



Am. H.B. 100*

127th General Assembly

(As Reported by H. Insurance)

(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.
- Requires the Board, in addition to the Administrator of Workers' Compensation, to safeguard and maintain the solvency of the State Insurance Fund.
- Creates the Workers' Compensation Council and specifies the Council's duties.
- Requires the Industrial Commission, Board, and Administrator to adopt all rules except those dealing with adjudicatory matters or establishing premium, assessment, or contribution rates in accordance with the

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

Administrative Procedure Act and to submit those rules to the Council for review.

- 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.).
- Requires the Governor and the Board to meet annually to evaluate the Administrator's performance.
- Requires the Board, based upon recommendations of the Actuarial Committee, to specify the policy for the Adjudicating Committee's procedures.
- 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 officers and employees, and regarding allegations of fraud committed by participants in the workers' compensation system.
- Requires the Administrator to pay death benefits from the Surplus Fund and not charge those payments to an employer's experience if the incident that caused an employee's death occurred through no fault of the employee, the employee's employer, or another employee of the employee's employer.
- Requires the Administrator to submit to the General Assembly an actuarial impact report on the payment of death benefits from the Surplus Fund as described above.
- Prohibits the Administrator, after June 30, 2007, from using the Micro Insurance Reserve Analysis System to determine the reserves used in establishing premium rates.

- 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 charge an employer's account for the payment of compensation and benefits after the employer waives or exhausts the employer's administrative appeals.
- Requires the Administrator to use the same procedures the Administrator uses to obtain payments from private employers when collecting payments from certain public employers.
- Allows organizations that sponsor more than one group plan to submit a single application that supplies all the information necessary for each group that the organization sponsors.
- Requires the Administrator, if a group rated employer's premium rate changed from the previous calculation of premium rates, to send a copy of the invoice with the rate revision to the third party administrator that administers the group plan for that employer's group.
- Prohibits the Administrator from placing a time limit for participation in the BWC Drug-Free Workplace Program until the Administrator adopts rules in accordance with the Administrative Procedure Act to establish a time limit.
- Requires a certified health care provider to extend to an employer participating in the \$5,000 Medical-Only Claim Program the same rates for services rendered under that program as the provider bills the Administrator for the same type of medical claim processed by BWC.

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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 the Bureau of Workers' Compensation (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 Workers' Compensation Council (see '**Workers' Compensation Council**,' below) and 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. The table is not exhaustive and does not specify all of the Board's duties under the bill or the Administrator's duties under the bill or continuing law.

<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 Administrator and 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 Administrator, with the advice and consent of the Board (R.C. 4123.29(A)).



<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</i>
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(A)(2), 4123.34, 4123.35, 4127.07, 4131.04, and 4131.14).	The Administrator, with the advice and consent of the Board (R.C. 119.01, 4123.29(A)(2), 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 Administrator, with the advice and consent of the Board (R.C. 4123.34(B)).
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 Administrator, with the advice and consent of the Board (R.C. 4123.32(E)).
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).	The Administrator, with the advice and consent of the Board (R.C. 4123.411).
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 (R.C. 4123.29(A)(3) and (4)).	The Administrator, with the advice and consent of the Board (R.C. 4123.29(A)(3) and (4)).
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 (R.C. 4123.29(B)(1)).	The Administrator, with the advice and consent of the Board (R.C. 4123.29(B)(1)).
Adopting rules to provide employer premium rebates and dividends.	The Administrator, with the advice and consent of the Oversight Commission (R.C. 4123.32(A)).	The Board, based upon recommendations of the Actuarial Committee (R.C. 4123.321).

