

AN ACT

To amend sections 121.52, 4121.12, 4121.125, 4121.62, 4121.70, 4121.75, 4123.29, 4123.34, 4123.35, and 4123.82 of the Revised Code and to amend Section 512.45 of Am. Sub. H.B. 100 of the 127th General Assembly to create the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund; to create the Competitive Workers' Compensation Task Force; to make other changes to the Workers' Compensation Law; to make appropriations for the Bureau of Workers' Compensation and for the Workers' Compensation Council for the biennium beginning July 1, 2009, and ending June 30, 2011; and to provide authorization and conditions for the operation of the Bureau's and the Council's programs.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 101. That sections 121.52, 4121.12, 4121.125, 4121.62, 4121.70, 4121.75, 4123.29, and 4123.34, 4123.35, and 4123.82 of the Revised Code be amended to read as follows:

Sec. 121.52. There is hereby created in the office of the inspector general the office of deputy inspector general for the bureau of workers' compensation and industrial commission. The inspector general shall appoint the deputy inspector general, and the deputy inspector general shall serve at the pleasure of the inspector general. A person employed as the deputy inspector general shall have the same qualifications as those specified in section 121.49 of the Revised Code for the inspector general. The inspector general shall provide professional and clerical assistance to the deputy inspector general.

The deputy inspector general for the bureau of workers' compensation and the industrial commission shall investigate wrongful acts or omissions

that have been committed by or are being committed by officers or employees of the bureau of workers' compensation and the industrial commission. The deputy inspector general has the same powers and duties regarding matters concerning the bureau and the commission as those specified in sections 121.42, 121.43, and 121.45 of the Revised Code for the inspector general. Complaints may be filed with the deputy inspector general in the same manner as prescribed for complaints filed with the inspector general under section 121.46 of the Revised Code. All investigations conducted and reports issued by the deputy inspector general are subject to section 121.44 of the Revised Code.

There is hereby created in the state treasury the deputy inspector general for the bureau of workers' compensation and industrial commission fund, which shall consist of moneys deposited into it that the inspector general receives from the administrator of workers' compensation and receives from the industrial commission in accordance with this section. The inspector general shall use the fund to pay the costs incurred by the deputy inspector general in performing the duties of the deputy inspector general as required under this section.

The members of the industrial commission, bureau of workers' compensation board of directors, workers' compensation audit committee, workers' compensation actuarial committee, and workers' compensation investment committee, and the administrator ~~of workers' compensation~~, and employees of the industrial commission and the bureau shall 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 shall 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 person employed by the industrial commission or the administrator and any person transacting business with the industrial commission, the board, the audit committee, the actuarial committee, the investment committee, the administrator, or the bureau and may inspect and copy any books, records, or papers in the possession of those persons or 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 shall avoid interfering with the ongoing operations of the entities being investigated, except insofar as is reasonably necessary to successfully complete the investigation.

At the conclusion of an investigation conducted by the deputy inspector

general for the bureau of workers' compensation and industrial commission, the deputy inspector general shall deliver to the board, the administrator, the industrial commission, and the governor any case for which remedial action is necessary. The deputy inspector general shall maintain a public record of the activities of the office of the deputy inspector general to the extent permitted under this section, ensuring that the rights of the parties involved in each case are protected. The inspector general shall include in the annual report required under section 121.48 of the Revised Code a summary of the activities of the deputy inspector general during the previous year.

No person shall disclose any information that is designated as confidential in accordance with section 121.44 of the Revised Code or any confidential information that is acquired in the course of an investigation conducted under this section ~~121.53 of the Revised Code~~ to any person who is not legally entitled to disclosure of that information.

Sec. 4121.12. (A) There is hereby created the bureau of workers' compensation board of directors consisting of eleven members to be appointed by the governor with the advice and consent of the senate. One member shall be an individual who, on account of the individual's previous vocation, employment, or affiliations, can be classed as a representative of employees; two members shall be 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 shall be a member of the executive committee of the largest statewide labor federation; three members shall be individuals 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 one hundred or more employees, and one of whom is a state fund employer who employs less than one hundred employees; two members shall be individuals who, on account of their vocation, employment, or affiliations, can be classed as investment and securities experts who have direct experience in the management, analysis, supervision, or investment of assets and are residents of this state; one member who shall be a certified public accountant; one member who shall be 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; and one member shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers. The governor shall select the chairperson of the board who shall serve as chairperson at

the pleasure of the governor.

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

(B) Of the initial appointments made to the board, the governor shall appoint the member who represents employees, one member who represents employers, and the member who represents the public to a term ending one year after ~~the effective date of this amendment~~ June 11, 2007; one member who represents employers, one member who represents employee organizations, one member who is an investment and securities expert, and the member who is a certified public accountant to a term ending two years after ~~the effective date of this amendment~~ June 11, 2007; and one member who represents employers, one member who represents employee organizations, one member who is an investment and securities expert, and the member who is an actuary to a term ending three years after ~~the effective date of this amendment~~ June 11, 2007. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed.

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

(C) In making appointments to the board, the governor shall select the members from the list of names submitted by the workers' compensation board of directors nominating committee pursuant to this division. The nominating committee shall submit to the governor a list containing four separate names for each of the members on the board. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

~~Within sixty~~ At least thirty days ~~after~~ prior to a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the board, the nominating committee shall submit an initial list containing four names for each vacancy. Within fourteen days after the

submission of the initial list, the governor either shall appoint individuals from that list or request the nominating committee to submit another list of four names for each member the governor has not appointed from the initial list, which list the nominating committee shall submit to the governor within fourteen days after the governor's request. The governor then shall appoint, within seven days after the submission of the second list, one of the individuals from either list to fill the vacancy for which the governor has not made an appointment from the initial list. If the governor appoints an individual to fill a vacancy occurring as a result of the expiration of a term, the individual appointed shall begin serving as a member of the board when the term for which the individual's predecessor was appointed expires or immediately upon appointment by the governor, whichever occurs later. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the board.

In order for the name of an individual to be submitted to the governor under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

(D) All members of the board shall receive their reasonable and necessary expenses pursuant to section 126.31 of the Revised Code while engaged in the performance of their duties as members and also shall receive an annual salary not to exceed sixty thousand dollars in total, payable on the following basis:

(1) Except as provided in division (D)(2) of this section, a member shall receive two thousand five hundred dollars during a month in which the member attends one or more meetings of the board and shall receive no payment during a month in which the member attends no meeting of the board.

(2) A member may receive no more than thirty thousand dollars per year to compensate the member for attending meetings of the board, regardless of the number of meetings held by the board during a year or the number of meetings in excess of twelve within a year that the member attends.

(3) Except as provided in division (D)(4) of this section, if a member serves on the workers' compensation audit committee, workers' compensation actuarial committee, or the workers' compensation investment committee, the member shall receive two thousand five hundred dollars during a month in which the member attends one or more meetings of the committee on which the member serves and shall receive no payment during any month in which the member attends no meeting of that committee.

