

As Introduced

136th General Assembly

Regular Session

H. B. No. 701

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Representatives Williams, Humphrey

To amend sections 4109.02 and 4123.35 and to enact
sections 2152.30, 4113.90, and 4123.97 of the
Revised Code regarding juvenile offenders and
certificates of qualification for employment.

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

Section 1. That sections 4109.02 and 4123.35 be amended
and sections 2152.30, 4113.90, and 4123.97 of the Revised Code
be enacted to read as follows:

Sec. 2152.30. A child who is seventeen years of age and
has previously been found to be a delinquent child under Chapter
2152. of the Revised Code may apply to the juvenile court that
adjudicated the child a delinquent child for a certificate of
qualification for employment. A court that receives a petition
under this section shall review the petition and, assuming the
petition is accurate and the child is no longer under the
jurisdiction of the court in the delinquency matter, the court
shall issue a certificate of qualification for employment to the
child.

In any proceeding on a claim against an employer alleging
the employer was negligent in hiring or supervising an
individual who is seventeen years of age and has previously been

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found to be a delinquent child under Chapter 2152. of the 21
Revised Code, a certificate of qualification for employment 22
issued under this section to the individual provides immunity 23
for the employer as to the claim. 24

Sec. 4109.02. (A) Except as provided in division (B) of 25
this section or in section 4109.06 of the Revised Code, no minor 26
of compulsory school age shall be employed by any employer 27
unless the minor presents to the employer a proper age and 28
schooling certificate or a certificate of qualification for 29
employment issued under section 2152.30 of the Revised Code as a 30
condition of employment. 31

A valid certificate or certificate of qualification for 32
employment constitutes conclusive evidence of the age of the 33
minor and of the employer's right to employ the minor in 34
occupations not denied by law to minors of that age under 35
section 4109.06 of the Revised Code or rules adopted under that 36
section. 37

(B) Minors aged sixteen or seventeen are not required to 38
provide an age and schooling certificate or a certificate of 39
qualification for employment issued under section 2152.30 of the 40
Revised Code as a condition of employment if they are to be 41
employed during summer vacation months after the last day of the 42
school term in the spring and before the first day of the school 43
term in the fall, in nonagricultural and nonhazardous employment 44
as defined by the "Fair Labor Standards Act of 1938," 52 Stat. 45
1060, 29 U.S.C.A. 201, and similar state statutes, or in other 46
employment not prohibited to minors age sixteen or seventeen by 47
law. 48

(C) To be hired for the type of employment described in 49
division (B) of this section, minors shall provide the employer 50

with the following: 51

(1) Evidence of proof of age in the same manner as proof 52
of age is provided the superintendent of schools or chief 53
administrative officer under division (A) (3) of section 3331.02 54
of the Revised Code; 55

(2) A statement signed by the minor's parent or guardian 56
consenting to the proposed employment. For the purposes of this 57
section, in the absence of a parent or guardian, a person over 58
eighteen years of age with whom the minor resides may sign the 59
statement. 60

Sec. 4113.90. (A) As used in this section: 61

(1) "Employee" means any person who performs a service for 62
wages or other remuneration for an employer. 63

(2) "Employer" means any person who has one or more 64
employees. "Employer" includes an agent of an employer, the 65
state or any agency or instrumentality of the state, and any 66
municipal corporation, county, township, school district, or 67
other political subdivision or any agency or instrumentality 68
thereof. 69

(3) "Fringe benefit" means any benefit for which the 70
employer would incur an expense, including health, welfare, or 71
retirement benefits, whether paid for entirely by the employee 72
or on the basis of a joint employer-employee contribution; 73
leaves of absence; or vacation, separation, sick, or holiday 74
pay. 75

(B) No employer shall discriminate against an employee in 76
the payment of wages or the provision of fringe benefits on the 77
basis that an employee has been granted a certificate of 78
qualification for employment under section 2152.30 of the 79

Revised Code by paying wages or providing fringe benefits to the 80
employee that are less than wages or fringe benefits provided to 81
another employee for equal work on jobs the performance of which 82
requires equal skill, effort, and responsibility, and which are 83
performed under similar conditions. 84

(C) No employer shall discriminate against any employee 85
because the employee makes a complaint or institutes, or 86
testifies in, any proceeding under this section. 87