<i>Duty</i>	<i>Who performs the duty under current law</i>	<i>Who performs the duty under the bill</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 Administrator, with the advice and consent of the Board (<i>R.C. 4121.121, 4123.34(C), and 4123.66</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>).
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>).
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 11 members who the Governor appoints with the advice and consent of the Senate. 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 member who, on account of the individual's previous vocation, employment, or affiliations, can be classed as a representative of employees;
- Two members 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 members who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employers, one of whom represents self-insuring employers, one of whom is a state fund employer who employs 100 or more employees, and one of whom is a state fund employer who employs less than 100 employees;

- Two members who, on account of their vocation, employment, or affiliations, can be classed as investment and securities experts who have experience in the management, analysis, supervision, or investment of assets, have experience with state workers' compensation funds or state pension funds, and are residents of this state;
- 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;
- A member who represents the public who, prior to the individual's appointment, has received compensation or benefits under the Workers' Compensation Law (R.C. 4121.12).

The bill prohibits the appointment of any person who, within one year 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. Board members serve at the pleasure of the Governor and may be removed from the Board by the Governor. 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 must meet at least 12 times a year. Each Board member receives necessary and reasonable expenses and an annual salary not to exceed \$60,000 payable on the following basis:

(1) A member receives \$2,500 per each month that the member attends a board meeting, up to a maximum of \$30,000 per year regardless of the number of meetings the member attends;

(2) If a member serves on the Audit Committee, Actuarial Committee, or Investment Committee, the member receives \$2,500 per each month the member attends one or more meetings of the committee on which the member serves, up to a maximum of \$30,000 per year regardless of the number of meetings held by a

committee during a year or the number of committees on which a member serves. (R.C. 4121.12(C).)

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 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 Board members, the Administrator, and the BWC Chief Investment Officer as the trustees of the State Insurance Fund (R.C. 4123.44).

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 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).

Under the bill, all Board members and the BWC Director of Investments must file a disclosure statement with the appropriate ethics commission, in addition to those persons required to do so under continuing law (R.C. 102.02). 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.)

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) Review all independent financial audits of the BWC.

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

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

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

(6) 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.

(7) 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.

(8) 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.

(9) 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 and additionally requires the Board to 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).

Annual report

Currently, the Oversight Commission must 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. The bill transfers this duty to the Board, requires the Board also to submit the annual report to the Workers' Compensation Council (see "**Workers' Compensation Council**," below), and expands the information that must be included in the report to include:

(1) A statement of the net assets available for the provision of compensation and benefits under the Workers' Compensation Law as of the last day of the fiscal year;

(2) A statement of any changes that occurred in the net assets available during the previous fiscal year;

(3) The following information for each of the six consecutive fiscal years occurring previous to the report:

- (a) A schedule of the net assets available for compensation and benefits;
- (b) The annual cost of the payment of compensation and benefits;
- (c) Annual administrative expenses incurred;

(d) Annual employer premiums allocated for the provision of compensation and benefits.

(4) A description of any significant changes that occurred during the six years for which the Board provided the information required under (3) above that affect the Board's ability to compare that information from year to year (R.C. 4121.12(E)(3)).

Bureau of Workers' Compensation Board of Directors Training Program

Under the bill the Board must develop and participate in a BWC Board of Directors Education Program that consists of an orientation component for newly appointed members and a continuing education component for board members who have served for at least one year. The program's curriculum must include education about each of the following topics: (1) Board member duties and responsibilities, (2) compensation and benefits paid pursuant to the Workers' Compensation Law, (3) ethics, (4) governance processes and procedures, (5) actuarial soundness, (6) investments, (7) any other subject matter the Board believes is reasonably related to a Board member's duties. The Board must submit the program to the Workers' Compensation Council for approval and must hold all sessions, classes, and other events for the program in Ohio. (R.C. 4121.12(E)(17) to (19).)

Actuarial reports and investigations

The bill requires the Board to contract to have prepared annually by or under the supervision of an actuary a report that consists of an actuarial valuation of the assets, liabilities, and funding requirements of the BWC funds.² The firm or person must prepare a report of the valuation and all of the information the bill specifies that the firm or actuary must include in the report. The firm or person must submit the report to the Board, and the Board must submit the report to the Workers' Compensation Council and the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation not later than the first day of September following the year for which the valuation was made. (R.C. 4121.125(C)(1) to (3) and (E).)

