

**As Reported by the House Finance and Appropriations  
Committee**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 123**

**Representative Hottinger**

**Cosponsors: Representatives Amstutz, Sears**

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**A B I L L**

To amend sections 4121.12, 4121.123, 4121.125,	1
4121.32, 4121.41, 4121.44, 4121.68, 4123.35,	2
4123.512, and 4123.52 and to repeal sections	3
4121.124 and 4121.99 of the Revised Code to allow	4
the Administrator of Workers' Compensation to	5
waive criteria certain public employers must	6
satisfy to become self-insuring employers; to	7
require bills for medical and vocational	8
rehabilitation services in claims that are	9
ultimately denied to be paid from the Surplus Fund	10
Account under specified circumstances; to make	11
other changes to the Workers' Compensation Law; to	12
make appropriations for the Bureau of Workers'	13
Compensation and for the Workers' Compensation	14
Council for the biennium beginning July 1, 2011,	15
and ending June 30, 2013; and to provide	16
authorization and conditions for the operation of	17
the Bureau's and the Council's programs.	18

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

<b>Section 101.</b> That sections 4121.12, 4121.123, 4121.125,	19
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4121.32, 4121.41, 4121.44, 4121.68, 4123.35, 4123.512, and 4123.52 20  
of the Revised Code be amended to read as follows: 21

**Sec. 4121.12.** (A) There is hereby created the bureau of 22  
workers' compensation board of directors consisting of eleven 23  
members to be appointed by the governor with the advice and 24  
consent of the senate. One member shall be an individual who, on 25  
account of the individual's previous vocation, employment, or 26  
affiliations, can be classed as a representative of employees; two 27  
members shall be individuals who, on account of their previous 28  
vocation, employment, or affiliations, can be classed as 29  
representatives of employee organizations and at least one of 30  
these two individuals shall be a member of the executive committee 31  
of the largest statewide labor federation; three members shall be 32  
individuals who, on account of their previous vocation, 33  
employment, or affiliations, can be classed as representatives of 34  
employers, one of whom represents self-insuring employers, one of 35  
whom is a state fund employer who employs one hundred or more 36  
employees, and one of whom is a state fund employer who employs 37  
less than one hundred employees; two members shall be individuals 38  
who, on account of their vocation, employment, or affiliations, 39  
can be classed as investment and securities experts who have 40  
direct experience in the management, analysis, supervision, or 41  
investment of assets and are residents of this state; one member 42  
who shall be a certified public accountant; one member who shall 43  
be an actuary who is a member in good standing with the American 44  
academy of actuaries or who is an associate or fellow with the 45  
casualty actuarial society ~~of actuaries~~; and one member shall 46  
represent the public and also be an individual who, on account of 47  
the individual's previous vocation, employment, or affiliations, 48  
cannot be classed as either predominantly representative of 49  
employees or of employers. The governor shall select the 50

chairperson of the board who shall serve as chairperson at the 51  
pleasure of the governor. 52

None of the members of the board, within one year immediately 53  
preceding the member's appointment, shall have been employed by 54  
the bureau of workers' compensation or by any person, partnership, 55  
or corporation that has provided to the bureau services of a 56  
financial or investment nature, including the management, 57  
analysis, supervision, or investment of assets. 58

(B) Of the initial appointments made to the board, the 59  
governor shall appoint the member who represents employees, one 60  
member who represents employers, and the member who represents the 61  
public to a term ending one year after June 11, 2007; one member 62  
who represents employers, one member who represents employee 63  
organizations, one member who is an investment and securities 64  
expert, and the member who is a certified public accountant to a 65  
term ending two years after June 11, 2007; and one member who 66  
represents employers, one member who represents employee 67  
organizations, one member who is an investment and securities 68  
expert, and the member who is an actuary to a term ending three 69  
years after June 11, 2007. Thereafter, terms of office shall be 70  
for three years, with each term ending on the same day of the same 71  
month as did the term that it succeeds. Each member shall hold 72  
office from the date of the member's appointment until the end of 73  
the term for which the member was appointed. 74

Members may be reappointed. Any member appointed to fill a 75  
vacancy occurring prior to the expiration date of the term for 76  
which the member's predecessor was appointed shall hold office as 77  
a member for the remainder of that term. A member shall continue 78  
in office subsequent to the expiration date of the member's term 79  
until a successor takes office or until a period of sixty days has 80  
elapsed, whichever occurs first. 81

(C) In making appointments to the board, the governor shall 82

select the members from the list of names submitted by the 83  
workers' compensation board of directors nominating committee 84  
pursuant to this division. The nominating committee shall submit 85  
to the governor a list containing four separate names for each of 86  
the members on the board. Within fourteen days after the 87  
submission of the list, the governor shall appoint individuals 88  
from the list. 89

At least thirty days prior to a vacancy occurring as a result 90  
of the expiration of a term and within thirty days after other 91  
vacancies occurring on the board, the nominating committee shall 92  
submit an initial list containing four names for each vacancy. 93  
Within fourteen days after the submission of the initial list, the 94  
governor either shall appoint individuals from that list or 95  
request the nominating committee to submit another list of four 96  
names for each member the governor has not appointed from the 97  
initial list, which list the nominating committee shall submit to 98  
the governor within fourteen days after the governor's request. 99  
The governor then shall appoint, within seven days after the 100  
submission of the second list, one of the individuals from either 101  
list to fill the vacancy for which the governor has not made an 102  
appointment from the initial list. If the governor appoints an 103  
individual to fill a vacancy occurring as a result of the 104  
expiration of a term, the individual appointed shall begin serving 105  
as a member of the board when the term for which the individual's 106  
predecessor was appointed expires or immediately upon appointment 107  
by the governor, whichever occurs later. With respect to the 108  
filling of vacancies, the nominating committee shall provide the 109  
governor with a list of four individuals who are, in the judgment 110  
of the nominating committee, the most fully qualified to accede to 111  
membership on the board. 112

In order for the name of an individual to be submitted to the 113  
governor under this division, the nominating committee shall 114

approve the individual by an affirmative vote of a majority of its members. 115  
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(D) All members of the board shall receive their reasonable and necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members and also shall receive an annual salary not to exceed sixty thousand dollars in total, payable on the following basis: 117  
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(1) Except as provided in division (D)(2) of this section, a member shall receive two thousand five hundred dollars during a month in which the member attends one or more meetings of the board and shall receive no payment during a month in which the member attends no meeting of the board. 122  
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(2) A member may receive no more than thirty thousand dollars per year to compensate the member for attending meetings of the board, regardless of the number of meetings held by the board during a year or the number of meetings in excess of twelve within a year that the member attends. 127  
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(3) Except as provided in division (D)(4) of this section, if a member serves on the workers' compensation audit committee, workers' compensation actuarial committee, or the workers' compensation investment committee, the member shall receive two thousand five hundred dollars during a month in which the member attends one or more meetings of the committee on which the member serves and shall receive no payment during any month in which the member attends no meeting of that committee. 132  
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(4) A member may receive no more than thirty thousand dollars per year to compensate the member for attending meetings of any of the committees specified in division (D)(3) of this section, regardless of the number of meetings held by a committee during a year or the number of committees on which a member serves. 140  
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The chairperson of the board shall set the meeting dates of 145

the board as necessary to perform the duties of the board under 146  
this chapter and Chapters 4123., 4125., 4127., 4131., and 4167. of 147  
the Revised Code. The board shall meet at least twelve times a 148  
year. The administrator of workers' compensation shall provide 149  
professional and clerical assistance to the board, as the board 150  
considers appropriate. 151

(E) Before entering upon the duties of office, each appointed 152  
member of the board shall take an oath of office as required by 153  
sections 3.22 and 3.23 of the Revised Code and file in the office 154  
of the secretary of state the bond required under section 4121.127 155  
of the Revised Code. 156

(F) The board shall: 157

(1) Establish the overall administrative policy for the 158  
bureau for the purposes of this chapter and Chapters 4123., 4125., 159  
4127., 4131., and 4167. of the Revised Code; 160

(2) Review progress of the bureau in meeting its cost and 161  
quality objectives and in complying with this chapter and Chapters 162  
4123., 4125., 4127., 4131., and 4167. of the Revised Code; 163

(3) Submit an annual report to the president of the senate, 164  
the speaker of the house of representatives, the governor, and the 165  
workers' compensation council and include all of the following in 166  
that report: 167

(a) An evaluation of the cost and quality objectives of the 168  
bureau; 169

(b) A statement of the net assets available for the provision 170  
of compensation and benefits under this chapter and Chapters 171  
4123., 4127., and 4131. of the Revised Code as of the last day of 172  
the fiscal year; 173

(c) A statement of any changes that occurred in the net 174  
assets available, including employer premiums and net investment 175

income, for the provision of compensation and benefits and payment	176
of administrative expenses, between the first and last day of the	177
fiscal year immediately preceding the date of the report;	178
(d) The following information for each of the six consecutive	179
fiscal years occurring previous to the report:	180
(i) A schedule of the net assets available for compensation	181
and benefits;	182
(ii) The annual cost of the payment of compensation and	183
benefits;	184
(iii) Annual administrative expenses incurred;	185
(iv) Annual employer premiums allocated for the provision of	186
compensation and benefits.	187
(e) A description of any significant changes that occurred	188
during the six years for which the board provided the information	189
required under division (F)(3)(d) of this section that affect the	190
ability of the board to compare that information from year to	191
year.	192
(4) Review all independent financial audits of the bureau.	193
The administrator shall provide access to records of the bureau to	194
facilitate the review required under this division.	195
(5) Study issues as requested by the administrator or the	196
governor;	197
(6) Contract with all of the following:	198
(a) An independent actuarial firm to assist the board in	199
making recommendations to the administrator regarding premium	200
rates;	201
(b) An outside investment counsel to assist the workers'	202
compensation investment committee in fulfilling its duties;	203
(c) An independent fiduciary counsel to assist the board in	204

the performance of its duties.	205
(7) Approve the investment policy developed by the workers' compensation investment committee pursuant to section 4121.129 of the Revised Code if the policy satisfies the requirements specified in section 4123.442 of the Revised Code.	206 207 208 209
(8) Review and publish the investment policy no less than annually and make copies available to interested parties.	210 211
(9) Prohibit, on a prospective basis, any specific investment it finds to be contrary to the investment policy approved by the board.	212 213 214
(10) Vote to open each investment class and allow the administrator to invest in an investment class only if the board, by a majority vote, opens that class;	215 216 217
(11) After opening a class but prior to the administrator investing in that class, adopt rules establishing due diligence standards for employees of the bureau to follow when investing in that class and establish policies and procedures to review and monitor the performance and value of each investment class;	218 219 220 221 222
(12) Submit a report annually on the performance and value of each investment class to the governor, the president and minority leader of the senate, the speaker and minority leader of the house of representatives, and the workers' compensation council.	223 224 225 226
(13) Advise and consent on all of the following:	227
(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;	228 229 230 231 232 233
(b) The duties and authority conferred upon the administrator	234

pursuant to section 4121.37 of the Revised Code;	235
(c) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code;	236 237 238
(d) Rules the administrator submits to it pursuant to Chapter 4167. of the Revised Code regarding the public employment risk reduction program and the protection of public health care workers from exposure incidents.	239 240 241 242
As used in this division, "public health care worker" and "exposure incident" have the same meanings as in section 4167.25 of the Revised Code.	243 244 245
(14) Perform all duties required under this chapter and Chapters 4123., 4125., 4127., 4131., and 4167. of the Revised Code;	246 247 248
(15) Meet with the governor on an annual basis to discuss the administrator's performance of the duties specified in this chapter and Chapters 4123., 4125., 4127., 4131., and 4167. of the Revised Code;	249 250 251 252
(16) Develop and participate in a bureau of workers' compensation board of directors education program that consists of all of the following:	253 254 255
(a) An orientation component for newly appointed members;	256
(b) A continuing education component for board members who have served for at least one year;	257 258
(c) A curriculum that includes education about each of the following topics:	259 260
(i) Board member duties and responsibilities;	261
(ii) Compensation and benefits paid pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;	262 263