(D) An employee who believes the employee has been 88
discriminated against in violation of this section may sue in 89
any court of competent jurisdiction. For a violation of division 90
(B) of this section, the employee may recover two times the 91
amount of the difference between the wages and value of fringe 92
benefits actually received and the wages and value of fringe 93
benefits received by a person performing equal work for the 94
employer from the date of the commencement of the violation. For 95
a violation of division (C) of this section, the court may grant 96
a remedy the court considers appropriate under the 97
circumstances. In addition to any other remedy granted under 98
this division, the court may award an employee reasonable 99
attorney's fees and court costs. 100

(E) Any action arising under this section shall be 101
initiated within one year after the date of violation. 102

Sec. 4123.35. (A) Except as provided in this section, and 103
until the policy year commencing July 1, 2015, every private 104
employer and every publicly owned utility shall pay semiannually 105
in the months of January and July into the state insurance fund 106
the amount of annual premium the administrator of workers' 107
compensation fixes for the employment or occupation of the 108
employer, the amount of which premium to be paid by each 109

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.

Except as otherwise provided in this section, for a policy
year commencing on or after July 1, 2015, every private employer
and every publicly owned utility shall pay annually in the month
of June immediately preceding the policy year into the state
insurance fund the amount of estimated annual premium the
administrator fixes for the employment or occupation of the
employer, the amount of which estimated 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 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. Upon receipt of the payroll
report required by division (B) of section 4123.26 of the
Revised Code, the administrator shall adjust the premium and
assessments charged to each employer for the difference between
estimated gross payrolls and actual gross payrolls, and any
balance due to the administrator shall be immediately paid by
the employer. Any balance due the employer shall be credited to
the employer's account.

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

Revised Code. 141

A receipt certifying that payment has been made shall be 142
issued to the employer by the bureau of workers' compensation. 143
The receipt is prima-facie evidence of the payment of the 144
premium. The administrator shall provide each employer written 145
proof of workers' compensation coverage as is required in 146
section 4123.83 of the Revised Code. Proper posting of the 147
notice constitutes the employer's compliance with the notice 148
requirement mandated in section 4123.83 of the Revised Code. 149

The bureau shall verify with the secretary of state the 150
existence of all corporations and organizations making 151
application for workers' compensation coverage and shall require 152
every such application to include the employer's federal 153
identification number. 154

A private employer who has contracted with a subcontractor 155
is liable for the unpaid premium due from any subcontractor with 156
respect to that part of the payroll of the subcontractor that is 157
for work performed pursuant to the contract with the employer. 158

Division (A) of this section providing for the payment of 159
premiums semiannually does not apply to any employer who was a 160
subscriber to the state insurance fund prior to January 1, 1914, 161
or, until July 1, 2015, who may first become a subscriber to the 162
fund in any month other than January or July. Instead, the 163
semiannual premiums shall be paid by those employers from time 164
to time upon the expiration of the respective periods for which 165
payments into the fund have been made by them. After July 1, 166
2015, an employer who first becomes a subscriber to the fund on 167
any day other than the first day of July shall pay premiums 168
according to rules adopted by the administrator, with the advice 169
and consent of the bureau of workers' compensation board of 170

directors, for the remainder of the policy year for which the
coverage is effective. 171
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The administrator, with the advice and consent of the
board, shall adopt rules to permit employers to make periodic
payments of the premium and assessment due under this division. 173
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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. The administrator, in the rules the administrator
adopts, may set an administrative fee for these periodic
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 shall issue a
receipt 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. 181
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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. 188
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(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
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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 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;

(b) 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;	231
(c) The sufficiency of the employer's assets located in this state to insure the employer's solvency in paying compensation directly;	232 233 234
(d) 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.	235 236 237 238 239 240
(e) The employer's organizational plan for the administration of the workers' compensation law;	241 242
(f) 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	243 244 245 246 247
(g) 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.	248 249 250 251 252 253 254
The administrator may waive the requirements of division (B) (1) (a) of this section and the requirement of division (B) (1) (d) 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	255 256 257 258 259

an employer shall meet in order for the administrator to waive 260
the requirements of divisions (B) (1) (a) and (d) of this section. 261
Such rules may require additional security of that employer 262
pursuant to division (E) of section 4123.351 of the Revised 263
Code. 264