The Board also must have an actuary or a person who provides actuarial services under the supervision of an actuary, at such time as the Board determines, and at least once during the five-year period that commences on the bill's effective date and once within each five-year period thereafter, conduct an actuarial investigation of the experience of employers; the mortality, service, and injury rate

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

of employees; and the payment of temporary total disability, permanent partial disability, and permanent total disability to update the actuarial assumptions used in the annual valuation report described immediately above (R.C. 4121.125(C)(4)). The actuary or person whom the board designates to conduct the actuarial investigation must prepare a report that includes all of the information that the bill specifies the actuary or person must include in the report (R.C. 4121.125(F)). The actuary or person must submit the report to the Board, who then must submit this report to the Council and the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation not later than the first day of November following the fifth year of the period that the report covers (R.C. 4121.125(C)(5)).

Finally, the Board also must have prepared by or under the supervision of an actuary an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the workers' compensation system (R.C. 4121.125(C)(6)). The actuary or person whom the board designates to conduct the actuarial analysis must prepare a report that includes all of the information that the bill specifies must be included in that analysis (R.C. 4121.125(G)). The actuary or person must submit this report to the Board, who then must submit this report to the Legislative Service Commission, the standing committees of the House of Representatives and the Senate with primary responsibility for workers' compensation legislation, and the Council not later than 60 days after the date of introduction of the legislation (R.C. 4121.125(C)(7)).

All reports prepared by an actuary or person supervised by an actuary must be completed in accordance with the actuarial standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries (R.C. 4121.125(C)(2), (F), and (G)). The Board may, at any time, request an actuary to make any studies or actuarial valuations to determine the adequacy of the premium rates established by the Administrator, and may adjust those rates as recommended by the actuary. (R.C. 4121.125(H).)

Rule adoption

Under the bill, in addition to the rules specified under "**Transfer of duties**," above for which the Administrator must obtain the Board's advice and consent, 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(E)(13)(d) (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

In addition to the duties specified under "**Transfer of duties**," above for which the Administrator must obtain the Board's advice and consent, 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).

Workers' Compensation Council

The bill creates the Workers' Compensation Council consisting of the following 11 members:

(1) Three members of the Senate, appointed by the President of the Senate, not more than two of whom may be members of the same political party;

(2) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may be members of the same political party;

(3) Three members jointly appointed by the Senate President and the Speaker, not more than two of whom are members of the same political party, one of whom must represent employers, one of whom must represent employees, and one of whom must be a person who, prior to the person's appointment, has received workers' compensation or benefits. Of these three members, at least one must be a person with investment expertise.

(4) The chairperson of the Industrial Commission and the Administrator, who are nonvoting ex officio members of the Council (R.C. 4121.75(A) and (B)).

The President and the Speaker must make the initial appointments required under (1) and (2) above not later than 30 days after the bill's effective date. The legislative members of the Council must serve during their terms as members of the General Assembly. Notwithstanding the adjournment of the General Assembly of which the member is a member, or the expiration of the member's term as a member of such General Assembly, a member must continue in office subsequent to the expiration date of the member's term on the Council until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (R.C. 4121.75(C) and (E).)

The President and the Speaker must make the initial appointments required under (3) above not later than 90 days after the bill's effective date. These 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. 4121.75(D) and (E).)

The Attorney General is the legal advisor for the Council (R.C. 4121.128).

Administrative duties of the Council

The bill requires that meetings of the Council be called in the manner and at the times prescribed by rules adopted by the Council (R.C. 4121.76). A majority of the voting members of the Council constitutes a quorum and the Council cannot take action unless at least five voting members approve the action. The Council must organize by selecting a chairperson, vice-chairperson, and any other officers as it determines are necessary. The bill requires the Council to select the chairperson and vice-chairperson from the members of the Council who also are members of the General Assembly, and each of those members must serve as chairperson or vice-chairperson during their terms as members of the General Assembly. The Council must rotate the selection of the chairperson and vice-chairperson between the two houses. (R.C. 4121.76.)

