

As Reported by the Senate Insurance Committee

131st General Assembly

Regular Session

2015-2016

Sub. H. B. No. 207

Representatives Henne, McColley

Cosponsors: Representatives Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears, Amstutz, Anielski, Antani, Antonio, Arndt, Barnes, Bishoff, Blessing, Brenner, Buchy, Butler, Conditt, Cupp, Derickson, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hall, Hayes, Hill, Huffman, Koehler, LaTourette, Manning, McClain, O'Brien, M., O'Brien, S., Patterson, Pelanda, Perales, Phillips, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Scherer, Schuring, Slesnick, Smith, R., Stinziano, Sweeney, Thompson, Young, Zeltwanger, Speaker Rosenberger

Senators Hottinger, Beagle, Bacon, Brown

A BILL

To amend sections 4123.35, 4123.93, and 4123.931 1
and to enact section 4123.932 of the Revised 2
Code to eliminate the minimum number of 3
employees required for a private sector employer 4
or a board of county commissioners with respect 5
to the construction of a sports facility to 6
obtain self-insuring status under the Workers' 7
Compensation Law and to allow a state fund 8
employer to have a workers' compensation claim 9
that is likely to be subrogated by a third party 10
paid from the surplus fund account in the state 11
insurance fund rather than charged to the 12
employer's experience. 13

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

Section 1. That sections 4123.35, 4123.93, and 4123.931 be 14
amended and section 4123.932 of the Revised Code be enacted to 15
read as follows: 16

Sec. 4123.35. (A) Except as provided in this section, and 17
until the policy year commencing July 1, 2015, every private 18
employer and every publicly owned utility shall pay semiannually 19
in the months of January and July into the state insurance fund 20
the amount of annual premium the administrator of workers' 21
compensation fixes for the employment or occupation of the 22
employer, the amount of which premium to be paid by each 23
employer to be determined by the classifications, rules, and 24
rates made and published by the administrator. The employer 25
shall pay semiannually a further sum of money into the state 26
insurance fund as may be ascertained to be due from the employer 27
by applying the rules of the administrator. 28

Except as otherwise provided in this section, for a policy 29
year commencing on or after July 1, 2015, every private employer 30
and every publicly owned utility shall pay annually in the month 31
of June immediately preceding the policy year into the state 32
insurance fund the amount of estimated annual premium the 33
administrator fixes for the employment or occupation of the 34
employer, the amount of which estimated premium to be paid by 35
each employer to be determined by the classifications, rules, 36
and rates made and published by the administrator. The employer 37
shall pay a further sum of money into the state insurance fund 38
as may be ascertained to be due from the employer by applying 39
the rules of the administrator. Upon receipt of the payroll 40
report required by division (B) of section 4123.26 of the 41
Revised Code, the administrator shall adjust the premium and 42
assessments charged to each employer for the difference between 43
estimated gross payrolls and actual gross payrolls, and any 44

balance due to the administrator shall be immediately paid by 45
the employer. Any balance due the employer shall be credited to 46
the employer's account. 47

For a policy year commencing on or after July 1, 2015, 48
each employer that is recognized by the administrator as a 49
professional employer organization shall pay monthly into the 50
state insurance fund the amount of premium the administrator 51
fixes for the employer for the prior month based on the actual 52
payroll of the employer reported pursuant to division (C) of 53
section 4123.26 of the Revised Code. 54

A receipt certifying that payment has been made shall be 55
issued to the employer by the bureau of workers' compensation. 56
The receipt is prima-facie evidence of the payment of the 57
premium. The administrator shall provide each employer written 58
proof of workers' compensation coverage as is required in 59
section 4123.83 of the Revised Code. Proper posting of the 60
notice constitutes the employer's compliance with the notice 61
requirement mandated in section 4123.83 of the Revised Code. 62

The bureau shall verify with the secretary of state the 63
existence of all corporations and organizations making 64
application for workers' compensation coverage and shall require 65
every such application to include the employer's federal 66
identification number. 67

A private employer who has contracted with a subcontractor 68
is liable for the unpaid premium due from any subcontractor with 69
respect to that part of the payroll of the subcontractor that is 70
for work performed pursuant to the contract with the employer. 71

Division (A) of this section providing for the payment of 72
premiums semiannually does not apply to any employer who was a 73

subscriber to the state insurance fund prior to January 1, 1914, 74
or, until July 1, 2015, who may first become a subscriber to the 75
fund in any month other than January or July. Instead, the 76
semiannual premiums shall be paid by those employers from time 77
to time upon the expiration of the respective periods for which 78
payments into the fund have been made by them. After July 1, 79
2015, an employer who first becomes a subscriber to the fund on 80
any day other than the first day of July shall pay premiums 81
according to rules adopted by the administrator, with the advice 82
and consent of the bureau of workers' compensation board of 83
directors, for the remainder of the policy year for which the 84
coverage is effective. 85

The administrator, with the advice and consent of the 86
board, shall adopt rules to permit employers to make periodic 87
payments of the premium and assessment due under this division. 88
The rules shall include provisions for the assessment of 89
interest charges, where appropriate, and for the assessment of 90
penalties when an employer fails to make timely premium 91
payments. The administrator, in the rules the administrator 92
adopts, may set an administrative fee for these periodic 93
payments. An employer who timely pays the amounts due under this 94
division is entitled to all of the benefits and protections of 95
this chapter. Upon receipt of payment, the bureau shall issue a 96
receipt to the employer certifying that payment has been made, 97
which receipt is prima-facie evidence of payment. Workers' 98
compensation coverage under this chapter continues uninterrupted 99
upon timely receipt of payment under this division. 100