(4) A member may receive no more than thirty thousand dollars per year to compensate the member for attending meetings of any of the committees specified in division (D)(3) of this section, regardless of the number of meetings held by a committee during a year or the number of committees on which a member serves.

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

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

(F) The board shall:

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

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

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

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

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

(c) A statement of any changes that occurred in the net assets available, including employer premiums and net investment income, for the provision of compensation and benefits and payment of administrative expenses, between the first and last day of the fiscal year immediately preceding the date of the report;

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

(i) A schedule of the net assets available for compensation and benefits;

(ii) The annual cost of the payment of compensation and benefits;

(iii) Annual administrative expenses incurred;

(iv) Annual employer premiums allocated for the provision of

compensation and benefits.

(e) A description of any significant changes that occurred during the six years for which the board provided the information required under division (F)(3)(d) of this section that affect the ability of the board to compare that information from year to year.

(4) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.

(5) Study issues as requested by the administrator or the governor;

(6) Contract with all of the following:

(a) An independent actuarial firm to assist the board in making recommendations to the administrator regarding premium rates;

(b) An outside investment counsel to assist the workers' compensation investment committee in fulfilling its duties;

(c) An independent fiduciary counsel to assist the board in the performance of its duties.

(7) Approve the investment policy developed by the workers' compensation investment committee pursuant to section 4121.129 of the Revised Code if the policy satisfies the requirements specified in section 4123.442 of the Revised Code.

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

(9) Prohibit, on a prospective basis, any specific investment it finds to be contrary to the investment policy approved by the board.

(10) Vote to open each investment class and allow the administrator to invest in an investment class only if the board, by a majority vote, opens that class;

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

(12) Submit a report annually on the performance and value of each investment class to the governor, the president and minority leader of the senate, ~~and~~ the speaker and minority leader of the house of representatives, and the workers' compensation council.

(13) Advise and consent on all of the following:

(a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and

contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;

(b) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;

(c) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code;

(d) Rules the administrator submits to it pursuant to Chapter 4167. of the Revised Code regarding the public employment risk reduction program and the protection of public health care workers from exposure incidents.

As used in this division, "public health care worker" and "exposure incident" have the same meanings as in section 4167.25 of the Revised Code.

(14) Perform all duties required under this chapter and Chapters 4123., 4125., 4127., 4131., and 4167. of the Revised Code;

(15) Meet with the governor on an annual basis to discuss the administrator's performance of the duties specified in this chapter and Chapters 4123., 4125., 4127., 4131., and 4167. of the Revised Code;

(16) Develop and participate in a bureau of workers' compensation board of directors education program that consists of all of the following:

(a) An orientation component for newly appointed members;

(b) A continuing education component for board members who have served for at least one year;

(c) A curriculum that includes education about each of the following topics:

(i) Board member duties and responsibilities;

(ii) Compensation and benefits paid pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(iii) Ethics;

(iv) Governance processes and procedures;

(v) Actuarial soundness;

(vi) Investments;

(vii) Any other subject matter the board believes is reasonably related to the duties of a board member.

(17) Submit the program developed pursuant to division (F)(16) of this section to the workers' compensation council for approval;

(18) Hold all sessions, classes, and other events for the program developed pursuant to division (F)(16) of this section in this state.

(G) The board may do both of the following:

(1) Vote to close any investment class;

(2) Create any committees in addition to the workers' compensation audit committee, the workers' compensation actuarial committee, and the workers' compensation investment committee that the board determines are necessary to assist the board in performing its duties.

(H) The office of a member of the board who is convicted of or pleads guilty to a felony, a theft offense as defined in section 2913.01 of the Revised Code, or a violation of section 102.02, 102.03, 102.04, 2921.02, 2921.11, 2921.13, 2921.31, 2921.41, 2921.42, 2921.43, or 2921.44 of the Revised Code shall be deemed vacant. The vacancy shall be filled in the same manner as the original appointment. A person who has pleaded guilty to or been convicted of an offense of that nature is ineligible to be a member of the board. A member who receives a bill of indictment for any of the offenses specified in this section shall be automatically suspended from the board pending resolution of the criminal matter.

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

Sec. 4121.125. (A) The bureau of workers' compensation board of directors, based upon recommendations of the workers' compensation actuarial committee, may contract with one or more outside actuarial firms and other professional persons, as the board determines necessary, to assist the board in measuring the performance of Ohio's workers' compensation system and in comparing Ohio's workers' compensation system to other state and private workers' compensation systems. The board, actuarial firm or firms, and professional persons shall make such measurements and comparisons using accepted insurance industry standards, including, but not limited to, standards promulgated by the National Council on Compensation Insurance.

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

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

(1) Contract to have prepared annually by or under the supervision of an actuary a report that meets the requirements specified under division (E) of this section and that consists of an actuarial valuation of the assets, liabilities, and funding requirements of the state insurance fund and all other

funds specified in this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

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

(3) Submit the report referred to in division (C)(1) of this section 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~~ on or before the first day of ~~September~~ November following the year for which the valuation was made;

(4) 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 effective date of this amendment~~ September 10, 2007, and once within each five-year period thereafter, conduct an actuarial investigation of the experience of employers, the mortality, service, and injury rate of employees, and the payment of temporary total disability, permanent partial disability, and permanent total disability under sections 4123.56 to 4123.58 of the Revised Code to update the actuarial assumptions used in the report required by division (C)(1) of this section;

(5) Submit the report required under division (F) of this section 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;

(6) 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;

(7) Submit the report required under division (G) of this section 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 sixty days after the date of introduction of the legislation.

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

(1) Conduct of the measurements and comparisons described in division (A) of this section;

(2) Conduct of the management and financial audits and establishment of the principles and methods described in division (B) of this section.

(E) The firm or person with whom the board contracts pursuant to division (C)(1) of this section shall prepare a report of the valuation and submit the report to the board. The firm or person shall include all of the following information in the report that is required under division (C)(1) of this section:

(1) A summary of the compensation and benefit provisions evaluated;

(2) A summary of the census data and financial information used in the valuation;

(3) A description of the actuarial assumptions, actuarial cost method, and asset valuation method used in the valuation;

(4) A summary of findings that includes a statement of the actuarial accrued compensation and benefit liabilities and unfunded actuarial accrued compensation and benefit liabilities;

(5) A schedule showing the effect of any changes in the compensation and benefit provisions, actuarial assumptions, or cost methods since the previous annual actuarial valuation report was submitted to the board.

(F) The actuary or person whom the board designates to conduct an actuarial investigation under division (C)(4) of this section shall prepare a report of the actuarial investigation and shall submit the report to the board. The actuary or person shall prepare the report and make any recommended changes in actuarial assumptions in accordance with the actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The actuary or person shall include all of the following information in the report:

(1) A summary of relevant decrement and economic assumption experience;

(2) Recommended changes in actuarial assumptions to be used in subsequent actuarial valuations required by division (C)(1) of this section;

(3) A measurement of the financial effect of the recommended changes in actuarial assumptions.

