

As Reported by the House Commerce and Labor Committee

126th General Assembly

Regular Session

2005-2006

Sub. H. B. No. 80

Representatives Smith, G., Flowers, Hartnett, Calvert, Hagan, Stewart, D.,
Distel, Yuko, Cassell, Collier, Combs

—

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.

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:

Sec. 153.03. (A) As used in this section:

(1) "Contracting authority" means any state agency or other
state instrumentality that is authorized to award a public
improvement contract.

(2) "Bidder" means a person who submits a bid to a
contracting authority to perform work under a public improvement
contract.

(3) "Contractor" means any person with whom a contracting
authority has entered into a public improvement contract to
provide labor for a public improvement.

(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.

20
21
22

(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.

23
24
25
26
27

(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.

28
29
30
31

(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.

32
33
34
35
36
37

(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.

38
39
40

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

41
42
43

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

44

(2) Terms that require the contractor to be enrolled in and
be in good standing in the drug-free workplace program of the
bureau of workers' compensation or a comparable program approved
by the bureau that requires an employer to do all of the
following:

45
46
47
48
49

(a) Develop, implement, and provide to all employees a 50
written substance use policy that conveys full and fair disclosure 51
of the employer's expectations that no employee be at work with 52
alcohol or drugs in the employee's system, and specifies the 53
consequences for violating the policy. 54

(b) Conduct drug and alcohol tests on employees in accordance 55
with division (B)(2)(c) of this section and under the following 56
conditions: 57

(i) Prior to an individual's employment or during an 58
employee's probationary period for employment, which shall not 59
exceed one hundred twenty days after the probationary period 60
begins; 61

(ii) At random intervals while an employee provides labor or 62
onsite supervision of labor for a public improvement contract. The 63
employer shall use the neutral selection procedures required by 64
the United States department of transportation to determine which 65
employees to test and when to test those employees. 66

(iii) After an accident at the site where labor is being 67
performed pursuant to a public improvement contract. For purposes 68
of this division, "accident" has the meaning established in rules 69
the administrator of workers' compensation adopts pursuant to 70
Chapters 4121. and 4123. of the Revised Code for the bureau's 71
drug-free workplace program, as those rules exist on the effective 72
date of this section. 73

(iv) When the employer or a construction manager has 74
reasonable suspicion that prior to an accident an employee may be 75
in violation of the employer's written substance use policy. For 76
purposes of this division, "reasonable suspicion" has the meaning 77
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
in a drug-free workplace program described in division (B) of this
section. Prior to awarding a contract to a bidder, a contracting
authority shall verify that the bidder is enrolled in and in good
standing in such a program.

143
144
145
146
147

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

148
149
150
151

(1) "Each contractor shall require all subcontractors with
whom the contractor is in contract for the public improvement 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 a subcontractor
providing labor at the project site of the public improvement."

152
153
154
155
156
157
158

(2) "Each subcontractor shall require all lower-tier
subcontractors with whom the subcontractor is in contract for the
public improvement 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 a lower-tier subcontractor providing labor at the project site
of the public improvement."

159
160
161
162
163
164
165
166

(3) "Failure of a contractor to require a 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
subcontractor provides labor at the project site will result in
the contractor being found in breach of the contract and that

167
168
169
170
171
172
173

breach shall be used in the responsibility analysis of that 174
contractor or the subcontractor who was not enrolled in a program 175
for future contracts with the state for five years after the date 176
of the breach." 177

(4) "Failure of a subcontractor to require a lower-tier 178
subcontractor to be enrolled in and be in good standing in the 179
Bureau of Workers' Compensation's Drug-Free Workplace Program or a 180
comparable program approved by the Bureau that meets the 181
requirements specified in section 153.03 of the Revised Code prior 182
to the time that the lower-tier subcontractor provides labor at 183
the project site will result in the subcontractor being found in 184
breach of the contract and that breach shall be used in the 185
responsibility analysis of that subcontractor or the lower-tier 186
subcontractor who was not enrolled in a program for future 187
contracts with the state for five years after the date of the 188
breach." 189

(F) In the event a construction manager intends and is 190
authorized to provide labor for a public improvement contract, a 191
contracting authority shall verify, prior to awarding a contract 192
for construction management services, that the construction 193
manager was enrolled in and in good standing in a drug-free 194
workplace program described in division (B) of this section prior 195
to entering into the public improvement contract. The contracting 196
authority shall not award a contract for construction manager 197
services to a construction manager if the construction manager is 198
not enrolled in or in good standing in such a program. 199

Sec. 153.031. The general assembly intends the drug-free 200
workplace programs required by section 153.03 of the Revised Code 201
to be limited to the constructing, altering, or repairing of 202
public improvements of the state and to be of assistance in 203
ensuring that such public improvements are constructed, altered, 204

<u>or repaired in a manner that protects the safety of the citizens</u>	205
<u>of this state.</u>	206