Every public employer, except public employers that are 101
self-insuring employers under this section, shall comply with 102
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 103
regard to the contribution of moneys to the public insurance 104

fund. 105

(B) Employers who will abide by the rules of the 106
administrator and who may be of sufficient financial ability to 107
render certain the payment of compensation to injured employees 108
or the dependents of killed employees, and the furnishing of 109
medical, surgical, nursing, and hospital attention and services 110
and medicines, and funeral expenses, equal to or greater than is 111
provided for in sections 4123.52, 4123.55 to 4123.62, and 112
4123.64 to 4123.67 of the Revised Code, and who do not desire to 113
insure the payment thereof or indemnify themselves against loss 114
sustained by the direct payment thereof, upon a finding of such 115
facts by the administrator, may be granted the privilege to pay 116
individually compensation, and furnish medical, surgical, 117
nursing, and hospital services and attention and funeral 118
expenses directly to injured employees or the dependents of 119
killed employees, thereby being granted status as a self- 120
insuring employer. The administrator may charge employers who 121
apply for the status as a self-insuring employer a reasonable 122
application fee to cover the bureau's costs in connection with 123
processing and making a determination with respect to an 124
application. 125

All employers granted status as self-insuring employers 126
shall demonstrate sufficient financial and administrative 127
ability to assure that all obligations under this section are 128
promptly met. The administrator shall deny the privilege where 129
the employer is unable to demonstrate the employer's ability to 130
promptly meet all the obligations imposed on the employer by 131
this section. 132

(1) The administrator shall consider, but is not limited 133
to, the following factors, where applicable, in determining the 134

employer's ability to meet all of the obligations imposed on the 135
employer by this section: 136

~~(a) The employer employs a minimum of five hundred~~ 137
~~employees in this state;~~ 138

~~(b)~~ The employer has operated in this state for a minimum 139
of two years, provided that an employer who has purchased, 140
acquired, or otherwise succeeded to the operation of a business, 141
or any part thereof, situated in this state that has operated 142
for at least two years in this state, also shall qualify; 143

~~(c)~~ (b) Where the employer previously contributed to the 144
state insurance fund or is a successor employer as defined by 145
bureau rules, the amount of the buyout, as defined by bureau 146
rules; 147

~~(d)~~ (c) The sufficiency of the employer's assets located 148
in this state to insure the employer's solvency in paying 149
compensation directly; 150

~~(e)~~ (d) The financial records, documents, and data, 151
certified by a certified public accountant, necessary to provide 152
the employer's full financial disclosure. The records, 153
documents, and data include, but are not limited to, balance 154
sheets and profit and loss history for the current year and 155
previous four years. 156

~~(f)~~ (e) The employer's organizational plan for the 157
administration of the workers' compensation law; 158

~~(g)~~ (f) The employer's proposed plan to inform employees 159
of the change from a state fund insurer to a self-insuring 160
employer, the procedures the employer will follow as a self- 161
insuring employer, and the employees' rights to compensation and 162
benefits; and 163

~~(h)~~ (g) The employer has either an account in a financial 164
institution in this state, or if the employer maintains an 165
account with a financial institution outside this state, ensures 166
that workers' compensation checks are drawn from the same 167
account as payroll checks or the employer clearly indicates that 168
payment will be honored by a financial institution in this 169
state. 170

The administrator may waive the requirements of ~~divisions~~ 171
division (B) (1) (a) ~~and (b)~~ of this section and the requirement 172
of division (B) (1) ~~(e)~~ (d) of this section that the financial 173
records, documents, and data be certified by a certified public 174
accountant. The administrator shall adopt rules establishing the 175
criteria that an employer shall meet in order for the 176
administrator to waive the requirements of divisions (B) (1) (a) ~~,~~ 177
~~(b)~~, and ~~(e)~~ (d) of this section. Such rules may require 178
additional security of that employer pursuant to division (E) of 179
section 4123.351 of the Revised Code. 180

The administrator shall not grant the status of self- 181
insuring employer to the state, except that the administrator 182
may grant the status of self-insuring employer to a state 183
institution of higher education, including its hospitals, that 184
meets the requirements of division (B) (2) of this section. 185

(2) When considering the application of a public employer, 186
except for a board of county commissioners described in division 187
(G) of section 4123.01 of the Revised Code, a board of a county 188
hospital, or a publicly owned utility, the administrator shall 189
verify that the public employer satisfies all of the following 190
requirements as the requirements apply to that public employer: 191

(a) For the two-year period preceding application under 192
this section, the public employer has maintained an unvoted debt 193

capacity equal to at least two times the amount of the current 194
annual premium established by the administrator under this 195
chapter for that public employer for the year immediately 196
preceding the year in which the public employer makes 197
application under this section. 198

(b) For each of the two fiscal years preceding application 199
under this section, the unreserved and undesignated year-end 200
fund balance in the public employer's general fund is equal to 201
at least five per cent of the public employer's general fund 202
revenues for the fiscal year computed in accordance with 203
generally accepted accounting principles. 204

(c) For the five-year period preceding application under 205
this section, the public employer, to the extent applicable, has 206
complied fully with the continuing disclosure requirements 207
established in rules adopted by the United States securities and 208
exchange commission under 17 C.F.R. 240.15c 2-12. 209

(d) For the five-year period preceding application under 210
this section, the public employer has not had its local 211
government fund distribution withheld on account of the public 212
employer being indebted or otherwise obligated to the state. 213

(e) For the five-year period preceding application under 214
this section, the public employer has not been under a fiscal 215
watch or fiscal emergency pursuant to section 118.023, 118.04, 216
or 3316.03 of the Revised Code. 217