(G) The actuary or person whom the board designates to conduct the actuarial analysis under division (C)(6) of this section shall prepare a report of the actuarial analysis and shall submit that report to the board. The actuary or person shall complete the analysis in accordance with the actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The actuary or person shall include all of the following information in the report:

(1) A summary of the statutory changes being evaluated;

(2) A description of or reference to the actuarial assumptions and actuarial cost method used in the report;

(3) A description of the participant group or groups included in the report;

(4) A statement of the financial impact of the legislation, including the resulting increase, if any, in employer premiums, in actuarial accrued liabilities, and, if an increase in actuarial accrued liabilities is predicted, the per cent of premium increase that would be required to amortize the increase in those liabilities as a level per cent of employer premiums over a period not to exceed thirty years.

(5) A statement of whether the employer premiums paid to the bureau of workers' compensation after the proposed change is enacted are expected to be sufficient to satisfy the funding objectives established by the board.

(H) 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 in accordance with sections 4123.29 and 4123.34 of the Revised Code, and may adjust those rates as recommended by the actuary.

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

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

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

Sec. 4121.62. (A) The authority granted to the administrator of workers' compensation pursuant to sections 4121.61 to 4121.69 of the Revised Code includes the authority to do all of the following:

(1) Contract with any public or private person for the rendition of rehabilitation services;

(2) Take actions and utilize money in the state insurance fund as

necessary to obtain federal funds and assistance in the maximum amounts and most advantageous proportions and terms possible;

(3) Conduct rehabilitation educational programs for employers and employees;

~~(4) Establish within the bureau of workers' compensation a rehabilitation division under the supervision of a director of rehabilitation appointed by and responsible to the administrator.~~

~~(B) The director of the division established is in the unclassified civil service of the state. The appointing authority may designate up to three positions at each facility under the jurisdiction of the division, and up to six positions in the division which are part of the director's immediate staff as being in the unclassified service of the state as long as the administrator determines that the positions are primarily and distinctively administrative, managerial, or professional. All other full-time employees of the division are in the classified civil service.~~

~~(C) The administrator shall establish fees for use of services offered by the division of rehabilitation, including, without limitation, the expense of providing rehabilitation services, counseling, and training. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, which establish the specific services the division offers and the amount of the fee for those services, which amount shall be based upon the actual cost of the division providing the services to the employer and employee.~~

~~(D) Nothing in sections 4121.61 to 4121.69 of the Revised Code shall be interpreted to grant authority to the administrator to require a claimant to utilize a public provider of rehabilitation services, counseling, or training.~~

Sec. 4121.70. (A) There is hereby created the labor-management government advisory council consisting of ~~twelve~~ fifteen members appointed as follows:

(1) The governor, with the advice and consent of the senate, shall appoint three members who, by training and vocation, are representative of labor and three members who, by training and vocation, are representative of employers.

(2) Ex officio, the chairpersons of the standing committees of the house of representatives and the senate to which legislation concerned with workers' compensation is customarily referred. A chairperson may designate the vice-chairperson of the committee to serve instead.

(3) One person who by training and vocation represents labor and one person who by training and vocation represents employers of differing political parties appointed by the speaker of the house of representatives.

(4) One person who by training and vocation represents labor and one

person who by training and vocation represents employers of differing political parties appointed by the president of the senate.

(5) One person who by training and vocation represents nonprofit vocational rehabilitation services providers that deliver services to injured workers, appointed by the speaker of the house of representatives;

(6) One person who by training and vocation represents nonprofit vocational rehabilitation services providers that deliver services to injured workers, appointed by the president of the senate;

(7) The governor, with the advice and consent of the senate, shall appoint one member who, by training and vocation, represents a nonprofit association of vocational rehabilitation services providers that deliver services to injured workers.

(B) Members appointed by the governor shall serve for a term of six years with each term ending on the same day of the year in which the member was first appointed, except that each member shall serve for a period of sixty additional days at the end of the member's term or until the member's successor is appointed and qualifies, whichever date occurs first. Of the members first appointed to the council by the governor, one member each representing labor and management shall serve an initial term of two years, one member each representing labor and management shall serve a term of four years, and the remaining two members shall serve full six-year terms. The members initially appointed by the speaker of the house of representatives and the president of the senate shall serve a term of six years. Thereafter, members shall be appointed to and serve full six-year terms. Members are eligible for reappointment to any number of additional terms.

Legislative members shall serve a term that coincides with the two-year legislative session in which they are first appointed with each term ending on the thirty-first day of December of the even-numbered year. Legislative members are eligible for reappointment.

Vacancies on the council shall be filled in the same manner as the original appointment. All members of the council shall serve without additional compensation but shall be reimbursed by the bureau of workers' compensation for actual and necessary expenses.

The council shall advise the bureau of workers' compensation board of directors and the administrator of workers' compensation on the quality and effectiveness of rehabilitation services and make recommendations pertaining to the bureau's rehabilitation program, including the operation of that program.

~~The labor management government advisory council shall recommend~~

~~to the administrator three candidates for the position of director of rehabilitation. The candidates shall be chosen for their ability and background in the field of rehabilitation. The administrator shall select a director from the list of candidates.~~

Sec. 4121.75. (A) There is hereby created in the legislative branch of government the workers' compensation council, which is created for the purpose of reviewing the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system. The council shall not be involved in the daily operations and oversight of the bureau of workers' compensation or the industrial commission. Members of the council shall be appointed as follows:

(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) Five members jointly appointed by the president of the senate and the speaker of the house of representatives, not more than three of whom shall be members of the same political party, one of whom~~ One member, appointed by the speaker of the house of representatives, who shall represent employers who employ one hundred or more employees, one of whom;

~~(4) One member, appointed by the president of the senate, shall represent employers who employ less than one hundred employees, one of whom;~~

~~(5) One member, appointed by the speaker of the house of representatives, who shall represent employees, one of whom;~~

~~(6) One member, appointed by the president of the senate, who shall represent injured workers, and one of whom;~~

~~(7) One member, who shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers and who the speaker of the house of representatives and the president of the senate, shall alternate in the appointment of for a term. Of these~~

~~(8) Of the five members appointed in divisions (A)(3), (4), (5), (6), and (7) of this section, at least one shall be a person with investment expertise.~~

(B) The council also shall consist of the chairperson of the industrial commission and the administrator of workers' compensation, who shall be nonvoting ex officio members of the council.

(C) The president of the senate and the speaker of the house of representatives shall make the initial appointments required under divisions (A)(1) and (2) of this section not later than thirty days after September 10, 2007. The members of the council who are appointed from the membership of the senate and the house of representatives shall 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 shall 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 sixty days has elapsed, whichever occurs first.