The Council must adopt rules for the conduct of its business and the election of its officers, and must establish an office in Columbus separate from the BWC and Industrial Commission offices. Each member of the Council, before entering upon the member's official duties must take and subscribe to an oath of office, to uphold the Constitution and laws of the United States and Ohio and to perform the duties of the office honestly, faithfully, and impartially. Members of the Council appointed pursuant to (3) above serve without compensation but are reimbursed for their actual and necessary expenses incurred in the performance of their official duties. Legislative members do not receive compensation or expenses. (R.C. 4121.76.)

The Council must establish policies and procedures for purchasing goods and services on a competitive basis and maintaining tangible personal property. The policies and procedures must be designed to safeguard the use of funds received by the Council. An audit performed under the Auditor of State Law (R.C. Chapter 117.) must include a determination of the Council's compliance with those policies and procedures. The Council is not subject to the Office of Budget and Management Law, the Controlling Board Law, or the laws governing purchases or the hiring of personnel through the Department of Administrative Services (R.C. Chapter 123., 124., 125., 126., or 127.). (R.C. 4121.79.)

Under the bill the Council may appoint a director to manage and direct the duties of the staff of the Council. The director must be a person who has had training and experience in areas related to the duties of the Council. The Council may appoint professional, technical, and clerical employees as necessary, and

employ or hire on a consulting basis persons to provide actuarial, legal, investment, or other technical services required for the performance of the Council's duties. For purposes of the Collective Bargaining Law (R.C. Chapter 4117.), the bill states that Council employees must be considered employees of the General Assembly, and thus are not considered "public employees" for the purposes of that law. The Council may fix the compensation of the director and all other Council employees. (R.C. 4121.77.) The compensation of all Council employees and other expenses of the Council must be paid upon vouchers approved by the director and the chairperson of the Council (R.C. 4121.79). The Administrator must pay the Council's annual expenses. The bill requires the Council to prepare and submit to the Administrator on or before the 30th day of June of each year an itemized estimate of the amounts necessary to pay the Council's expenses (R.C. 4121.79).

Additionally, the bill permits the Council to require the members of the Industrial Commission, Board, Audit Committee, Actuarial Committee, and Investment Committee, the Administrator, and employees of the Commission and BWC, and any agency or official of this state or its political subdivisions to provide the Council with any information necessary to carry out its duties (R.C. 4121.77). The Council may administer oaths and hold public hearings at times and places within the state as necessary to accomplish the purposes of the law governing the Council. Also, the Council may establish regular reporting requirements for any report that the chairperson of the Commission, chairperson of the Board, members of the working committees, and the Administrator are required to submit to the Council. Additionally, the Council may request that the Auditor of State perform or contract for the performance of a financial or special audit of BWC and the workers' compensation system. (R.C. 4121.77.)

Duties of the Council

The bill requires the Council to do all of the following:

(1) Make an impartial review from time to time of all laws governing the administration and financing of the workers' compensation system under the Workers' Compensation Law and recommend to the General Assembly any changes it may find desirable with respect to compensation and benefits, sound financing of the cost of paying compensation and benefits, the prudent investment of funds, and the improvement of the language, structure, and organization of the relevant laws governing the workers' compensation system;

(2) Make an annual report to the Governor and General Assembly describing its evaluation and recommendations with respect to the operations of the Industrial Commission and the BWC and the BWC funds;

(3) Study all changes to the Workers' Compensation Law proposed to the General Assembly and report to the General Assembly on their probable costs, actuarial implications, and desirability as a matter of public policy;

(4) Review semiannually the investment policy approved by the Board for the operation of the investment program of the workers' compensation system, including a review of asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, relative volatility, and performance evaluation guidelines;

(5) Create a report that summarizes the Council's findings in the review conducted pursuant to (4) immediately above and submit that report to the Governor and General Assembly not later than 30 days after completing the review;

(6) Review, as the Council determines necessary, all financial, actuarial, and fiduciary audits performed on the BWC funds and BWC's actuarial policies;