(f) For the public employer's fiscal year preceding 218
application under this section, the public employer has obtained 219
an annual financial audit as required under section 117.10 of 220
the Revised Code, which has been released by the auditor of 221
state within seven months after the end of the public employer's 222

fiscal year.	223
(g) On the date of application, the public employer holds	224
a debt rating of Aa3 or higher according to Moody's investors	225
service, inc., or a comparable rating by an independent rating	226
agency similar to Moody's investors service, inc.	227
(h) The public employer agrees to generate an annual	228
accumulating book reserve in its financial statements reflecting	229
an actuarially generated reserve adequate to pay projected	230
claims under this chapter for the applicable period of time, as	231
determined by the administrator.	232
(i) For a public employer that is a hospital, the public	233
employer shall submit audited financial statements showing the	234
hospital's overall liquidity characteristics, and the	235
administrator shall determine, on an individual basis, whether	236
the public employer satisfies liquidity standards equivalent to	237
the liquidity standards of other public employers.	238
(j) Any additional criteria that the administrator adopts	239
by rule pursuant to division (E) of this section.	240
The administrator may adopt rules establishing the	241
criteria that a public employer shall satisfy in order for the	242
administrator to waive any of the requirements listed in	243
divisions (B) (2) (a) to (j) of this section. The rules may	244
require additional security from that employer pursuant to	245
division (E) of section 4123.351 of the Revised Code. The	246
administrator shall not waive any of the requirements listed in	247
divisions (B) (2) (a) to (j) of this section for a public employer	248
who does not satisfy the criteria established in the rules the	249
administrator adopts.	250
(C) A board of county commissioners described in division	251

(G) of section 4123.01 of the Revised Code, as an employer, that 252
will abide by the rules of the administrator and that may be of 253
sufficient financial ability to render certain the payment of 254
compensation to injured employees or the dependents of killed 255
employees, and the furnishing of medical, surgical, nursing, and 256
hospital attention and services and medicines, and funeral 257
expenses, equal to or greater than is provided for in sections 258
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the 259
Revised Code, and that does not desire to insure the payment 260
thereof or indemnify itself against loss sustained by the direct 261
payment thereof, upon a finding of such facts by the 262
administrator, may be granted the privilege to pay individually 263
compensation, and furnish medical, surgical, nursing, and 264
hospital services and attention and funeral expenses directly to 265
injured employees or the dependents of killed employees, thereby 266
being granted status as a self-insuring employer. The 267
administrator may charge a board of county commissioners 268
described in division (G) of section 4123.01 of the Revised Code 269
that applies for the status as a self-insuring employer a 270
reasonable application fee to cover the bureau's costs in 271
connection with processing and making a determination with 272
respect to an application. All employers granted such status 273
shall demonstrate sufficient financial and administrative 274
ability to assure that all obligations under this section are 275
promptly met. The administrator shall deny the privilege where 276
the employer is unable to demonstrate the employer's ability to 277
promptly meet all the obligations imposed on the employer by 278
this section. The administrator shall consider, but is not 279
limited to, the following factors, where applicable, in 280
determining the employer's ability to meet all of the 281
obligations imposed on the board as an employer by this section: 282

(1) The board as an employer employs a minimum of five-	283
hundred employees in this state;	284
(2) The board has operated in this state for a minimum of	285
two years;	286
(3) (2) Where the board previously contributed to the	287
state insurance fund or is a successor employer as defined by	288
bureau rules, the amount of the buyout, as defined by bureau	289
rules;	290
(4) (3) The sufficiency of the board's assets located in	291
this state to insure the board's solvency in paying compensation	292
directly;	293
(5) (4) The financial records, documents, and data,	294
certified by a certified public accountant, necessary to provide	295
the board's full financial disclosure. The records, documents,	296
and data include, but are not limited to, balance sheets and	297
profit and loss history for the current year and previous four	298
years.	299
(6) (5) The board's organizational plan for the	300
administration of the workers' compensation law;	301
(7) (6) The board's proposed plan to inform employees of	302
the proposed self-insurance, the procedures the board will	303
follow as a self-insuring employer, and the employees' rights to	304
compensation and benefits;	305
(8) (7) The board has either an account in a financial	306
institution in this state, or if the board maintains an account	307
with a financial institution outside this state, ensures that	308
workers' compensation checks are drawn from the same account as	309
payroll checks or the board clearly indicates that payment will	310
be honored by a financial institution in this state;	311

~~(9)~~ (8) The board shall provide the administrator a surety 312
bond in an amount equal to one hundred twenty-five per cent of 313
the projected losses as determined by the administrator. 314

(D) The administrator shall require a surety bond from all 315
self-insuring employers, issued pursuant to section 4123.351 of 316
the Revised Code, that is sufficient to compel, or secure to 317
injured employees, or to the dependents of employees killed, the 318
payment of compensation and expenses, which shall in no event be 319
less than that paid or furnished out of the state insurance fund 320
in similar cases to injured employees or to dependents of killed 321
employees whose employers contribute to the fund, except when an 322
employee of the employer, who has suffered the loss of a hand, 323
arm, foot, leg, or eye prior to the injury for which 324
compensation is to be paid, and thereafter suffers the loss of 325
any other of the members as the result of any injury sustained 326
in the course of and arising out of the employee's employment, 327
the compensation to be paid by the self-insuring employer is 328
limited to the disability suffered in the subsequent injury, 329
additional compensation, if any, to be paid by the bureau out of 330
the surplus created by section 4123.34 of the Revised Code. 331

(E) In addition to the requirements of this section, the 332
administrator shall make and publish rules governing the manner 333
of making application and the nature and extent of the proof 334
required to justify a finding of fact by the administrator as to 335
granting the status of a self-insuring employer, which rules 336
shall be general in their application, one of which rules shall 337
provide that all self-insuring employers shall pay into the 338
state insurance fund such amounts as are required to be credited 339
to the surplus fund in division (B) of section 4123.34 of the 340
Revised Code. The administrator may adopt rules establishing 341
requirements in addition to the requirements described in 342

division (B) (2) of this section that a public employer shall 343
meet in order to qualify for self-insuring status. 344

