

**As Passed by the House**

**126th General Assembly  
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**Sub. H. B. No. 80**

**Representatives Smith, G., Flowers, Hartnett, Calvert, Hagan, Stewart, D.,  
Distel, Yuko, Cassell, Collier, Combs, Allen, Aslanides, Barrett, Blessing,  
Chandler, Daniels, DeBose, Domenick, Evans, C., Fende, Garrison, Hughes,  
Key, McGregor, J., Otterman, Patton, T., Schaffer, Schneider, Setzer,  
Skindell, Stewart, J., Strahorn, Uecker, Williams**

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**A B I L L**

To enact sections 153.03 and 153.031 of the Revised Code to prohibit a state agency from awarding a public improvement contract unless its terms require the contractors and subcontractors to participate in a specified drug-free workplace program. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 153.03 and 153.031 of the Revised Code be enacted to read as follows: 7  
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**Sec. 153.03.** (A) As used in this section: 9

(1) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a public improvement contract. 10  
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(2) "Bidder" means a person who submits a bid to a contracting authority to perform work under a public improvement contract. 13  
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(3) "Contractor" means any person with whom a contracting 16

authority has entered into a public improvement contract to  
provide labor for a public improvement.

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(4) "Subcontractor" means any person who undertakes to  
provide any part of the labor on the site of a public improvement  
under a contract with any person other than the contracting  
authority, including all such persons in any tier.

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(5) "Construction manager" means a person with substantial  
discretion and authority to plan, coordinate, manage, and direct  
all phases of a project for the construction, demolition,  
alteration, repair, or reconstruction of any public building,  
structure, or other improvement.

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(6) "Labor" means any activity performed by a person that  
contributes to the direct installation of a product, component, or  
system, or that contributes to the direct removal of a product,  
component, or system.

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(7) "Public improvement contract" means any contract that is  
financed in whole or in part with money appropriated by the  
general assembly, or that is financed in any manner by a  
contracting authority, and that is awarded by a contracting  
authority for the construction, alteration, or repair of any  
public building, public highway, or other public improvement.

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(8) "State agency" means every organized body, office, or  
agency established by the laws of this state for the exercise of  
any function of state government.

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(B) A contracting authority shall not award a public  
improvement contract to a bidder unless the contract contains both  
of the following:

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(1) The statements described in division (E) of this section;

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(2) Terms that require the contractor to be enrolled in and  
be in good standing in the drug-free workplace program of the

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bureau of workers' compensation or a comparable program approved  
by the bureau that requires an employer to do all of the  
following:

(a) Develop, implement, and provide to all employees a  
written substance use policy that conveys full and fair disclosure  
of the employer's expectations that no employee be at work with  
alcohol or drugs in the employee's system, and specifies the  
consequences for violating the policy.

(b) Conduct drug and alcohol tests on employees in accordance  
with division (B)(2)(c) of this section and under the following  
conditions:

(i) Prior to an individual's employment or during an  
employee's probationary period for employment, which shall not  
exceed one hundred twenty days after the probationary period  
begins;

(ii) At random intervals while an employee provides labor or  
onsite supervision of labor for a public improvement contract. The  
employer shall use the neutral selection procedures required by  
the United States department of transportation to determine which  
employees to test and when to test those employees.

(iii) After an accident at the site where labor is being  
performed pursuant to a public improvement contract. For purposes  
of this division, "accident" has the meaning established in rules  
the administrator of workers' compensation adopts pursuant to  
Chapters 4121. and 4123. of the Revised Code for the bureau's  
drug-free workplace program, as those rules exist on the effective  
date of this section.

(iv) When the employer or a construction manager has  
reasonable suspicion that prior to an accident an employee may be  
in violation of the employer's written substance use policy. For  
purposes of this division, "reasonable suspicion" has the meaning

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established in rules the administrator adopts pursuant to Chapters 78  
4121. and 4123. of the Revised Code for the bureau's drug-free 79  
workplace program, as those rules exist on the effective date of 80  
this section. 81

(v) Prior to an employee returning to a work site to provide 82  
labor for a public improvement contract after the employee tested 83  
positive for drugs or alcohol, and again after the employee 84  
returns to that site to provide labor under that contract, as 85  
required by either the employer, the construction manager, or 86  
conditions in the contract. 87

(c) Use the following types of tests when conducting a test 88  
on an employee under the conditions described in division 89  
(B)(2)(b) of this section: 90

(i) Drug and alcohol testing that uses the federal testing 91  
model that the administrator has incorporated into the bureau's 92  
drug-free workplace program; 93