(7) Have prepared by an independent actuary, at least once every ten years, an actuarial review of the annual actuarial valuations and quinquennial actuarial investigations prepared by the Board as described under "*Actuarial reports and investigations*," above, including a review of the actuarial assumptions and methods, the data underlying the valuations and investigations, and the adequacy of employer premium rates to amortize its unfunded actuarial liability, if any, and to support the payment of compensation and benefits under the Workers' Compensation Law;

(8) Submit to the Governor and the General Assembly a report summarizing the review required under (7) immediately above;

(9) Have conducted by an independent auditor at least once every ten years a fiduciary performance audit of the workers' compensation system, and require the Administrator to pay the costs associated with that audit;

(10) Review all proposed rules submitted to the Council as required under "*Administrative rule adoption*," below, provide each member of the Council a copy of those rules, and submit any recommendations concerning whether those rules should be approved to the Joint Committee on Agency Rule Review. (R.C. 4121.78.)

The Council, under the bill, must contract with an independent actuary to have that actuary perform an actuarial valuation of the assets, liabilities, and funding requirements of the BWC funds. The actuary with whom the Council contracts must prepare a report of the valuation in accordance with the standards

of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and must submit that report to the Council. The bill specifies the information that the actuary must include in the report. The Council must submit to the Governor and the General Assembly a report summarizing the valuation required under the bill not later than two years after the effective date of the law creating the Council. (Section 512.45.)

Administrative rule adoption

Under current law, the Administrative Procedure Act (R.C. Chapter 119.) does not apply to actions of the Industrial Commission or the BWC with respect to all matters of adjudication, and to the actions of the Industrial Commission and BWC under provisions of the Workers' Compensation Law requiring that a manual for health care provider reimbursement rates be created; establishing and revising premium, assessment, and contribution rates; establishing alternative and discount premium programs; and regarding the Administrator's investments of BWC Funds. (R.C. 119.01, 4121.32(D), 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, 4123.442, and 4131.14(B), (C), and (E).)

The bill requires the Industrial Commission, the Board, and the Administrator to adopt all rules in accordance with the Administrative Procedure Act except those rules concerning adjudicatory matters or establishing premium, contribution, or assessment rates. The Industrial Commission, the Board, and the Administrator also, at the time the Industrial Commission, Board, or Administrator submits the rules to JCARR, must submit those rules to the Council for the Council's review (see **Duties of the Council**," above). (R.C. 111.15, 119.01, 4121.03, 4121.12(E)(16), 4121.121(B)(22), and 4121.32(D).)

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. If a committee meets on the same day as the Board holds a meeting, the bill prohibits a member from being compensated for more than one meeting held on that day. 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 funds 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).)

Obligations and liabilities of the Board

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).

Preparation of internal operating budget by the Administrator of Workers' Compensation

The bill 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)).

Comprehensive reviews on rates and reserves

The bill requires the Administrator to have two comprehensive reviews performed: one of the base rate of premiums paid by all employers and of all the rating programs used by the Administrator, and one of the adequacy of the Surplus Fund and the general reserving methods used for the BWC funds. The Administrator must commission a reputable outside firm that the BWC has not retained to conduct similar reports over the five years preceding the bill's effective date to conduct these reviews. The bill specifies duties that the Administrator must perform for the first comprehensive review. The Administrator must provide a summary of these reviews and present recommendations based on the reviews to the General Assembly and Board within two years after the bill's effective date. (Section 512.50.)

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. 121.52). The Inspector General must appoint 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 Inspector General must certify to the Director of Budget and Management the costs incurred by the Deputy Inspector General, including the salaries of the employees assisting the Deputy Inspector General. The bill creates the Deputy Inspector General for BWC Fund in the state treasury, and the Director must transfer the amount certified to that fund from the appropriation made to the BWC from which expenditures for general administrative purposes are made. The Inspector General must use that fund to pay costs incurred by the Deputy Inspector General. (R.C. 121.52.)

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).

