  
the course of, those employees' employment on that construction 1106  
project. 1107

The contractors and subcontractors included under a 1108  
certificate issued under this division shall identify in their 1109  
payroll records the employees who are considered the employees of 1110  
the self-insuring employer listed in that certificate for purposes 1111  
of this chapter and Chapter 4121. of the Revised Code, and the 1112

amount that those employees earned for employment on the 1113  
construction project that is the subject of that certificate. 1114  
Notwithstanding any provision to the contrary under this chapter 1115  
and Chapter 4121. of the Revised Code, the administrator shall 1116  
exclude the payroll that is reported for employees who are 1117  
considered the employees of the self-insuring employer listed in 1118  
that certificate, and that the employees earned for employment on 1119  
the construction project that is the subject of that certificate, 1120  
when determining those contractors' or subcontractors' premiums or 1121  
assessments required under this chapter and Chapter 4121. of the 1122  
Revised Code. A self-insuring employer issued a certificate under 1123  
this division shall include in the amount of paid compensation it 1124  
reports pursuant to division (L) of this section, the amount of 1125  
paid compensation the self-insuring employer paid pursuant to this 1126  
division for the previous calendar year. 1127

Nothing in this division shall be construed as altering the 1128  
rights of employees under this chapter and Chapter 4121. of the 1129  
Revised Code as those rights existed prior to September 17, 1996. 1130  
Nothing in this division shall be construed as altering the rights 1131  
devolved under sections 2305.31 and 4123.82 of the Revised Code as 1132  
those rights existed prior to September 17, 1996. 1133

As used in this division, "privilege to self-insure a 1134  
construction project" means privilege to pay individually 1135  
compensation, and to furnish medical, surgical, nursing, and 1136  
hospital services and attention and funeral expenses directly to 1137  
injured employees or the dependents of killed employees. 1138

(P) A self-insuring employer whose application is granted 1139  
under division (O) of this section shall designate a safety 1140  
professional to be responsible for the administration and 1141  
enforcement of the safety program that is specifically designed 1142  
for the construction project that is the subject of the 1143  
application. 1144

A self-insuring employer whose application is granted under 1145  
division (O) of this section shall employ an ombudsperson for the 1146  
construction project that is the subject of the application. The 1147  
ombudsperson shall have experience in workers' compensation or the 1148  
construction industry, or both. The ombudsperson shall perform all 1149  
of the following duties: 1150

(1) Communicate with and provide information to employees who 1151  
are injured in the course of, or whose injury arises out of 1152  
employment on the construction project, or who contract an 1153  
occupational disease in the course of employment on the 1154  
construction project; 1155

(2) Investigate the status of a claim upon the request of an 1156  
employee to do so; 1157

(3) Provide information to claimants, third party 1158  
administrators, employers, and other persons to assist those 1159  
persons in protecting their rights under this chapter and Chapter 1160  
4121. of the Revised Code. 1161

A self-insuring employer whose application is granted under 1162  
division (O) of this section shall post the name of the safety 1163  
professional and the ombudsperson and instructions for contacting 1164  
the safety professional and the ombudsperson in a conspicuous 1165  
place at the site of the construction project. 1166

(Q) The administrator may consider all of the following when 1167  
deciding whether to grant a self-insuring employer the privilege 1168  
to self-insure a construction project as provided under division 1169  
(O) of this section: 1170

(1) Whether the self-insuring employer has an organizational 1171  
plan for the administration of the workers' compensation law; 1172

(2) Whether the safety program that is specifically designed 1173  
for the construction project provides for the safety of employees 1174  
employed on the construction project, is applicable to all 1175

contractors and subcontractors who perform labor or work or 1176  
provide materials for the construction project, and has as a 1177  
component, a safety training program that complies with standards 1178  
adopted pursuant to the "Occupational Safety and Health Act of 1179  
1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing 1180  
management and employee involvement; 1181

(3) Whether granting the privilege to self-insure the 1182  
construction project will reduce the costs of the construction 1183  
project; 1184

(4) Whether the self-insuring employer has employed an 1185  
ombudsperson as required under division (P) of this section; 1186

(5) Whether the self-insuring employer has sufficient surety 1187  
to secure the payment of claims for which the self-insuring 1188  
employer would be responsible pursuant to the granting of the 1189  
privilege to self-insure a construction project under division (O) 1190  
of this section. 1191