(D) The president of the senate and the speaker of the house of representatives shall make the initial appointments required under division (A)(3) of this section not later than ninety days after September 10, 2007. Of these initial appointments to the council, one member shall be appointed for a term ending one year after September 10, 2007, two members shall be appointed for terms ending two years after September 10, 2007, and two members shall be appointed for terms ending three years after September 10, 2007. Thereafter, terms shall be for three years, except for the term of the member appointed under division (A)(7) of this section who shall serve a term of two years, with each term ending on the same day of the same month as did the term that it succeeds. Each member appointed under ~~division~~ divisions (A)(3), (4), (5), (6), and (7) of this section shall hold office from the date of appointment until the end of the term for which the appointment was made. Members may be reappointed. Any member appointed pursuant to ~~division~~ divisions (A)(3), (4), (5), (6), and (7) of this section to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Each member appointed pursuant to ~~division~~ divisions (A)(3), (4), (5), (6), and (7) of this section shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office ~~or until a period of sixty days has elapsed, whichever occurs first.~~

(E) Vacancies shall be filled in the manner prescribed for original appointments.

Sec. 4123.29. (A) The administrator of workers' compensation, subject to the approval of the bureau of workers' compensation board of directors, shall do all of the following:

(1) Classify occupations or industries with respect to their degree of hazard and determine the risks of the different classes according to the

categories the national council on compensation insurance establishes that are applicable to employers in this state;

(2)(a) Fix the rates of premium of the risks of the classes based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter and to maintain a state insurance fund from year to year. The administrator shall set the rates at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the administrator, is not an adequate measure for determining the premium to be paid for the degree of hazard, the administrator may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in this chapter reference is made to payroll or expenditure of wages with reference to fixing premiums, the reference shall be construed to have been made also to such other basis for fixing the rates of premium as the administrator may determine under this section.

(b) If an employer elects to obtain other-states' coverage pursuant to section 4123.292 of the Revised Code through either the administrator, if the administrator elects to offer such coverage, or an other-states' insurer, calculate the employer's premium for the state insurance fund in the same manner as otherwise required under division (A) of this section and section 4123.34 of the Revised Code, except that when the administrator determines the expenditure of wages, payroll, or both upon which to base the employer's premium, the administrator shall use only the expenditure of wages, payroll, or both attributable to the labor performed and services provided by that employer's employees when those employees performed labor and provided services in this state only and to which the other-states' coverage does not apply.

(c) The administrator in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set.

(3) Develop and make available to employers who are paying premiums to the state insurance fund alternative premium plans. Alternative premium plans shall include retrospective rating plans. The administrator may make available plans under which an advanced deposit may be applied against a specified deductible amount per claim.

(4)(a) Offer to insure the obligations of employers under this chapter under a plan that groups, for rating purposes, employers, and pools the risk of the employers within the group provided that the employers meet all of the following conditions:

(i) All of the employers within the group are members of an

organization that has been in existence for at least two years prior to the date of application for group coverage;

(ii) The organization was formed for purposes other than that of obtaining group workers' compensation under this division;

(iii) The employers' business in the organization is substantially similar such that the risks which are grouped are substantially homogeneous;

(iv) The group of employers consists of at least one hundred members or the aggregate workers' compensation premiums of the members, as determined by the administrator, are expected to exceed one hundred fifty thousand dollars during the coverage period;

(v) The formation and operation of the group program in the organization will substantially improve accident prevention and claims handling for the employers in the group;

(vi) Each employer seeking to enroll in a group for workers' compensation coverage has an industrial insurance account in good standing with the bureau of workers' compensation such that at the time the agreement is processed no outstanding premiums, penalties, or assessments are due from any of the employers.

(b) If an organization sponsors more than one employer group to participate in group plans established under this section, 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.

(c) In providing employer group plans under division (A)(4) of this section, the administrator shall consider an employer group as a single employing entity for purposes of group rating. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage under this division.

(d) At the time the administrator revises premium rates pursuant to this section and section 4123.34 of the Revised Code, if the premium rate of an employer who participates in a group plan established under this section changes from the rate established for the previous year, the administrator, in addition to sending the invoice with the rate revision to that employer, shall send a copy of that invoice to the third-party administrator that administers the group plan for that employer's group.

(e) In providing employer group plans under division (A)(4) of this section, the administrator shall establish a program designed to mitigate the impact of a significant claim that would come into the experience of a private, state fund group-rated employer for the first time and be a contributing factor in that employer being excluded from a group-rated plan.

The administrator shall establish eligibility criteria and requirements that such employers must satisfy in order to participate in this program. For purposes of this program, the administrator shall establish a discount on premium rates applicable to employers who qualify for the program.

(f) In no event shall division (A)(4) of this section be construed as granting to an employer status as a self-insuring employer.

(g)(i) An employer that is merging operations with another employer shall notify the administrator of workers' compensation of the merger not more than thirty days after the merger takes effect.

(ii) If the administrator receives a notice from one or more employers of a merger of operations between those employers as described in division (A)(4)(f)(i) of this section, and if any employer involved in the merger participates in a group plan established under this section, the administrator shall provide a written notice to the organization that sponsors and the third party administrator that administers the group plan in which an employer who is involved in the merger participates informing that organization and the third party administrator about the merger.

(iii) The administrator shall comply with the notice requirements of division (A)(4)(f)(i) of this section relative to every employer that participates in a group plan that is involved in a merger about which the administrator receives a notice described in that division.

~~(g)(h)~~ The administrator shall develop classifications of occupations or industries that are sufficiently distinct so as not to group employers in classifications that unfairly represent the risks of employment with the employer.

(5) Generally promote employer participation in the state insurance fund through the regular dissemination of information to all classes of employers describing the advantages and benefits of opting to make premium payments to the fund. To that end, the administrator shall regularly make employers aware of the various workers' compensation premium packages developed and offered pursuant to this section.

(6) Make available to every employer who is paying premiums to the state insurance fund a program whereby the employer or the employer's agent pays to the claimant or on behalf of the claimant the first fifteen thousand dollars of a compensable workers' compensation medical-only claim filed by that claimant that is related to the same injury or occupational disease. No formal application is required; however, an employer must elect to participate by telephoning the bureau after July 1, 1995. Once an employer has elected to participate in the program, the employer will be responsible for all bills in all medical-only claims with a date of injury the

same or later than the election date, unless the employer notifies the bureau within fourteen days of receipt of the notification of a claim being filed that it does not wish to pay the bills in that claim, or the employer notifies the bureau that the fifteen thousand dollar maximum has been paid, or the employer notifies the bureau of the last day of service on which it will be responsible for the bills in a particular medical-only claim. If an employer elects to enter the program, the administrator shall not reimburse the employer for such amounts paid and shall not charge the first fifteen thousand dollars of any medical-only claim paid by an employer to the employer's experience or otherwise use it in merit rating or determining the risks of any employer for the purpose of payment of premiums under this chapter. A certified health care provider shall 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 the bureau and shall not charge, assess, or otherwise attempt to collect from an employee any amount for covered services or supplies that is in excess of that rate. If an employer elects to enter the program and the employer fails to pay a bill for a medical-only claim included in the program, the employer shall be liable for that bill and the employee for whom the employer failed to pay the bill shall not be liable for that bill. The administrator shall adopt rules to implement and administer division (A)(6) of this section. Upon written request from the bureau, the employer shall provide documentation to the bureau of all medical-only bills that they are paying directly. Such requests from the bureau may not be made more frequently than on a semiannual basis. Failure to provide such documentation to the bureau within thirty days of receipt of the request may result in the employer's forfeiture of participation in the program for such injury. The provisions of this section shall not apply to claims in which an employer with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation or total disability.