(iii) Ethics;	264
(iv) Governance processes and procedures;	265
(v) Actuarial soundness;	266
(vi) Investments;	267
(vii) Any other subject matter the board believes is reasonably related to the duties of a board member.	268 269
(17) Submit the program developed pursuant to division (F)(16) of this section to the workers' compensation council for approval;	270 271 272
(18) Hold all sessions, classes, and other events for the program developed pursuant to division (F)(16) of this section in this state.	273 274 275
(G) The board may do both of the following:	276
(1) Vote to close any investment class;	277
(2) Create any committees in addition to the workers' compensation audit committee, the workers' compensation actuarial committee, and the workers' compensation investment committee that the board determines are necessary to assist the board in performing its duties.	278 279 280 281 282
(H) The office of a member of the board who is convicted of or pleads guilty to a felony, a theft offense as defined in section 2913.01 of the Revised Code, or a violation of section 102.02, 102.03, 102.04, 2921.02, 2921.11, 2921.13, 2921.31, 2921.41, 2921.42, 2921.43, or 2921.44 of the Revised Code shall be deemed vacant. The vacancy shall be filled in the same manner as the original appointment. A person who has pleaded guilty to or been convicted of an offense of that nature is ineligible to be a member of the board. A member who receives a bill of indictment for any of the offenses specified in this section shall be automatically suspended from the board pending resolution of the	283 284 285 286 287 288 289 290 291 292 293

criminal matter. 294

(I) For the purposes of division (G)(1) of section 121.22 of 295  
the Revised Code, the meeting between the governor and the board 296  
to review the administrator's performance as required under 297  
division (F)(15) of this section shall be considered a meeting 298  
regarding the employment of the administrator. 299

**Sec. 4121.123.** (A) There is hereby created the workers' 300  
compensation board of directors nominating committee consisting of 301  
the following: 302

(1) Three individuals who are members of affiliated employee 303  
organizations of the Ohio chapter of the American federation of 304  
labor-congress of industrial organizations, who are selected by 305  
the Ohio chapter of the American federation of labor-congress of 306  
industrial organizations and who, on account of their previous 307  
vocation, employment, or affiliations, can be classed as 308  
representative of employees who are members of an employee 309  
organization. Terms of office shall be for one year, with each 310  
term ending on the same day of the same month as did the term that 311  
it succeeds. 312

(2) Two individuals who, on account of their previous 313  
vocation, employment, or affiliations, can be classed as 314  
representative of employees, one of whom shall be an injured 315  
worker with a valid, open, and active workers' compensation claim 316  
and at least one of these two representatives also shall represent 317  
employees who are not members of an employee organization. The 318  
president of the senate and the speaker of the house of 319  
representatives each shall appoint annually one of these members. 320  
The member who is an injured worker shall serve for a full term 321  
even if the member's workers' compensation claim is invalidated, 322  
closed, or inactivated during the member's term. 323

(3) The chief executive officer, or the equivalent of the 324

chief executive officer, of the Ohio chamber of commerce, the Ohio 325  
manufacturers' association, the Ohio self-insurers' association, 326  
the Ohio council of retail merchants, ~~and of either~~ the national 327  
federation of independent business ~~or, and~~ the Ohio farm bureau ~~as~~ 328  
~~jointly selected by the national federation of independent~~ 329  
~~business and the Ohio farm bureau;~~ 330

(4) The director of development; 331

(5) The president of ~~the Ohio municipal league,~~ the Ohio 332  
township association, ~~and~~ the president of the Ohio county 333  
commissioners association, or, in the event of a vacancy in the 334  
presidency, a designee appointed by the governing body authorized 335  
to appoint the president. A designee so appointed shall serve on 336  
the nominating committee only until the vacancy in the presidency 337  
is filled. 338

(B) Each member appointed under divisions (A)(1) and (2) of 339  
this section shall hold office from the date of the member's 340  
appointment until the end of the term for which the member was 341  
appointed. Such members may be reappointed. Vacancies shall be 342  
filled in the manner provided for original appointments. Any such 343  
member appointed to fill a vacancy occurring prior to the 344  
expiration date of the term for which the member's predecessor was 345  
appointed shall hold office as a member for the remainder of that 346  
term. Such a member shall continue in office subsequent to the 347  
expiration date of the member's term until the member's successor 348  
takes office or until a period of sixty days has elapsed, 349  
whichever occurs first. 350

(C) The nominating committee shall meet at the request of the 351  
governor or as the nominating committee determines appropriate in 352  
order to make recommendations to the governor for the appointment 353  
of members of the bureau of workers' compensation board of 354  
directors under section 4121.12 of the Revised Code. 355

(D) The director of development shall serve as chairperson of 356  
the nominating committee and have no voting rights on matters 357  
coming before the nominating committee, except that the director 358  
may vote in the event of a tie vote of the nominating committee. 359  
Annually, the nominating committee shall select a secretary from 360  
among its members. The nominating committee may adopt by-laws 361  
governing its proceedings. 362

(E) Members of the nominating committee shall be paid their 363  
reasonable and necessary expenses pursuant to section 126.31 of 364  
the Revised Code while engaged in the performance of their duties 365  
as members of the nominating committee. 366

(F) The nominating committee shall: 367

(1) Review and evaluate possible appointees for the board. In 368  
reviewing and evaluating possible appointees for the board, the 369  
nominating committee may accept comments from, cooperate with, and 370  
request information from any person. 371

(2) Make recommendations to the governor for the appointment 372  
of members to the board as provided in division (C) of section 373  
4121.12 of the Revised Code. 374

(G) The nominating committee may make recommendations to the 375  
general assembly concerning changes in legislation that will 376  
assist the nominating committee in the performance of its duties. 377

**Sec. 4121.125.** (A) The bureau of workers' compensation board 378  
of directors, based upon recommendations of the workers' 379  
compensation actuarial committee, may contract with one or more 380  
outside actuarial firms and other professional persons, as the 381  
board determines necessary, to assist the board in measuring the 382  
performance of Ohio's workers' compensation system and in 383  
comparing Ohio's workers' compensation system to other state and 384  
private workers' compensation systems. The board, actuarial firm 385

or firms, and professional persons shall make such measurements 386  
and comparisons using accepted insurance industry standards, 387  
including, but not limited to, standards promulgated by the 388  
National Council on Compensation Insurance. 389

(B) The board may contract with one or more outside firms to 390  
conduct management and financial audits of the workers' 391  
compensation system, including audits of the reserve fund 392  
belonging to the state insurance fund, and to establish objective 393  
quality management principles and methods by which to review the 394  
performance of the workers' compensation system. 395

(C) The board shall do all of the following: 396

(1) Contract to have prepared annually by or under the 397  
supervision of an actuary a report that meets the requirements 398  
specified under division (E) of this section and that consists of 399  
an actuarial valuation of the assets, liabilities, and funding 400  
requirements of the state insurance fund and all other funds 401  
specified in this chapter and Chapters 4123., 4127., and 4131. of 402  
the Revised Code; 403

(2) Require that the actuary or person supervised by an 404  
actuary referred to in division (C)(1) of this section complete 405  
the valuation in accordance with the actuarial standards of 406  
practice promulgated by the actuarial standards board of the 407  
American academy of actuaries; 408

(3) Submit the report referred to in division (C)(1) of this 409  
section to the workers' compensation council and the standing 410  
committees of the house of representatives and the senate with 411  
primary responsibility for workers' compensation legislation on or 412  
before the first day of November following the year for which the 413  
valuation was made; 414

(4) Have an actuary or a person who provides actuarial 415  
services under the supervision of an actuary, at such time as the 416

board determines, and at least once during the five-year period 417  
that commences on September 10, 2007, and once within each 418  
five-year period thereafter, conduct an actuarial investigation of 419  
the experience of employers, the mortality, service, and injury 420  
rate of employees, and the payment of temporary total disability, 421  
permanent partial disability, and permanent total disability under 422  
sections 4123.56 to 4123.58 of the Revised Code to update the 423  
actuarial assumptions used in the report required by division 424  
(C)(1) of this section; 425

(5) Submit the report required under division (F) of this 426  
section to the council and the standing committees of the house of 427  
representatives and the senate with primary responsibility for 428  
workers' compensation legislation not later than the first day of 429  
November following the fifth year of the period that the report 430  
covers; 431

(6) Have prepared by or under the supervision of an actuary 432  
an actuarial analysis of any introduced legislation expected to 433  
have a measurable financial impact on the workers' compensation 434  
system; 435

(7) Submit the report required under division (G) of this 436  
section to the legislative service commission, the standing 437  
committees of the house of representatives and the senate with 438  
primary responsibility for workers' compensation legislation, and 439  
the council not later than sixty days after the date of 440  
introduction of the legislation. 441

(D) The administrator of workers' compensation and the 442  
industrial commission shall compile information and provide access 443  
to records of the bureau and the industrial commission to the 444  
board to the extent necessary for fulfillment of both of the 445  
following requirements: 446

(1) Conduct of the measurements and comparisons described in 447

division (A) of this section;	448
(2) Conduct of the management and financial audits and establishment of the principles and methods described in division (B) of this section.	449 450 451
(E) The firm or person with whom the board contracts pursuant to division (C)(1) of this section shall prepare a report of the valuation and submit the report to the board. The firm or person shall include all of the following information in the report that is required under division (C)(1) of this section:	452 453 454 455 456
(1) A summary of the compensation and benefit provisions evaluated;	457 458
<del>(2) A summary of the census data and financial information used in the valuation;</del>	459 460
<del>(3) A description of the actuarial assumptions, <u>and</u> actuarial cost method, <del>and asset valuation method</del> used in the valuation;</del>	461 462
<del>(4) A summary of findings that includes a statement of the actuarial accrued compensation and benefit liabilities and unfunded actuarial accrued compensation and benefit liabilities;</del>	463 464 465
<del>(5)</del> <u>(3)</u> A schedule showing the effect of any changes in the compensation and benefit provisions, actuarial assumptions, or cost methods since the previous annual actuarial valuation report was submitted to the board.	466 467 468 469
(F) The actuary or person whom the board designates to conduct an actuarial investigation under division (C)(4) of this section shall prepare a report of the actuarial investigation and shall submit the report to the board. The actuary or person shall prepare the report and make any recommended changes in actuarial assumptions in accordance with the actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The actuary or person shall include all of	470 471 472 473 474 475 476 477

the following information in the report:	478
(1) A summary of relevant decrement and economic assumption experience;	479 480
(2) Recommended changes in actuarial assumptions to be used in subsequent actuarial valuations required by division (C)(1) of this section;	481 482 483
(3) A measurement of the financial effect of the recommended changes in actuarial assumptions.	484 485
(G) The actuary or person whom the board designates to conduct the actuarial analysis under division (C)(6) of this section shall prepare a report of the actuarial analysis and shall submit that report to the board. The actuary or person shall complete the analysis in accordance with the actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The actuary or person shall include all of the following information in the report:	486 487 488 489 490 491 492 493
(1) A summary of the statutory changes being evaluated;	494
(2) A description of or reference to the actuarial assumptions and actuarial cost method used in the report;	495 496
(3) A description of the participant group or groups included in the report;	497 498
(4) A statement of the financial impact of the legislation, including the resulting increase, if any, in employer premiums, in actuarial accrued liabilities, and, if an increase in actuarial accrued liabilities is predicted, the per cent of premium increase that would be required to amortize the increase in those liabilities as a level per cent of employer premiums over a period not to exceed thirty years.	499 500 501 502 503 504 505
(5) A statement of whether the employer premiums paid to the bureau of workers' compensation after the proposed change is	506 507

enacted are expected to be sufficient to satisfy the funding 508  
objectives established by the board. 509