(R) As used in divisions (O), (P), and (Q), "self-insuring 1192  
employer" includes the following employers, whether or not they 1193  
have been granted the status of being a self-insuring employer 1194  
under division (B) of this section: 1195

(1) A state institution of higher education; 1196

(2) A school district; 1197

(3) A county school financing district; 1198

(4) An educational service center; 1199

(5) A community school established under Chapter 3314. of the 1200  
Revised Code; 1201

(6) A municipal power agency as defined in section 3734.058 1202  
of the Revised Code. 1203

(S) A group of employers mentioned in division (B)(2) of 1204  
section 4123.01 of the Revised Code may be granted the privilege 1205

to pay compensation and benefits directly as provided in section 1206  
4123.354 of the Revised Code. 1207

(T) As used in this section: 1208

(1) "Unvoted debt capacity" means the amount of money that a 1209  
public employer may borrow without voter approval of a tax levy; 1210

(2) "State institution of higher education" means the state 1211  
universities listed in section 3345.011 of the Revised Code, 1212  
community colleges created pursuant to Chapter 3354. of the 1213  
Revised Code, university branches created pursuant to Chapter 1214  
3355. of the Revised Code, technical colleges created pursuant to 1215  
Chapter 3357. of the Revised Code, and state community colleges 1216  
created pursuant to Chapter 3358. of the Revised Code. 1217

**Sec. 4123.354.** (A) A group of employers mentioned in division 1218  
(B)(2) of section 4123.01 of the Revised Code that are located 1219  
within an Ohio opportunity area created under section 122.09 of 1220  
the Revised Code; that will abide by the rules of the 1221  
administrator of workers' compensation; that may be of sufficient 1222  
financial ability to render certain the payment of compensation to 1223  
claimants, and the furnishing of medical, surgical, nursing, and 1224  
hospital attention and services and medicines, and funeral 1225  
expenses, equal to or greater than is provided for in sections 1226  
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised 1227  
Code; and that do not desire to insure the payment thereof or 1228  
indemnify themselves against loss sustained by the direct payment 1229  
thereof, upon a finding of such facts by the administrator, may be 1230  
granted the privilege to pay individually compensation, and 1231  
furnish medical, surgical, nursing, and hospital attention and 1232  
services and funeral expenses directly to claimants, thereby being 1233  
granted status as a self-insuring consortium. 1234

(B) To qualify as a self-insuring consortium, the consortium 1235  
shall satisfy, as a group, the requirements listed in division 1236

(B)(1) of section 4123.35 of the Revised Code that an individual 1237  
employer must satisfy to become a self-insuring employer. For 1238  
purposes of satisfying the requirement listed in division 1239  
(B)(1)(a) of that section, the administrator shall count only 1240  
those employees who work within an Ohio opportunity area and whose 1241  
employer wishes to participate in a self-insuring consortium. The 1242  
administrator shall not waive the requirement listed in division 1243  
(B)(1)(a) of that section with respect to a group of employers 1244  
wishing to become a self-insuring consortium. 1245

(C)(1) A group of employers mentioned in division (B)(2) of 1246  
section 4123.01 of the Revised Code and located within an Ohio 1247  
opportunity area that desires to become a self-insuring consortium 1248  
as described in division (A) of this section shall submit an 1249  
application to the administrator alleging that the consortium 1250  
fulfills the requirements described in division (B)(1) of section 1251  
4123.35 of the Revised Code. Upon receipt of the application from 1252  
a group, the administrator shall determine whether the group, as a 1253  
whole, fulfills the requirements described in division (B)(1) of 1254  
section 4123.35 of the Revised Code. The administrator shall 1255  
review completed applications within a reasonable amount of time. 1256  
If the administrator determines to grant a group the status of a 1257  
self-insuring consortium, the administrator shall issue a 1258  
statement containing findings of fact that is prepared and signed 1259  
by the administrator. The administrator shall not grant the 1260  
privilege of self-insurance to a group where the group, as a 1261  
whole, is unable to demonstrate that the group satisfies the 1262  
requirements described in division (B)(1) of section 4123.35 of 1263  
the Revised Code and the employers comprising the group shall 1264  
continue to pay their full premiums into the state insurance fund. 1265

