



H.B. 100*

127th General Assembly

(As Introduced)

(Excluding appropriations, fund transfers, and similar provisions)

Rep. Brinkman

BILL SUMMARY

- Abolishes the Workers' Compensation Oversight Commission, the Workers' Compensation Oversight Commission Nominating Committee, the Services Committee of the Workers' Compensation System, and the Internal Security Committee.
- Creates the Bureau of Workers' Compensation Board of Directors, and three working committees: the Workers' Compensation Audit Committee, the Workers' Compensation Actuarial Committee, and the Workers' Compensation Investment Committee.
- Transfers the powers and the duties of the Oversight Commission to the Board and the working committees.
- Transfers the powers and duties of the Administrator of Workers' Compensation to safeguard and maintain the solvency of the State Insurance Fund to the Board.
- Transfers the powers and duties of the Administrator to classify occupations and industries and fix premium, contribution, and assessment rates to the Board, which must perform these duties based upon recommendations of the Actuarial Committee.
- Requires the Investment Committee to develop the investment policy for the investment of the funds specified in the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.).

* This analysis was prepared before the bill was introduced in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the Governor and the Board to meet annually to evaluate the Administrator's performance.
- Requires the Board, rather than the Administrator under current law, to establish alternative premium programs and discounts for premiums.
- Requires the Board, based upon recommendations of the Actuarial Committee, to appoint the members of the Adjudicating Committee rather than the Administrator and to specify the policy for the Adjudicating Committee's procedures.
- Removes the ability to appeal an Adjudicating Committee's decision to the Administrator.
- Allows the Board to create additional committees as the Board determines necessary.
- Specifies additional duties for the Board and the working committees.
- Creates the Office of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission in the Office of the Inspector General and requires the Deputy Inspector General to conduct investigations regarding the conduct of Bureau of Workers' Compensation (BWC) and Industrial Commission employees.
- Requires the Administrator to conduct assessments of the Health Partnership Program and the Group Rating Program.
- Allows the Administrator to discontinue an employer's workers' compensation coverage if the employer fails to pay the employer's premium or other obligations when due under specified conditions.
- Requires the Administrator to immediately charge an employer's account upon the payment of compensation and benefits.
- Requires the Administrator to use the same procedures the Administrator uses to obtain payments from private employers when collecting payments from certain public employers.

TABLE OF CONTENTS

Abolition of the Workers' Compensation Oversight Commission and specified committees.....	3
Transfer of duties.....	4
Oversight Commission and Bureau of Workers' Compensation Board of Directors.....	7
Fiduciary responsibilities	10
Duties	12
Rule adoption.....	13
Additional duties of the Administrator that require oversight	14
Working Committees	14
Audit Committee	15
Actuarial Committee.....	15
Investment Committee.....	15
Actions against the Board and Working Committees.....	16
Duties of the Administrator of Workers' Compensation	17
Studies of the Health Partnership Program and Group Rating Program.....	18
Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission.....	19
Complete employer applications for coverage	20
Public employers who fail to pay security deposit and premium.....	21
Failure to pay premiums or other assessments when due	21
Charges to an employer's experience rating pending a final determination.....	22
Labor-Management Advisory Council	23

CONTENT AND OPERATION

Abolition of the Workers' Compensation Oversight Commission and specified committees

The bill abolishes the following four entities: (1) the Workers' Compensation Oversight Commission, which performs various duties under the Workers' Compensation Law, (2) the Workers' Compensation Oversight Commission Nominating Committee, which supplies a list of the names of the people from which the Governor selects members of the Oversight Commission, (3) the Services Committee of the Workers' Compensation System, which coordinates data and management services between BWC and the Industrial Commission, and (4) the Internal Security Committee, which investigates all claims or cases of criminal violations, abuse of office, or misconduct on the part of BWC or Industrial Commission employees. (R.C. 4121.06 (repealed by the bill),

4121.12, 4121.122, and 4121.123 (repealed by the bill), and Sections 512.10, 512.30, and 512.40.)

Transfer of duties

The bill creates the Bureau of Workers' Compensation Board of Directors (see '**Oversight Commission and Bureau of Workers' Compensation Board of Directors**,' below) and three working committees of the Board (the Workers' Compensation Audit Committee, Workers' Compensation Actuarial Committee, and Workers Compensation Investment Committee; see '**Working Committees**,' below). The bill also creates the Office of the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission (see '**Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission**,' below). The bill transfers several of the Oversight Commission's duties to the Board or the appropriate working committee, and also transfers some of the duties of the Administrator to the Board. The table below gives an overview of the major duty transfers required by the bill.

<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</i>
Establishing the overall administrative policy of the BWC.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4121.121).	The Board (R.C. 4121.12).
Safeguarding and maintaining the solvency of the State Insurance Fund.	The Administrator (R.C. 4123.29(B) and 4123.34).	The Board (R.C. 4123.29(B) and 4123.34).
Classifying occupations and industries for the purpose of determining employer premium rates.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.29(A)).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.29(A)).
Fixing premium rates based upon the classes of occupation and industry.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 119.01, 4123.29(B), 4123.34, 4123.35, 4127.07, 4131.04, and 4131.14).	The Board, based upon recommendations of the Actuarial Committee (R.C. 119.01, 4123.29(B), 4123.34, 4123.35, 4127.07, 4131.04, and 4131.14).
Revising basic employer premium rates and adopting rules governing rate revision.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.34(B)).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.34(B)).