(H) The board may, at any time, request an actuary to make 510  
any studies or actuarial valuations to determine the adequacy of 511  
the premium rates established by the administrator in accordance 512  
with sections 4123.29 and 4123.34 of the Revised Code, and may 513  
adjust those rates as recommended by the actuary. 514

(I) The board shall have an independent auditor, at least 515  
once every ten years, conduct a fiduciary performance audit of the 516  
investment program of the bureau of workers' compensation. That 517  
audit shall include an audit of the investment policies approved 518  
by the board and investment procedures of the bureau. The board 519  
shall submit a copy of that audit to the auditor of state. 520

(J) The administrator, with the advice and consent of the 521  
board, shall employ an internal auditor who shall report findings 522  
directly to the board, workers' compensation audit committee, and 523  
administrator, except that the internal auditor shall not report 524  
findings directly to the administrator when those findings involve 525  
malfeasance, misfeasance, or nonfeasance on the part of the 526  
administrator. The board and the workers' compensation audit 527  
committee may request and review internal audits conducted by the 528  
internal auditor. 529

(K) The administrator shall pay the expenses incurred by the 530  
board to effectively fulfill its duties and exercise its powers 531  
under this section as the administrator pays other operating 532  
expenses of the bureau. 533

**Sec. 4121.32.** (A) The rules covering operating procedure and 534  
criteria for decision-making that the administrator of workers' 535  
compensation and the industrial commission are required to adopt 536  
pursuant to section 4121.31 of the Revised Code shall be 537  
supplemented with operating manuals setting forth the procedural 538

steps in detail for performing each of the assigned tasks of each 539  
section of the bureau of workers' compensation and commission. The 540  
administrator and commission jointly shall adopt such manuals. No 541  
employee may deviate from manual procedures without authorization 542  
of the section chief. 543

(B) Manuals shall set forth the procedure for the assignment 544  
and transfer of claims within sections and be designed to provide 545  
performance objectives and may require employees to record 546  
sufficient data to reasonably measure the efficiency of functions 547  
in all sections. The ~~bureau's division of research and statistics~~ 548  
bureau shall perform periodic cost-effectiveness analyses ~~which~~ 549  
that shall be made available to the general assembly, the 550  
governor, and to the public during normal working hours. 551

(C) The bureau and commission jointly shall develop, adopt, 552  
and use a policy manual setting forth the guidelines and bases for 553  
decision-making for any decision which is the responsibility of 554  
the bureau, district hearing officers, staff hearing officers, or 555  
the commission. Guidelines shall be set forth in the policy manual 556  
by the bureau and commission to the extent of their respective 557  
jurisdictions for deciding at least the following specific 558  
matters: 559

(1) Reasonable ambulance services; 560

(2) Relationship of drugs to injury; 561

(3) Awarding lump-sum advances for creditors; 562

(4) Awarding lump-sum advances for attorney's fees; 563

(5) Placing a claimant into rehabilitation; 564

(6) Transferring costs of a claim from employer costs to the 565  
statutory surplus fund pursuant to section 4123.343 of the Revised 566  
Code; 567

(7) Utilization of physician specialist reports; 568

(8) Determining the percentage of permanent partial disability, temporary partial disability, temporary total disability, violations of specific safety requirements, an award under division (B) of section 4123.57 of the Revised Code, and permanent total disability.

(D) The bureau shall establish, adopt, and implement policy guidelines and bases for decisions involving reimbursement issues including, but not limited to, the adjustment of invoices, the reduction of payments for future services when an internal audit concludes that a health care provider was overpaid or improperly paid for past services, reimbursement fees, or other adjustments to payments. These policy guidelines and bases for decisions, and any changes to the guidelines and bases, shall be set forth in a reimbursement manual and provider bulletins.

Neither the policy guidelines nor the bases set forth in the reimbursement manual or provider bulletins referred to in this division is a rule as defined in section 119.01 of the Revised Code.

(E) With respect to any determination of disability under Chapter 4123. of the Revised Code, when the physician makes a determination based upon statements or information furnished by the claimant or upon subjective evidence, ~~he~~ the physician shall clearly indicate this fact in ~~his~~ the physician's report.

(F) The administrator shall publish the manuals and make copies of all manuals available to interested parties at cost.

**Sec. 4121.41.** (A) The administrator of workers' compensation shall operate a program designed to inform employees and employers of their rights and responsibilities under Chapter 4123. of the Revised Code and as part of that program prepare and distribute pamphlets, which clearly and simply explain at least all of the following:

(1) The rights and responsibilities of claimants and employers;	600 601
(2) The procedures for processing claims;	602
(3) The procedure for fulfilling employer responsibility;	603
(4) All applicable statutes of limitation;	604
(5) The availability of services and benefits;	605
(6) The claimant's right to representation in the processing of a claim or to elect no representation.	606 607
The administrator shall ensure that the provisions of this section are faithfully and speedily implemented.	608 609
(B) The bureau <u>of workers' compensation</u> shall maintain an ongoing program to identify employers subject to Chapter 4123. of the Revised Code and to audit employers to ensure an optimum level of premium payment. The bureau shall coordinate such efforts with other governmental agencies which have information as to employers who are subject to Chapter 4123. of the Revised Code.	610 611 612 613 614 615
(C) The administrator <del>of the bureau</del> shall handle complaints through the service offices, the claims section, and the <del>ombudsman</del> <u>ombudsperson</u> program. The administrator shall provide toll free telephone lines for employers and claimants in order to expedite the handling of complaints. The bureau shall monitor complaint traffic to ensure an adequacy of telephone service to bureau offices. <del>The division of research and statistics in the bureau</del> shall compile statistics on complaint subjects. Based upon those compilations, the bureau shall revise procedures and rules to correct major problem areas and submit data and recommendations annually to the appropriate committees of the general assembly.	616 617 618 619 620 621 622 623 624 625 626
<b>Sec. 4121.44.</b> (A) The administrator of workers' compensation shall oversee the implementation of the Ohio workers' compensation qualified health plan system as established under section 4121.442	627 628 629

of the Revised Code. 630

(B) The administrator shall direct the implementation of the 631  
health partnership program administered by the bureau as set forth 632  
in section 4121.441 of the Revised Code. To implement the health 633  
partnership program, the bureau: 634

(1) Shall certify one or more external vendors, which shall 635  
be known as "managed care organizations," to provide medical 636  
management and cost containment services in the health partnership 637  
program for a period of two years beginning on the date of 638  
certification, consistent with the standards established under 639  
this section; 640

(2) May recertify external vendors for additional periods of 641  
two years; and 642

(3) May integrate the certified vendors with bureau staff and 643  
existing bureau services for purposes of operation and training to 644  
allow the bureau to assume operation of the health partnership 645  
program at the conclusion of the certification periods set forth 646  
in division (B)(1) or (2) of this section. 647

(C) Any vendor selected shall demonstrate all of the 648  
following: 649

(1) Arrangements and reimbursement agreements with a 650  
substantial number of the medical, professional and pharmacy 651  
providers currently being utilized by claimants. 652

(2) Ability to accept a common format of medical bill data in 653  
an electronic fashion from any provider who wishes to submit 654  
medical bill data in that form. 655

(3) A computer system able to handle the volume of medical 656  
bills and willingness to customize that system to the bureau's 657  
needs and to be operated by the vendor's staff, bureau staff, or 658  
some combination of both staffs. 659

(4) A prescription drug system where pharmacies on a 660  
statewide basis have access to the eligibility and pricing, at a 661  
discounted rate, of all prescription drugs. 662

(5) A tracking system to record all telephone calls from 663  
claimants and providers regarding the status of submitted medical 664  
bills so as to be able to track each inquiry. 665

(6) Data processing capacity to absorb all of the bureau's 666  
medical bill processing or at least that part of the processing 667  
which the bureau arranges to delegate. 668

(7) Capacity to store, retrieve, array, simulate, and model 669  
in a relational mode all of the detailed medical bill data so that 670  
analysis can be performed in a variety of ways and so that the 671  
bureau and its governing authority can make informed decisions. 672

(8) Wide variety of software programs which translate medical 673  
terminology into standard codes, and which reveal if a provider is 674  
manipulating the procedures codes, commonly called "unbundling." 675

(9) Necessary professional staff to conduct, at a minimum, 676  
authorizations for treatment, medical necessity, utilization 677  
review, concurrent review, post-utilization review, and have the 678  
attendant computer system which supports such activity and 679  
measures the outcomes and the savings. 680

(10) Management experience and flexibility to be able to 681  
react quickly to the needs of the bureau in the case of required 682  
change in federal or state requirements. 683

(D)(1) Information contained in a vendor's application for 684  
certification in the health partnership program, and other 685  
information furnished to the bureau by a vendor for purposes of 686  
obtaining certification or to comply with performance and 687  
financial auditing requirements established by the administrator, 688  
is for the exclusive use and information of the bureau in the 689  
discharge of its official duties, and shall not be open to the 690

public or be used in any court in any proceeding pending therein, 691  
unless the bureau is a party to the action or proceeding, but the 692  
information may be tabulated and published by the bureau in 693  
statistical form for the use and information of other state 694  
departments and the public. No employee of the bureau, except as 695  
otherwise authorized by the administrator, shall divulge any 696  
information secured by the employee while in the employ of the 697  
bureau in respect to a vendor's application for certification or 698  
in respect to the business or other trade processes of any vendor 699  
to any person other than the administrator or to the employee's 700  
superior. 701

(2) Notwithstanding the restrictions imposed by division 702  
(D)(1) of this section, the governor, members of select or 703  
standing committees of the senate or house of representatives, the 704  
auditor of state, the attorney general, or their designees, 705  
pursuant to the authority granted in this chapter and Chapter 706  
4123. of the Revised Code, may examine any vendor application or 707  
other information furnished to the bureau by the vendor. None of 708  
those individuals shall divulge any information secured in the 709  
exercise of that authority in respect to a vendor's application 710  
for certification or in respect to the business or other trade 711  
processes of any vendor to any person. 712