(2) The administrator may charge groups that apply for the 1266  
status of a self-insuring consortium a reasonable application fee 1267  
to cover the administrator's costs in connection with processing 1268

and making a determination with respect to an application. 1269

(D) Each member of a self-insuring consortium is jointly and 1270  
severally liable for the payment of compensation and benefits 1271  
under this chapter and Chapters 4121., 4127., and 4131. of the 1272  
Revised Code. If an individual member of the consortium fails to 1273  
pay compensation and benefits for a claim that is compensable 1274  
under this chapter or Chapter 4121., 4127., or 4131. of the 1275  
Revised Code, the remaining members of the consortium are liable 1276  
for that payment. If the number of employees covered by the 1277  
consortium is below five hundred employees at any time, the 1278  
consortium shall lose the consortium's status as a self-insuring 1279  
consortium and the individual employers shall resume the payment 1280  
of premiums into the state insurance fund. 1281

(E) An employer that participates in a self-insuring 1282  
consortium shall obtain an insurance policy that indemnifies the 1283  
employer against all of the employer's loss in excess of fifty 1284  
thousand dollars, as such policy is described in division (B)(1) 1285  
of section 4123.82 of the Revised Code. 1286

(F) The administrator shall require a self-insuring 1287  
consortium to pay a contribution, calculated under section 1288  
4123.351 of the Revised Code, to the self-insuring employers' 1289  
guaranty fund established pursuant to section 4123.351 of the 1290  
Revised Code. The consortium shall adopt procedures to allocate 1291  
the cost of that contribution among the members of the consortium. 1292

(G) For the purpose of making determinations as to whether to 1293  
grant status as a self-insuring consortium, the administrator may 1294  
subscribe to and pay for a credit reporting service that offers 1295  
financial and other business information about individual 1296  
employers. The costs in connection with the administrator's 1297  
subscription or individual reports from the service about a member 1298  
of an applicant group may be included in the application fee 1299  
charged groups under this section. 1300

(H) The administrator may permit an employer member of a self-insuring consortium to resume payment of premiums to the state insurance fund with appropriate credit modifications to the employer's basic premium rate as such rate is determined pursuant to section 4123.29 of the Revised Code.

(I) A self-insuring consortium under this section shall pay assessments for the safety and hygiene fund, administrative costs, and surplus fund in the same manner as a self-insuring employer as provided under divisions (J) and (K) of section 4123.35 of the Revised Code. The consortium shall adopt procedures to allocate the cost of those assessments among the members of the consortium.

(J) A self-insuring consortium shall certify the paid compensation for all the members of the consortium for the previous calendar year in the same manner as a self-insuring employer as provided in division (L) of section 4123.35 of the Revised Code.

(K) The administrator shall adopt rules to do all of the following:

(1) Determine the liability of an employer that requests to transfer from the state insurance fund coverage to a self-insuring consortium;

(2) Set forth procedures for auditing the program of a self-insuring consortium, similar to the requirements for self-insuring employers provided in division (G) of section 4123.35 of the Revised Code;

(3) Provide for the implementation of this section.

(L) Sections 4121.121, 4121.31, 4121.44, 4121.444, 4123.15, 4123.25, 4123.342, 4123.343, 4123.351, 4123.411, 4123.46, 4123.50, 4123.51, 4123.511, 4123.512, 4123.54, 4123.56, 4123.63, 4123.65, 4123.70, 4123.74, 4123.75, 4123.79, 4123.84, 4123.85, 4123.93, and 4123.931 of the Revised Code apply to a self-insuring consortium

or employers that are members of a self-insuring consortium in the 1332  
same manner those sections apply to self-insuring employers. 1333