The administrator shall not grant the status of self- 265
insuring employer to the state, except that the administrator 266
may grant the status of self-insuring employer to a state 267
institution of higher education, including its hospitals, that 268
meets the requirements of division (B) (2) of this section. 269

(2) When considering the application of a public employer, 270
except for a board of county commissioners described in division 271
(G) of section 4123.01 of the Revised Code, a board of a county 272
hospital, or a publicly owned utility, the administrator shall 273
verify that the public employer satisfies all of the following 274
requirements as the requirements apply to that public employer: 275

(a) For the two-year period preceding application under 276
this section, the public employer has maintained an unvoted debt 277
capacity equal to at least two times the amount of the current 278
annual premium established by the administrator under this 279
chapter for that public employer for the year immediately 280
preceding the year in which the public employer makes 281
application under this section. 282

(b) For each of the two fiscal years preceding application 283
under this section, the unreserved and undesignated year-end 284
fund balance in the public employer's general fund is equal to 285
at least five per cent of the public employer's general fund 286
revenues for the fiscal year computed in accordance with 287
generally accepted accounting principles. 288

(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. 289
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(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. 294
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(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. 298
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(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. 302
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(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. 308
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(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. 312
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(i) For a public employer that is a hospital, the public 317

employer shall submit audited financial statements showing the 318
hospital's overall liquidity characteristics, and the 319
administrator shall determine, on an individual basis, whether 320
the public employer satisfies liquidity standards equivalent to 321
the liquidity standards of other public employers. 322

(j) Any additional criteria that the administrator adopts 323
by rule pursuant to division (E) of this section. 324

The administrator may adopt rules establishing the 325
criteria that a public employer shall satisfy in order for the 326
administrator to waive any of the requirements listed in 327
divisions (B) (2) (a) to (j) of this section. The rules may 328
require additional security from that employer pursuant to 329
division (E) of section 4123.351 of the Revised Code. The 330
administrator shall not waive any of the requirements listed in 331
divisions (B) (2) (a) to (j) of this section for a public employer 332
who does not satisfy the criteria established in the rules the 333
administrator adopts. 334

(C) A board of county commissioners described in division 335
(G) of section 4123.01 of the Revised Code, as an employer, that 336
will abide by the rules of the administrator and that may be of 337
sufficient financial ability to render certain the payment of 338
compensation to injured employees or the dependents of killed 339
employees, and the furnishing of medical, surgical, nursing, and 340
hospital attention and services and medicines, and funeral 341
expenses, equal to or greater than is provided for in sections 342
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the 343
Revised Code, and that does not desire to insure the payment 344
thereof or indemnify itself against loss sustained by the direct 345
payment thereof, upon a finding of such facts by the 346
administrator, may be granted the privilege to pay individually 347

compensation, and furnish medical, surgical, nursing, and 348
hospital services and attention and funeral expenses directly to 349
injured employees or the dependents of killed employees, thereby 350
being granted status as a self-insuring employer. The 351
administrator may charge a board of county commissioners 352
described in division (G) of section 4123.01 of the Revised Code 353
that applies for the status as a self-insuring employer a 354
reasonable application fee to cover the bureau's costs in 355
connection with processing and making a determination with 356
respect to an application. All employers granted such status 357
shall demonstrate sufficient financial and administrative 358
ability to assure that all obligations under this section are 359
promptly met. The administrator shall deny the privilege where 360
the employer is unable to demonstrate the employer's ability to 361
promptly meet all the obligations imposed on the employer by 362
this section. The administrator shall consider, but is not 363
limited to, the following factors, where applicable, in 364
determining the employer's ability to meet all of the 365
obligations imposed on the board as an employer by this section: 366

(1) The board has operated in this state for a minimum of 367
two years; 368

(2) Where the board previously contributed to the state 369
insurance fund or is a successor employer as defined by bureau 370
rules, the amount of the buyout, as defined by bureau rules; 371

(3) The sufficiency of the board's assets located in this 372
state to insure the board's solvency in paying compensation 373
directly; 374