<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</i>
Adopting rules to establish employer premium security deposits.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.32(F)).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.32(D)).
Classifying the state and its departments, agencies, and instrumentalities to determine public employer contributions to the State Insurance Fund.	The Administrator (R.C. 4123.40).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.40).
Establishing the total amount of contributions made to the State Insurance Fund by the state and counties within the state.	The Administrator (R.C. 4123.39 to 4123.41).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.39 to 4123.41).
Establishing self-insuring employer assessment rates.	The Administrator (R.C. 4123.35(J)).	The Board (R.C. 4123.35(J)).
Establishing the total assessment allocation for the administrative costs of the Oversight Commission (Board), BWC, and Industrial Commission.	The Administrator (R.C. 4123.341 and 4123.342).	The Board, based upon recommendation of the Actuarial Committee (R.C. 4123.341 and 4123.342).
Establishing the Disabled Worker Relief Fund assessment rate and the amount of annual contributions from employers.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.411 and 4123.419).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.411 and 4123.419).
Transferring money from the State Insurance Fund to the Surplus Fund and maintaining the Surplus Fund.	The Administrator (R.C. 4123.025, 4123.34(B), 4123.35, 4123.512, 4123.57, 4123.65, and 4123.75).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.025, 4123.34(A), 4123.35, 4123.512, 4123.57, 4123.65, and 4123.75).
Establishing and transferring funds into the Premium Security Fund.	The Administrator (R.C. 4123.34(D)).	The Board (R.C. 4123.34(D)).

<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</i>
Establishing contribution rates for the Self-Insuring Employer Guaranty Fund.	The Administrator (<i>R.C. 4123.351(B)</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.351(B)</i>).
Establishing alternative premium plans (e.g. retrospective rating plans, group rating plans, and the one-claim program).	The Administrator, with the advice and consent of the Oversight Commission (<i>R.C. 4123.29(A)(3) and (4)</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.29(A)(3) and (4)</i>).
Electing to adopt rules to grant a discount to employers who pay their semiannual premium at least one month before it is due.	The Administrator, with the advice and consent of the Oversight Commission (<i>R.C. 4123.29(B)(1)</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.29(B)</i>).
Adopting rules to provide employer premium rebates and dividends.	The Administrator, with the advice and consent of the Oversight Commission (<i>R.C. 4123.32(A)</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.32(A)</i>).
Establishing a merit rate system for employer premiums.	The Administrator, with the advice and consent of the Oversight Commission (<i>R.C. 4123.34(C) and 4123.66</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.34(C) and 4123.66</i>).
Granting a premium discount to employers who have certain safety programs.	The Administrator (<i>R.C. 4123.34(E)</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.34(E)</i>).
Establishing the investment policy for the funds specified in the Workers' Compensation Law (<i>R.C. Chapters 4121., 4123., 4125., 4127., 4131., and 4167.</i>).	The Oversight Commission (<i>R.C. 3345.12 and 4121.12</i>).	The Workers' Compensation Investment Committee develops the policy, which must be approved by the Board (<i>R.C. 3345.12, 4121.12, 4121.123, 4123.44, and 4123.442</i>).
Contracting with actuarial firms to perform audits determined necessary.	The Oversight Commission (<i>R.C. 4123.125</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.123 and 4123.125</i>).

<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</i>
Having an independent auditor conduct a fiduciary performance audit of the BWC investment program and the investment policy.	The Oversight Commission (<i>R.C. 4121.125(D)</i>).	The Board (<i>R.C. 4121.125(D)</i>).
Selecting an accounting firm for the annual audit of the funds specified in the Workers' Compensation Law.	The Administrator (<i>R.C. 4123.47</i>).	The Board, with Audit Committee recommendations (<i>R.C. 4121.123 and 4123.47</i>).
Electing to purchase reinsurance for the State Insurance Fund and other specified funds.	The Administrator (<i>R.C. 4123.351, 4123.82, and 4131.13</i>).	The Board (<i>R.C. 4123.351, 4123.82, and 4131.13</i>).
Appointment of the Bureau of Workers' Compensation Chief Investment Officer.	BWC, with the advice and consent of the Oversight Commission (<i>R.C. 1707.01 and 4123.441</i>).	The Administrator, with the advice and consent of the Board (<i>R.C. 1707.01 and 4123.441</i>).
Adopting rules regarding successor employer liability.	The Administrator, with the advice and consent of the Oversight Commission (<i>R.C. 4123.32</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.32</i>).
Appointing members of the Adjudicating Committee.	The Administrator (<i>R.C. 4123.291</i>).	The Board, based upon recommendations of the Actuarial Committee (<i>R.C. 4123.291</i>).
Establishing the fee for applications for a temporary variance from a Public Employment Risk Reduction Program standard.	The Oversight Commission (<i>R.C. 4167.09</i>).	The Board (<i>R.C. 4167.09</i>).

