



S.B. 210

124th General Assembly
(As Introduced)

Sens. Shoemaker, Herington

BILL SUMMARY

- Requires that a school district board of education obtain written assurances regarding drug-free workplaces from persons who bid on a school facilities construction project that is undertaken with the assistance of the Ohio School Facilities Commission and pursuant to an agreement between the district and Commission.
- Requires that, for a project undertaken as described above, a board require mandatory drug testing of any owner of any firm that bids on the project and of any firm employee who will provide construction services if the firm is selected to provide those services.
- Requires that, for a project undertaken as described above, a board require mandatory random drug testing of any owner of any firm that enters into a contract with the board for the project and of any firm employee who provides construction services under the project.
- Requires the board to require each firm to maintain a record of the date and results of each individual's drug testing and of the name and address of the laboratory that analyzed the specimens for the drug testing.
- States that the General Assembly intends that the required drug testing will assist in assuring the safety of students who utilize classroom facilities that are constructed, repaired, or renovated with state assistance.

CONTENT AND OPERATION

Drug-free workplace and drug-testing requirements for school facility construction projects

The bill requires that the agreement between any school district and the Ohio School Facilities Commission for a project to construct or reconstruct classroom facilities undertaken by the district with the Commission's assistance, including any locally funded project under the School Building Assistance Expedited Local Partnership Program, include a provision stipulating that, when soliciting bids and contracting for any labor under the project, the board of education of the school district (hereafter "board") must require all the following:¹

(1) A written assurance from any individual or firm that bids to provide labor for any construction, repair, or renovation phase under the project, that the individual or firm maintains a drug-free workplace. The board must establish procedures for filing this written assurance with the board and for the board's custody of that document.

(2) Mandatory drug testing of any owner of any firm that bids to provide labor for any construction, repair, or renovation phase under the project and of any employee of that firm who will provide such services under the project if the firm is selected to provide those services. The board must require each firm to maintain a record of the date and results of each individual's drug testing required under this provision and the provision described in (3) below, and of the name and address of the laboratory that analyzed the specimens for the drug testing.

(3) Mandatory random drug testing of any owner of any firm that enters into a contract with the board to provide labor for any construction, repair, or renovation phase under the project and of any employee of that firm who provides such services under the project. (R.C. 3318.08(T) and 3318.36(F).)

¹ *"Project" is defined to mean "a project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities, to be used for housing the applicable school district and its functions." (R.C. section 3318.01.)*

Under the School Building Assistance Expedited Local Partnership Program, the Commission may enter into an agreement with a board of education of a school district under which the board may proceed with new construction or major repairs of classroom facilities through the expenditure of local resources prior to the district's eligibility for state assistance. When the district becomes eligible, that expenditure can be applied to the district's portion of the basic project cost.

The bill states that the General Assembly intends that the drug testing required under the bill will assist in assuring that any elementary and secondary classroom facilities constructed, repaired, or renovated with state assistance will be safe facilities for all the students that attend school in those facilities. (See **COMMENT.**) (Section 3.)

Definitions

As used in (2) above, "owner" does not include a shareholder of a corporation that offers shares in the corporation for sale to the public unless the shareholder is also an employee of the corporation.

As used in the bill, "drug testing" means a procedure in which blood or urine specimens are collected from individuals for the purpose of scientifically analyzing the specimens to determine whether the individual ingested or was injected with a drug of abuse.

For purposes of the bill, "random drug testing" means "a procedure in which blood or urine specimens are collected from individuals chosen by automatic, random selection and without prearrangement or planning, for the purpose of scientifically analyzing the specimens to determine whether the individual ingested or was injected with a drug of abuse."

A drug of abuse means all of the following:

(1) A drug, compound, mixture, preparation, or substance included in the controlled substance schedules of the Controlled Substances Law (R.C. Chapter 3719.);

(2) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which, when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects;

(3) Drugs that, under federal law, are required to bear a label containing specified statements cautioning people about the dispensing restrictions placed on the drug.

COMMENT

At present, private employers are free to implement drug-testing programs within certain parameters without being subject to the search and seizure restrictions of the Fourth Amendment of the United States Constitution. A state law to *mandate* testing would, however, be subject to scrutiny under the Fourth

Amendment. The Fourth Amendment generally requires adequate individualized suspicion and the issuance of a warrant. The United States Supreme Court, however, has allowed suspicionless administrative searches, such as drug testing of employees, under limited circumstances. To determine whether reasonable, individualized suspicion of drug use is required before drug testing, courts have weighed the sensitive nature of the position, the intrusiveness of the test, and whether the government can demonstrate a compelling interest or special need that must be preserved by the drug testing. If the provisions of the bill were challenged, it is not possible to predict how courts would weigh the state's compelling interest represented in Section 3 of the bill against the bill's drug-testing requirements.

HISTORY

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Introduced	01-09-02	p. 1294

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