(4) The financial records, documents, and data, certified 375
by a certified public accountant, necessary to provide the 376
board's full financial disclosure. The records, documents, and 377

data include, but are not limited to, balance sheets and profit	378
and loss history for the current year and previous four years.	379
(5) The board's organizational plan for the administration	380
of the workers' compensation law;	381
(6) The board's proposed plan to inform employees of the	382
proposed self-insurance, the procedures the board will follow as	383
a self-insuring employer, and the employees' rights to	384
compensation and benefits;	385
(7) The board has either an account in a financial	386
institution in this state, or if the board maintains an account	387
with a financial institution outside this state, ensures that	388
workers' compensation checks are drawn from the same account as	389
payroll checks or the board clearly indicates that payment will	390
be honored by a financial institution in this state;	391
(8) The board shall provide the administrator a surety	392
bond in an amount equal to one hundred twenty-five per cent of	393
the projected losses as determined by the administrator.	394
(D) The administrator shall require a surety bond from all	395
self-insuring employers, issued pursuant to section 4123.351 of	396
the Revised Code, that is sufficient to compel, or secure to	397
injured employees, or to the dependents of employees killed, the	398
payment of compensation and expenses, which shall in no event be	399
less than that paid or furnished out of the state insurance fund	400
in similar cases to injured employees or to dependents of killed	401
employees whose employers contribute to the fund, except when an	402
employee of the employer, who has suffered the loss of a hand,	403
arm, foot, leg, or eye prior to the injury for which	404
compensation is to be paid, and thereafter suffers the loss of	405
any other of the members as the result of any injury sustained	406

in the course of and arising out of the employee's employment, 407
the compensation to be paid by the self-insuring employer is 408
limited to the disability suffered in the subsequent injury, 409
additional compensation, if any, to be paid by the bureau out of 410
the surplus created by section 4123.34 of the Revised Code. 411

(E) In addition to the requirements of this section, the 412
administrator shall make and publish rules governing the manner 413
of making application and the nature and extent of the proof 414
required to justify a finding of fact by the administrator as to 415
granting the status of a self-insuring employer, which rules 416
shall be general in their application, one of which rules shall 417
provide that all self-insuring employers shall pay into the 418
state insurance fund such amounts as are required to be credited 419
to the surplus fund in division (B) of section 4123.34 of the 420
Revised Code. The administrator may adopt rules establishing 421
requirements in addition to the requirements described in 422
division (B) (2) of this section that a public employer shall 423
meet in order to qualify for self-insuring status. 424

Employers shall secure directly from the bureau central 425
offices application forms upon which the bureau shall stamp a 426
designating number. Prior to submission of an application, an 427
employer shall make available to the bureau, and the bureau 428
shall review, the information described in division (B)(1) of 429
this section, and public employers shall make available, and the 430
bureau shall review, the information necessary to verify whether 431
the public employer meets the requirements listed in division 432
(B) (2) of this section. An employer shall file the completed 433
application forms with an application fee, which shall cover the 434
costs of processing the application, as established by the 435
administrator, by rule, with the bureau at least ninety days 436
prior to the effective date of the employer's new status as a 437

self-insuring employer. The application form is not deemed 438
complete until all the required information is attached thereto. 439
The bureau shall only accept applications that contain the 440
required information. 441

(F) The bureau shall review completed applications within 442
a reasonable time. If the bureau determines to grant an employer 443
the status as a self-insuring employer, the bureau shall issue a 444
statement, containing its findings of fact, that is prepared by 445
the bureau and signed by the administrator. If the bureau 446
determines not to grant the status as a self-insuring employer, 447
the bureau shall notify the employer of the determination and 448
require the employer to continue to pay its full premium into 449
the state insurance fund. The administrator also shall adopt 450
rules establishing a minimum level of performance as a criterion 451
for granting and maintaining the status as a self-insuring 452
employer and fixing time limits beyond which failure of the 453
self-insuring employer to provide for the necessary medical 454
examinations and evaluations may not delay a decision on a 455
claim. 456

(G) The administrator shall adopt rules setting forth 457
procedures for auditing the program of self-insuring employers. 458
The bureau shall conduct the audit upon a random basis or 459
whenever the bureau has grounds for believing that a self- 460
insuring employer is not in full compliance with bureau rules or 461
this chapter. 462

The administrator shall monitor the programs conducted by 463
self-insuring employers, to ensure compliance with bureau 464
requirements and for that purpose, shall develop and issue to 465
self-insuring employers standardized forms for use by the self- 466
insuring employer in all aspects of the self-insuring employers' 467

direct compensation program and for reporting of information to 468
the bureau. 469