Duties of the Inspector General and the Deputy Inspector General

The bill abolishes the Internal Security Committee, which currently investigates all claims or cases of criminal violations, abuse of office, or misconduct on the part of BWC or Industrial Commission employees and instead requires the Deputy Inspector General to investigate wrongful acts or omissions that have been committed by or are being committed by officers or employees of the BWC and the Industrial Commission. The Deputy Inspector General must perform the same duties regarding matters concerning officers or employees of the BWC or the Industrial Commission as those specified in continuing law for the Inspector General (R.C. 121.53(A)(1) and (2) and 121.42 and 121.45, not in the bill).

Under the bill, the Deputy Inspector General also must investigate any activities that may constitute fraud that allegedly have been or are being committed by a participant in the workers' compensation system.⁴ After conducting an investigation for fraud, the Deputy Inspector General must report any suspected acts of fraud to the Inspector General (R.C. 121.53(A)(3) and (4)). If the Inspector General receives a report from the Deputy Inspector General, the Inspector General must report the allegation of fraud to the Administrator or the Industrial Commission only if the Inspector General believes that reporting the allegation has the potential to stop fraud (R.C. 121.53(C)).

The Deputy Inspector General must receive complaints as described under "**Complaint procedure**," below that allege that wrongful acts and omissions have been committed or are being committed by a BWC or Industrial Commission officer or that allege activities that may constitute fraud that have been or are being committed by a participant in the workers' compensation system. The bill requires the Deputy Inspector General to determine whether the information contained in those complaints allege facts that give reasonable cause to investigate, and, if so, investigate the complaint to determine if there is reasonable cause to believe that an alleged wrongful act or omission has been committed or is being committed by a BWC or Industrial Commission officer or employee or that activities that may constitute fraud have been or are being committed by a participant in the workers' compensation system. (R.C. 121.53(A)(5) and (6).)

⁴ The bill defines "participant in the workers' compensation system" as any of the following persons: (1) an employer subject to the Workers' Compensation Law, (2) a claimant for compensation or benefits under the Workers' Compensation Law, (3) a health care provider or managed care organization that provides services under the Workers' Compensation Law, or (4) a person investing the assets of BWC funds (R.C. 121.53(D)).

The bill requires the Deputy Inspector General to exercise the same powers as the Inspector General in administering oaths and obtaining subpoenas (R.C. 121.43, not in the bill, and 121.53(A)(7)).

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, and 121.53(B)).

Complaint procedure

The Inspector General, under the bill, must prescribe a form for complaints filed as described below. The Inspector General must provide a blank copy of the form to any person, free of charge. The bill specifies the information that the person making a complaint must include in that complaint. No complaint is defective, however, because it is not made on the form prescribed by the Inspector General (R.C. 121.55).

Under the bill, any person who (1) knows or has reasonable cause to believe that a BWC or Industrial Commission officer or employee has committed, or is in the process of committing, a wrongful act or omission, or (2) knows or has reasonable cause to believe that a participant in the workers' compensation system has committed, or is in the process of committing, an activity that may constitute fraud, may prepare and file a complaint with the Deputy Inspector General. The bill states that the preparation and filing of the complaint is in addition to any other report of the wrongful act or omission or the activity that may constitute fraud that the person is required by law to make. (R.C. 121.55.)

Cooperation by persons being investigated

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, and participants in the workers' compensation system must cooperate with and 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 (1) 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, (2) question any participant in the workers' compensation system, and (3) inspect and

copy any books, records, or papers in the possession of a person or participant the Deputy Inspector General questions, 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. (R.C. 121.54.)

Inspector General and Deputy Inspector General reports

At the conclusion of an investigation conducted by the Deputy Inspector General, 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. The Inspector General must include in the annual report required under continuing law a summary of the Deputy Inspector General's activities during the previous year (R.C. 121.56).

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. 121.56).

Specified death benefits not charged to an employer's experience

Under the bill, if an injury to an employee causes the employee's death, and the incident that resulted in the employee's injury occurred through no fault of the employee, the employee's employer, or another employee of the employee's employer, death benefits must be paid from the Surplus Fund in accordance with the requirements specified in continuing law (R.C. 4123.59, 4123.60, and 4123.61, not in the bill). The bill prohibits the Administrator from charging the payment of those benefits to the experience of the employee's employer. The Administrator annually must submit to the General Assembly a report evaluating the actuarial impact of the payment of benefits made pursuant to this provision. (R.C. 4123.592.)