(E) On and after January 1, 2001, a vendor shall not be any 713  
insurance company holding a certificate of authority issued 714  
pursuant to Title XXXIX of the Revised Code or any health insuring 715  
corporation holding a certificate of authority under Chapter 1751. 716  
of the Revised Code. 717

(F) The administrator may limit freedom of choice of health 718  
care provider or supplier by requiring, beginning with the period 719  
set forth in division (B)(1) or (2) of this section, that 720  
claimants shall pay an appropriate out-of-plan copayment for 721  
selecting a medical provider not within the health partnership 722

program as provided for in this section. 723

(G) The administrator, six months prior to the expiration of 724  
the bureau's certification or recertification of the vendor or 725  
vendors as set forth in division (B)(1) or (2) of this section, 726  
may certify and provide evidence to the governor, the speaker of 727  
the house of representatives, and the president of the senate that 728  
the existing bureau staff is able to match or exceed the 729  
performance and outcomes of the external vendor or vendors and 730  
that the bureau should be permitted to internally administer the 731  
health partnership program upon the expiration of the 732  
certification or recertification as set forth in division (B)(1) 733  
or (2) of this section. 734

(H) The administrator shall establish and operate a bureau of 735  
workers' compensation health care data program. The administrator 736  
shall develop reporting requirements from all employees, employers 737  
and medical providers, medical vendors, and plans that participate 738  
in the workers' compensation system. The administrator shall do 739  
all of the following: 740

(1) Utilize the collected data to measure and perform 741  
comparison analyses of costs, quality, appropriateness of medical 742  
care, and effectiveness of medical care delivered by all 743  
components of the workers' compensation system. 744

(2) Compile data to support activities of the selected vendor 745  
or vendors and to measure the outcomes and savings of the health 746  
partnership program. 747

(3) Publish and report compiled data ~~to the governor, the~~ 748  
~~speaker of the house of representatives, and the president of the~~ 749  
~~senate on the first day of each January and July, on~~ the measures 750  
of outcomes and savings of the health partnership program and 751  
submit the report to the president of the senate, the speaker of 752  
the house of representatives, the governor, and the workers' 753

compensation council with the annual report prepared under 754  
division (F)(3) of section 4121.12 of the Revised Code. The 755  
administrator shall protect the confidentiality of all proprietary 756  
pricing data. 757

(I) Any rehabilitation facility the bureau operates is 758  
eligible for inclusion in the Ohio workers' compensation qualified 759  
health plan system or the health partnership program under the 760  
same terms as other providers within health care plans or the 761  
program. 762

(J) In areas outside the state or within the state where no 763  
qualified health plan or an inadequate number of providers within 764  
the health partnership program exist, the administrator shall 765  
permit employees to use a nonplan or nonprogram health care 766  
provider and shall pay the provider for the services or supplies 767  
provided to or on behalf of an employee for an injury or 768  
occupational disease that is compensable under this chapter or 769  
Chapter 4123., 4127., or 4131. of the Revised Code on a fee 770  
schedule the administrator adopts. 771

(K) No health care provider, whether certified or not, shall 772  
charge, assess, or otherwise attempt to collect from an employee, 773  
employer, a managed care organization, or the bureau any amount 774  
for covered services or supplies that is in excess of the allowed 775  
amount paid by a managed care organization, the bureau, or a 776  
qualified health plan. 777

(L) The administrator shall permit any employer or group of 778  
employers who agree to abide by the rules adopted under this 779  
section and sections 4121.441 and 4121.442 of the Revised Code to 780  
provide services or supplies to or on behalf of an employee for an 781  
injury or occupational disease that is compensable under this 782  
chapter or Chapter 4123., 4127., or 4131. of the Revised Code 783  
through qualified health plans of the Ohio workers' compensation 784  
qualified health plan pursuant to section 4121.442 of the 785

Revised Code or through the health partnership program pursuant to 786  
section 4121.441 of the Revised Code. No amount paid under the 787  
qualified health plan system pursuant to section 4121.442 of the 788  
Revised Code by an employer who is a state fund employer shall be 789  
charged to the employer's experience or otherwise be used in 790  
merit-rating or determining the risk of that employer for the 791  
purpose of the payment of premiums under this chapter, and if the 792  
employer is a self-insuring employer, the employer shall not 793  
include that amount in the paid compensation the employer reports 794  
under section 4123.35 of the Revised Code. 795

**Sec. 4121.68.** In the event a claimant sustains an injury or 796  
occupational disease or dies as a result of any injury or disease 797  
received in the course of and arising out of ~~his~~ the claimant's 798  
participation in a rehabilitation program, the claimant or, in the 799  
case of death, a dependent of the claimant, may file a claim for 800  
compensation and benefits ~~as if the claimant's employer were the~~ 801  
~~bureau of workers' compensation.~~ All compensation and benefit 802  
awards made as a result of the injury, disease, or death shall be 803  
charged to the surplus fund account, created pursuant to section 804  
4123.34 of the Revised Code, and not charged through the state 805  
insurance fund to the employer against which the claim was allowed 806  
so long as the employer pays assessments into the surplus fund 807  
account for the payment of such compensation and benefits. 808

**Sec. 4123.35.** (A) Except as provided in this section, every 809  
employer mentioned in division (B)(2) of section 4123.01 of the 810  
Revised Code, and every publicly owned utility shall pay 811  
semiannually in the months of January and July into the state 812  
insurance fund the amount of annual premium the administrator of 813  
workers' compensation fixes for the employment or occupation of 814  
the employer, the amount of which premium to be paid by each 815  
employer to be determined by the classifications, rules, and rates 816

made and published by the administrator. The employer shall pay 817  
semiannually a further sum of money into the state insurance fund 818  
as may be ascertained to be due from the employer by applying the 819  
rules of the administrator, and a receipt or certificate 820  
certifying that payment has been made, along with a written notice 821  
as is required in section 4123.54 of the Revised Code, shall be 822  
mailed immediately to the employer by the bureau of workers' 823  
compensation. The receipt or certificate is prima-facie evidence 824  
of the payment of the premium, and the proper posting of the 825  
notice constitutes the employer's compliance with the notice 826  
requirement mandated in section 4123.54 of the Revised Code. 827

The bureau of workers' compensation shall verify with the 828  
secretary of state the existence of all corporations and 829  
organizations making application for workers' compensation 830  
coverage and shall require every such application to include the 831  
employer's federal identification number. 832

An employer as defined in division (B)(2) of section 4123.01 833  
of the Revised Code who has contracted with a subcontractor is 834  
liable for the unpaid premium due from any subcontractor with 835  
respect to that part of the payroll of the subcontractor that is 836  
for work performed pursuant to the contract with the employer. 837

Division (A) of this section providing for the payment of 838  
premiums semiannually does not apply to any employer who was a 839  
subscriber to the state insurance fund prior to January 1, 1914, 840  
or who may first become a subscriber to the fund in any month 841  
other than January or July. Instead, the semiannual premiums shall 842  
be paid by those employers from time to time upon the expiration 843  
of the respective periods for which payments into the fund have 844  
been made by them. 845

The administrator shall adopt rules to permit employers to 846  
make periodic payments of the semiannual premium due under this 847  
division. The rules shall include provisions for the assessment of 848

interest charges, where appropriate, and for the assessment of 849  
penalties when an employer fails to make timely premium payments. 850  
An employer who timely pays the amounts due under this division is 851  
entitled to all of the benefits and protections of this chapter. 852  
Upon receipt of payment, the bureau immediately shall mail a 853  
receipt or certificate to the employer certifying that payment has 854  
been made, which receipt is prima-facie evidence of payment. 855  
Workers' compensation coverage under this chapter continues 856  
uninterrupted upon timely receipt of payment under this division. 857

Every public employer, except public employers that are 858  
self-insuring employers under this section, shall comply with 859  
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 860  
regard to the contribution of moneys to the public insurance fund. 861

(B) Employers who will abide by the rules of the 862  
administrator and who may be of sufficient financial ability to 863  
render certain the payment of compensation to injured employees or 864  
the dependents of killed employees, and the furnishing of medical, 865  
surgical, nursing, and hospital attention and services and 866  
medicines, and funeral expenses, equal to or greater than is 867  
provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 868  
to 4123.67 of the Revised Code, and who do not desire to insure 869  
the payment thereof or indemnify themselves against loss sustained 870  
by the direct payment thereof, upon a finding of such facts by the 871  
administrator, may be granted the privilege to pay individually 872  
compensation, and furnish medical, surgical, nursing, and hospital 873  
services and attention and funeral expenses directly to injured 874  
employees or the dependents of killed employees, thereby being 875  
granted status as a self-insuring employer. The administrator may 876  
charge employers who apply for the status as a self-insuring 877  
employer a reasonable application fee to cover the bureau's costs 878  
in connection with processing and making a determination with 879  
respect to an application. 880

All employers granted status as self-insuring employers shall 881  
demonstrate sufficient financial and administrative ability to 882  
assure that all obligations under this section are promptly met. 883  
The administrator shall deny the privilege where the employer is 884  
unable to demonstrate the employer's ability to promptly meet all 885  
the obligations imposed on the employer by this section. 886

(1) The administrator shall consider, but is not limited to, 887  
the following factors, where applicable, in determining the 888  
employer's ability to meet all of the obligations imposed on the 889  
employer by this section: 890

(a) The employer employs a minimum of five hundred employees 891  
in this state; 892

(b) The employer has operated in this state for a minimum of 893  
two years, provided that an employer who has purchased, acquired, 894  
or otherwise succeeded to the operation of a business, or any part 895  
thereof, situated in this state that has operated for at least two 896  
years in this state, also shall qualify; 897

(c) Where the employer previously contributed to the state 898  
insurance fund or is a successor employer as defined by bureau 899  
rules, the amount of the buyout, as defined by bureau rules; 900

(d) The sufficiency of the employer's assets located in this 901  
state to insure the employer's solvency in paying compensation 902  
directly; 903

(e) The financial records, documents, and data, certified by 904  
a certified public accountant, necessary to provide the employer's 905  
full financial disclosure. The records, documents, and data 906  
include, but are not limited to, balance sheets and profit and 907  
loss history for the current year and previous four years. 908

(f) The employer's organizational plan for the administration 909  
of the workers' compensation law; 910

(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

(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.

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.

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.