(B) The administrator shall supply an employer, at the time the employer institutes coverage under this chapter and first selects a managed care organization under the health partnership program, with a list of all groups participating in the group rating program created pursuant to this section and a list of all premium discount programs offered by the administrator pursuant to this chapter.

(C) The administrator, with the advice and consent of the board, by rule, may do both of the following:

- (1) Grant an employer who makes the employer's semiannual premium

payment at least one month prior to the last day on which the payment may be made without penalty, a discount as the administrator fixes from time to time;

(2) Levy a minimum annual administrative charge upon risks where semiannual premium reports develop a charge less than the administrator considers adequate to offset administrative costs of processing.

(D) The administrator shall adopt a rule that sets an estimated discount for programs or alternative premium plans not later than the first day of September prior to the policy year in which the premium rate is to be in effect and shall adopt a rule that sets the actual discount for programs or alternative premium plans not later than the first day of January of the year in which the discount for programs or alternative premium plans is to be in effect, except for the premium year starting July 1, 2010, in which case the rule that sets the estimate shall not be adopted.

Sec. 4123.34. It shall be the duty of the bureau of workers' compensation board of directors and the administrator of workers' compensation to safeguard and maintain the solvency of the state insurance fund and all other funds specified in this chapter and Chapters 4121., 4127., and 4131. of the Revised Code. The administrator, in the exercise of the powers and discretion conferred upon the administrator in section 4123.29 of the Revised Code, shall fix and maintain, with the advice and consent of the board, for each class of occupation or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury, occupational disease, and death that the administrator authorizes to be paid from the state insurance fund for the benefit of injured, diseased, and the dependents of killed employees. In establishing rates, the administrator shall take into account the necessity of ensuring sufficient money is set aside in the premium payment security fund to cover any defaults in premium obligations. The administrator shall observe all of the following requirements in fixing the rates of premium for the risks of occupations or industries:

(A) The administrator shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries, occupational disease, and death of employees thereof, and also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries, occupational disease, and death of the employees of the employer.

(B) ~~Ten per cent~~ A portion of the money paid into the state insurance

fund shall be set aside for the creation of a surplus ~~until the surplus amounts to the sum of one hundred thousand dollars, after which time, whenever necessary in the judgment of the administrator to guarantee a solvent fund account within the state insurance fund, a sum not exceeding five per cent of all the money paid into the state insurance fund shall be credited to the surplus fund.~~ Any references in this chapter or in Chapter 4121., 4125., 4127., or 4131. of the Revised Code to the surplus fund, the surplus created in this division, the statutory surplus fund, or the statutory surplus of the state insurance fund are hereby deemed to be references to the surplus fund account. The administrator may transfer the portion of the state insurance fund to the surplus fund account as the administrator determines is necessary to satisfy the needs of the surplus fund account and to guarantee the solvency of the state insurance fund and the surplus fund account. In addition to all statutory authority under this chapter and Chapter 4121. of the Revised Code, the administrator has discretionary and contingency authority to make charges to the surplus fund account. The administrator shall account for all charges, whether statutory, discretionary, or contingency, that the administrator may make to the surplus fund account. A revision of basic rates shall be made annually on the first day of July.

Notwithstanding any provision of the law to the contrary, one hundred eighty days after the effective date on which self-insuring employers first may elect under division (D) of section 4121.66 of the Revised Code to directly pay for rehabilitation expenses, the administrator shall calculate the deficit, if any, in the portion of the surplus fund account that is used for reimbursement to self-insuring employers for all expenses other than handicapped reimbursement under section 4123.343 of the Revised Code. The administrator, from time to time, may determine whether the surplus fund account has such a deficit and may assess all self-insuring employers who participated in the portion of the surplus fund account during the accrual of the deficit and who during that time period have not made the election under division (D) of section 4121.66 of the Revised Code the amount the administrator determines necessary to reduce the deficit.

Revisions of basic rates shall be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the administrator in the administration of this chapter, as shown by the accounts kept as provided in this section, excluding the experience of employers that are no longer active if the administrator determines that the inclusion of those employers would have a significant negative impact on the remainder of the employers in a particular manual classification; and the administrator shall adopt rules, with the advice and

consent of the board, governing rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

(C) The administrator may apply that form of rating system that the administrator finds is best calculated to merit rate or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident and occupational disease experience, and may encourage and stimulate accident prevention. The administrator shall develop fixed and equitable rules controlling the rating system, which rules shall conserve to each risk the basic principles of workers' compensation insurance.

(D) The administrator, from the money paid into the state insurance fund, shall set aside into an account of the state insurance fund titled a premium payment security fund sufficient money to pay for any premiums due from an employer and uncollected that are in excess of the employer's premium security deposit.

The fund shall be in the custody of the treasurer of state. All investment earnings of the fund shall be deposited in the fund. Disbursements from the fund shall be made by the bureau of workers' compensation upon order of the administrator to the state insurance fund. The use of the moneys held by the premium payment security fund is restricted to reimbursement to the state insurance fund of premiums due and uncollected in excess of an employer's premium security deposit. The moneys constituting the premium payment security fund shall be maintained without regard to or reliance upon any other fund. This section does not prevent the deposit or investment of the premium payment security fund with any other fund created by this chapter, but the premium payment security fund is separate and distinct for every other purpose and a strict accounting thereof shall be maintained.

(E) The administrator may grant discounts on premium rates for employers who meet either of the following requirements:

(1) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization or make periodic safety inspections of the workplace.

(2) Successfully complete a loss prevention program prescribed by the superintendent of the division of safety and hygiene and conducted by the division or by any other person approved by the superintendent.

(F)(1) In determining the premium rates for the construction industry the administrator shall calculate the employers' premiums based upon the actual remuneration construction industry employees receive from construction industry employers, provided that the amount of remuneration the administrator uses in calculating the premiums shall not exceed an

average weekly wage equal to one hundred fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code.

(2) Division (F)(1) of this section shall not be construed as affecting the manner in which benefits to a claimant are awarded under this chapter.

(3) As used in division (F) of this section, "construction industry" includes any activity performed in connection with the erection, alteration, repair, replacement, renovation, installation, or demolition of any building, structure, highway, or bridge.

(G) Commencing with the bureau of workers' compensation policy year beginning on July 1, 2010, the administrator shall offer a workplace safety program to all employers, whether or not the employers participate in a group as described in division (A)(4) of section 4123.29 of the Revised Code. The administrator shall provide any employer who participates in the workplace safety program a discount on the employer's premiums of not less than two per cent.

