

STORAGE NAME: h0651a.in.doc
DATE: February 6, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
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
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

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

Rather than making drug testing permissive as part of a drug-free workplace program qualifying for a workers' compensation premium discount, the employer would be required to actually test employees for drugs.

This bill also would require the implementation of a drug-free workplace program by 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.

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

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

Presently, there are two drug-free workplace programs codified in the Florida Statutes: the Drug-Free Workplace Act and the Drug-Free Workplace Program under Florida's Workers' Compensation Law. The use of these programs is not mandatory for public or private employers, including construction contractors working under state contract.

Drug-Free Workplace Act

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

¹ Section 112.0455(2), Florida Statutes.

Drug-Free Workplace Program / Florida's Workers' Compensation Law

Florida's Workers' Compensation Law allows employers to implement a drug-free workplace program.² Under s. 440.102, F.S., if an employer implements a drug-free workplace program and the employer's insurance carrier determines that the employee has met 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.³ While a drug-free workplace program is required to qualify for the premium discount, the actual implementation of employee drug testing is permissive.⁴

Section 440.102, F.S., establishes the parameters for drug-free workplace programs for state and private employers required to provide workers' compensation coverage. 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.⁵

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.⁶ The employee would then forfeit eligibility for medical and indemnity benefits under the Workers' Compensation Law.⁷

² Section 440.102, F.S.

³ S. 627.0915, F.S.

⁴ S. 440.102(1), F.S.

⁵ 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.

⁶ Section 440.101(2), Florida Statutes.

⁷ *Id.*

C. EFFECT OF PROPOSED CHANGES:

Rather than making drug testing permissive as part of a drug-free workplace program qualifying for a workers' compensation premium discount, the employer would be required to actually drug test employees.

This bill would 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. This would include construction contractors who would not be eligible for workers' compensation premium discounts. Construction contractors that do not have any "employees," for workers' compensation purposes, are not required to carry a workers' compensation policy.

The bill would be effective on October 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

After the effective date of this bill, construction contractors and electrical and alarm system contractors performing construction work would be required to implement a drug-free workplace program to be awarded certain state contracts, unless they already have one in place. The cost to implement a drug-free workplace program includes administrative costs, such as policy determination, notification, and application, and the cost to administer drug tests.

Employers could experience fewer work-related accidents, increased productivity, and a reduction in workers' compensation insurance premiums.

This bill could have a positive effect on competition, private enterprise, and employment markets. Employers implementing a drug-free workplace program could enhance their positions in the workplace. The cost of compliance could be offset by the reduction in workers' compensation insurance premiums. However, 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. In addition, the savings in workers' compensation insurance premiums may be passed on to the state in terms of lower bids on state contracts.

D. FISCAL COMMENTS:

N/A

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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Eric Lloyd

Stephen Hogge