Oversight Commission and Bureau of Workers' Compensation Board of Directors

Currently the Oversight Commission consists of 11 members, five of whom are appointed by the Governor and represent employers, employees, organized labor, and the public. No more than three of these five members can belong to or

be affiliated with the same political party. The Oversight Commission also consists of two investment expert members, one member who is appointed by the Treasurer of State, and one who is appointed jointly by the President of the Senate and the Speaker of the House of Representatives. All of these members serve three-year terms and can serve a maximum of two full terms. The Oversight Commission also consists of four legislative members who serve in an advisory capacity to the Oversight Commission. (R.C. 4121.12(A), (D), and (E).)

Under existing law, the Oversight Commission must meet at least nine times a year. Members appointed by the Governor and the investment expert members receive \$2,000 per meeting that a member attends, except that that amount is capped at \$18,000 per year regardless of whether the member attends more than nine meetings that year. All members receive their necessary and reasonable expenses. (R.C. 4121.12(F).)

The bill abolishes the Oversight Commission and creates the Bureau of Workers' Compensation Board of Directors consisting of 15 members, 11 of which the Governor appoints. The Governor cannot appoint any current member of the Oversight Commission to serve as a member of the Board (Section 512.10). The Governor must appoint the following members to the Board:

- One individual who, on account of the individual's previous vocation, employment, or affiliations, can be classed as a representative of employees;
- Two individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employee organizations, and at least one of these two individuals must be a member of the executive committee of the largest statewide labor federation;
- Three individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of industry, one of whom represents self-insuring employers, one of whom employs 100 or more employees and is a compliant state fund employer, and one of whom employs less than 100 employees and is a compliant state fund employer;
- Two individuals who, because of their vocation, employment, or affiliations, can be classed as investment and securities experts who have experience with state workers' compensation funds or state pension funds;
- A certified public accountant;

- An actuary who is a member in good standing with the American Academy of Actuaries or who is an associate or fellow with the Society of Actuaries;
- An individual who represents the public who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of industry (R.C. 4121.12).

The bill prohibits the appointment of any person who, within three years immediately preceding appointment, has been employed by the BWC or by any person, partnership, or corporation that has provided to the BWC services of a financial or investment nature, including the management, analysis, supervision, or investment of assets (R.C. 4121.12(A)).

The Governor must appoint the initial members to the Board not later than 60 days after the bill's effective date. Board members serve three-year terms, and the bill staggers the terms of the initial appointees. Members may be reappointed, and the bill includes standard provisions for the filling of vacancies. (R.C. 4121.12(B).) Before entering upon the duties of office, each appointed member of the Board must take an oath of office and file a fiduciary bond in the office of the Secretary of State as required under continuing law for the Oversight Commission (R.C. 4121.12(E)).

The Board also includes the chairperson and ranking minority member of the standing committees of the House of Representatives and of the Senate to which legislation concerning Workers' Compensation Law normally are referred, or a designee of the chairperson or ranking minority member, provided that the designee is a member of the standing committee. Legislative members serve during the session of the General Assembly to which they are elected and for as long as they are members of the General Assembly. Legislative members must serve in an advisory capacity to the Board and have no voting rights on matters coming before the Board. Membership on the Board by legislative members is not to be deemed as holding a public office. (R.C. 4121.12(C).)

The Board must meet at least 12 times a year. Each Board member receives necessary and reasonable expenses and each of the members of the Board the Governor appoints receive \$2,500 per each month that the member attends a meeting, up to a maximum of \$30,000 per year regardless of the number of meetings the member attends. (R.C. 4121.12(D).)

The bill specifies that the Oversight Commission is abolished on the date the Governor appoints the last member to the Board (Section 512.10). The Board, under the bill, supercedes the Oversight Commission and its members and must

succeed to, have, and perform all the duties, powers, and obligations pertaining to the duties, powers, and obligations of the Oversight Commission and its members. For the purpose of the institution, conduct, and completion of matters relating to its succession, the Board is deemed to be the continuation of and successor under law to the Oversight Commission and its members. Under the bill, all rules, actions, determinations, commitments, resolutions, decisions, and agreements pertaining to those duties, powers, obligations, functions, and rights in force or in effect on the effective date of this provision continue in force and effect subject to any further lawful action thereon by the Board. The bill specifies that wherever the Oversight Commission or its members are referred to in any provision of law, or in any agreement or document that pertains to those duties, powers, obligations, functions, and rights, the reference is to the Board. (Section 512.10.)

Under the bill, all authorized obligations and supplements thereto of the Oversight Commission and its members pertaining to the duties, powers, and obligations transferred are binding on the Board, and nothing in the bill impairs the obligations or rights thereunder or under any contract. The abolition of the Oversight Commission and the transfer of the Oversight Commission's duties, powers, and obligations do not affect the validity of agreements or obligations made by the Oversight Commission or its members pursuant to the Workers' Compensation Law or any other provisions of law. (Section 512.10.)