Employers shall secure directly from the bureau central 345
offices application forms upon which the bureau shall stamp a 346
designating number. Prior to submission of an application, an 347
employer shall make available to the bureau, and the bureau 348
shall review, the information described in division (B) (1) of 349
this section, and public employers shall make available, and the 350
bureau shall review, the information necessary to verify whether 351
the public employer meets the requirements listed in division 352
(B) (2) of this section. An employer shall file the completed 353
application forms with an application fee, which shall cover the 354
costs of processing the application, as established by the 355
administrator, by rule, with the bureau at least ninety days 356
prior to the effective date of the employer's new status as a 357
self-insuring employer. The application form is not deemed 358
complete until all the required information is attached thereto. 359
The bureau shall only accept applications that contain the 360
required information. 361

(F) The bureau shall review completed applications within 362
a reasonable time. If the bureau determines to grant an employer 363
the status as a self-insuring employer, the bureau shall issue a 364
statement, containing its findings of fact, that is prepared by 365
the bureau and signed by the administrator. If the bureau 366
determines not to grant the status as a self-insuring employer, 367
the bureau shall notify the employer of the determination and 368
require the employer to continue to pay its full premium into 369
the state insurance fund. The administrator also shall adopt 370
rules establishing a minimum level of performance as a criterion 371
for granting and maintaining the status as a self-insuring 372
employer and fixing time limits beyond which failure of the 373

self-insuring employer to provide for the necessary medical 374
examinations and evaluations may not delay a decision on a 375
claim. 376

(G) The administrator shall adopt rules setting forth 377
procedures for auditing the program of self-insuring employers. 378
The bureau shall conduct the audit upon a random basis or 379
whenever the bureau has grounds for believing that a self- 380
insuring employer is not in full compliance with bureau rules or 381
this chapter. 382

The administrator shall monitor the programs conducted by 383
self-insuring employers, to ensure compliance with bureau 384
requirements and for that purpose, shall develop and issue to 385
self-insuring employers standardized forms for use by the self- 386
insuring employer in all aspects of the self-insuring employers' 387
direct compensation program and for reporting of information to 388
the bureau. 389

The bureau shall receive and transmit to the self-insuring 390
employer all complaints concerning any self-insuring employer. 391
In the case of a complaint against a self-insuring employer, the 392
administrator shall handle the complaint through the self- 393
insurance division of the bureau. The bureau shall maintain a 394
file by employer of all complaints received that relate to the 395
employer. The bureau shall evaluate each complaint and take 396
appropriate action. 397

The administrator shall adopt as a rule a prohibition 398
against any self-insuring employer from harassing, dismissing, 399
or otherwise disciplining any employee making a complaint, which 400
rule shall provide for a financial penalty to be levied by the 401
administrator payable by the offending self-insuring employer. 402

(H) For the purpose of making determinations as to whether 403
to grant status as a self-insuring employer, the administrator 404
may subscribe to and pay for a credit reporting service that 405
offers financial and other business information about individual 406
employers. The costs in connection with the bureau's 407
subscription or individual reports from the service about an 408
applicant may be included in the application fee charged 409
employers under this section. 410

(I) The administrator, notwithstanding other provisions of 411
this chapter, may permit a self-insuring employer to resume 412
payment of premiums to the state insurance fund with appropriate 413
credit modifications to the employer's basic premium rate as 414
such rate is determined pursuant to section 4123.29 of the 415
Revised Code. 416

(J) On the first day of July of each year, the 417
administrator shall calculate separately each self-insuring 418
employer's assessments for the safety and hygiene fund, 419
administrative costs pursuant to section 4123.342 of the Revised 420
Code, and for the surplus fund under division (B) of section 421
4123.34 of the Revised Code, on the basis of the paid 422
compensation attributable to the individual self-insuring 423
employer according to the following calculation: 424

(1) The total assessment against all self-insuring 425
employers as a class for each fund and for the administrative 426
costs for the year that the assessment is being made, as 427
determined by the administrator, divided by the total amount of 428
paid compensation for the previous calendar year attributable to 429
all amenable self-insuring employers; 430

(2) Multiply the quotient in division (J)(1) of this 431
section by the total amount of paid compensation for the 432

previous calendar year that is attributable to the individual 433
self-insuring employer for whom the assessment is being 434
determined. Each self-insuring employer shall pay the assessment 435
that results from this calculation, unless the assessment 436
resulting from this calculation falls below a minimum 437
assessment, which minimum assessment the administrator shall 438
determine on the first day of July of each year with the advice 439
and consent of the bureau of workers' compensation board of 440
directors, in which event, the self-insuring employer shall pay 441
the minimum assessment. 442

In determining the total amount due for the total 443
assessment against all self-insuring employers as a class for 444
each fund and the administrative assessment, the administrator 445
shall reduce proportionately the total for each fund and 446
assessment by the amount of money in the self-insurance 447
assessment fund as of the date of the computation of the 448
assessment. 449

The administrator shall calculate the assessment for the 450
portion of the surplus fund under division (B) of section 451
4123.34 of the Revised Code that is used for reimbursement to a 452
self-insuring employer under division (H) of section 4123.512 of 453
the Revised Code in the same manner as set forth in divisions 454
(J) (1) and (2) of this section except that the administrator 455
shall calculate the total assessment for this portion of the 456
surplus fund only on the basis of those self-insuring employers 457
that retain participation in reimbursement to the self-insuring 458
employer under division (H) of section 4123.512 of the Revised 459
Code and the individual self-insuring employer's proportion of 460
paid compensation shall be calculated only for those self- 461
insuring employers who retain participation in reimbursement to 462
the self-insuring employer under division (H) of section 463

4123.512 of the Revised Code. 464

An employer who no longer is a self-insuring employer in 465
this state or who no longer is operating in this state, shall 466
continue to pay assessments for administrative costs and for the 467
surplus fund under division (B) of section 4123.34 of the 468
Revised Code based upon paid compensation attributable to claims 469
that occurred while the employer was a self-insuring employer 470
within this state. 471