(H) Commencing with the bureau of workers' compensation policy year beginning on July 1, 2010, the administrator shall offer a drug free workplace program to all employers, whether or not the employers participate in a group as described in division (A)(4) of section 4123.29 of the Revised Code. The administrator shall provide any employer who participates in the drug free workplace program a discount of not less than three per cent per year on the employer's premiums for each year the employer participates in the program.

(I) The administrator of workers' compensation shall not place a limit on the length of time that an employer may participate in the bureau of workers' compensation drug free workplace and workplace safety programs.

Sec. 4123.35. (A) Except as provided in this section, every employer mentioned in division (B)(2) of section 4123.01 of the Revised Code, and every publicly owned utility shall pay semiannually in the months of January and July into the state insurance fund the amount of annual premium the administrator of workers' compensation fixes for the employment or occupation of the employer, the amount of which premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay semiannually a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator, and a receipt or certificate certifying that payment has been made, along with a written notice as is required in section 4123.54 of the Revised Code, shall be mailed immediately to the employer by the bureau of

workers' compensation. The receipt or certificate is prima-facie evidence of the payment of the premium, and the proper posting of the notice constitutes the employer's compliance with the notice requirement mandated in section 4123.54 of the Revised Code.

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

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

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

The administrator shall adopt rules to permit employers to make periodic payments of the semiannual premium due under this division. The rules shall include provisions for the assessment of interest charges, where appropriate, and for the assessment of penalties when an employer fails to make timely premium payments. An employer who timely pays the amounts due under this division is entitled to all of the benefits and protections of this chapter. Upon receipt of payment, the bureau immediately shall mail a receipt or certificate to the employer certifying that payment has been made, which receipt is prima-facie evidence of payment. Workers' compensation coverage under this chapter continues uninterrupted upon timely receipt of payment under this division.

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

(B) Employers who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is

provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application.

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

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

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

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

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

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

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

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

(g) The employer's proposed plan to inform employees of the change from a state fund insurer to a self-insuring employer, the procedures the

employer will follow as a self-insuring employer, and the employees' rights to compensation and benefits; and

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

The administrator may waive the requirements of divisions (B)(1)(a) and (b) of this section and the requirement of division (B)(1)(e) of this section that the financial records, documents, and data be certified by a certified public accountant. The administrator shall adopt rules establishing the criteria that an employer shall meet in order for the administrator to waive the requirement of division (B)(1)(e) of this section. Such rules may require additional security of that employer pursuant to division (E) of section 4123.351 of the Revised Code.

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

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

(a) For the two-year period preceding application under this section, the public employer has maintained an unvoted debt capacity equal to at least two times the amount of the current annual premium established by the administrator under this chapter for that public employer for the year immediately preceding the year in which the public employer makes application under this section.

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

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

2-12.

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

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

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

(g) On the date of application, the public employer holds a debt rating of Aa3 or higher according to Moody's investors service, inc., or a comparable rating by an independent rating agency similar to Moody's investors service, inc.

(h) The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected claims under this chapter for the applicable period of time, as determined by the administrator.

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

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

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

(C) A board of county commissioners described in division (G) of section 4123.01 of the Revised Code, as an employer, that will abide by the rules of the administrator and that may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52,

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

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

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

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

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

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

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

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

(8) The board has either an account in a financial institution in this state, or if the board maintains an account with a financial institution outside this

state, ensures that workers' compensation checks are drawn from the same account as payroll checks or the board clearly indicates that payment will be honored by a financial institution in this state;

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

(D) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to injured employees, or to the dependents of employees killed, the payment of compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to the fund, except when an employee of the employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of the members as the result of any injury sustained in the course of and arising out of the employee's employment, the compensation to be paid by the self-insuring employer is limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the bureau out of the surplus created by section 4123.34 of the Revised Code.

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

Employers shall secure directly from the bureau central offices application forms upon which the bureau shall stamp a designating number. Prior to submission of an application, an employer shall make available to the bureau, and the bureau shall review, the information described in division (B)(1) of this section, and public employers shall make available, and the bureau shall review, the information necessary to verify whether the public employer meets the requirements listed in division (B)(2) of this section. An employer shall file the completed application forms with an application fee, which shall cover the costs of processing the application, as

established by the administrator, by rule, with the bureau at least ninety days prior to the effective date of the employer's new status as a self-insuring employer. The application form is not deemed complete until all the required information is attached thereto. The bureau shall only accept applications that contain the required information.

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

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

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

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

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

self-insuring employer.

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

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

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

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

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

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

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

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

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

An employer who no longer is a self-insuring employer in this state or who no longer is operating in this state, shall continue to pay assessments for administrative costs and for the portion of the surplus fund under division (B) of section 4123.34 of the Revised Code that is not used for handicapped reimbursement, based upon paid compensation attributable to

claims that occurred while the employer was a self-insuring employer within this state.

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

(L) Every self-insuring employer shall certify, in affidavit form subject to the penalty for perjury, to the bureau the amount of the self-insuring employer's paid compensation for the previous calendar year. In reporting paid compensation paid for the previous year, a self-insuring employer shall exclude from the total amount of paid compensation any reimbursement the self-insuring employer receives in the previous calendar year from the surplus fund pursuant to section 4123.512 of the Revised Code for any paid compensation. The self-insuring employer also shall exclude from the paid compensation reported any amount recovered under section 4123.931 of the Revised Code and any amount that is determined not to have been payable to or on behalf of a claimant in any final administrative or judicial proceeding. The self-insuring employer shall exclude such amounts from the paid compensation reported in the reporting period subsequent to the date the determination is made. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, that provide for all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) The administrator may grant a self-insuring employer the privilege

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

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

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

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

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

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

Upon approval of the application, the self-insuring employer is

responsible for the administration and payment of all claims under this chapter and Chapter 4121. of the Revised Code for the employees of the contractor and subcontractors covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the construction project, or who contract an occupational disease in the course of employment on the construction project. For purposes of this chapter and Chapter 4121. of the Revised Code, a claim that is administered and paid in accordance with this division is considered a claim against the self-insuring employer listed in the certificate. A contractor or subcontractor included under the certificate shall report to the self-insuring employer listed in the certificate, all claims that arise under this chapter and Chapter 4121. of the Revised Code in connection with the construction project for which the certificate is issued.

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

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

The contractors and subcontractors included under a certificate issued under this division shall identify in their payroll records the employees who are considered the employees of the self-insuring employer listed in that certificate for purposes of this chapter and Chapter 4121. of the Revised Code, and the amount that those employees earned for employment on the

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

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

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

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

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

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

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

(3) Provide information to claimants, third party administrators, employers, and other persons to assist those persons in protecting their

rights under this chapter and Chapter 4121. of the Revised Code.