**Sec. 4123.82.** (A) All contracts and agreements are void which 1334  
undertake to indemnify or insure an employer against loss or 1335  
liability for the payment of compensation to workers or their 1336  
dependents for death, injury, or occupational disease occasioned 1337  
in the course of the workers' employment, or which provide that 1338  
the insurer shall pay the compensation, or which indemnify the 1339  
employer against damages when the injury, disease, or death arises 1340  
from the failure to comply with any lawful requirement for the 1341  
protection of the lives, health, and safety of employees, or when 1342  
the same is occasioned by the willful act of the employer or any 1343  
of the employer's officers or agents, or by which it is agreed 1344  
that the insurer shall pay any such damages. No license or 1345  
authority to enter into any such agreements or issue any such 1346  
policies of insurance shall be granted or issued by any public 1347  
authority in this state. Any corporation organized or admitted 1348  
under the laws of this state to transact liability insurance as 1349  
defined in section 3929.01 of the Revised Code may by amendment of 1350  
its articles of incorporation or by original articles of 1351  
incorporation, provide therein for the authority and purpose to 1352  
make insurance in states, territories, districts, and counties, 1353  
other than the state of Ohio, and in the state of Ohio in respect 1354  
of contracts permitted by division (B) of this section, 1355  
indemnifying employers against loss or liability for payment of 1356  
compensation to workers and employees and their dependents for 1357  
death, injury, or occupational disease occasioned in the course of 1358  
the employment and to insure and indemnify employers against loss, 1359  
expense, and liability by risk of bodily injury or death by 1360  
accident, disability, sickness, or disease suffered by workers and 1361  
employees for which the employer may be liable or has assumed 1362  
liability. 1363

(B) Notwithstanding division (A) of this section: 1364

(1) No contract because of that division is void which 1365  
undertakes to indemnify a self-insuring employer or an employer 1366  
that is a member of a self-insuring consortium against all or part 1367  
of such employer's loss in excess of at least fifty thousand 1368  
dollars from any one disaster or event arising out of the 1369  
employer's liability under this chapter, but no insurance 1370  
corporation shall, directly or indirectly, represent an employer 1371  
in the settlement, adjudication, determination, allowance, or 1372  
payment of claims. The superintendent of insurance shall enforce 1373  
this prohibition by such disciplinary orders directed against the 1374  
offending insurance corporation as the superintendent of insurance 1375  
deems appropriate in the circumstances and the administrator of 1376  
workers' compensation shall enforce this prohibition by such 1377  
disciplinary orders directed against the offending employer as the 1378  
administrator deems appropriate in the circumstances, which orders 1379  
may include revocation of the insurance corporation's right to 1380  
enter into indemnity contracts and revocation of the employer's 1381  
status as a self-insuring employer or ability to participate in a 1382  
self-insuring consortium. 1383

(2) The administrator may enter into a contract of indemnity 1384  
with any such employer upon such terms, payment of such premium, 1385  
and for such amount and form of indemnity as the administrator 1386  
determines and the bureau of workers' compensation board of 1387  
directors may procure reinsurance of the liability of the public 1388  
and private funds under this chapter, or any part of the liability 1389  
in respect of either or both of the funds, upon such terms and 1390  
premiums or other payments from the fund or funds as the 1391  
administrator deems prudent in the maintenance of a solvent fund 1392  
or funds from year to year. When making the finding of fact which 1393  
the administrator is required by section 4123.35 of the Revised 1394  
Code to make with respect to the financial ability of an employer, 1395

no contract of indemnity, or the ability of the employer to 1396  
procure such a contract, shall be considered as increasing the 1397  
financial ability of the employer. 1398

(C) Nothing in this section shall be construed to prohibit 1399  
the administrator or an other-states' insurer from providing to 1400  
employers in this state other-states' coverage in accordance with 1401  
section 4123.292 of the Revised Code. 1402

(D) Notwithstanding any other section of the Revised Code, 1403  
but subject to division (A) of this section, the superintendent of 1404  
insurance shall have the sole authority to regulate any insurance 1405  
products, except for the bureau of workers' compensation and those 1406  
products offered by the bureau, that indemnify or insure employers 1407  
against workers' compensation losses in this state or that are 1408  
sold to employers in this state. 1409

**Section 2.** That existing sections 1739.02, 4115.04, 4123.01, 1410  
4123.35, and 4123.82 of the Revised Code are hereby repealed. 1411

**Section 3.** Section 4115.04 of the Revised Code is presented 1412  
in this act as a composite of the section as amended by both Sub. 1413  
H.B. 443 and Am. Sub. H.B. 699 of the 126th General Assembly. The 1414  
General Assembly, applying the principle stated in division (B) of 1415  
section 1.52 of the Revised Code that amendments are to be 1416  
harmonized if reasonably capable of simultaneous operation, finds 1417  
that the composite is the resulting version of the section in 1418  
effect prior to the effective date of the section as presented in 1419  
this act. 1420