(K) There is hereby created in the state treasury the 472
self-insurance assessment fund. All investment earnings of the 473
fund shall be deposited in the fund. The administrator shall use 474
the money in the self-insurance assessment fund only for 475
administrative costs as specified in section 4123.341 of the 476
Revised Code. 477

(L) Every self-insuring employer shall certify, in 478
affidavit form subject to the penalty for perjury, to the bureau 479
the amount of the self-insuring employer's paid compensation for 480
the previous calendar year. In reporting paid compensation paid 481
for the previous year, a self-insuring employer shall exclude 482
from the total amount of paid compensation any reimbursement the 483
self-insuring employer receives in the previous calendar year 484
from the surplus fund pursuant to section 4123.512 of the 485
Revised Code for any paid compensation. The self-insuring 486
employer also shall exclude from the paid compensation reported 487
any amount recovered under section 4123.931 of the Revised Code 488
and any amount that is determined not to have been payable to or 489
on behalf of a claimant in any final administrative or judicial 490
proceeding. The self-insuring employer shall exclude such 491
amounts from the paid compensation reported in the reporting 492
period subsequent to the date the determination is made. The 493

administrator shall adopt rules, in accordance with Chapter 119. 494
of the Revised Code, that provide for all of the following: 495

(1) Establishing the date by which self-insuring employers 496
must submit such information and the amount of the assessments 497
provided for in division (J) of this section for employers who 498
have been granted self-insuring status within the last calendar 499
year; 500

(2) If an employer fails to pay the assessment when due, 501
the administrator may add a late fee penalty of not more than 502
five hundred dollars to the assessment plus an additional 503
penalty amount as follows: 504

(a) For an assessment from sixty-one to ninety days past 505
due, the prime interest rate, multiplied by the assessment due; 506

(b) For an assessment from ninety-one to one hundred 507
twenty days past due, the prime interest rate plus two per cent, 508
multiplied by the assessment due; 509

(c) For an assessment from one hundred twenty-one to one 510
hundred fifty days past due, the prime interest rate plus four 511
per cent, multiplied by the assessment due; 512

(d) For an assessment from one hundred fifty-one to one 513
hundred eighty days past due, the prime interest rate plus six 514
per cent, multiplied by the assessment due; 515

(e) For an assessment from one hundred eighty-one to two 516
hundred ten days past due, the prime interest rate plus eight 517
per cent, multiplied by the assessment due; 518

(f) For each additional thirty-day period or portion 519
thereof that an assessment remains past due after it has 520
remained past due for more than two hundred ten days, the prime 521

interest rate plus eight per cent, multiplied by the assessment 522
due. 523

(3) An employer may appeal a late fee penalty and penalty 524
assessment to the administrator. 525

For purposes of division (L)(2) of this section, "prime 526
interest rate" means the average bank prime rate, and the 527
administrator shall determine the prime interest rate in the 528
same manner as a county auditor determines the average bank 529
prime rate under section 929.02 of the Revised Code. 530

The administrator shall include any assessment and 531
penalties that remain unpaid for previous assessment periods in 532
the calculation and collection of any assessments due under this 533
division or division (J) of this section. 534

(M) As used in this section, "paid compensation" means all 535
amounts paid by a self-insuring employer for living maintenance 536
benefits, all amounts for compensation paid pursuant to sections 537
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 538
and 4123.64 of the Revised Code, all amounts paid as wages in 539
lieu of such compensation, all amounts paid in lieu of such 540
compensation under a nonoccupational accident and sickness 541
program fully funded by the self-insuring employer, and all 542
amounts paid by a self-insuring employer for a violation of a 543
specific safety standard pursuant to Section 35 of Article II, 544
Ohio Constitution and section 4121.47 of the Revised Code. 545

(N) Should any section of this chapter or Chapter 4121. of 546
the Revised Code providing for self-insuring employers' 547
assessments based upon compensation paid be declared 548
unconstitutional by a final decision of any court, then that 549
section of the Revised Code declared unconstitutional shall 550

revert back to the section in existence prior to November 3, 551
1989, providing for assessments based upon payroll. 552

(O) The administrator may grant a self-insuring employer 553
the privilege to self-insure a construction project entered into 554
by the self-insuring employer that is scheduled for completion 555
within six years after the date the project begins, and the 556
total cost of which is estimated to exceed one hundred million 557
dollars or, for employers described in division (R) of this 558
section, if the construction project is estimated to exceed 559
twenty-five million dollars. The administrator may waive such 560
cost and time criteria and grant a self-insuring employer the 561
privilege to self-insure a construction project regardless of 562
the time needed to complete the construction project and 563
provided that the cost of the construction project is estimated 564
to exceed fifty million dollars. A self-insuring employer who 565
desires to self-insure a construction project shall submit to 566
the administrator an application listing the dates the 567
construction project is scheduled to begin and end, the 568
estimated cost of the construction project, the contractors and 569
subcontractors whose employees are to be self-insured by the 570
self-insuring employer, the provisions of a safety program that 571
is specifically designed for the construction project, and a 572
statement as to whether a collective bargaining agreement 573
governing the rights, duties, and obligations of each of the 574
parties to the agreement with respect to the construction 575
project exists between the self-insuring employer and a labor 576
organization. 577

A self-insuring employer may apply to self-insure the 578
employees of either of the following: 579

(1) All contractors and subcontractors who perform labor 580

or work or provide materials for the construction project; 581

(2) All contractors and, at the administrator's 582
discretion, a substantial number of all the subcontractors who 583
perform labor or work or provide materials for the construction 584
project. 585

Upon approval of the application, the administrator shall 586
mail a certificate granting the privilege to self-insure the 587
construction project to the self-insuring employer. The 588
certificate shall contain the name of the self-insuring employer 589
and the name, address, and telephone number of the self-insuring 590
employer's representatives who are responsible for administering 591
workers' compensation claims for the construction project. The 592
self-insuring employer shall post the certificate in a 593
conspicuous place at the site of the construction project. 594