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

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

section, the public employer has maintained an unvoted debt 942  
capacity equal to at least two times the amount of the current 943  
annual premium established by the administrator under this chapter 944  
for that public employer for the year immediately preceding the 945  
year in which the public employer makes application under this 946  
section. 947

(b) For each of the two fiscal years preceding application 948  
under this section, the unreserved and undesignated year-end fund 949  
balance in the public employer's general fund is equal to at least 950  
five per cent of the public employer's general fund revenues for 951  
the fiscal year computed in accordance with generally accepted 952  
accounting principles. 953

(c) For the five-year period preceding application under this 954  
section, the public employer, to the extent applicable, has 955  
complied fully with the continuing disclosure requirements 956  
established in rules adopted by the United States securities and 957  
exchange commission under 17 C.F.R. 240.15c 2-12. 958

(d) For the five-year period preceding application under this 959  
section, the public employer has not had its local government fund 960  
distribution withheld on account of the public employer being 961  
indebted or otherwise obligated to the state. 962

(e) For the five-year period preceding application under this 963  
section, the public employer has not been under a fiscal watch or 964  
fiscal emergency pursuant to section 118.023, 118.04, or 3316.03 965  
of the Revised Code. 966

(f) For the public employer's fiscal year preceding 967  
application under this section, the public employer has obtained 968  
an annual financial audit as required under section 117.10 of the 969  
Revised Code, which has been released by the auditor of state 970  
within seven months after the end of the public employer's fiscal 971  
year. 972

(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~~ may  
~~waive any of the requirements listed in divisions (B)(2)(a) to (j)~~  
~~of this section for 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 those requirements~~  
~~listed in division (B)(2) of this section. The administrator may~~  
~~adopt rules establishing the criteria that a public employer shall~~  
~~satisfy in order for the administrator to waive any of the~~  
~~requirements listed in divisions (B)(2)(a) to (j) of this section.~~  
~~The rules may require additional security from that employer~~  
~~pursuant to division (E) of section 4123.351 of the Revised Code.~~

(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 1004  
sufficient financial ability to render certain the payment of 1005  
compensation to injured employees or the dependents of killed 1006  
employees, and the furnishing of medical, surgical, nursing, and 1007  
hospital attention and services and medicines, and funeral 1008  
expenses, equal to or greater than is provided for in sections 1009  
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised 1010  
Code, and that does not desire to insure the payment thereof or 1011  
indemnify itself against loss sustained by the direct payment 1012  
thereof, upon a finding of such facts by the administrator, may be 1013  
granted the privilege to pay individually compensation, and 1014  
furnish medical, surgical, nursing, and hospital services and 1015  
attention and funeral expenses directly to injured employees or 1016  
the dependents of killed employees, thereby being granted status 1017  
as a self-insuring employer. The administrator may charge a board 1018  
of county commissioners described in division (G) of section 1019  
4123.01 of the Revised Code that applies for the status as a 1020  
self-insuring employer a reasonable application fee to cover the 1021  
bureau's costs in connection with processing and making a 1022  
determination with respect to an application. All employers 1023  
granted such status shall demonstrate sufficient financial and 1024  
administrative ability to assure that all obligations under this 1025  
section are promptly met. The administrator shall deny the 1026  
privilege where the employer is unable to demonstrate the 1027  
employer's ability to promptly meet all the obligations imposed on 1028  
the employer by this section. The administrator shall consider, 1029  
but is not limited to, the following factors, where applicable, in 1030  
determining the employer's ability to meet all of the obligations 1031  
imposed on the board as an employer by this section: 1032

(1) The board as an employer employs a minimum of five 1033  
hundred employees in this state; 1034

(2) The board has operated in this state for a minimum of two 1035

years;	1036
(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;	1037 1038 1039
(4) The sufficiency of the board's assets located in this state to insure the board's solvency in paying compensation directly;	1040 1041 1042
(5) The financial records, documents, and data, certified by a certified public accountant, necessary to provide the board's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.	1043 1044 1045 1046 1047
(6) The board's organizational plan for the administration of the workers' compensation law;	1048 1049
(7) The board's proposed plan to inform employees of the proposed self-insurance, the procedures the board will follow as a self-insuring employer, and the employees' rights to compensation and benefits;	1050 1051 1052 1053
(8) The board has either an account in a financial institution in this state, or if the board 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 board clearly indicates that payment will be honored by a financial institution in this state;	1054 1055 1056 1057 1058 1059
(9) The board shall provide the administrator a surety bond in an amount equal to one hundred twenty-five per cent of the projected losses as determined by the administrator.	1060 1061 1062
(D) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to	1063 1064 1065

injured employees, or to the dependents of employees killed, the 1066  
payment of compensation and expenses, which shall in no event be 1067  
less than that paid or furnished out of the state insurance fund 1068  
in similar cases to injured employees or to dependents of killed 1069  
employees whose employers contribute to the fund, except when an 1070  
employee of the employer, who has suffered the loss of a hand, 1071  
arm, foot, leg, or eye prior to the injury for which compensation 1072  
is to be paid, and thereafter suffers the loss of any other of the 1073  
members as the result of any injury sustained in the course of and 1074  
arising out of the employee's employment, the compensation to be 1075  
paid by the self-insuring employer is limited to the disability 1076  
suffered in the subsequent injury, additional compensation, if 1077  
any, to be paid by the bureau out of the surplus created by 1078  
section 4123.34 of the Revised Code. 1079

(E) In addition to the requirements of this section, the 1080  
administrator shall make and publish rules governing the manner of 1081  
making application and the nature and extent of the proof required 1082  
to justify a finding of fact by the administrator as to granting 1083  
the status of a self-insuring employer, which rules shall be 1084  
general in their application, one of which rules shall provide 1085  
that all self-insuring employers shall pay into the state 1086  
insurance fund such amounts as are required to be credited to the 1087  
surplus fund in division (B) of section 4123.34 of the Revised 1088  
Code. The administrator may adopt rules establishing requirements 1089  
in addition to the requirements described in division (B)(2) of 1090  
this section that a public employer shall meet in order to qualify 1091  
for self-insuring status. 1092

Employers shall secure directly from the bureau central 1093  
offices application forms upon which the bureau shall stamp a 1094  
designating number. Prior to submission of an application, an 1095  
employer shall make available to the bureau, and the bureau shall 1096  
review, the information described in division (B)(1) of this 1097

section, and public employers shall make available, and the bureau 1098  
shall review, the information necessary to verify whether the 1099  
public employer meets the requirements listed in division (B)(2) 1100  
of this section. An employer shall file the completed application 1101  
forms with an application fee, which shall cover the costs of 1102  
processing the application, as established by the administrator, 1103  
by rule, with the bureau at least ninety days prior to the 1104  
effective date of the employer's new status as a self-insuring 1105  
employer. The application form is not deemed complete until all 1106  
the required information is attached thereto. The bureau shall 1107  
only accept applications that contain the required information. 1108

(F) The bureau shall review completed applications within a 1109  
reasonable time. If the bureau determines to grant an employer the 1110  
status as a self-insuring employer, the bureau shall issue a 1111  
statement, containing its findings of fact, that is prepared by 1112  
the bureau and signed by the administrator. If the bureau 1113  
determines not to grant the status as a self-insuring employer, 1114  
the bureau shall notify the employer of the determination and 1115  
require the employer to continue to pay its full premium into the 1116  
state insurance fund. The administrator also shall adopt rules 1117  
establishing a minimum level of performance as a criterion for 1118  
granting and maintaining the status as a self-insuring employer 1119  
and fixing time limits beyond which failure of the self-insuring 1120  
employer to provide for the necessary medical examinations and 1121  
evaluations may not delay a decision on a claim. 1122

(G) The administrator shall adopt rules setting forth 1123  
procedures for auditing the program of self-insuring employers. 1124  
The bureau shall conduct the audit upon a random basis or whenever 1125  
the bureau has grounds for believing that a self-insuring employer 1126  
is not in full compliance with bureau rules or this chapter. 1127

The administrator shall monitor the programs conducted by 1128  
self-insuring employers, to ensure compliance with bureau 1129

requirements and for that purpose, shall develop and issue to 1130  
self-insuring employers standardized forms for use by the 1131  
self-insuring employer in all aspects of the self-insuring 1132  
employers' direct compensation program and for reporting of 1133  
information to the bureau. 1134

The bureau shall receive and transmit to the self-insuring 1135  
employer all complaints concerning any self-insuring employer. In 1136  
the case of a complaint against a self-insuring employer, the 1137  
administrator shall handle the complaint through the 1138  
self-insurance division of the bureau. The bureau shall maintain a 1139  
file by employer of all complaints received that relate to the 1140  
employer. The bureau shall evaluate each complaint and take 1141  
appropriate action. 1142

The administrator shall adopt as a rule a prohibition against 1143  
any self-insuring employer from harassing, dismissing, or 1144  
otherwise disciplining any employee making a complaint, which rule 1145  
shall provide for a financial penalty to be levied by the 1146  
administrator payable by the offending self-insuring employer. 1147

(H) For the purpose of making determinations as to whether to 1148  
grant status as a self-insuring employer, the administrator may 1149  
subscribe to and pay for a credit reporting service that offers 1150  
financial and other business information about individual 1151  
employers. The costs in connection with the bureau's subscription 1152  
or individual reports from the service about an applicant may be 1153  
included in the application fee charged employers under this 1154  
section. 1155

(I) The administrator, notwithstanding other provisions of 1156  
this chapter, may permit a self-insuring employer to resume 1157  
payment of premiums to the state insurance fund with appropriate 1158  
credit modifications to the employer's basic premium rate as such 1159  
rate is determined pursuant to section 4123.29 of the Revised 1160  
Code. 1161

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

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

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

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

The administrator shall calculate the assessment for the 1194  
portion of the surplus fund under division (B) of section 4123.34 1195  
of the Revised Code that is used for handicapped reimbursement in 1196  
the same manner as set forth in divisions (J)(1) and (2) of this 1197  
section except that the administrator shall calculate the total 1198  
assessment for this portion of the surplus fund only on the basis 1199  
of those self-insuring employers that retain participation in the 1200  
handicapped reimbursement program and the individual self-insuring 1201  
employer's proportion of paid compensation shall be calculated 1202  
only for those self-insuring employers who retain participation in 1203  
the handicapped reimbursement program. The administrator, as the 1204  
administrator determines appropriate, may determine the total 1205  
assessment for the handicapped portion of the surplus fund in 1206  
accordance with sound actuarial principles. 1207

The administrator shall calculate the assessment for the 1208  
portion of the surplus fund under division (B) of section 4123.34 1209  
of the Revised Code that under division (D) of section 4121.66 of 1210  
the Revised Code is used for rehabilitation costs in the same 1211  
manner as set forth in divisions (J)(1) and (2) of this section, 1212  
except that the administrator shall calculate the total assessment 1213  
for this portion of the surplus fund only on the basis of those 1214  
self-insuring employers who have not made the election to make 1215  
payments directly under division (D) of section 4121.66 of the 1216  
Revised Code and an individual self-insuring employer's proportion 1217  
of paid compensation only for those self-insuring employers who 1218  
have not made that election. 1219

The administrator shall calculate the assessment for the 1220  
portion of the surplus fund under division (B) of section 4123.34 1221  
of the Revised Code that is used for reimbursement to a 1222  
self-insuring employer under division (H) of section 4123.512 of 1223  
the Revised Code in the same manner as set forth in divisions 1224  
(J)(1) and (2) of this section except that the administrator shall 1225

calculate the total assessment for this portion of the surplus 1226  
fund only on the basis of those self-insuring employers that 1227  
retain participation in reimbursement to the self-insuring 1228  
employer under division (H) of section 4123.512 of the Revised 1229  
Code and the individual self-insuring employer's proportion of 1230  
paid compensation shall be calculated only for those self-insuring 1231  
employers who retain participation in reimbursement to the 1232  
self-insuring employer under division (H) of section 4123.512 of 1233  
the Revised Code. 1234