In connection with the transfer of duties, powers, obligations, functions, and rights and abolition of the Oversight Commission, the bill automatically transfers all real property and interest therein, documents, books, money, papers, records, machinery, furnishings, office equipment, furniture, and all other property over which the Oversight Commission has control pertaining to the duties, powers, and obligations transferred and the rights of the Oversight Commission to enforce or receive any of the aforesaid to the Board without necessity for further action on the part of the Board. Additionally, under the bill, all appropriations or reappropriations made to the Oversight Commission for the purposes of the performance of its duties, powers, and obligations, are transferred to the Board to the extent of the remaining unexpended or unencumbered balance thereof, whether allocated or unallocated, and whether obligated or unobligated. (Section 512.10.)

Fiduciary responsibilities

Under current law, the voting members of the Oversight Commission, the Administrator, and the BWC Chief Investment Officer are the trustees of the State Insurance Fund (R.C. 4123.44). Additionally, current law specifies conflict of interest prohibitions and prohibits fiduciaries¹ from engaging in specified

¹ Continuing law defines a "fiduciary" as "a person who does any of the following: (1) exercises discretionary authority or control with respect to the management of the BWC

activities. Additionally, continuing law requires every fiduciary of the BWC to be bonded or insured for an amount of not less than \$1 million for loss by reason of acts of fraud or dishonesty (R.C. 4121.126 and 4121.127, not in the bill). Additionally, the Administrator, the voting members of the Oversight Commission, and the BWC Chief Investment Officer must file a disclosure statement with the appropriate ethics commission (R.C. 102.02 and 102.06). Under current law the Attorney General is the legal advisor for the Oversight Commission (R.C. 4121.128 and 4123.92). However, if a voting member of the Oversight Commission breaches the member's fiduciary duty to the BWC, the Attorney General may maintain a civil action against the member for harm resulting from that breach. Notwithstanding the designation of the Attorney General as legal advisor for the Oversight Commission, after being informed of an allegation that the entire Oversight Commission has breached its fiduciary duty, the Oversight Commission may retain independent legal counsel, including legal counsel provided by the Oversight Commission's fiduciary insurance carrier, to advise and represent the Oversight Commission. (R.C. 109.981.)

Under current law, if a member of the Oversight Commission is convicted of or pleads guilty to a felony, a theft offense, a violation of the duties and restrictions specified in the Ohio Elections Law (R.C. Chapter 102.), or other offenses relating to the performance of a person's duties in a public office, the office of that member is deemed vacant. A member who receives a bill of indictment for any of the aforementioned offenses is automatically suspended from the Oversight Commission pending resolution of the criminal matter. A person who has pleaded guilty to or been convicted of any of the aforementioned offenses is ineligible to be a member of the Oversight Commission. The bill makes these provisions applicable to the Board. (R.C. 4121.12(H).)

The bill names the voting members of the Board, the Administrator, and the BWC Chief Investment Officer as the trustees of the State Insurance Fund (R.C. 4123.44). The bill also transfers the fiduciary responsibilities of the Oversight Commission members to the Board members. Additionally, the Board members are subject to the same conflict of interest prohibitions as the Oversight Commission members. The Attorney General is the legal advisor for the Board, and the Attorney General may bring a civil action against a member of the Board or the Board itself for breach of fiduciary duty. (R.C. 109.981, 4121.126, and 4121.128, and R.C. 4121.127, not in the bill.)

or with respect to the management or disposition of its assets, (2) renders investment advice for a fee, directly or indirectly, with respect to money or property of the BWC, or (3) has discretionary authority or responsibility in the administration of the BWC" (R.C. 4121.127, not in the bill).

Duties

In addition to the duties specified under "Transfer of duties" above, the bill transfers the following duties from the Oversight Commission to the Board:

(1) Review progress of the BWC in meeting its cost and quality objectives and in complying with the Workers' Compensation Law.

(2) Issue an annual report on the cost and quality objectives of the BWC to the President of the Senate, the Speaker of the House of Representatives, and the Governor.

(3) Review all independent financial audits of the BWC.

(4) Study issues as requested by the Administrator or the Governor.

(5) Review and publish the investment policy no less than annually and make copies available to interested parties.

(6) Prohibit, on a prospective basis, any specific investment it finds contrary to the investment policy.

(7) 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.

(8) After opening a class but prior to the Administrator investing in that class, adopt rules establishing due diligence standards for BWC employees to follow when investing in that class and establish policies and procedures to review and monitor the performance and value of each investment class.

(9) Submit a report annually on the performance and value of each investment class to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.

(10) Advise and consent on specified rules the Administrator adopts and on specified programs the Administrator administers (see "Rule adoption and program administration," below).

