

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 264

SPONSOR: Senator King

SUBJECT: Drug-Free Workplaces

DATE: January 7, 2002

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Vaccaro</u>	<u>Caldwell</u>	<u>RI</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill clarifies that an employer must conduct drug testing of employees and job applicants in order to qualify as having established a drug-free workplace under s. 440.102, F.S. The bill also requires construction contractors, electrical contractors, and alarm system contractors, who contract to perform construction work under state contracts for educational facilities, public property and publicly owned buildings, and state correctional facilities to implement a drug-free workplace program.

This bill substantially amends section 440.102 of the Florida Statutes.

## I. Present Situation:

### Drug-Free Workplace Programs

Under current law, there are two parallel drug-free workplace programs in this state: one program for state agencies, under s. 112.0455, F.S., and another program for private employers, under s. 440.102, F.S. The programs are voluntary for both public and private employers and are intended to create a healthy and productive working environment.

The drug-free workplace program for private employers is part of the Workers' Compensation Law under s. 440.101, F.S. Section 440.101, F.S., provides that employers who implement a drug-free workplace program in conformity with the standards and procedures in s. 440.102, F.S., may require an employee to submit to a test for the presence of drugs or alcohol, and, if a drug or alcohol is found to be present in the employee's system at prescribed levels, the employee may be terminated. Consequently, the employee also forfeits his or her eligibility for medical and indemnity benefits under the Workers' Compensation Law.

To implement a drug-free workplace program under s. 440.102, F.S., an employer must follow certain notice, education, and procedural requirements. As part of these requirements, employers must provide information to job applicants and employees that includes the following:

- The employer's policy on employee drug use, the types of drug tests that may be required, and the actions the employer may take as a result of a positive test result;
- A statements regarding the existence of s. 440.102, F.S.;
- The drug testing procedures and the types of drugs for which employees will be tested;
- A statement concerning confidentiality;
- A list of over-the-counter medications that may alter or affect drug test results;
- The consequences and sanctions for refusing to submit to drug testing;
- A list of employee assistance programs in the local area; and
- A statement that the employee or job applicant may contest a positive test within five working days after receiving notification of the test result.

Under the drug-free workplace program, an employer may not discharge, discipline, or discriminate against an employee based upon the employee voluntarily seeking treatment for a drug-related problem, if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless prohibited by a collective bargaining agreement, the employer may select the employee assistance program or drug rehabilitation program, if the employer pays for the program.

An employer who requires a drug test based upon reasonable suspicion must detail in writing the circumstances that formed the basis for testing. A copy of this documentation must be given to the employee upon request, and the employer must keep the original documentation confidential.

### **Workers' Compensation Premium Credit**

The 1990 Legislature mandated that rating plans approved by the Florida Department of Insurance (department) for workers' compensation insurance must give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program. See ch. 90-201, L.O.F. and s. 627.0915, F.S. In response to the legislation, the department required insurance carriers to provide a 5-percent premium credit for employers implementing the drug-free workplace program. The rating organization that files rating plans for workers' compensation insurance carriers in Florida, the National Council on Compensation Insurance, Inc. (NCCI), filed a rating plan that included the 5-percent premium credit effective January 1, 1992. The department approved NCCI's rating plan, and the premium credit has remained in effect since that date.<sup>1</sup> An employer receives the premium credit after its workers' compensation insurance carrier approves the employer's drug-free workplace program.

Section 440.102(2), F.S., requires that in order to qualify as having established a drug-free workplace program which affords an employer the ability to qualify for the discounts provided

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<sup>1</sup> National Council on Compensation Insurance, Inc., *Basic Manual for Workers' Compensation and Employers Liability Insurance, Florida*, 30, 2d reprint (Jan. 2001).

under s. 627.0915, F.S., and to deny medical and indemnity benefits under the Workers' Compensation Law, all drug testing conducted by employers must be in conformity with the standards and procedures established in s. 440.102, F.S., and all applicable rules. The statute further provides that if an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established, the employer will not be eligible for discounts under s. 627.0915, F.S.

It is clear that implementation of the drug-free workplace program is required in order to receive the 5-percent workers' compensation premium credit, but the statute does not clearly articulate whether drug testing is a requisite part of the drug-free workplace program.

### **Contractors**

Parts I and II of ch. 489, F.S., regulate construction contractors, electrical contractors, and alarm system contractors engaged in the business of contracting under certification or registration, as required by the Florida Department of Business and Professional Regulation. State construction contracts may be awarded to these contractors for educational facilities under ch. 235, F.S., public property and publicly owned buildings under ch. 255, F.S., and state correctional facilities under ch. 944, F.S. Performance of the terms and conditions of state contracts is enforced by contract managers designated by each agency. Under ch 287.087, F.S., preference in contracting between equal bids is awarded to the contractor that certifies it has implemented a drug-free workplace program.

## **II. Effect of Proposed Changes:**

The bill amends s. 440.102(2), F.S., to clarify that an employer is required to implement drug testing of employees and job applicants in order to qualify as having a drug-free workplace program. The bill requires construction contractors, electrical contractors, and alarm system contractors who contract to perform construction work under a state contract to implement a drug-free workplace program under s. 440.102, F.S. This requirement applies to state contracts for educational facilities, public property and publicly owned buildings, and state correctional facilities.

Because the bill requires contractors that construct specified public facilities under a state contract to implement a drug-free workplace program, contract managers at affected agencies will be required to include implementation of a drug-free workplace program as a term or condition of all specified contracts.

The bill takes effect October 1, 2002.

## **III. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**IV. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Construction contractors, electrical contractors, and alarm system contractors working under a state contract for the construction of educational facilities, public property and 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 review of test results. These contractors may also experience a 5-percent reduction in workers' compensation insurance premiums if approved by their insurance carriers.

As an example of these related costs, the Executive Office of the Governor (EOG) implements a drug-free workplace program under s. 112.0455, F.S. As part of this program, the Governor's office requires its job applicants for Senior Management Service (SMS) and Selected Exempt Service (SES) positions to submit to drug testing and mandates that, once employed, these employers are subject to reasonable-suspicion drug testing. According to the EOG, between July 1, 1999, and June 30, 2000, the Governor's office tested 46 job applicants at a cost of \$27.38 per drug test, plus \$6 per test for review by a medical review officer (a total of \$33.38 per applicant). No reasonable-suspicion drug tests were performed. The EOG reports the marginal increase in its staff time devoted to implementation of its drug-free workplace program was nominal and was absorbed without a need to increase staff positions. Thus, the total amount expended by the EOG to implement its drug-free workplace program for FY 1999-2000 was \$1,535.48.

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 who fail drug or alcohol tests administered under a drug-free workplace program may be discharged from employment and may forfeit medical and indemnity benefits under the Workers' Compensation Law.

**C. Government Sector Impact:**

If construction contractors, electrical contractors, and alarm system contractors contemplate the costs of implementing a drug-free workplace program as part of their bid proposals for

state contracts for construction of educational facilities, public property and publicly owned buildings, and state correctional facilities, an indeterminate government sector impact may result for state and local agencies when constructing these facilities. Conversely, competitive bidding for these state contracts may cause the contractors to internally absorb these costs.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

**VII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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