(ii) Testing to determine whether the concentration of 94  
alcohol on an employee's breath is equal to or in excess of the 95  
level specified in division (A)(1)(d) or (h) of section 4511.19 of 96  
the Revised Code, which is obtained through an evidentiary breath 97  
test conducted by a breath alcohol technician using breath testing 98  
equipment that meets standards established by the United States 99  
department of transportation, or, if such technician and equipment 100  
are unavailable, a blood test may be used to determine whether the 101  
concentration of alcohol in an employee's blood is equal to or in 102  
excess of the level specified in division (A)(1)(b) or (f) of 103  
section 4511.19 of the Revised Code. 104

(d) Require all employees to receive at least one hour of 105  
training that increases awareness of and attempts to deter 106  
substance abuse and supplies information about employee assistance 107  
to deal with substance abuse problems, and require all supervisors 108

to receive one additional hour of training in skill building to 109  
teach a supervisor how to observe and document employee behavior 110  
and intervene when reasonable suspicion exists of substance use; 111

(e) Require all supervisors and employees to receive the 112  
training described in division (B)(2)(d) of this section before 113  
work for a public improvement contract commences or during the 114  
term of a public improvement contract; 115

(f) Require that the training described in division (B)(2)(d) 116  
of this section be provided using material prepared by an 117  
individual who has credentials or experience in substance abuse 118  
training; 119

(g) Assist employees by providing, at a minimum, a list of 120  
community resources from which an employee may obtain help with 121  
substance abuse problems, except that this requirement does not 122  
preclude an employer from having a policy that allows an employer 123  
to terminate an employee's employment the first time the employee 124  
tests positive for drugs or alcohol or if an employee refuses to 125  
be tested for drugs, alcohol, or both. 126

(C) Any time the United States department of health and human 127  
services changes the federal testing model that the administrator 128  
has incorporated into the bureau's drug-free workplace program in 129  
a manner that allows additional or new products, protocols, 130  
procedures, and standards in the model, the administrator may 131  
adopt rules establishing standards to allow employers to use those 132  
additional or new products, protocols, procedures, or standards to 133  
satisfy the requirements of division (B)(2)(c) of this section, 134  
and the bureau may approve an employer's drug-free workplace 135  
program that meets the administrator's standards and the other 136  
requirements specified in division (B)(2) of this section. 137

(D) A contracting authority shall ensure that money 138  
appropriated by the general assembly for the contracting 139

authority's public improvement contract or, in the case of a state 140  
institution of higher education, the institution's financing for 141  
the public improvement contract, is not expended unless the 142  
contractor for that contract is enrolled in and in good standing 143  
in a drug-free workplace program described in division (B) of this 144  
section. Prior to awarding a contract to a bidder, a contracting 145  
authority shall verify that the bidder is enrolled in and in good 146  
standing in such a program. 147

(E) A contracting authority shall include all of the 148  
following statements in the public improvement contract entered 149  
into between the contracting authority and a contractor for the 150  
public improvement: 151

(1) "Each contractor shall require all subcontractors with 152  
whom the contractor is in contract for the public improvement to 153  
be enrolled in and be in good standing in the Bureau of Workers' 154  
Compensation's Drug-Free Workplace Program or a comparable program 155  
approved by the Bureau that meets the requirements specified in 156  
section 153.03 of the Revised Code prior to a subcontractor 157  
providing labor at the project site of the public improvement." 158

(2) "Each subcontractor shall require all lower-tier 159  
subcontractors with whom the subcontractor is in contract for the 160  
public improvement to be enrolled in and be in good standing in 161  
the Bureau of Workers' Compensation's Drug-Free Workplace Program 162  
or a comparable program approved by the Bureau that meets the 163  
requirements specified in section 153.03 of the Revised Code prior 164  
to a lower-tier subcontractor providing labor at the project site 165  
of the public improvement." 166

(3) "Failure of a contractor to require a subcontractor to be 167  
enrolled in and be in good standing in the Bureau of Workers' 168  
Compensation's Drug-Free Workplace Program or a comparable program 169  
approved by the Bureau that meets the requirements specified in 170

section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

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(4) "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

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(F) In the event a construction manager intends and is authorized to provide labor for a public improvement contract, a contracting authority shall verify, prior to awarding a contract for construction management services, that the construction manager was enrolled in and in good standing in a drug-free workplace program described in division (B) of this section prior to entering into the public improvement contract. The contracting authority shall not award a contract for construction manager services to a construction manager if the construction manager is not enrolled in or in good standing in such a program.

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Sec. 153.031. The general assembly intends the drug-free workplace programs required by section 153.03 of the Revised Code

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<u>to be limited to the constructing, altering, or repairing of</u>	202
<u>public improvements of the state and to be of assistance in</u>	203
<u>ensuring that such public improvements are constructed, altered,</u>	204
<u>or repaired in a manner that protects the safety of the citizens</u>	205
<u>of this state.</u>	206