

Fiscal Note & Local Impact Statement

126th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	Sub. H.B. 80	DATE:	May 8, 2006
STATUS:	As Passed by the House	SPONSOR:	Rep. G. Smith
LOCAL IMPACT STATEMENT REQUIRED:	No —	No local cost	
CONTENTS:	Requires public improvement contractors and subcontractors to participate in a specified drug-free workplace program		

State Fiscal Highlights

- House Bill 80 generally codifies Executive Order 2002-13T, which requires each state agency and instrumentality that awards contracts for construction to implement policies requiring that all contractors and subcontractors to state-administered construction projects be enrolled in the Bureau of Workers' Compensation (BWC) Drug-Free Workplace Program (DFWP), or a similar program approved by the BWC, and to be in good standing in the drug-free workplace program. There are no anticipated state costs associated with codifying this existing practice.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Background

Executive Order 2002-13T was signed on September 20, 2002 and has been in effect since July 1, 2003. It requires each state agency and instrumentality that awards contracts for construction to implement policies requiring that all contractors and subcontractors to state-administered construction projects be enrolled in the Bureau of Workers' Compensation (BWC) Drug-Free Workplace Program (DFWP), or a similar program approved by the BWC, and to be in good standing in the drug-free workplace program. The Executive Order is in effect until rescinded.

The BWC's Drug-Free Workplace Program is an incentive-based program that offers employers discounts on their workers' compensation premiums in exchange for implementing the program. There are three levels to the program:

- Level 1 (10% discount): Requires development of a written policy and certain types of testing (pre-employment and/or new hire, reasonable suspicion, post-accident, and follow-up). Employers must also provide annual employee education and supervisor training and develop a list of local community resources to which employees with problems can turn for assistance.
- Level 2 (15% discount): In addition to Level 1 requirements, requires random drug testing of 10% of the average annual total work force (for public employers, random testing applies only to safety-sensitive positions or functions), and expanded employee assistance. Employers must also implement five steps of the BWC's 10-Step Business Plan, a highly coordinated safety program.
- Level 3 (20% discount): In addition to Level 1 requirements, requires 25% random drug testing and expanded employee assistance. Employers must also implement all 10 steps of the 10-Step Business Plan.

Requirements Under Substitute House Bill 80

I. Terms of Contract

Sub. H.B. 80 generally codifies Executive Order 2002-13T. The bill prohibits state agencies and state instrumentalities from awarding a public improvement contract to a bidder unless the contract contains the following: (1) terms requiring the contractor to be enrolled and in good standing in the BWC's Drug-Free Workplace Program or a comparable program approved by the BWC; (2) a statement that requires the contractor to require all subcontractors to be enrolled and in good standing in the BWC's Drug-Free Workplace Program or a comparable program approved by the BWC prior to the subcontractor providing labor at a public improvement project site; (3) a statement that requires all

subcontractors to require all *lower-tier* subcontractors to be enrolled and in good standing in the BWC's Drug-Free Workplace Program or a comparable program approved by the BWC prior to the lower-tier subcontractor providing labor at a public improvement project site; (4) a statement that alerts the contractor that if he/she fails to verify a subcontractor's enrollment in the BWC's Drug-Free Workplace Program or a comparable program approved by the BWC, it will result in the contractor being in breach of his/her contract, evidence of which will be used in the responsibility analysis of the contractor or the offending subcontractor for a period of five years after the date of the breach; and (5) a statement that alerts a *subcontractor* that if he/she fails to verify a *lower-tier* subcontractor's enrollment in the BWC's Drug-Free Workplace Program or a comparable program approved by the BWC, it will result in the subcontractor being in breach of his/her contract, evidence of which will be used in the responsibility analysis of the subcontractor or the offending lower-tier subcontractor for a period of five years after the date of the breach.

II. Other Requirements

State agencies and instrumentalities are required to ensure that any money appropriated to it for a public improvement contract not be expended until the contractor's enrollment and good standing in a drug-free workplace program has been verified.

Additionally, state agencies and instrumentalities that intend to contract for construction management services must also verify, prior to awarding such a contract, that the construction manager is enrolled and in good standing in a drug-free workplace program.

Fiscal Implications of Substitute House Bill 80

I. Contract Requirements (State Costs)

Costs associated with codifying what is, in essence, existing practice are not anticipated to be significant. There may be minimal administrative costs associated with verifying every contractor, subcontractor, and construction manager's enrollment in a drug-free workplace program; however, the onus of proving enrollment in such a program lies with the individual contractor/subcontractor/construction manager and not with contracting authorities (i.e., the state). The language of standard contracts used by contracting authorities may need to be amended to comply with language requirements outlined above, but costs associated with this are also not likely to be significant. In short, there are no anticipated state costs associated with codifying this existing practice.

II. Comparable Drug-Free Workplace Program Requirements (Employer Costs)

Program requirements for a comparable drug-free workplace program that may be approved by the BWC are listed under section 153.03(B)(2) of the bill. They include (1) the development and implementation of a written substance abuse policy, (2) drug and alcohol testing of employees (at times of pre-employment and/or new hire, post-accident, under conditions of reasonable suspicion, prior to an employee returning to work after testing positive for drugs or alcohol, and at random intervals throughout employment), (3) employee education and supervisor training, (4) and the development of a list of local community resources to which employees with substance abuse problems can turn for assistance.^[1]

With the exception of random drug testing of employees, these requirements for a comparable drug-free workplace program appear similar to (but slightly less restrictive than) the requirements of BWC's Level 1 Drug-Free Workplace Program.^[2] Costs to employers associated with implementing a comparable drug-free workplace program, therefore, are expected to be roughly equal to what would be expended to implement Level 1 of the BWC's program. In addition, so long as employers meet the bill's requirements for a comparable drug-free workplace program, they are still eligible to receive discounts on their workers' compensation premiums in exchange for implementing the program.

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^[1] This last requirement does not preclude an employer from implementing a policy of "zero tolerance" within the workplace.

^[2] Random drug testing is first introduced under the BWC's Drug-Free Workplace Program at Level 2, at 10% of an employer's average total workforce per year.