The bureau shall receive and transmit to the self-insuring 470
employer all complaints concerning any self-insuring employer. 471
In the case of a complaint against a self-insuring employer, the 472
administrator shall handle the complaint through the self- 473
insurance division of the bureau. The bureau shall maintain a 474
file by employer of all complaints received that relate to the 475
employer. The bureau shall evaluate each complaint and take 476
appropriate action. 477

The administrator shall adopt as a rule a prohibition 478
against any self-insuring employer from harassing, dismissing, 479
or otherwise disciplining any employee making a complaint, which 480
rule shall provide for a financial penalty to be levied by the 481
administrator payable by the offending self-insuring employer. 482

(H) For the purpose of making determinations as to whether 483
to grant status as a self-insuring employer, the administrator 484
may subscribe to and pay for a credit reporting service that 485
offers financial and other business information about individual 486
employers. The costs in connection with the bureau's 487
subscription or individual reports from the service about an 488
applicant may be included in the application fee charged 489
employers under this section. 490

(I) A self-insuring employer that returns to the state 491
insurance fund as a state fund employer shall provide the 492
administrator with medical costs and indemnity costs by claim, 493
and payroll by manual classification and year, and such other 494
information the administrator may require. The self-insuring 495
employer shall submit this information by dates and in a format 496
determined by the administrator. The administrator shall develop 497

a state fund experience modification factor for a self-insuring employer that returns to the state insurance fund based in whole or in part on the employer's self-insured experience and the information submitted. 498
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(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 surplus fund under division (B) of section 4123.34 of the Revised Code, on the basis of the paid compensation attributable to the individual self-insuring employer according to the following calculation: 502
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(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; 510
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(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. 516
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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.	528 529 530 531 532 533 534
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.	535 536 537 538 539 540 541 542 543 544 545 546 547 548 549
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 surplus fund under division (B) of section 4123.34 of the Revised Code based upon paid compensation attributable to claims that occurred while the employer was a self-insuring employer within this state.	550 551 552 553 554 555 556
(K) There is hereby created in the state treasury the	557

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~~Except as provided in section 4123.97 of the~~
Revised Code, 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,

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the administrator may add a late fee penalty of not more than 588
five hundred dollars to the assessment plus an additional 589
penalty amount as follows: 590

(a) For an assessment from sixty-one to ninety days past 591
due, the prime interest rate, multiplied by the assessment due; 592

(b) For an assessment from ninety-one to one hundred 593
twenty days past due, the prime interest rate plus two per cent, 594
multiplied by the assessment due; 595

(c) For an assessment from one hundred twenty-one to one 596
hundred fifty days past due, the prime interest rate plus four 597
per cent, multiplied by the assessment due; 598

(d) For an assessment from one hundred fifty-one to one 599
hundred eighty days past due, the prime interest rate plus six 600
per cent, multiplied by the assessment due; 601

(e) For an assessment from one hundred eighty-one to two 602
hundred ten days past due, the prime interest rate plus eight 603
per cent, multiplied by the assessment due; 604

(f) For each additional thirty-day period or portion 605
thereof that an assessment remains past due after it has 606
remained past due for more than two hundred ten days, the prime 607
interest rate plus eight per cent, multiplied by the assessment 608
due. 609

(3) An employer may appeal a late fee penalty and penalty 610
assessment to the administrator. 611

For purposes of division (L) (2) of this section, "prime 612
interest rate" means the average bank prime rate, and the 613
administrator shall determine the prime interest rate in the 614
same manner as a county auditor determines the average bank 615

prime rate under section 929.02 of the Revised Code. 616

The administrator shall include any assessment and 617
penalties that remain unpaid for previous assessment periods in 618
the calculation and collection of any assessments due under this 619
division or division (J) of this section. 620

(M) As used in this section, "paid compensation" means all 621
amounts paid by a self-insuring employer for living maintenance 622
benefits, all amounts for compensation paid pursuant to sections 623
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 624
and 4123.64 of the Revised Code, all amounts paid as wages in 625
lieu of such compensation, all amounts paid in lieu of such 626
compensation under a nonoccupational accident and sickness 627
program fully funded by the self-insuring employer, and all 628
amounts paid by a self-insuring employer for a violation of a 629
specific safety standard pursuant to Section 35 of Article II, 630
Ohio Constitution and section 4121.47 of the Revised Code. 631