The administrator shall maintain a record of the 595
contractors and subcontractors whose employees are covered under 596
the certificate issued to the self-insured employer. A self- 597
insuring employer immediately shall notify the administrator 598
when any contractor or subcontractor is added or eliminated from 599
inclusion under the certificate. 600

Upon approval of the application, the self-insuring 601
employer is responsible for the administration and payment of 602
all claims under this chapter and Chapter 4121. of the Revised 603
Code for the employees of the contractor and subcontractors 604
covered under the certificate who receive injuries or are killed 605
in the course of and arising out of employment on the 606
construction project, or who contract an occupational disease in 607
the course of employment on the construction project. For 608
purposes of this chapter and Chapter 4121. of the Revised Code, 609
a claim that is administered and paid in accordance with this 610

division is considered a claim against the self-insuring 611
employer listed in the certificate. A contractor or 612
subcontractor included under the certificate shall report to the 613
self-insuring employer listed in the certificate, all claims 614
that arise under this chapter and Chapter 4121. of the Revised 615
Code in connection with the construction project for which the 616
certificate is issued. 617

A self-insuring employer who complies with this division 618
is entitled to the protections provided under this chapter and 619
Chapter 4121. of the Revised Code with respect to the employees 620
of the contractors and subcontractors covered under a 621
certificate issued under this division for death or injuries 622
that arise out of, or death, injuries, or occupational diseases 623
that arise in the course of, those employees' employment on that 624
construction project, as if the employees were employees of the 625
self-insuring employer, provided that the self-insuring employer 626
also complies with this section. No employee of the contractors 627
and subcontractors covered under a certificate issued under this 628
division shall be considered the employee of the self-insuring 629
employer listed in that certificate for any purposes other than 630
this chapter and Chapter 4121. of the Revised Code. Nothing in 631
this division gives a self-insuring employer authority to 632
control the means, manner, or method of employment of the 633
employees of the contractors and subcontractors covered under a 634
certificate issued under this division. 635

The contractors and subcontractors included under a 636
certificate issued under this division are entitled to the 637
protections provided under this chapter and Chapter 4121. of the 638
Revised Code with respect to the contractor's or subcontractor's 639
employees who are employed on the construction project which is 640
the subject of the certificate, for death or injuries that arise 641

out of, or death, injuries, or occupational diseases that arise 642
in the course of, those employees' employment on that 643
construction project. 644

The contractors and subcontractors included under a 645
certificate issued under this division shall identify in their 646
payroll records the employees who are considered the employees 647
of the self-insuring employer listed in that certificate for 648
purposes of this chapter and Chapter 4121. of the Revised Code, 649
and the amount that those employees earned for employment on the 650
construction project that is the subject of that certificate. 651
Notwithstanding any provision to the contrary under this chapter 652
and Chapter 4121. of the Revised Code, the administrator shall 653
exclude the payroll that is reported for employees who are 654
considered the employees of the self-insuring employer listed in 655
that certificate, and that the employees earned for employment 656
on the construction project that is the subject of that 657
certificate, when determining those contractors' or 658
subcontractors' premiums or assessments required under this 659
chapter and Chapter 4121. of the Revised Code. A self-insuring 660
employer issued a certificate under this division shall include 661
in the amount of paid compensation it reports pursuant to 662
division (L) of this section, the amount of paid compensation 663
the self-insuring employer paid pursuant to this division for 664
the previous calendar year. 665

Nothing in this division shall be construed as altering 666
the rights of employees under this chapter and Chapter 4121. of 667
the Revised Code as those rights existed prior to September 17, 668
1996. Nothing in this division shall be construed as altering 669
the rights devolved under sections 2305.31 and 4123.82 of the 670
Revised Code as those rights existed prior to September 17, 671
1996. 672

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 702
safety professional and the ombudsperson and instructions for 703
contacting the safety professional and the ombudsperson in a 704
conspicuous place at the site of the construction project. 705

(Q) The administrator may consider all of the following 706
when deciding whether to grant a self-insuring employer the 707
privilege to self-insure a construction project as provided 708
under division (O) of this section: 709

(1) Whether the self-insuring employer has an 710
organizational plan for the administration of the workers' 711
compensation law; 712

(2) Whether the safety program that is specifically 713
designed for the construction project provides for the safety of 714
employees employed on the construction project, is applicable to 715
all contractors and subcontractors who perform labor or work or 716
provide materials for the construction project, and has as a 717
component, a safety training program that complies with 718
standards adopted pursuant to the "Occupational Safety and 719
Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and 720
provides for continuing management and employee involvement; 721

(3) Whether granting the privilege to self-insure the 722
construction project will reduce the costs of the construction 723
project; 724

(4) Whether the self-insuring employer has employed an 725
ombudsperson as required under division (P) of this section; 726

(5) Whether the self-insuring employer has sufficient 727
surety to secure the payment of claims for which the self- 728
insuring employer would be responsible pursuant to the granting 729
of the privilege to self-insure a construction project under 730

division (O) of this section.	731
(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:	732 733 734 735
(1) A state institution of higher education;	736
(2) A school district;	737
(3) A county school financing district;	738
(4) An educational service center;	739
(5) A community school established under Chapter 3314. of the Revised Code;	740 741
(6) A municipal power agency as defined in section 3734.058 of the Revised Code.	742 743
(S) As used in this section:	744
(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;	745 746 747
(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.	748 749 750 751 752 753 754 755
Sec. 4123.93. As used in sections 4123.93 and 4123.931 <u>to 4123.932</u> of the Revised Code:	756 757

(A) "Claimant" means a person who is eligible to receive 758
compensation, medical benefits, or death benefits under this 759
chapter or Chapter 4121., 4127., or 4131. of the Revised Code. 760