An employer who no longer is a self-insuring employer in this 1235  
state or who no longer is operating in this state, shall continue 1236  
to pay assessments for administrative costs and for the portion of 1237  
the surplus fund under division (B) of section 4123.34 of the 1238  
Revised Code that is not used for handicapped reimbursement, based 1239  
upon paid compensation attributable to claims that occurred while 1240  
the employer was a self-insuring employer within this state. 1241

(K) The administrator shall deposit any moneys received from 1242  
a self-insuring employer for the self-insuring employer's 1243  
assessment to pay the costs solely attributable to the workers' 1244  
compensation council into the administrative assessment account 1245  
described in division (B) of section 4123.342 of the Revised Code 1246  
for the administrative cost assessment collected by the 1247  
administrator for the council. There is hereby created in the 1248  
state treasury the self-insurance assessment fund. All investment 1249  
earnings of the fund shall be deposited in the fund. The 1250  
administrator shall use the money in the self-insurance assessment 1251  
fund only for administrative costs as specified in section 1252  
4123.341 of the Revised Code. 1253

(L) Every self-insuring employer shall certify, in affidavit 1254  
form subject to the penalty for perjury, to the bureau the amount 1255  
of the self-insuring employer's paid compensation for the previous 1256  
calendar year. In reporting paid compensation paid for the 1257

previous year, a self-insuring employer shall exclude from the 1258  
total amount of paid compensation any reimbursement the 1259  
self-insuring employer receives in the previous calendar year from 1260  
the surplus fund pursuant to section 4123.512 of the Revised Code 1261  
for any paid compensation. The self-insuring employer also shall 1262  
exclude from the paid compensation reported any amount recovered 1263  
under section 4123.931 of the Revised Code and any amount that is 1264  
determined not to have been payable to or on behalf of a claimant 1265  
in any final administrative or judicial proceeding. The 1266  
self-insuring employer shall exclude such amounts from the paid 1267  
compensation reported in the reporting period subsequent to the 1268  
date the determination is made. The administrator shall adopt 1269  
rules, in accordance with Chapter 119. of the Revised Code, that 1270  
provide for all of the following: 1271

(1) Establishing the date by which self-insuring employers 1272  
must submit such information and the amount of the assessments 1273  
provided for in division (J) of this section for employers who 1274  
have been granted self-insuring status within the last calendar 1275  
year; 1276

(2) If an employer fails to pay the assessment when due, the 1277  
administrator may add a late fee penalty of not more than five 1278  
hundred dollars to the assessment plus an additional penalty 1279  
amount as follows: 1280

(a) For an assessment from sixty-one to ninety days past due, 1281  
the prime interest rate, multiplied by the assessment due; 1282

(b) For an assessment from ninety-one to one hundred twenty 1283  
days past due, the prime interest rate plus two per cent, 1284  
multiplied by the assessment due; 1285

(c) For an assessment from one hundred twenty-one to one 1286  
hundred fifty days past due, the prime interest rate plus four per 1287  
cent, multiplied by the assessment due; 1288

(d) For an assessment from one hundred fifty-one to one	1289
hundred eighty days past due, the prime interest rate plus six per	1290
cent, multiplied by the assessment due;	1291
(e) For an assessment from one hundred eighty-one to two	1292
hundred ten days past due, the prime interest rate plus eight per	1293
cent, multiplied by the assessment due;	1294
(f) For each additional thirty-day period or portion thereof	1295
that an assessment remains past due after it has remained past due	1296
for more than two hundred ten days, the prime interest rate plus	1297
eight per cent, multiplied by the assessment due.	1298
(3) An employer may appeal a late fee penalty and penalty	1299
assessment to the administrator.	1300
For purposes of division (L)(2) of this section, "prime	1301
interest rate" means the average bank prime rate, and the	1302
administrator shall determine the prime interest rate in the same	1303
manner as a county auditor determines the average bank prime rate	1304
under section 929.02 of the Revised Code.	1305
The administrator shall include any assessment and penalties	1306
that remain unpaid for previous assessment periods in the	1307
calculation and collection of any assessments due under this	1308
division or division (J) of this section.	1309
(M) As used in this section, "paid compensation" means all	1310
amounts paid by a self-insuring employer for living maintenance	1311
benefits, all amounts for compensation paid pursuant to sections	1312
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, and	1313
4123.64 of the Revised Code, all amounts paid as wages in lieu of	1314
such compensation, all amounts paid in lieu of such compensation	1315
under a nonoccupational accident and sickness program fully funded	1316
by the self-insuring employer, and all amounts paid by a	1317
self-insuring employer for a violation of a specific safety	1318
standard pursuant to Section 35 of Article II, Ohio Constitution	1319

and section 4121.47 of the Revised Code. 1320

(N) Should any section of this chapter or Chapter 4121. of 1321  
the Revised Code providing for self-insuring employers' 1322  
assessments based upon compensation paid be declared 1323  
unconstitutional by a final decision of any court, then that 1324  
section of the Revised Code declared unconstitutional shall revert 1325  
back to the section in existence prior to November 3, 1989, 1326  
providing for assessments based upon payroll. 1327

(O) The administrator may grant a self-insuring employer the 1328  
privilege to self-insure a construction project entered into by 1329  
the self-insuring employer that is scheduled for completion within 1330  
six years after the date the project begins, and the total cost of 1331  
which is estimated to exceed one hundred million dollars or, for 1332  
employers described in division (R) of this section, if the 1333  
construction project is estimated to exceed twenty-five million 1334  
dollars. The administrator may waive such cost and time criteria 1335  
and grant a self-insuring employer the privilege to self-insure a 1336  
construction project regardless of the time needed to complete the 1337  
construction project and provided that the cost of the 1338  
construction project is estimated to exceed fifty million dollars. 1339  
A self-insuring employer who desires to self-insure a construction 1340  
project shall submit to the administrator an application listing 1341  
the dates the construction project is scheduled to begin and end, 1342  
the estimated cost of the construction project, the contractors 1343  
and subcontractors whose employees are to be self-insured by the 1344  
self-insuring employer, the provisions of a safety program that is 1345  
specifically designed for the construction project, and a 1346  
statement as to whether a collective bargaining agreement 1347  
governing the rights, duties, and obligations of each of the 1348  
parties to the agreement with respect to the construction project 1349  
exists between the self-insuring employer and a labor 1350  
organization. 1351

A self-insuring employer may apply to self-insure the 1352  
employees of either of the following: 1353

(1) All contractors and subcontractors who perform labor or 1354  
work or provide materials for the construction project; 1355

(2) All contractors and, at the administrator's discretion, a 1356  
substantial number of all the subcontractors who perform labor or 1357  
work or provide materials for the construction project. 1358

Upon approval of the application, the administrator shall 1359  
mail a certificate granting the privilege to self-insure the 1360  
construction project to the self-insuring employer. The 1361  
certificate shall contain the name of the self-insuring employer 1362  
and the name, address, and telephone number of the self-insuring 1363  
employer's representatives who are responsible for administering 1364  
workers' compensation claims for the construction project. The 1365  
self-insuring employer shall post the certificate in a conspicuous 1366  
place at the site of the construction project. 1367

The administrator shall maintain a record of the contractors 1368  
and subcontractors whose employees are covered under the 1369  
certificate issued to the self-insured employer. A self-insuring 1370  
employer immediately shall notify the administrator when any 1371  
contractor or subcontractor is added or eliminated from inclusion 1372  
under the certificate. 1373

Upon approval of the application, the self-insuring employer 1374  
is responsible for the administration and payment of all claims 1375  
under this chapter and Chapter 4121. of the Revised Code for the 1376  
employees of the contractor and subcontractors covered under the 1377  
certificate who receive injuries or are killed in the course of 1378  
and arising out of employment on the construction project, or who 1379  
contract an occupational disease in the course of employment on 1380  
the construction project. For purposes of this chapter and Chapter 1381  
4121. of the Revised Code, a claim that is administered and paid 1382

in accordance with this division is considered a claim against the 1383  
self-insuring employer listed in the certificate. A contractor or 1384  
subcontractor included under the certificate shall report to the 1385  
self-insuring employer listed in the certificate, all claims that 1386  
arise under this chapter and Chapter 4121. of the Revised Code in 1387  
connection with the construction project for which the certificate 1388  
is issued. 1389

A self-insuring employer who complies with this division is 1390  
entitled to the protections provided under this chapter and 1391  
Chapter 4121. of the Revised Code with respect to the employees of 1392  
the contractors and subcontractors covered under a certificate 1393  
issued under this division for death or injuries that arise out 1394  
of, or death, injuries, or occupational diseases that arise in the 1395  
course of, those employees' employment on that construction 1396  
project, as if the employees were employees of the self-insuring 1397  
employer, provided that the self-insuring employer also complies 1398  
with this section. No employee of the contractors and 1399  
subcontractors covered under a certificate issued under this 1400  
division shall be considered the employee of the self-insuring 1401  
employer listed in that certificate for any purposes other than 1402  
this chapter and Chapter 4121. of the Revised Code. Nothing in 1403  
this division gives a self-insuring employer authority to control 1404  
the means, manner, or method of employment of the employees of the 1405  
contractors and subcontractors covered under a certificate issued 1406  
under this division. 1407

The contractors and subcontractors included under a 1408  
certificate issued under this division are entitled to the 1409  
protections provided under this chapter and Chapter 4121. of the 1410  
Revised Code with respect to the contractor's or subcontractor's 1411  
employees who are employed on the construction project which is 1412  
the subject of the certificate, for death or injuries that arise 1413  
out of, or death, injuries, or occupational diseases that arise in 1414

the course of, those employees' employment on that construction project. 1415  
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The contractors and subcontractors included under a certificate issued under this division shall identify in their payroll records the employees who are considered the employees of the self-insuring employer listed in that certificate for purposes of this chapter and Chapter 4121. of the Revised Code, and the amount that those employees earned for employment on the construction project that is the subject of that certificate. Notwithstanding any provision to the contrary under this chapter and Chapter 4121. of the Revised Code, the administrator shall exclude the payroll that is reported for employees who are considered the employees of the self-insuring employer listed in that certificate, and that the employees earned for employment on the construction project that is the subject of that certificate, when determining those contractors' or subcontractors' premiums or assessments required under this chapter and Chapter 4121. of the Revised Code. A self-insuring employer issued a certificate under this division shall include in the amount of paid compensation it reports pursuant to division (L) of this section, the amount of paid compensation the self-insuring employer paid pursuant to this division for the previous calendar year. 1417  
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Nothing in this division shall be construed as altering the rights of employees under this chapter and Chapter 4121. of the Revised Code as those rights existed prior to September 17, 1996. Nothing in this division shall be construed as altering the rights devolved under sections 2305.31 and 4123.82 of the Revised Code as those rights existed prior to September 17, 1996. 1437  
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As used in this division, "privilege to self-insure a construction project" means privilege to pay individually compensation, and to furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to 1443  
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injured employees or the dependents of killed employees. 1447

(P) A self-insuring employer whose application is granted 1448  
under division (O) of this section shall designate a safety 1449  
professional to be responsible for the administration and 1450  
enforcement of the safety program that is specifically designed 1451  
for the construction project that is the subject of the 1452  
application. 1453