Prohibition against the use of the MIRA program

The bill prohibits the Administrator from using the Micro Insurance Reserve Analysis System to determine the reserves for use in establishing premium rates assessed for the purposes of the Workers' Compensation Law after June 30, 2007. The bill states that a contract between the Administrator and a

vendor for the System in existence on the bill's effective date must expire in accordance with the terms of the contract, and the Administrator must not renew or extend that contract. (Section 512.70.)

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,⁵ or a state hospital,⁶ 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.,

⁵ 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).

⁶ 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).

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, 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. The bill prohibits the Administrator from discontinuing an employer's coverage prior to a final adjudication regarding the employer's failure to pay such obligation, billing, account, or assessment on or before its due date (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)).⁷

The bill requires the Administrator to charge an employer's experience immediately after an employer has exhausted the employer's administrative appeals or waived the employer's right to an administrative appeal under continuing law, subject to 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. 131.02, 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.)

Participation by hospitals in Long-Term Care Loan Fund Program

Continuing law requires the Administrator to operate the Long-Term Care Loan Fund Program. The Administrator must use the program to make loans without interest to employers that are nursing homes for the purpose of allowing those employers to purchase, improve, install, or erect sit-to-stand floor lifts, ceiling lifts, other lifts, and fast electric beds, and to pay for the education and training of personnel to implement a facility policy of no manual lifting of residents by employees. The Administrator, with the advice and consent of the Oversight Commission (the Board under the bill), may adopt rules for loan eligibility, maximum loan amounts, loan periods, default penalties, and any other

⁷ 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).

terms the Administrator considers necessary for a loan. The bill allows hospitals to participate in the program (R.C. 4121.48).

Administrative changes for group plans

Under continuing law, the Administrator, subject to the approval of the Oversight Commission, must offer to insure the obligations of employers under the Workers' Compensation Law under a group-rating plan that pools the risk of the employers within the group provided that the employers meet conditions specified in continuing law. (R.C. 4123.29(A)(4).) Organizations sponsor these employer groups. Under the bill, if an organization sponsors more than one employer group to participate in group plans, that organization may submit a single application that supplies all of the information necessary for each group of employers that the organization wishes to sponsor.

Additionally, at the time the Administrator revises premium rates, if the premium rate of an employer who participates in a group plan changes from the rate established for the previous year, the bill requires the Administrator, in addition to sending the invoice with the rate revision to that employer, to send a copy of that invoice to the third-party administrator that administers the group plan for that employer's group. (R.C. 4123.29(A)(4).)

Time limit for participation in the Drug-Free Workplace Program

The Administrator, under current law, has established a Drug-Free Workplace Program that allows a state fund employer to receive a discount for participating in the program. An employer may receive a discount under the program for five years (O.A.C. 4123-17-58). The bill prohibits the Administrator from placing a limit on the length of time that an employer may participate in the program until the Administrator adopts rules in accordance with the Administrative Procedure Act for the purpose of establishing the length of time that an employer may participate in that program (Section 512.60).

Provider rates under the \$5,000 Medical-Only Claim Program

Continuing law requires the Administrator to allow all state fund employers to participate in the \$5,000 Medical-Only Claim Program, and requires the Administrator to adopt rules to administer and implement the program (R.C. 4123.29(A)(6)). Under rules adopted by the Administrator, a participating employer must pay all bills as billed or agree upon an appropriate reimbursement level with the health care provider who provided services to the employer's employee under the program (O.A.C. 4123-17-59).

The bill requires a certified health care provider to extend to an employer who participates in this program the same rates for services rendered to an employee of that employer as the provider bills the Administrator for the same type of medical claim processed by BWC (R.C. 4123.29(A)(6)).

HISTORY

ACTION	DATE
Introduced	03-06-07
Reported, H. Insurance	---

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