The Oversight Commission currently is required to contract with an independent actuarial firm to assist the Oversight Commission in making recommendations to the Administrator regarding premium rates (R.C. 4121.12(G)(5)). The bill also transfers this duty to the Board, except that the Board must use the independent actuarial firm to assist the Board in determining premium rates. The Board also must contract with: (1) outside investment

counsel to assist the Investment Committee in fulfilling its duties and (2) an independent fiduciary counsel to assist the Board in the performance of its duties (R.C. 4121.12(F)(6)).

The bill requires the Board to meet with the Governor on an annual basis to discuss the Administrator's performance of the duties specified in the Workers' Compensation Law. The bill specifies that for purposes of Ohio's Open Meetings Law (R.C. 121.22, not in the bill), the meeting between the Governor and the Board to review the Administrator's performance is considered a meeting regarding the employment of the Administrator, and as such, can be held as an executive session. The bill also requires the Board, based upon recommendations of the Actuarial Committee, to establish the policy for all adjudicating procedures, including, but not limited to, specific criteria for manual premium rate adjustment (R.C. 4123.291).

Rule adoption

Under the bill, the Administrator must obtain the advice and consent of the Board rather than the Oversight Commission, as under existing law, when adopting rules regarding or providing for any of the following:

(1) For the Health Partnership Program and Qualified Health Plan System (R.C. 4121.12 and 4121.441);

(2) Regarding loans from the Long-Term Care Loan Fund and transferring money from the Safety and Hygiene Fund to the Long-Term Loan Care Fund (R.C. 4121.48);

(3) Regarding rehabilitation programs (R.C. 4121.67);

(4) Specifying the acts or omissions that constitute a violation of the prohibition against misrepresenting payroll and the penalties for such violations (R.C. 4123.25);

(5) Regarding the utilization of direct deposit (R.C. 4123.311);

(6) Governing the treatment of employers who violate the prohibition against causing an employer to fail to pay the employer's premium or assessment when due (R.C. 4123.50);

(7) Identifying medical conditions that have an historical record being allowed whenever included in a claim (R.C. 4123.511(A));

(8) Regarding furnishing medical, nurse, and hospital service and medicine to injured employees (R.C. 4123.66);

(9) Regarding the employment of persons who are blind and the inspection of their places of employment;

(10) Requiring a professional employer organization to provide security in the form of a bond or a line of credit assignable to BWC;

(11) Regarding the Public Employment Risk Reduction Program (PERRP), declining to adopt a federal Occupational Health and Safety Administration rule for PERRP, and adopting emergency standards, (R.C. 4121.12(F)(13)(c) (the bill), 4121.12(G)(8) (current law), 4167.02, 4167.07, 4167.08, 4167.11, and 4167.14).

Additional duties of the Administrator that require oversight

Under the bill, the Administrator must obtain the advice and consent of the Board rather than the Oversight Commission, as under existing law, when performing any of the following duties:

(1) Employing the Superintendent of the Division of Safety and Hygiene and directing the Superintendent and the employees of the Division in conducting investigations regarding preventing industrial accidents and promoting safe practices (R.C. 4121.12 and 4121.37);

(2) Adopting rules, taking measures, and making expenditures to aid claimants to return to work or assist in lessening or removing any resulting handicap (R.C. 4121.61);

(3) Adjusting the rate of disbursements from the Public Work-Relief Employees' Compensation Fund (R.C. 4127.07);

(4) Determining when premiums for the Marine Industry Fund and the Coal-Workers Pnuemoconiosis Fund must be paid (R.C. 4131.04 and 4131.14).

Working Committees

The bill creates the Workers' Compensation Audit Committee, Actuarial Committee, and Investment Committee (R.C. 4121.123). The Board appoints the members of each committee and, with the exception of specified Board members who must serve on a particular committee, the Board, by majority vote, may remove any committee member. The Board, by majority vote, must determine how often each committee will meet and report to the Board. The Board must appoint the members of each committee not later than 90 days after the bill's effective date (Section 512.20). The Board may create any committees in addition to these three committees that the Board determines are necessary to assist the Board in performing its duties (R.C. 4121.12(G)).

Audit Committee

The Audit Committee consists of at least three members, one of whom must be the certified accountant member of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Audit Committee and may appoint additional members who are not Board members, as the Board determines necessary. The Audit Committee must do all of the following:

- (1) Recommend to the Board an accounting firm to perform the annual audits required under continuing law;
- (2) Recommend an auditing firm for the Board to use when the Board elects to conduct additional audits permitted under continuing law;
- (3) Review the results of each annual audit and management review and, if any problems exist, assess the appropriate course of action to correct those problems and develop an action plan to correct those problems;
- (4) Monitor the implementation of any action plans created pursuant to (3) immediately above;
- (5) Review all internal audit reports on a regular basis. (R.C. 4121.123(A).)

Actuarial Committee

The Actuarial Committee consists of at least three members, one of whom must be the actuary member of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Actuarial Committee and may appoint additional members who are not Board members, as the Board determines necessary. In addition to the recommendations the Actuarial Committee must make to the Board as described under "**Transfer of duties**," above, the Actuarial Committee must review calculations on rate schedules and performance prepared by the actuarial consultants with whom the Board enters into a contract. (R.C. 4121.123(B).)