A self-insuring employer whose application is granted under 1454  
division (O) of this section shall employ an ombudsperson for the 1455  
construction project that is the subject of the application. The 1456  
ombudsperson shall have experience in workers' compensation or the 1457  
construction industry, or both. The ombudsperson shall perform all 1458  
of the following duties: 1459

(1) Communicate with and provide information to employees who 1460  
are injured in the course of, or whose injury arises out of 1461  
employment on the construction project, or who contract an 1462  
occupational disease in the course of employment on the 1463  
construction project; 1464

(2) Investigate the status of a claim upon the request of an 1465  
employee to do so; 1466

(3) Provide information to claimants, third party 1467  
administrators, employers, and other persons to assist those 1468  
persons in protecting their rights under this chapter and Chapter 1469  
4121. of the Revised Code. 1470

A self-insuring employer whose application is granted under 1471  
division (O) of this section shall post the name of the safety 1472  
professional and the ombudsperson and instructions for contacting 1473  
the safety professional and the ombudsperson in a conspicuous 1474  
place at the site of the construction project. 1475

(Q) The administrator may consider all of the following when 1476  
deciding whether to grant a self-insuring employer the privilege 1477

to self-insure a construction project as provided under division	1478
(O) of this section:	1479
(1) Whether the self-insuring employer has an organizational	1480
plan for the administration of the workers' compensation law;	1481
(2) Whether the safety program that is specifically designed	1482
for the construction project provides for the safety of employees	1483
employed on the construction project, is applicable to all	1484
contractors and subcontractors who perform labor or work or	1485
provide materials for the construction project, and has as a	1486
component, a safety training program that complies with standards	1487
adopted pursuant to the "Occupational Safety and Health Act of	1488
1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing	1489
management and employee involvement;	1490
(3) Whether granting the privilege to self-insure the	1491
construction project will reduce the costs of the construction	1492
project;	1493
(4) Whether the self-insuring employer has employed an	1494
ombudsperson as required under division (P) of this section;	1495
(5) Whether the self-insuring employer has sufficient surety	1496
to secure the payment of claims for which the self-insuring	1497
employer would be responsible pursuant to the granting of the	1498
privilege to self-insure a construction project under division (O)	1499
of this section.	1500
(R) As used in divisions (O), (P), and (Q), "self-insuring	1501
employer" includes the following employers, whether or not they	1502
have been granted the status of being a self-insuring employer	1503
under division (B) of this section:	1504
(1) A state institution of higher education;	1505
(2) A school district;	1506
(3) A county school financing district;	1507

(4) An educational service center;	1508
(5) A community school established under Chapter 3314. of the Revised Code;	1509 1510
(6) A municipal power agency as defined in section 3734.058 of the Revised Code.	1511 1512
(S) As used in this section:	1513
(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;	1514 1515
(2) "State institution of higher education" means the state universities listed in section 3345.011 of the Revised Code, community colleges created pursuant to Chapter 3354. of the Revised Code, university branches created pursuant to Chapter 3355. of the Revised Code, technical colleges created pursuant to Chapter 3357. of the Revised Code, and state community colleges created pursuant to Chapter 3358. of the Revised Code.	1516 1517 1518 1519 1520 1521 1522
<b>Sec. 4123.512.</b> (A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state. If no common pleas court has jurisdiction for the purposes of an appeal by the use of the jurisdictional requirements described in this division, the appellant may use the venue provisions in the Rules of Civil Procedure to vest jurisdiction in a court. If the claim is for an occupational disease, the appeal shall be to the court of common pleas of the county in which the exposure which caused the disease occurred. Like appeal may be taken from an	1523 1524 1525 1526 1527 1528 1529 1530 1531 1532 1533 1534 1535 1536 1537

order of a staff hearing officer made under division (D) of 1538  
section 4123.511 of the Revised Code from which the commission has 1539  
refused to hear an appeal. The appellant shall file the notice of 1540  
appeal with a court of common pleas within sixty days after the 1541  
date of the receipt of the order appealed from or the date of 1542  
receipt of the order of the commission refusing to hear an appeal 1543  
of a staff hearing officer's decision under division (D) of 1544  
section 4123.511 of the Revised Code. The filing of the notice of 1545  
the appeal with the court is the only act required to perfect the 1546  
appeal. 1547

If an action has been commenced in a court of a county other 1548  
than a court of a county having jurisdiction over the action, the 1549  
court, upon notice by any party or upon its own motion, shall 1550  
transfer the action to a court of a county having jurisdiction. 1551

Notwithstanding anything to the contrary in this section, if 1552  
the commission determines under section 4123.522 of the Revised 1553  
Code that an employee, employer, or their respective 1554  
representatives have not received written notice of an order or 1555  
decision which is appealable to a court under this section and 1556  
which grants relief pursuant to section 4123.522 of the Revised 1557  
Code, the party granted the relief has sixty days from receipt of 1558  
the order under section 4123.522 of the Revised Code to file a 1559  
notice of appeal under this section. 1560

(B) The notice of appeal shall state the names of the 1561  
claimant and the employer, the number of the claim, the date of 1562  
the order appealed from, and the fact that the appellant appeals 1563  
therefrom. 1564

The administrator of workers' compensation, the claimant, and 1565  
the employer shall be parties to the appeal and the court, upon 1566  
the application of the commission, shall make the commission a 1567  
party. The party filing the appeal shall serve a copy of the 1568  
notice of appeal on the administrator at the central office of the 1569

bureau of workers' compensation in Columbus. The administrator 1570  
shall notify the employer that if the employer fails to become an 1571  
active party to the appeal, then the administrator may act on 1572  
behalf of the employer and the results of the appeal could have an 1573  
adverse effect upon the employer's premium rates. 1574

(C) The attorney general or one or more of the attorney 1575  
general's assistants or special counsel designated by the attorney 1576  
general shall represent the administrator and the commission. In 1577  
the event the attorney general or the attorney general's 1578  
designated assistants or special counsel are absent, the 1579  
administrator or the commission shall select one or more of the 1580  
attorneys in the employ of the administrator or the commission as 1581  
the administrator's attorney or the commission's attorney in the 1582  
appeal. Any attorney so employed shall continue the representation 1583  
during the entire period of the appeal and in all hearings thereof 1584  
except where the continued representation becomes impractical. 1585

(D) Upon receipt of notice of appeal, the clerk of courts 1586  
shall provide notice to all parties who are appellees and to the 1587  
commission. 1588

The claimant shall, within thirty days after the filing of 1589  
the notice of appeal, file a petition containing a statement of 1590  
facts in ordinary and concise language showing a cause of action 1591  
to participate or to continue to participate in the fund and 1592  
setting forth the basis for the jurisdiction of the court over the 1593  
action. Further pleadings shall be had in accordance with the 1594  
Rules of Civil Procedure, provided that service of summons on such 1595  
petition shall not be required and provided that the claimant may 1596  
not dismiss the complaint without the employer's consent if the 1597  
employer is the party that filed the notice of appeal to court 1598  
pursuant to this section. The clerk of the court shall, upon 1599  
receipt thereof, transmit by certified mail a copy thereof to each 1600  
party named in the notice of appeal other than the claimant. Any 1601

party may file with the clerk prior to the trial of the action a deposition of any physician taken in accordance with the provisions of the Revised Code, which deposition may be read in the trial of the action even though the physician is a resident of or subject to service in the county in which the trial is had. The bureau of workers' compensation shall pay the cost of the stenographic deposition filed in court and of copies of the stenographic deposition for each party from the surplus fund and charge the costs thereof against the unsuccessful party if the claimant's right to participate or continue to participate is finally sustained or established in the appeal. In the event the deposition is taken and filed, the physician whose deposition is taken is not required to respond to any subpoena issued in the trial of the action. The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of the action.

(E) The court shall certify its decision to the commission and the certificate shall be entered in the records of the court. Appeals from the judgment are governed by the law applicable to the appeal of civil actions.

(F) The cost of any legal proceedings authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge, based upon the effort expended, in the event the claimant's right to participate or to continue to participate in the fund is established upon the final determination of an appeal, shall be taxed against the employer or the commission if the commission or the administrator rather than the employer contested the right of the claimant to participate in the fund. The attorney's fee shall not exceed forty-two hundred dollars.

(G) If the finding of the court or the verdict of the jury is

in favor of the claimant's right to participate in the fund, the 1634  
commission and the administrator shall thereafter proceed in the 1635  
matter of the claim as if the judgment were the decision of the 1636  
commission, subject to the power of modification provided by 1637  
section 4123.52 of the Revised Code. 1638

(H)(1) An appeal from an order issued under division (E) of 1639  
section 4123.511 of the Revised Code or any action filed in court 1640  
in a case in which an award of compensation or medical benefits 1641  
has been made shall not stay the payment of compensation or 1642  
medical benefits under the award, or payment for subsequent 1643  
periods of total disability or medical benefits during the 1644  
pendency of the appeal. If, in a final administrative or judicial 1645  
action, it is determined that payments of compensation or 1646  
benefits, or both, made to or on behalf of a claimant should not 1647  
have been made, the amount thereof shall be charged to the surplus 1648  
fund account under division ~~(A)~~(B) of section 4123.34 of the 1649  
Revised Code. In the event the employer is a state risk, the 1650  
amount shall not be charged to the employer's experience, and the 1651  
administrator shall adjust the employer's account accordingly. In 1652  
the event the employer is a self-insuring employer, the 1653  
self-insuring employer shall deduct the amount from the paid 1654  
compensation the self-insuring employer reports to the 1655  
administrator under division (L) of section 4123.35 of the Revised 1656  
Code. 1657

(2)(a) Notwithstanding a final determination that payments of 1658  
benefits made to or on behalf of a claimant should not have been 1659  
made, the administrator or self-insuring employer shall award 1660  
payment of medical or vocational rehabilitation services submitted 1661  
for payment after the date of the final determination if all of 1662  
the following apply: 1663

(i) The services were approved and were rendered by the 1664  
provider in good faith prior to the date of the final 1665

determination. 1666

(ii) The services were payable under division (I) of section 4123.511 of the Revised Code prior to the date of the final determination. 1667  
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(iii) The request for payment is submitted within the time limit set forth in section 4123.52 of the Revised Code. 1670  
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(b) Payments made under division (H)(1) of this section shall be charged to the surplus fund account under division (B) of section 4123.34 of the Revised Code. If the employer of the employee who is the subject of a claim described in division (H)(2)(a) of this section is a state fund employer, the payments made under that division shall not be charged to the employer's experience. If that employer is a self-insuring employer, the self-insuring employer shall deduct the amount from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code. 1672  
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(c) Division (H)(2) of this section shall apply only to a claim under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code arising on or after the effective date of this amendment. 1683  
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(3) A self-insuring employer may elect to pay compensation and benefits under this section directly to an employee or an employee's dependents by filing an application with the bureau of workers' compensation not more than one hundred eighty days and not less than ninety days before the first day of the employer's next six-month coverage period. If the self-insuring employer timely files the application, the application is effective on the first day of the employer's next six-month coverage period, provided that the administrator shall compute the employer's assessment for the surplus fund account due with respect to the 1687  
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period during which that application was filed without regard to 1697  
the filing of the application. On and after the effective date of 1698  
the employer's election, the self-insuring employer shall pay 1699  
directly to an employee or to an employee's dependents 1700  
compensation and benefits under this section regardless of the 1701  
date of the injury or occupational disease, and the employer shall 1702  
receive no money or credits from the surplus fund account on 1703  
account of those payments and shall not be required to pay any 1704  
amounts into the surplus fund account on account of this section. 1705  
The election made under this division is irrevocable. 1706