(B) "Statutory subrogee" means the administrator of 761
workers' compensation, a self-insuring employer, or an employer 762
that contracts for the direct payment of medical services 763
pursuant to division (P) of section 4121.44 of the Revised Code. 764

(C) "Third party" means an individual, private insurer, 765
public or private entity, or public or private program that is 766
or may be liable to make payments to a person without regard to 767
any statutory duty contained in this chapter or Chapter 4121., 768
4127., or 4131. of the Revised Code. 769

(D) "Subrogation interest" includes past, present, and 770
estimated future payments of compensation, medical benefits, 771
rehabilitation costs, or death benefits, and any other costs or 772
expenses paid to or on behalf of the claimant by the statutory 773
subrogee pursuant to this chapter or Chapter 4121., 4127., or 774
4131. of the Revised Code. 775

(E) "Net amount recovered" means the amount of any award, 776
settlement, compromise, or recovery by a claimant against a 777
third party, minus the attorney's fees, costs, or other expenses 778
incurred by the claimant in securing the award, settlement, 779
compromise, or recovery. "Net amount recovered" does not include 780
any punitive damages that may be awarded by a judge or jury. 781

(F) "Uncompensated damages" means the claimant's 782
demonstrated or proven damages minus the statutory subrogee's 783
subrogation interest. 784

Sec. 4123.931. (A) The payment of compensation or benefits 785
pursuant to this chapter or Chapter 4121., 4127., or 4131., of 786

the Revised Code creates a right of recovery in favor of a 787
statutory subrogee against a third party, and the statutory 788
subrogee is subrogated to the rights of a claimant against that 789
third party. The net amount recovered is subject to a statutory 790
subrogee's right of recovery. 791

(B) If a claimant, statutory subrogee, and third party 792
settle or attempt to settle a claimant's claim against a third 793
party, the claimant shall receive an amount equal to the 794
uncompensated damages divided by the sum of the subrogation 795
interest plus the uncompensated damages, multiplied by the net 796
amount recovered, and the statutory subrogee shall receive an 797
amount equal to the subrogation interest divided by the sum of 798
the subrogation interest plus the uncompensated damages, 799
multiplied by the net amount recovered, except that the net 800
amount recovered may instead be divided and paid on a more fair 801
and reasonable basis that is agreed to by the claimant and 802
statutory subrogee. If while attempting to settle, the claimant 803
and statutory subrogee cannot agree to the allocation of the net 804
amount recovered, the claimant and statutory subrogee may file a 805
request with the administrator of workers' compensation for a 806
conference to be conducted by a designee appointed by the 807
administrator, or the claimant and statutory subrogee may agree 808
to utilize any other binding or non-binding alternative dispute 809
resolution process. 810

The claimant and statutory subrogee shall pay equal shares 811
of the fees and expenses of utilizing an alternative dispute 812
resolution process, unless they agree to pay those fees and 813
expenses in another manner. The administrator shall not assess 814
any fees to a claimant or statutory subrogee for a conference 815
conducted by the administrator's designee. 816

(C) If a claimant and statutory subrogee request that a conference be conducted by the administrator's designee pursuant to division (B) of this section, both of the following apply:

(1) The administrator's designee shall schedule a conference on or before sixty days after the date that the claimant and statutory subrogee filed a request for the conference.

(2) The determination made by the administrator's designee is not subject to Chapter 119. of the Revised Code.

(D) When a claimant's action against a third party proceeds to trial and damages are awarded, both of the following apply:

(1) The claimant shall receive an amount equal to the uncompensated damages divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered, and the statutory subrogee shall receive an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the net amount recovered.

(2) The court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories that specify the following:

(a) The total amount of the compensatory damages;

(b) The portion of the compensatory damages specified pursuant to division (D) (2) (a) of this section that represents economic loss;

(c) The portion of the compensatory damages specified

pursuant to division (D)(2)(a) of this section that represents 845
noneconomic loss. 846

(E)(1) After a claimant and statutory subrogee know the 847
net amount recovered, and after the means for dividing it has 848
been determined under division (B) or (D) of this section, a 849
claimant may establish an interest-bearing trust account for the 850
full amount of the subrogation interest that represents 851
estimated future payments of compensation, medical benefits, 852
rehabilitation costs, or death benefits, reduced to present 853
value, from which the claimant shall make reimbursement payments 854
to the statutory subrogee for the future payments of 855
compensation, medical benefits, rehabilitation costs, or death 856
benefits. If the workers' compensation claim associated with the 857
subrogation interest is settled, or if the claimant dies, or if 858
any other circumstance occurs that would preclude any future 859
payments of compensation, medical benefits, rehabilitation 860
costs, and death benefits by the statutory subrogee, any amount 861
remaining in the trust account after final reimbursement is paid 862
to the statutory subrogee for all payments made by the statutory 863
subrogee before the ending of future payments shall be paid to 864
the claimant or the claimant's estate. 865

(2) A claimant may use interest that accrues on the trust 866
account to pay the expenses of establishing and maintaining the 867
trust account, and all remaining interest shall be credited to 868
the trust account. 869

(3) If a claimant establishes a trust account, the 870
statutory subrogee shall provide payment notices to the claimant 871
on or before the thirtieth day of June and the thirty-first day 872
of December every year listing the total amount that the 873
statutory subrogee has paid for compensation, medical benefits, 874

rehabilitation costs, or death benefits during the half of the 875
year preceding the notice. The claimant shall make reimbursement 876
payments to the statutory subrogee from the trust account on or 877
before the thirty-first day of July every year for a notice 878
provided by the thirtieth day of June, and on or before the 879
thirty-first day of January every year for a notice provided by 880
the thirty-first day of December. The claimant's reimbursement 881
payment shall be in an amount that equals the total amount 882
listed on the notice the claimant receives from the statutory 883
subrogee. 884