(N) Should any section of this chapter or Chapter 4121. of 632
the Revised Code providing for self-insuring employers' 633
assessments based upon compensation paid be declared 634
unconstitutional by a final decision of any court, then that 635
section of the Revised Code declared unconstitutional shall 636
revert back to the section in existence prior to November 3, 637
1989, providing for assessments based upon payroll. 638

(O) The administrator may grant a self-insuring employer 639
the privilege to self-insure a construction project entered into 640
by the self-insuring employer that is scheduled for completion 641
within six years after the date the project begins, and the 642
total cost of which is estimated to exceed one hundred million 643
dollars or, for employers described in division (R) of this 644
section, if the construction project is estimated to exceed 645

twenty-five million dollars. The administrator may waive such 646
cost and time criteria and grant a self-insuring employer the 647
privilege to self-insure a construction project regardless of 648
the time needed to complete the construction project and 649
provided that the cost of the construction project is estimated 650
to exceed fifty million dollars. A self-insuring employer who 651
desires to self-insure a construction project shall submit to 652
the administrator an application listing the dates the 653
construction project is scheduled to begin and end, the 654
estimated cost of the construction project, the contractors and 655
subcontractors whose employees are to be self-insured by the 656
self-insuring employer, the provisions of a safety program that 657
is specifically designed for the construction project, and a 658
statement as to whether a collective bargaining agreement 659
governing the rights, duties, and obligations of each of the 660
parties to the agreement with respect to the construction 661
project exists between the self-insuring employer and a labor 662
organization. 663

A self-insuring employer may apply to self-insure the 664
employees of either of the following: 665

(1) All contractors and subcontractors who perform labor 666
or work or provide materials for the construction project; 667

(2) All contractors and, at the administrator's 668
discretion, a substantial number of all the subcontractors who 669
perform labor or work or provide materials for the construction 670
project. 671

Upon approval of the application, the administrator shall 672
mail a certificate granting the privilege to self-insure the 673
construction project to the self-insuring employer. The 674
certificate shall contain the name of the self-insuring employer 675

and the name, address, and telephone number of the self-insuring 676
employer's representatives who are responsible for administering 677
workers' compensation claims for the construction project. The 678
self-insuring employer shall post the certificate in a 679
conspicuous place at the site of the construction project. 680

The administrator shall maintain a record of the 681
contractors and subcontractors whose employees are covered under 682
the certificate issued to the self-insured employer. A self- 683
insuring employer immediately shall notify the administrator 684
when any contractor or subcontractor is added or eliminated from 685
inclusion under the certificate. 686

Upon approval of the application, the self-insuring 687
employer is responsible for the administration and payment of 688
all claims under this chapter and Chapter 4121. of the Revised 689
Code for the employees of the contractor and subcontractors 690
covered under the certificate who receive injuries or are killed 691
in the course of and arising out of employment on the 692
construction project, or who contract an occupational disease in 693
the course of employment on the construction project. For 694
purposes of this chapter and Chapter 4121. of the Revised Code, 695
a claim that is administered and paid in accordance with this 696
division is considered a claim against the self-insuring 697
employer listed in the certificate. A contractor or 698
subcontractor included under the certificate shall report to the 699
self-insuring employer listed in the certificate, all claims 700
that arise under this chapter and Chapter 4121. of the Revised 701
Code in connection with the construction project for which the 702
certificate is issued. 703

A self-insuring employer who complies with this division 704
is entitled to the protections provided under this chapter and 705

Chapter 4121. of the Revised Code with respect to the employees 706
of the contractors and subcontractors covered under a 707
certificate issued under this division for death or injuries 708
that arise out of, or death, injuries, or occupational diseases 709
that arise in the course of, those employees' employment on that 710
construction project, as if the employees were employees of the 711
self-insuring employer, provided that the self-insuring employer 712
also complies with this section. No employee of the contractors 713
and subcontractors covered under a certificate issued under this 714
division shall be considered the employee of the self-insuring 715
employer listed in that certificate for any purposes other than 716
this chapter and Chapter 4121. of the Revised Code. Nothing in 717
this division gives a self-insuring employer authority to 718
control the means, manner, or method of employment of the 719
employees of the contractors and subcontractors covered under a 720
certificate issued under this division. 721