Investment Committee

The Investment Committee consists of at least four members, two of whom must be the investment and securities expert members of the Board. The Board, by majority vote, must appoint two additional Board members to serve on the Investment Committee and may appoint additional members who are not Board members. Each additional member the Board appoints must have at least one of the following qualifications: (1) experience managing another state's pension

funds or workers' compensation funds, (2) have represented an employee organization, or (3) special expertise that the Board determines is needed to make investment decisions.

The Investment Committee must develop the investment policy for the BWC funds² and submit the policy to the Board for approval. The Investment Committee must follow the same requirements concerning prohibited investments, opening investment classes, and limits on contracting that the Oversight Commission must follow under current law when developing the policy. Additionally, the Investment Committee must prohibit investing in specific investments in which the Board prohibits investment of the assets of the funds. (R.C. 4121.12(F)(6) and 4123.442.) The Investment Committee also must monitor implementation by the Administrator and BWC Chief Investment Officer of the investment policy approved by the Board and review the performance of the BWC Chief Investment Officer and any investment consultants retained by the Administrator to assure that the investments of the assets of the BWC are made in accordance with the investment policy approved by the Board and that the best possible return on investment is achieved. Additionally, the Investment Committee must recommend outside investment counsel with whom the Board may contract to assist the investment committee in fulfilling its duties. (R.C. 4121.123(C).)

Actions against the Board and Working Committees

Current law prohibits any injunction from being issued suspending or restraining any order, classification, or rate adopted by the Industrial Commission, or BWC, or any action of the Auditor of State, Treasurer of State, Attorney General, or the county auditor or county treasurer of any county, required to be taken by them or any of them by the Workers' Compensation Law. The bill applies this provision to the Board (R.C. 4123.21).

Current law specifies that, except for a gross abuse of discretion, neither the Oversight Commission, nor the individual members thereof, nor the Administrator incur any obligation or liability respecting the assessments for contributions for the Self-Insuring Employers' Guaranty Fund, the collection of premiums for the Coal-Workers Pneumoconiosis Fund or Marine Industry Fund, the administration and investment of those funds, or the payment of liabilities therefrom. The bill applies this provision to the Board. (R.C. 4123.351, 4131.06, and 4131.16).

The bill also prohibits an injunction from being issued suspending or restraining any order, classification, or rate adopted by the Board (R.C. 4123.21).

² "BWC funds" are those funds specified in the Workers' Compensation Law.

Additionally, the Board and the Actuarial Committee, rather than the Oversight Commission under current law, cannot incur any obligation or liability respecting the assessments for contributions for the Self-Insuring Employers' Guaranty Fund, the collection of premiums for the Coal-Workers Pneumoconiosis Fund or Marine Industry Fund, the administration and investment of those funds, or the payment of liabilities therefrom. (R.C. 4123.351, 4131.06, and 4131.16.)

Duties of the Administrator of Workers' Compensation

Under current law, the Administrator, with the advice and consent of the Oversight Commission, must classify occupations and industries, fix premium, contribution, and assessment rates, submit rules for the Oversight Commission's advice and consent regarding these classifications and rates, and determine the amount of each individual employer's premiums (for state fund employers), contributions (for public employers), and assessments (R.C. 4123.29, 4123.34, 4123.35, 4123.38 to 4123.41, 4127.07, 4131.04, and 4131.14). The Administrator under current law is responsible for maintaining a solvent State Insurance Fund and must adopt rules regarding the collection and maintenance of, and disbursements from, the fund (R.C. 4123.32 and 4123.34). Current law also allows the Administrator to retain the services of a recognized actuary on a consulting basis for the purpose of evaluating the actuarial soundness of premium rates and classifications and all other matters involving the administration of the State Insurance Fund. The expense of services provided by the actuary must be paid from the State Insurance Fund (R.C. 4123.47(C)).

The Administrator also establishes the overall administrative policy of the BWC and provides professional and clerical assistance to the Oversight Commission under existing law (R.C. 4121.12 and 4121.121). Additionally, the Administrator may hear appeals from the Adjudicating Committee's decisions (R.C. 4123.291).

As described under "**Transfer of Duties**" above, the bill transfers the Administrator's duty to classify occupations and industries and fix premium, contribution, and assessment rates to the Board. The bill also removes the ability of the Administrator to retain the services of a recognized actuary on a consulting basis (R.C. 4123.47). Additionally, the Administrator's duty to maintain a solvent State Insurance Fund and establish the overall BWC policy also are transferred to the Board. The Administrator, however, maintains the responsibility for determining the amount of each employer's premiums, contributions, and assessments, and also must continue to adopt rules with respect to the collection and disbursement of the fund (R.C. 4123.01, 4123.321, 4123.35, 4127.07, 4131.04, and 4131.14). The Administrator also must provide professional and clerical staff to the Board. Additionally, under the bill, Adjudicating Committee opinions can no longer be appealed to the Administrator (R.C. 4123.291). The bill

also requires the Administrator, in addition to the biennial budget the Administrator prepares and submits to the Director of the Office of Budget and Management under continuing law, to prepare and submit to the Board, for the Board's approval, an annual budget for internal operating purposes (R.C. 4121.121(B)(10)).

