

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 868

SPONSOR: Governmental Oversight and Productivity Committee and Senator King

SUBJECT: Drug-Free Workplaces

DATE: March 15, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Robinson Pierce</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) requires each person or legal entity that engages in activity regulated or defined in parts I and II of ch. 489, F.S., and that performs construction work under a state contract, to implement a drug-free workplace program under s. 440.102, F.S. The CS applies to construction contracts let under chs. 235, 255, or 944, F.S., which relate to educational facilities, public property and publicly owned buildings, and state correctional system facilities, respectively.

The CS substantially amends section 440.102, Florida Statutes.

II. Present Situation:

There are two drug-free workplace programs codified in the Florida Statutes. Section 112.0455, F.S., contains the Drug-Free Workplace Act and applies only to agencies within state government. The act is permissive and seeks to protect public employees and employers. Section 440.102, F.S., is likewise permissive. It allows employers to implement a drug-free workplace program under Florida’s Workers’ Compensation Law. If an employer implements a drug-free workplace program under s. 440.102, F.S., and is determined by his or her insurance carrier to meet the statutory requirements, the Department of Insurance requires the carrier to give the employer a five percent discount on the employer’s workers’ compensation insurance premium.¹

To implement a drug-free workplace program that complies with s. 440.102, F.S, an employer must meet certain notice, education, and procedural requirements. Some components relating to these requirements include, but are not limited to:

¹ See, Section 627.0915, F.S., and Press Release from Department of Insurance (December 6, 1991) (workers’ compensation rate reduction for drug-free workplaces) (on file with the Senate Comm. & Econ. Opp. Cmte.).

- a general statement of the employer's policy on employee drug use that identifies the employer's prohibition of drug use, the types of tests required, and the actions the employer may take as a result of a positive test result;
- a copy of s. 440.102, F.S.;
- the drug testing procedures;
- the confidentiality procedures;
- a list of over-the-counter medications which may alter or affect drug test results;
- consequences and sanctions of refusing to submit to drug testing; and
- a statement that an employee or job applicant may contest a positive result within five working days after receiving notification of the test result.

Moreover, an employer who implements a drug-free workplace program in accordance with s. 440.102, F.S., and requires an employee to submit to a test for the presence of drugs or alcohol may terminate the employee if a drug or alcohol is found to be in the employee's system at a level prescribed by rule.² The employee would forfeit his or her eligibility for medical and indemnity benefits under the Workers' Compensation Law.³

The Division of Workers' Compensation within the Department of Labor and Employment Security administers the Workers' Compensation Law and the Agency for Health Care Administration is authorized to develop rules regarding drug-free workplace programs. Chapter 59A-24 of the Florida Administrative Code sets forth the standards for drug-free workplace programs, including drug testing, collection sites, specimen collection procedures, drug testing laboratories, and review of test results before transmission to the employer.

Parts I and II of ch. 489, F.S., define construction, electrical, and alarm system contractors qualified to engage in the business of contracting under a license, certificate, or registration as required by the Department of Business and Professional Regulation or by statutory exemption. State construction contracts may be let for work to these contractors on educational facilities, as set forth in ch. 235, F.S.; public property and publicly owned buildings, as set forth in ch. 255, F.S.; and state correctional system facilities as set forth in ch. 944, F.S.

III. Effect of Proposed Changes:

The CS requires each person or legal entity that engages in activity regulated or defined in parts I and II of ch. 489, F.S., and that performs construction work under a state contract, to implement a drug-free workplace program under s. 440.102, F.S. The requirement applies to state construction contracts let under chs. 235, 255, or 944, F.S.

The CS takes effect October 1, 2000.

² Section 440.101(2), F.S.

³ Section 440.101(2), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Construction, electrical, and alarm system contractors who have more than three employees working under a state contract in excess of \$10,000 for the construction of educational facilities, public property, publicly owned buildings, and state correctional facilities may experience an increase in administrative costs, including policy determination, notification, education of employees and job applicants, drug testing, and test results review. Such contractors may also experience a five percent reduction in workers' compensation insurance premiums, if certified by their insurance carrier.

Drug-testing laboratories may experience an increase in revenue resulting from affected contractors having to test employees and job applicants for drugs and alcohol.

Employees or job applicants who fail drug or alcohol tests administered under a drug-free workplace program implemented under s. 440.102, F.S., may be terminated from employment and may forfeit medical and indemnity benefits under the Workers' Compensation Law.

C. Government Sector Impact:

The CS does not appear to generate significant additional costs for any agency of government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the federal Occupational Safety and Health Administration (OSHA), during the past three years the number of fatalities in the construction industry in the state of Florida has increased significantly. During this time frame, the construction industry experienced a 36 percent increase in the number of fatalities (from 50 in 1996 to 68 in 1998). In 1999, OSHA began the Construction Accident Reduction Emphasis (CARE) program. The program seeks to reduce accidents, injuries, and fatalities in the construction industry throughout the state of Florida by conducting inspections and offering training and education.

In its 1998 annual report, the Division of Workers' Compensation within the Department of Labor and Employment Security stated that from 1988 through 1997, the rate of lost-time injuries by industry had fallen significantly. The division stated that this drop was a result of the combined effects of decreasing numbers of lost-time injuries and steadily increasing employment, with the exception of the 1991-1992 recession. However, the division noted that the construction industry consistently reported the highest injury rates of all industries.

VIII. Amendments:

None.