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

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

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

(2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, and has as a component, a safety training program that complies with standards adopted pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing management and employee involvement;

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

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

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

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

(1) A state institution of higher education;

(2) A school district;

(3) A county school financing district;

(4) An educational service center;

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

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

(S) As used in this section:

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

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

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

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

(1) No contract because of that division is void which undertakes to indemnify a self-insuring employer against all or part of such employer's loss in excess of at least fifty thousand dollars from any one disaster or event arising out of the employer's liability under this chapter, but no insurance corporation shall, directly or indirectly, represent an employer in the settlement, adjudication, determination, allowance, or payment of claims. The superintendent of insurance shall enforce this prohibition by such disciplinary orders directed against the offending insurance corporation

as the superintendent of insurance deems appropriate in the circumstances and the administrator of workers' compensation shall enforce this prohibition by such disciplinary orders directed against the offending employer as the administrator deems appropriate in the circumstances, which orders may include revocation of the insurance corporation's right to enter into indemnity contracts and revocation of the employer's status as a self-insuring employer.

(2) The administrator may enter into a contract of indemnity with any such employer upon such terms, payment of such premium, and for such amount and form of indemnity as the administrator determines and the bureau of workers' compensation board of directors may procure reinsurance of the liability of the public and private funds under this chapter, or any part of the liability in respect of either or both of the funds, upon such terms and premiums or other payments from the fund or funds as the administrator deems prudent in the maintenance of a solvent fund or funds from year to year. When making the finding of fact which the administrator is required by section 4123.35 of the Revised Code to make with respect to the financial ability of an employer, no contract of indemnity, or the ability of the employer to procure such a contract, shall be considered as increasing the financial ability of the employer.

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

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

SECTION 102. That existing sections 121.52, 4121.12, 4121.125, 4121.62, 4121.70, 4121.75, 4123.29, 4123.34, 4123.35, and 4123.82 of the Revised Code are hereby repealed.

SECTION 201. All items in Sections 201 and 203 of this act are hereby appropriated out of any moneys in the state treasury to the credit of the designated fund. For all appropriations made in this act, those in the first column are for fiscal year 2010, and those in the second column are for

fiscal year 2011.

FND AI	AI TITLE	Appropriations	
BWC BUREAU OF WORKERS' COMPENSATION			
Workers' Compensation Fund Group			
7023	855401	William Green Lease	\$ 19,871,795 \$ 19,049,395
		Payments to OBA	
7023	855407	Claims, Risk and Medical	\$ 138,129,873 \$ 142,659,528
		Management	
7023	855408	Fraud Prevention	\$ 12,546,239 \$ 13,101,761
7023	855409	Administrative Services	\$ 124,674,772 \$ 120,192,995
7023	855410	Attorney General Payments	\$ 4,621,850 \$ 4,621,850
8220	855606	Coal Workers' Fund	\$ 91,894 \$ 91,894
8230	855608	Marine Industry	\$ 53,952 \$ 53,952
8250	855605	Disabled Workers Relief	\$ 492,500 \$ 492,500
		Fund	
8260	855609	Safety and Hygiene Operating	\$ 20,734,750 \$ 20,734,750
8260	855610	Gear Program	\$ 4,000,000 \$ 4,000,000
8290	855604	Long Term Care Loan	\$ 2,000,000 \$ 2,000,000
		Program	
TOTAL WCF Workers' Compensation			
Fund Group		\$ 327,217,625	\$ 326,998,625
Federal Special Revenue Fund Group			
3490	855601	OSHA Enforcement	\$ 1,604,140 \$ 1,604,140
TOTAL FED Federal Special Revenue Fund		\$ 1,604,140	\$ 1,604,140
Group			
TOTAL ALL BUDGET FUND GROUPS		\$ 328,821,765	\$ 328,602,765

WILLIAM GREEN LEASE PAYMENTS

The foregoing appropriation item 855401, William Green Lease Payments to OBA, shall be used for lease payments to the Ohio Building Authority, and these appropriations shall be used to meet all payments at the times they are required to be made during the period from July 1, 2009, to June 30, 2011, by the Bureau of Workers' Compensation to the Ohio Building Authority pursuant to leases and agreements made under Chapter 152. of the Revised Code and Section 6 of Am. Sub. H.B. 743 of the 118th General Assembly. Of the amounts received in Fund 7023, appropriation item 855401, William Green Lease Payments to OBA, up to \$38,921,190 shall be restricted for lease rental payments to the Ohio Building Authority. If it is determined that additional appropriations are necessary for such purpose, such amounts are hereby appropriated.

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

WORKERS' COMPENSATION FRAUD UNIT

The Workers' Compensation Section Fund (Fund 1950) that is used by the Attorney General shall receive payments from the Bureau of Workers' Compensation at the beginning of each quarter of each fiscal year to fund expenses of the Workers' Compensation Fraud Unit of the Attorney General's Office. Of the foregoing appropriation item 855410, Attorney General Payments, \$828,200 in fiscal year 2010 and \$828,200 in fiscal year 2011 shall be used to provide these payments.

SAFETY AND HYGIENE

Notwithstanding section 4121.37 of the Revised Code, the Administrator of Workers' Compensation shall transfer moneys from the State Insurance Fund so that appropriation item 855609, Safety and Hygiene Operating, is provided \$20,734,750 in fiscal year 2010 and \$20,734,750 in fiscal year 2011.

OSHA ON-SITE CONSULTATION PROGRAM

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

VOCATIONAL REHABILITATION

The Bureau of Workers' Compensation and the Rehabilitation Services Commission shall enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. The bureau shall provide \$605,407 in fiscal year 2010 and \$605,407 in fiscal year 2011 from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

FUND BALANCE

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

SECTION 203. WCC WORKERS' COMPENSATION COUNCIL

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

WORKERS' COMPENSATION COUNCIL

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

Between July 1, 2009, and December 31, 2009, the Administrator of Workers' Compensation shall direct the Treasurer of State to transfer \$325,000 in cash from the Workers' Compensation Fund (Fund 7023) to the Workers' Compensation Council Fund, created in division (C) of section 4121.79 of the Revised Code, in three installments. These transfers shall be made according to a schedule agreed to by the Director of the Workers' Compensation Council and the Administrator of Workers' Compensation.

If the Workers' Compensation Council contracts with an independent actuary to have that actuary perform an actuarial valuation as described in division (A)(1) of Section 512.45 of Am. Sub. H.B. 100 of the 127th General Assembly as amended by this act, or a review as described in division (A)(2), (3), or (4) of Section 512.45 of Am. Sub. H.B. 100 of the 127th General Assembly as amended by this act, on or before January 31, 2011, the Director of the Workers' Compensation Council shall request the funds necessary to cover the expenses of the valuation or review, which amount shall not exceed \$650,000, from the Administrator of Workers' Compensation. The Administrator shall direct the Treasurer of State to transfer the amount requested by the Director from the Workers' Compensation Fund (Fund 7023) to the Workers' Compensation Council Fund created in division (C) of section 4121.79 of the Revised Code. The Director and Administrator shall agree to a schedule for the transfer of these funds.

SECTION 211. DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING

On July 1, 2009, January 1, 2010, July 1, 2010, and January 1, 2011 or as soon after each date as possible, the Director of Budget and Management shall transfer \$212,500 in cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0). The amounts transferred are appropriated.