Studies of the Health Partnership Program and Group Rating Program

The bill requires the Administrator to perform an assessment of the Health Partnership Program (HPP) and of the Group Rating Program (Section 201.10). For both studies, the Administrator may enter into contracts with outside consultants to perform the assessments required under the bill. The Administrator, as appropriate, may work with the working committees (see "**Working Committees**," above), and must provide a summary of the assessments and present recommendations based on the assessments to the Board not later than 90 days after the last initial member of the Board is appointed.

The assessment of the HPP must include all of the following:

- (1) The adequacy and appropriateness of the compensation arrangement between the BWC and the managed care organizations (MCOs) participating in the program,
- (2) The scope and quality of the services provided by the MCOs,
- (3) The achieved claim cost avoidance, and
- (4) The increased return to work ratios.

The assessment of the Group Rating Program must include all of the following:

- (1) The actuarial soundness of the program;
- (2) The impact of the program on Ohio businesses, including both participating and nonparticipating businesses;
- (3) The rating equity of the program;
- (4) The impact of the group rating program on the State Insurance Fund as a whole; and
- (5) The impact of the program on base rates. (Section 201.10.)

Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission

The bill creates in the Office of the Inspector General the Office of Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission (R.C. 121.51). The Inspector General must hire the Deputy Inspector General. The Deputy Inspector General serves at the pleasure of the Inspector General. A person employed as the Deputy Inspector General must have the same qualifications as those specified in continuing law for the Inspector General.³ The Inspector General must provide professional and clerical assistance to the Deputy Inspector General. The Administrator must pay the costs incurred by the Deputy Inspector General, including the salaries of the Deputy Inspector General and employees of the office of the Deputy Inspector General.

The bill also abolishes the Internal Security Committee and transfers its duties to the office of the Deputy Inspector General. The Deputy Inspector General must therefore investigate all claims or cases of criminal violations, abuse of office, or misconduct on the part of employees of the BWC or Industrial Commission and must conduct a program of random review of the processing of workers' compensation claims. The Deputy Inspector General has the same powers and duties regarding matters concerning the BWC and the Industrial Commission as those specified in continuing law for the Inspector General, which includes receiving complaints, investigating the BWC and Industrial Commission, reporting suspected crimes, administering oaths, and obtaining subpoenas (R.C. 121.42, 121.43, and 121.45, not in the bill). Complaints may be filed with the Deputy Inspector General in the same manner as prescribed for complaints filed with the Inspector General under continuing law. All investigations conducted and reports issued by the Deputy Inspector General are public records unless made confidential or unless the Deputy Inspector General indicates the matter is confidential in accordance with procedures the Inspector General follows under continuing law (R.C. 121.44, not in the bill).

The members of the Industrial Commission, Board, Audit Committee, Actuarial Committee, and Investment Committee, and the Administrator and employees of the Industrial Commission and the BWC must cooperate with and

³ A person appointed to serve as the Inspector General cannot have been convicted, in this or any other state, of a felony or of any crime involving fraud, dishonesty, or moral turpitude, and must meet one of the following qualifications: (1) has at least five years experience as a law enforcement officer in this or any other state, (2) is admitted to the bar of this or any other state, (3) is certified as a certified public accountant in this or any other state, or (4) has at least five years service as the comptroller or similar officer of a public or private entity in this or any other state (R.C. 121.49, not in the bill).

provide assistance to the Deputy Inspector General in the performance of any investigation conducted by the Deputy Inspector General. In particular, those persons must make their premises, equipment, personnel, books, records, and papers readily available to the Deputy Inspector General. In the course of an investigation, the Deputy Inspector General may question any of those persons employed by the Industrial Commission or the Administrator and any other person transacting business with the Industrial Commission, the Board, the Audit Committee, the Actuarial Committee, the Investment Committee, the Administrator, or the BWC, and may inspect and copy any books, records, or papers in the possession of those entities, taking care to preserve the confidentiality of information contained in responses to questions or the books, records, or papers that are made confidential by law. In performing any investigation, the Deputy Inspector General must avoid interfering with the ongoing operations of the entities being investigated, except insofar as is reasonably necessary to successfully complete the investigation.

The Deputy Inspector General must deliver to the Board, the Administrator, the Industrial Commission, and the Governor any case for which remedial action is necessary. The Deputy Inspector General must maintain a public record of its activities to the extent permitted under the bill, ensuring that the rights of the parties involved in each case are protected, and, once every six months, must report to the Governor, the General Assembly, the Board, the Administrator, and Industrial Commission, the Deputy Inspector General's findings and the corrective actions subsequently taken in cases considered by the Deputy Inspector General.

The bill prohibits any person from disclosing any information that is designated as confidential in accordance with the bill or any confidential information that is acquired in the course of an investigation conducted under the bill to any person who is not legally entitled to disclosure of that information. (R.C. 121.51.)

