

**As Reported by the Senate Insurance, Commerce and Labor  
Committee**

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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 authority has entered into a public improvement contract to provide labor for a public improvement. 16  
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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. 19  
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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. 23  
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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. 28  
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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. 32  
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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. 38  
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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: 41  
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(1) The statements described in division (E) of this section; 44

(2) Terms that require the contractor to be enrolled in and 45

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:

(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

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purposes of this division, "reasonable suspicion" has the meaning established in rules the administrator 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.

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

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

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

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

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(d) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance

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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 171  
subcontractor provides labor at the project site will result in 172  
the contractor being found in breach of the contract and that 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

<u>workplace programs required by section 153.03 of the Revised Code</u>	201
<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