Should additional amounts be necessary, the Inspector General may seek Controlling Board approval for additional transfers of cash and to increase the amount appropriated from appropriation item 965604, Deputy Inspector General for the Bureau of Workers' compensation and Industrial Commission, in the amount of the additional transfers.

SECTION 215.01. That Section 512.45 of Am. Sub. H.B. 100 of the 127th General Assembly be amended to read as follows:

Sec. 512.45. ~~(A)~~ The Workers' Compensation Council ~~shall~~ may contract with an independent actuary to have that actuary perform ~~an~~ any of the following work as the Council determines is necessary:

(1) An actuarial valuation of the assets, liabilities, and funding requirements of the funds specified in Chapters 4121., 4123., 4127., and 4131. of the Revised Code.~~The;~~

(2) A review of a recent actuarial valuation performed pursuant to division (C)(1) of section 4121.125 of the Revised Code;

(3) A review of the study required by Section 512.50 of Am. Sub. H.B. 100 of the 127th General Assembly;

(4) A review of any actuarial analysis of any of the funds specified in Chapters 4121., 4123., 4127., and 4131. of the Revised Code that is completed as required by the Auditor of State.

~~(B) If the Council contracts with an actuary with whom the Council contracts under pursuant to division (A)(1) of this section, that actuary shall prepare a report of the valuation described in that division in accordance with the standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and shall submit that report to the Council. The actuary shall include all of the following information in the report:~~

~~(A)(1) A summary of the compensation and benefit provisions evaluated;~~

~~(B)(2) A summary of the census data and financial information used in the valuation;~~

~~(C)(3) A description of the actuarial assumptions, actuarial cost method, and asset valuation method used in the valuation;~~

~~(D)(4) A summary of the findings that includes a statement of the actuarial accrued compensation and benefit liabilities and unfounded actuarial accrued compensation and benefit liabilities.~~

~~The (C) If the Council contracts with an actuary pursuant to division (A)(2), (3), or (4) of this section, that actuary shall prepare a report of the review in accordance with the standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries and shall submit that report to the Council. The actuary shall include all of the following information in the report:~~

~~(1) A summary of the valuation, study, or analysis the actuary reviewed;~~

~~(2) The actuarial assumptions and methods and the data underlying the valuation, study, or analysis, as appropriate;~~

~~(3) An assessment of the adequacy of each of the funds specified in Chapters 4121., 4123., 4127., and 4131. of the Revised Code that were~~

evaluated to pay the claims authorized under those chapters:

(4) A discussion of the reasonableness of the findings of valuation, study, or analysis, and whether the valuation, study, or analysis was performed in accordance with the actuarial standards of practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries;

(5) A description of any additional studies the actuary recommends to assist the Council in the performance of its duties.

(D) If the Council contracts with an actuary under this section, the Council shall submit to the ~~governor~~ Governor and the ~~general assembly~~ General Assembly a report summarizing ~~the valuation required~~ any report ~~completed~~ under this section not later than ~~two years after the effective date of section 4121.75 of the Revised Code, as enacted by this act~~ September 10, 2011.

SECTION 215.02. That existing Section 512.45 of Am. Sub. H.B. 100 of the 127th General Assembly is hereby repealed.

SECTION 217. All members serving on the Workers' Compensation Council on the effective date of section 4121.75 of the Revised Code as amended by this act shall serve the duration of their terms as appointed. Upon the expiration of the terms of the members serving on the Council on the effective date of section 4121.75 of the Revised Code as amended by this act, new appointments shall be made to the Council in accordance with section 4121.75 of the Revised Code as amended by this act. The President of the Senate shall make the initial appointment of the member described in division (A)(7) of section 4121.75 of the Revised Code as amended by this act, and thereafter the President and the Speaker of the House shall alternate appointments as described in division (A)(7) of section 4121.75 of the Revised Code as amended by this act.

SECTION 219. The Speaker of the House of Representatives, the President of the Senate, and the Governor shall make the initial appointments of the members of the Labor-Management Government Advisory Council described in divisions (A)(5), (6), and (7) of section 4121.70 of the Revised Code, as amended by this act, within sixty days after the effective date of section 4121.70 of the Revised Code, as amended by this act. The members appointed pursuant to this section shall serve terms of

six years, as described in division (B) of section 4121.70 of the Revised Code. Subsequent appointments of the members described in divisions (A)(5), (6), and (7) of section 4121.70 of the Revised Code, as amended by this act, shall be made in accordance with section 4121.70 of the Revised Code, as amended by this act.

SECTION 220. (A) For the policy year beginning July 1, 2009 and ending June 30, 2010, and thereafter until the Bureau of Workers' Compensation completes the Bureau's transition to the adoption of a split-experienced rating plan in conformity with the current methodology of the National Council of Compensation Insurance, the Bureau shall offer to an eligible construction industry employer a construction industry cap on the employer's experience modification as provided in this section.

(B) The Bureau shall establish the employer's experience modifier at .99 for the policy year beginning July 1, 2009, and ending June 30, 2010, unless the employer opts to not participate. The Bureau shall adjust the premium rate calculation of a participating employer by including an adjustment factor in the calculation of the blended rate of the employer to establish a blended rate that the employer would have paid as established by using the initially calculated experience modifier.

(C) The construction industry cap is available to a construction industry employer that satisfies all of the following requirements:

(1) The employer's predominant premium for the policy year beginning July 1, 2007, is in Industry Group 4, Construction, as identified in Appendix A to section 4123-17-05 of the Ohio Administrative Code.

(2) The employer had an experience modifier of less than or equal to 1.0 in the preceding policy year.

(3) The experience modifier initially calculated for the employer for the current policy year is greater than 1.0 and not more than 1.5.

(4) The employer participates in a safety program approved by the Bureau or by the Occupational Safety and Health Administration during the policy year to improve accident prevention.

SECTION 221. Law contained in the Main Operating Appropriations Act of the 128th General Assembly that applies generally to the appropriations made in that act also applies generally to the appropriations made in this act.

SECTION 301. The provisions of law contained in this act, and their applications, are severable. If any provision of law contained in this act, or if any application of any provision of law contained in this act, is held invalid, the invalidity does not affect other provisions of law contained in this act and their applications that can be given effect without the invalid provision or application.

SECTION 311. Except as otherwise provided in this act, the amendment, enactment, or repeal by this act of a section of law is exempt from the referendum because it is or relates to an appropriation for current expenses within the meaning of Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore takes effect immediately when this act becomes law.

SECTION 313. The amendment, enactment, or repeal by this act of the divisions and sections of law listed below are subject to the referendum under Ohio Constitution, Article II, Section 1c and therefore take effect on the ninety-first day after this act is filed with the Secretary of State.

The amendment by this act of divisions (A)(4)(g) and (B) of section 4123.29, division (B) of section 4123.34 and sections 4121.12, 4121.125, 4121.62, 4121.70, and 4123.35 of the Revised Code.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 15

128th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____