The contractors and subcontractors included under a 722
certificate issued under this division are entitled to the 723
protections provided under this chapter and Chapter 4121. of the 724
Revised Code with respect to the contractor's or subcontractor's 725
employees who are employed on the construction project which is 726
the subject of the certificate, for death or injuries that arise 727
out of, or death, injuries, or occupational diseases that arise 728
in the course of, those employees' employment on that 729
construction project. 730

The contractors and subcontractors included under a 731
certificate issued under this division shall identify in their 732
payroll records the employees who are considered the employees 733
of the self-insuring employer listed in that certificate for 734
purposes of this chapter and Chapter 4121. of the Revised Code, 735
and the amount that those employees earned for employment on the 736

construction project that is the subject of that certificate. 737
Notwithstanding any provision to the contrary under this chapter 738
and Chapter 4121. of the Revised Code, the administrator shall 739
exclude the payroll that is reported for employees who are 740
considered the employees of the self-insuring employer listed in 741
that certificate, and that the employees earned for employment 742
on the construction project that is the subject of that 743
certificate, when determining those contractors' or 744
subcontractors' premiums or assessments required under this 745
chapter and Chapter 4121. of the Revised Code. A self-insuring 746
employer issued a certificate under this division shall include 747
in the amount of paid compensation it reports pursuant to 748
division (L) of this section, the amount of paid compensation 749
the self-insuring employer paid pursuant to this division for 750
the previous calendar year. 751

Nothing in this division shall be construed as altering 752
the rights of employees under this chapter and Chapter 4121. of 753
the Revised Code as those rights existed prior to September 17, 754
1996. Nothing in this division shall be construed as altering 755
the rights devolved under sections 2305.31 and 4123.82 of the 756
Revised Code as those rights existed prior to September 17, 757
1996. 758

As used in this division, "privilege to self-insure a 759
construction project" means privilege to pay individually 760
compensation, and to furnish medical, surgical, nursing, and 761
hospital services and attention and funeral expenses directly to 762
injured employees or the dependents of killed employees. 763

(P) A self-insuring employer whose application is granted 764
under division (O) of this section shall designate a safety 765
professional to be responsible for the administration and 766

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;	796 797 798
(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;	799 800 801 802 803 804 805 806 807
(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;	808 809 810
(4) Whether the self-insuring employer has employed an ombudsperson as required under division (P) of this section;	811 812
(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.	813 814 815 816 817
(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:	818 819 820 821
(1) A state institution of higher education;	822
(2) A school district;	823

(3) A county school financing district;	824
(4) An educational service center;	825
(5) A community school established under Chapter 3314. of the Revised Code;	826 827
(6) A municipal power agency as defined in section 3734.058 of the Revised Code.	828 829
(S) As used in this section:	830
(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;	831 832 833
(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.	834 835 836 837 838 839 840 841
<u>Sec. 4123.97. (A) As used in this section, "paid compensation" has the same meaning as in section 4123.35 of the Revised Code.</u>	842 843 844
<u>(B) Except as provided in division (C) of this section, any compensation and benefits related to a claim that is compensable under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code shall be charged to the surplus fund account created under division (B) of section 4123.34 of the Revised Code and not charged to an individual employer's experience if both of the following apply to that claim:</u>	845 846 847 848 849 850 851

<u>(1) The employer of the employee who is the subject of the claim pays premiums into the state insurance fund.</u>	852
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<u>(2) The employee who is the subject of the claim is seventeen years of age and has been granted a certificate of qualification for employment under section 2152.30 of the Revised Code.</u>	854
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<u>(C) Division (B) of this section does not prohibit increasing an employer's premium to recoup an additional award for a violation of a specific safety rule pursuant to Ohio Constitution, Article II, Section 35 and section 4121.47 of the Revised Code.</u>	858
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<u>(D) A self-insuring employer shall deduct all compensation and benefits payable on account of an employee who is seventeen years of age and has been granted a certificate of qualification for employment under section 2152.30 of the Revised Code from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code. This division does not permit a self-insuring employer to deduct any amounts paid by the self-insuring employer for a violation of a specific safety standard pursuant to Ohio Constitution, Article II, Section 35 and section 4121.47 of the Revised Code.</u>	863
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Section 2. That existing sections 4109.02 and 4123.35 of the Revised Code are hereby repealed.	874
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