Complete employer applications for coverage

The bill requires the Administrator, with the advice and consent of the Board, to adopt a rule that requires each employer, on the occasion of instituting workers' compensation coverage, to submit an application for coverage that completely provides all of the information required for the Administrator to establish coverage for that employer. The bill further specifies that an employer's failure to provide all of the information completely may be grounds for the Administrator to deny coverage for that employer (R.C. 4123.321(K)).

Public employers who fail to pay security deposit and premium

Under continuing law, when an employer institutes workers' compensation coverage, the employer must pay a premium security deposit that is based upon the amount of the employer's premium. Continuing law specifies procedures the Administrator must follow if the Administrator determines that a private employer is subject to the Workers' Compensation Law and has not paid the employer's premium security deposit and premium. The bill requires the Administrator, with regard to a public employer other than the state, a state university or college,⁴ or a state hospital,⁵ to follow the same procedures specified for a private employer who the Administrator determines is subject to the Workers' Compensation Law and has not paid the employer's premium security deposit and premium (R.C. 4123.37).

Failure to pay premiums or other assessments when due

The Administrator, with the advice and consent of the Board instead of the Oversight Commission as under current law, must adopt a rule specifying that an employer is covered under the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) if the employer pays the employer's premium security deposit and the employer's premium when due (R.C. 4123.32(B) and 4123.321(L) under the bill). An employer also is required to pay administrative assessments under the Workers' Compensation Law and may be required to pay other obligations under the law. If an employer fails to pay the employer's premium when due, the employer may be subject to a penalty, including a late fee penalty (R.C. 4123.32).

The bill requires the Administrator, with the advice and consent of the Board, to adopt rules that permit the Administrator, in addition to any other remedies permitted under the Workers' Compensation Law, to discontinue the coverage of an employer other than the state, a state university or college, or a state hospital if the employer fails to pay the employer's premium to the Administrator on or before its due date. The bill also requires the Administrator,

⁴ Under the bill, a "state university or college" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, the Northeastern Ohio Universities College of Medicine, the Ohio Agricultural Research and Development Center, and the Ohio State University Cooperative Extension Service (R.C. 4123.321 and R.C. 3345.12, not in the bill).

⁵ The bill defines "state hospital" as the Ohio State University Hospital and its ancillary facilities and the Medical University of Ohio at Toledo Hospital (R.C. 4123.321).

with the advice and consent of the Board, to adopt a rule that specifies that if after a final adjudication it is determined that an employer has failed to pay an obligation, billing, account, or assessment that is greater than \$1,000 on or before its due date, the Administrator may discontinue the employer's coverage in addition to any other remedies permitted in the Workers' Compensation Law (R.C. 4123.321(M) and (N)).

Charges to an employer's experience rating pending a final determination

Under continuing law, unless an exception applies, payments of compensation to a claimant or on behalf of a claimant as a result of any order issued under the Workers' Compensation Law commences upon the earlier of the following:

- (1) Fourteen days after the date the Administrator issues an order unless that order is appealed;
- (2) The date when the employer has waived the right to appeal a decision issued;
- (3) If no appeal of an order has been filed with the Bureau of Workers' Compensation or the Industrial Commission or to a court, the expiration of the time limitations for the filing of an appeal of an order;
- (4) The date of receipt by the employer of an order of a district hearing officer, a staff hearing officer, or the Industrial Commission (R.C. 4123.511).

Under continuing law, medical benefits are not payable until the earlier of the date of the issuance of the staff hearing officer's order or the date of the final administrative or judicial determination (R.C. 4123.511(I)). Current law also states that if, in a final administrative or judicial action, it is determined that payments of compensation or benefits, or both, made to or on behalf of a claimant should not have been made, the amount thereof is charged to the Surplus Fund and if the employer is a state fund employer, the amount is not charged to the employer's experience (R.C. 4123.512(H)).⁶

The bill requires the Administrator to charge an employer's experience immediately upon the payment of compensation or medical benefits, subject to

⁶ The Ohio Supreme Court held in *Arth Brass and Aluminum Castings Inc. v. Conrad* (2004), 104 Ohio St.3d 547, that the Administrator has the discretion to make compensation and medical benefit payments prior to a final determination, but the Administrator could not charge an employer's experience for medical benefit payments made to a claimant prior to a final adjudication (*Arth Brass* at ¶ 28 and ¶ 37).

any adjustment made to the employer's experience because it was ultimately determined that the claimant was not entitled to compensation or medical benefits. (R.C. 4123.511 and 4123.512.)

Labor-Management Advisory Council

Under current law, the Labor-Management Advisory Council must advise the Oversight Commission and the Administrator on the quality and effectiveness of rehabilitation services and make recommendations pertaining to BWC's rehabilitation program, including the operation of that program. The Council, under the bill, must advise the Board rather than the Oversight Commission. (R.C. 4121.70.)

HISTORY

ACTION	DATE
Introduced	---

h0100-i-127.doc/kl