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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 651
RELATING TO: Drug-free Workplaces
SPONSOR(S): Representative Benson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 13 NAYS 2
- (2) BUSINESS REGULATION YEAS 6 NAYS 4
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Currently, employers are encouraged, but not required, to adopt drug-free workplace programs. This includes private employers working under state contract. Employers implementing a drug-free workplace program may qualify for a workers' compensation premium discount. While a drug-free workplace program is required to qualify for the premium discount, the actual implementation of employee drug testing is permissive.

This 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, publicly owned buildings, and state correctional facilities to implement a drug-free workplace program, which includes drug-testing.

This bill does not appear to have a significant fiscal impact on state or local governments.

The bill provides that the act will take effect October 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill creates new responsibilities and obligations for the agencies involved in maintaining the drug-free workplace program requirements and for the contractors required to implement a drug-free workplace program.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

This bill decreases the allowable options that construction contractors have in conducting their own affairs by requiring certain contractors to implement a drug-free workplace program.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Drug-Free Workplaces

Under current law, there are two parallel drug-free workplace programs in the state: one program for state agencies, under s. 112.0455, F.S., and another program for private employers, under s. 440.102, F.S. These programs are voluntary for both public and private employers.

Drug-Free Workplace Act

Section 112.0455, F.S., contains the Drug-Free Workplace Act. This act only applies to agencies within state government and encourages state employers to implement drug-free workplace programs in order to maintain a safe and healthy workforce. Its stated purpose is to:

- (a) Promote the goal of drug-free workplaces within government through fair and reasonable drug-testing methods for the protection of public employees and employers.
- (b) Encourage employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or an alcohol and drug rehabilitation program.
- (c) Provide for confidentiality of testing results.¹

Workers' Compensation Law

Florida's Workers' Compensation Law authorizes employers to implement a drug-free workplace program. Section 440.102, F.S., establishes the parameters for drug-free workplace programs for

¹ Section 112.0455(2), Florida Statutes.

state and private employers required to provide workers' compensation coverage.² To implement a drug-free workplace program that complies with this section, an employer must meet certain notice, education, and procedural requirements. One time only, prior to testing, an employer must give all employees and job applicants for employment a written policy statement that contains, in part:

- 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 statement advising the employee or job applicant of the existence of the drug-free workplace program;
- A list of all drugs for which the employer will test, described by brand name or common name, as well as by chemical name;
- A general statement concerning confidentiality and procedures for employees or job applicants to confidentially report use of prescription and nonprescription medications;
- A list of over-the-counter medications which may alter or affect drug testing results; and
- A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.³

Furthermore, an employer implementing a drug-free workplace program in accordance with s. 440.102, F.S., requiring 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 proscribed by rules adopted by the Agency for Health Care Administration.⁴ The employee would then forfeit eligibility for medical and indemnity benefits under the Workers' Compensation Law.⁵

Workers' Compensation Premium Credit

Under the workers' compensation law if an employer implements a drug-free workplace program and the employer's insurance carrier determines that the employer has met the statutory requirements, the Department of Insurance requires the carrier to give the employer a discount on the employer's workers' compensation insurance premium [see ch. 90-201, LOF and s.627.0915,F.S.]⁶ A five percent premium credit has been in effect since January 1, 1992. While a drug-free workplace program is required to qualify for the premium discount, the actual implementation of employee drug testing is permissive.⁷

² See s.440.02(16), F.S., which provides a threshold for exemption from workers' compensation coverage.

³ See s. 440.102(3), F.S.; see also Senate Staff Analysis and Economic Impact Statement for CS/SB 868 by the Committee on Governmental Oversight and Productivity, March 15, 2000.

⁴ Section 440.101(2), F.S.

⁵ *Id.*

⁶ In response to this legislation, the department required insurance carriers to provide a 5% premium credit for employers implementing a 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. filed a rating plan that included the 5% premium credit effective January 1, 1992.

⁷ Section 440.102(1), F.S.

C. EFFECT OF PROPOSED CHANGES:

This 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 and in order to qualify for the workers' compensation premium discount.

The bill also requires construction contractors, electrical contractors, and alarm system contractors, who contract to perform construction work under state contracts at educational facilities, public property, publicly owned buildings and state correctional facilities to implement a drug-free workplace program, which includes drug testing.

Construction contractors that do not have any "employees," for workers' compensation purposes, are not presently required to carry a workers' compensation policy [see 440.02(16), F.S.]. The provisions of this bill appear to include those construction contractors who are not eligible for workers' compensation premium discounts.

These provisions will take effect on October 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (2) of s. 440.102, F.S., to require an employer to implement drug testing as part of its drug-free workplace program in order to receive the workers' compensation premium discount authorized by s. 627.0915.

Creates a new subsection (15) in s. 440.102, F.S., to require each construction contractor, as regulated under part I of chapter 489, F.S., and each electrical contractor and alarm system contractor, as regulated under part II of chapter 489, F.S., contracting to perform construction work pursuant to a state contract let under chapter 235, F.S., regarding educational facilities; chapter 255, F.S., regarding public property and publicly owned buildings; or chapter 944, F.S., regarding state correctional facilities, to implement a drug-free workplace program.

Section 2. Provides that the act will take effect October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under the provisions of this bill, construction contractors and electrical and alarm system contractors will be required to implement a drug-free workplace program which includes drug-testing, unless they already have one in place, in order to be awarded certain state contracts and in order to receive a discount on their workers' compensation insurance premium.

- The cost to implement a drug-free workplace program includes administrative costs, such as policy determination, notification, application, and the cost to administer drug tests. The cost of compliance could be offset by the reduction in workers' compensation insurance premiums. In addition, the savings in workers' compensation insurance premiums could be passed on to the state in terms of lower bids on state contracts.
- In certain circumstances, the costs of implementation could outweigh any potential savings. Construction contractors that do not have any "employees," for workers' compensation purposes, are not required to carry a workers' compensation policy and, therefore, would not receive the benefits of premium discounts.
- Employers could experience fewer work-related accidents, increased productivity, and a reduction in workers' compensation insurance premiums.
- The bill could have a positive effect on competition, private enterprise, and employment markets as employers implementing a drug-free workplace program could enhance their positions in the workplace.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None notes.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Department of Insurance has expressed a concern that the remaining permissive language contained in the first sentence of s. 440.102(2) of the bill may not adequately accomplish the sponsor's intent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Eric Lloyd

Staff Director:

Stephen Hogge

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Janet Clark Morris

Staff Director:

M. Paul Liepshutz