(F) If a claimant does not establish a trust account as 885
described in division (E) (1) of this section, the claimant shall 886
pay to the statutory subrogee, on or before thirty days after 887
receipt of funds from the third party, the full amount of the 888
subrogation interest that represents estimated future payments 889
of compensation, medical benefits, rehabilitation costs, or 890
death benefits. 891

(G) A claimant shall notify a statutory subrogee and the 892
attorney general of the identity of all third parties against 893
whom the claimant has or may have a right of recovery, except 894
that when the statutory subrogee is a self-insuring employer, 895
the claimant need not notify the attorney general. No 896
settlement, compromise, judgment, award, or other recovery in 897
any action or claim by a claimant shall be final unless the 898
claimant provides the statutory subrogee and, when required, the 899
attorney general, with prior notice and a reasonable opportunity 900
to assert its subrogation rights. If a statutory subrogee and, 901
when required, the attorney general are not given that notice, 902
or if a settlement or compromise excludes any amount paid by the 903
statutory subrogee, the third party and the claimant shall be 904
jointly and severally liable to pay the statutory subrogee the 905

full amount of the subrogation interest. 906

(H) The right of subrogation under this chapter is 907
automatic, regardless of whether a statutory subrogee is joined 908
as a party in an action by a claimant against a third party. A 909
statutory subrogee may assert its subrogation rights through 910
correspondence with the claimant and the third party or their 911
legal representatives. A statutory subrogee may institute and 912
pursue legal proceedings against a third party either by itself 913
or in conjunction with a claimant. If a statutory subrogee 914
institutes legal proceedings against a third party, the 915
statutory subrogee shall provide notice of that fact to the 916
claimant. If the statutory subrogee joins the claimant as a 917
necessary party, or if the claimant elects to participate in the 918
proceedings as a party, the claimant may present the claimant's 919
case first if the matter proceeds to trial. If a claimant 920
disputes the validity or amount of an asserted subrogation 921
interest, the claimant shall join the statutory subrogee as a 922
necessary party to the action against the third party. 923

(I) The statutory subrogation right of recovery applies 924
to, but is not limited to, all of the following: 925

(1) Amounts recoverable from a claimant's insurer in 926
connection with underinsured or uninsured motorist coverage, 927
notwithstanding any limitation contained in Chapter 3937. of the 928
Revised Code; 929

(2) Amounts that a claimant would be entitled to recover 930
from a political subdivision, notwithstanding any limitations 931
contained in Chapter 2744. of the Revised Code; 932

(3) Amounts recoverable from an intentional tort action. 933

(J) If a claimant's claim against a third party is for 934

wrongful death or the claim involves any minor beneficiaries, 935
amounts allocated under this section are subject to the approval 936
of probate court. 937

(K) ~~The~~ Except as otherwise provided in this division, the 938
administrator shall deposit any money collected under this 939
section into the public fund or the private fund of the state 940
insurance fund, as appropriate. Any money collected under this 941
section for compensation or benefits that were charged pursuant 942
to section 4123.932 of the Revised Code to the surplus fund 943
account created in division (B) of section 4123.34 of the 944
Revised Code and not charged to an employer's experience shall 945
be deposited in the surplus fund account and not applied to an 946
individual employer's account. If a self-insuring employer 947
collects money under this section of the Revised Code, the self- 948
insuring employer shall deduct the amount collected, in the year 949
collected, from the amount of paid compensation the self-insured 950
employer is required to report under section 4123.35 of the 951
Revised Code. 952

Sec. 4123.932. (A) As used in this section, "motor 953
vehicle" has the same meaning as in section 4501.01 of the 954
Revised Code. 955

(B) Any compensation and benefits related to a claim that 956
is compensable under this chapter or Chapter 4121., 4127., or 957
4131. of the Revised Code shall be charged to the surplus fund 958
account created under division (B) of section 4123.34 of the 959
Revised Code and not charged to an individual employer's 960
experience if, upon the administrator's determination, all of 961
the following apply to that claim: 962

(1) The employer of the employee who is the subject of the 963
claim pays premiums into the state insurance fund. 964

- (2) The claim is based on a motor vehicle accident 965
involving a third party. 966
- (3) The third party is issued a citation for violation of 967
any law or ordinance regulating the operation of a motor vehicle 968
arising from the accident on which the claim is based. 969
- (4) Either of the following circumstances apply to the 970
claim: 971
- (a) Any form of insurance maintained by the third party 972
covers the claim. 973
- (b) Uninsured or underinsured motorist coverage as 974
described in section 3937.18 of the Revised Code, covers the 975
claim. 976
- (C) If an employer believes division (B) of this section 977
applies to a claim about which an employee of the employer is 978
the subject, the employer may file a request with the 979
administrator for a determination by the administrator as to 980
whether the claim is to be charged to the surplus fund account 981
pursuant to this section. 982
- (D) (1) Within one hundred eighty days after the 983
administrator receives a request made under division (C) of this 984
section, the administrator shall determine whether the claim for 985
which the request is made shall be charged to the surplus fund 986
account pursuant to this section. 987
- (2) If the administrator fails to make a determination 988
under division (D) (1) of this section within the time required, 989
the administrator shall charge the claim for which the request 990
was made to the surplus fund account pursuant to this section. 991
- (E) This section does not apply if the employer of the 992

employee who is the subject of the claim is the state or a state 993
institution of higher education, including its hospitals. 994

Section 2. That existing sections 4123.35, 4123.93, and 995
4123.931 of the Revised Code are hereby repealed. 996

Section 3. Sections 4123.93 and 4123.931 of the Revised 997
Code, as amended by this act, and section 4123.932 of the 998
Revised Code, as enacted by this act, apply to a claim under 999
Chapter 4121., 4123., 4127., or 4131. of the Revised Code 1000
arising on or after July 1, 2016. 1001