(I) All actions and proceedings under this section which are 1707  
the subject of an appeal to the court of common pleas or the court 1708  
of appeals shall be preferred over all other civil actions except 1709  
election causes, irrespective of position on the calendar. 1710

This section applies to all decisions of the commission or 1711  
the administrator on November 2, 1959, and all claims filed 1712  
thereafter are governed by sections 4123.511 and 4123.512 of the 1713  
Revised Code. 1714

Any action pending in common pleas court or any other court 1715  
on January 1, 1986, under this section is governed by former 1716  
sections 4123.514, 4123.515, 4123.516, and 4123.519 and section 1717  
4123.522 of the Revised Code. 1718

**Sec. 4123.52.** (A) The jurisdiction of the industrial 1719  
commission and the authority of the administrator of workers' 1720  
compensation over each case is continuing, and the commission may 1721  
make such modification or change with respect to former findings 1722  
or orders with respect thereto, as, in its opinion is justified. 1723  
No modification or change nor any finding or award in respect of 1724  
any claim shall be made with respect to disability, compensation, 1725  
dependency, or benefits, after five years from the date of injury 1726  
in the absence of the payment of medical benefits under this 1727

chapter or in the absence of payment of compensation under section 1728  
4123.57, 4123.58, or division (A) or (B) of section 4123.56 of the 1729  
Revised Code or wages in lieu of compensation in a manner so as to 1730  
satisfy the requirements of section 4123.84 of the Revised Code, 1731  
in which event the modification, change, finding, or award shall 1732  
be made within five years from the date of the last payment of 1733  
compensation or from the date of death, nor unless written notice 1734  
of claim for the specific part or parts of the body injured or 1735  
disabled has been given as provided in section 4123.84 or 4123.85 1736  
of the Revised Code. The commission shall not make any 1737  
modification, change, finding, or award which shall award 1738  
compensation for a back period in excess of two years prior to the 1739  
date of filing application therefor. ~~This~~ 1740

(B) Notwithstanding division (A) of this section, neither the 1741  
administrator nor the commission shall make any finding or award 1742  
for payment of medical or vocational rehabilitation services 1743  
submitted for payment more than one year after the date the 1744  
services were rendered or more than one year after the date the 1745  
services became payable under division (I) of section 4123.511 of 1746  
the Revised Code, whichever is later. No medical or vocational 1747  
rehabilitation provider shall bill a claimant for services 1748  
rendered if the administrator or commission is prohibited from 1749  
making that payment under this division. 1750

(C) This section does not affect the right of a claimant to 1751  
compensation accruing subsequent to the filing of any such 1752  
application, provided the application is filed within the time 1753  
limit provided in this section. 1754

(D) This section does not deprive the commission of its 1755  
continuing jurisdiction to determine the questions raised by any 1756  
application for modification of award which has been filed with 1757  
the commission after June 1, 1932, and prior to the expiration of 1758  
the applicable period but in respect to which no award has been 1759



7023	855401	William Green Lease	\$	18,291,365	\$	17,533,370	1790
		Payments to OBA					
7023	855407	Claims, Risk and	\$	125,427,732	\$	124,192,959	1791
		Medical Management					
7023	855408	Fraud Prevention	\$	11,331,154	\$	11,164,226	1792
7023	855409	Administrative	\$	101,724,950	\$	104,136,037	1793
		Services					
7023	855410	Attorney General	\$	4,621,850	\$	4,621,850	1794
		Payments					
8220	855606	Coal Workers' Fund	\$	1,050,586	\$	1,047,666	1795
8230	855608	Marine Industry	\$	76,532	\$	75,527	1796
8250	855605	Disabled Workers	\$	322,266	\$	319,718	1797
		Relief Fund					
8260	855609	Safety and Hygiene	\$	20,382,567	\$	20,161,132	1798
		Operating					
8260	855610	Gear Program	\$	4,000,000	\$	4,000,000	1799
8290	855604	Long Term Care Loan	\$	1,000,000	\$	1,000,000	1800
		Program					
TOTAL WCF Workers' Compensation							1801
Fund Group			\$	288,229,002	\$	288,252,485	1802
Federal Special Revenue Fund Group							1803
3490	855601	OSHA Enforcement	\$	1,670,998	\$	1,647,515	1804
TOTAL FED Federal Special Revenue			\$	1,670,998	\$	1,647,515	1805
Fund Group							
TOTAL ALL BUDGET FUND GROUPS			\$	289,900,000	\$	289,900,000	1806
WILLIAM GREEN LEASE PAYMENTS							1807
The foregoing appropriation item 855401, William Green Lease							1808
Payments to OBA, shall be used for lease payments to the Ohio							1809
Building Authority, and these appropriations shall be used to meet							1810
all payments at the times they are required to be made during the							1811
period from July 1, 2011, to June 30, 2013, by the Bureau of							1812
Workers' Compensation to the Ohio Building Authority pursuant to							1813

leases and agreements made under Chapter 152. of the Revised Code 1814  
and Section 6 of Am. Sub. H.B. 743 of the 118th General Assembly. 1815  
Of the amounts received in Fund 7023, appropriation item 855401, 1816  
William Green Lease Payments to OBA, up to \$35,824,735 shall be 1817  
restricted for lease rental payments to the Ohio Building 1818  
Authority. If it is determined that additional appropriations are 1819  
necessary for such purpose, such amounts are hereby appropriated. 1820

Notwithstanding any provision of law to the contrary, all 1821  
tenants of the William Green Building not funded by the Workers' 1822  
Compensation Fund (Fund 7023) shall pay their fair share of the 1823  
costs of lease payments to the Workers' Compensation Fund (Fund 1824  
7023) by intrastate transfer voucher. 1825

**WORKERS' COMPENSATION FRAUD UNIT 1826**

The Workers' Compensation Section Fund (Fund 1950) 1827  
administered by the Attorney General shall receive payments from 1828  
the Bureau of Workers' Compensation at the beginning of each 1829  
quarter of each fiscal year to fund expenses of the Workers' 1830  
Compensation Fraud Unit within the Attorney General's Office. Of 1831  
the foregoing appropriation item 855410, Attorney General 1832  
Payments, \$828,200 in fiscal year 2012 and \$828,200 in fiscal year 1833  
2013 shall be used to provide these payments. 1834

**SAFETY AND HYGIENE 1835**

Notwithstanding section 4121.37 of the Revised Code, the 1836  
Treasurer of State shall transfer \$20,382,567 cash in fiscal year 1837  
2012 and \$20,161,132 cash in fiscal year 2013 from the State 1838  
Insurance Fund to the Safety and Hygiene Fund (Fund 8260). 1839

**OSHA ON-SITE CONSULTATION PROGRAM 1840**

The Bureau of Workers' Compensation may designate a portion 1841  
of appropriation item 855609, Safety and Hygiene Operating, to be 1842  
used to match federal funding for the federal Occupational Safety 1843  
and Health Administration's (OSHA) on-site consultation program. 1844

VOCATIONAL REHABILITATION 1845

The Bureau of Workers' Compensation and the Rehabilitation 1846  
Services Commission shall enter into an interagency agreement for 1847  
the provision of vocational rehabilitation services and staff to 1848  
mutually eligible clients. The bureau shall provide \$605,407 in 1849  
fiscal year 2012 and \$605,407 in fiscal year 2013 from the State 1850  
Insurance Fund to fund vocational rehabilitation services and 1851  
staff in accordance with the interagency agreement. 1852

FUND BALANCE 1853

Any unencumbered cash balance in excess of \$45,000,000 in the 1854  
Workers' Compensation Fund (Fund 7023) on the thirtieth day of 1855  
June of each fiscal year shall be used to reduce the 1856  
administrative cost rate charged to employers to cover 1857  
appropriations for Bureau of Workers' Compensation operations. 1858

**Section 211.** WCC WORKERS' COMPENSATION COUNCIL 1859

5FV0 321600	Remuneration Expenses	\$	471,200	\$	471,200	1860
TOTAL 5FV0	Workers' Compensation	\$	471,200	\$	471,200	1861
Council Remuneration Fund						
TOTAL ALL BUDGET FUND GROUPS		\$	471,200	\$	471,200	1862

WORKERS' COMPENSATION COUNCIL 1863

The foregoing appropriation item 321600, Remuneration 1864  
Expenses, shall be used to pay the payroll and fringe benefit 1865  
costs for employees of the Workers' Compensation Council. 1866

**Section 221.** DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING 1867

To pay for the FY 2012 costs related to the Deputy Inspector 1868  
General for the Bureau of Workers' Compensation and Industrial 1869  
Commission, on July 1, 2011, and on January 1, 2012, or as soon as 1870  
possible after each date, the Director of Budget and Management 1871  
shall transfer \$212,500 in cash from the Workers' Compensation 1872

Fund (Fund 7023) to the Deputy Inspector General for the Bureau of  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 1873  
1874

To pay for the FY 2013 costs related to the Deputy Inspector 1875  
General for the Bureau of Workers' Compensation and Industrial 1876  
Commission, on July 1, 2012, and on January 1, 2013, or as soon as 1877  
possible after each date, the Director of Budget and Management 1878  
shall transfer \$212,500 in cash from the Workers' Compensation 1879  
Fund (Fund 7023) to the Deputy Inspector General for the Bureau of 1880  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 1881

If additional amounts are needed, the Inspector General may 1882  
seek Controlling Board approval for additional transfers of cash 1883  
and to increase the amount appropriated in appropriation item 1884  
965604, Deputy Inspector General for the Bureau of Workers' 1885  
Compensation and Industrial Commission. 1886

**Section 301.** Law contained in the Main Operating 1887  
Appropriations Act of the 129th General Assembly that applies 1888  
generally to the appropriations made in that act also applies 1889  
generally to the appropriations made in this act. 1890

**Section 311.** The provisions of law contained in this act, and 1891  
their applications, are severable. If any provision of law 1892  
contained in this act, or if any application of any provision of 1893  
law contained in this act, is held invalid, the invalidity does 1894  
not affect other provisions of law contained in this act and their 1895  
applications that can be given effect without the invalid 1896  
provision or application. 1897

**Section 321.** Except as otherwise provided in this act, the 1898  
amendment, enactment, or repeal by this act of a section of law is 1899  
exempt from the referendum under Ohio Constitution, Article II, 1900  
Section 1d and section 1.471 of the Revised Code and therefore 1901  
takes effect immediately when this act becomes law. 1902

**Section 322.** The amendment, enactment, or repeal by this act 1903  
of the divisions and sections of law listed below are subject to 1904  
the referendum under Ohio Constitution, Article II, Section 1c and 1905  
therefore take effect on the ninety-first day after this act is 1906  
filed with the Secretary of State. 1907

All Revised Code sections in Section 101 of this act. 1908

The repeal of sections 4121.124 and 4121.99 of the Revised 1909  
Code. 1910