John S. VanNorman *Legislative Service Commission*

H.B. 136

125th General Assembly
(As Introduced)

Rep. G. Smith

BILL SUMMARY

- Requires public improvement contractors to have written safety programs that include drug and alcohol testing.
- Requires public works contractors for projects financed with money appropriated by the General Assembly to establish drug-free workplace programs.
- Requires the Department of Administrative Services to adopt, by rule, specified standards and requirements for drug-free workplace programs.

CONTENT AND OPERATION

Overview

The bill enacts provisions requiring the creation of various safety and drug-free workplace plans and programs. These plans and programs must be implemented by contractors who contract with the state; any township, county, municipal corporation, school district, or other political subdivision; or any public board, commission, authority, instrumentality, or special purpose district (referred to in the bill and under continuing law as "owners") for public works or improvements. (Secs. 153.12, not in the bill, 153.121, and 153.73(A)(7).)

Safety programs

The bill requires each owner to include in its contracts for public improvement projects a requirement that the contractor and subcontractors for the project have a written safety program. This program must include drug and alcohol testing. Additionally, the bill requires these contractors and subcontractors to prepare a written site-specific safety plan, in addition to a written safety program, if the public improvement project is estimated to either last longer than

two weeks or to cost more than $50,000 and if it is financed with money appropriated by the General Assembly. (Sec. 153.121.) (See **COMMENT** 1.)

Drug-free workplace programs

If the contract is specifically for the construction, engineering, alteration, or repair of any public building, public highway, or other public work and it is financed in whole or in part with money appropriated by the General Assembly (referred to in the bill as a "public works contract"), the terms of the contract not only must require a written safety program or written site-specific safety plan, but must also require the contractor and subcontractors to implement a drug-free workplace program that complies with rules adopted by the Department of Administrative Services (DAS) under the bill (see "***Duties of the Department of Administrative Services***," below). However, this requirement does not apply if the contractor already participates in the Drug-Free Workplace Discount Program that the Bureau of Workers' Compensation has established under the Bureau of Workers' Compensation Law and the program includes drug testing of all applicants for employment and random drug testing that annually tests at least 25% of the contractor's employees. (Sec. 153.73(A)(7), (B), and (D).) (See **COMMENT** 2.)

Duties of the Department of Administrative Services

The bill requires DAS to ensure that no money appropriated by the General Assembly for a public works contract is spent unless the contractor implements a drug-free workplace program (sec. 153.73(B)). To this end, DAS must adopt rules creating the program that contractors must implement. Specifically, these rules must do each of the following:

- Establish drug testing and alcohol testing protocols that, at a minimum, require a contractor to do each of the following:

(1) Conduct drug testing of the contractor's employment applicants;

(2) Conduct random drug testing that annually tests at least 25% of the contractor's employees;

(3) Conduct a drug or alcohol test of an employee who may have caused or contributed to an accident while performing the employee's job duties. The test must be conducted as soon as possible after the accident and after any necessary medical attention has been administered to the employee; and

(4) Conduct a drug or alcohol test of an employee when the employee's supervisor has reasonable cause to believe that the employee has

reported to work under the influence of alcohol or marihuana, cocaine, opiates, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone, or propoxyphene (referred to in the bill as a "drug of abuse"). (Sec. 153.73(C)(1).)[1, 2, 3, 4]

• Require that a laboratory certified by the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration or the Administration's successor conduct all drug tests performed under the program (sec. 153.73(C)(2)).

• Establish standards governing these laboratories' performance of the drug tests. The standards must include, but are not limited to, each of the following:

(1) The collection of blood or urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(2) The collection and testing of the blood or urine specimens with due regard for the privacy of the individual being tested and in a manner that is reasonably calculated to prevent substitutions or interference with the collection and testing;

(3) The documentation of blood or urine specimens through procedures that reasonably preclude the possibility of erroneous identification of the test results and that provide the individual being tested with an

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[1] *The bill defines "drug test" as a procedure that uses a program that tests for marihuana, cocaine, opiates, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone, or propoxyphene in which blood or urine specimens are collected from individuals for the purpose of scientifically analyzing the specimens to determine if the individual ingested or was injected with one of these drugs (sec. 153.73(A)(3), (4), and (6)). (See* **COMMENT** 3.)

[2] *The bill defines "alcohol test" as a procedure conducted to determine if an individual is under the influence of alcohol (sec. 153.73(A)(1)). (See* **COMMENT** 3.*)*

[3] *The bill defines "random drug testing" as a procedure in which drug testing is conducted by automatic, random selection and without prearrangement or planning (sec. 153.73(A)(8)).*

[4] *The bill defines "under the influence of alcohol" as a concentration of .08 of 1% or more by weight of alcohol in an individual's blood, a concentration of .08 of one gram or more by weight of alcohol per 210 liters of an individual's breath, or a concentration of .08 of one gram or more by weight of alcohol per 100 milliliters of an individual's urine (sec. 153.73(A)(9)).*

opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition;

(4) The collection, maintenance, storage, and transportation of blood or urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration; and

(5) The testing of a blood or urine specimen to determine if the individual ingested or was injected with a drug of abuse in a manner that conforms with scientifically accepted analytical methods and procedures and that may include verification or confirmation of any positive test result by a reliable analytical method. (Sec. 153.73(C)(3).)

- Establish standards and procedures governing the performance of alcohol tests (sec. 153.73(C)(4)).

- Require that a medical review officer review all drug testing and alcohol testing that yields a positive result (sec. 153.73(C)(5)).[5]

- Establish procedures by which an individual who undergoes a drug or alcohol test may contest a positive result (sec. 153.73(C)(6)).

- Require that when an employee tests positive for alcohol or a drug of abuse, the employee be subject to appropriate disciplinary measures, including termination from employment, in accordance with the contractor's substance abuse policy. If the employee is not terminated, the rules must require the contractor to subject the employee to random drug or alcohol testing at any time for one year after the positive test result. If any employee is suspended or terminated as a result of a positive test result, the rules must prevent the contractor from considering the employee for re-employment unless the employee demonstrates meaningful participation in a rehabilitation program and submits to additional drug or alcohol testing prior to re-employment. (Sec. 153.73(C)(7).)

- Require that when an employee's supervisor has reasonable cause to believe that the employee is under the influence of alcohol or a drug of abuse while at work, the contractor immediately suspend the employee from

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[5] *The bill defines "medical review officer" as a physician who holds a certificate issued under the Physicians and Limited Practitioners Law authorizing the practice of medicine and surgery or osteopathic medicine and surgery, has knowledge of substance abuse disorders, and has the appropriate medical training to interpret and evaluate positive drug and alcohol test results together with a person's medical history and other relevant biomedical information (sec. 153.73(A)(5)).*

employment until such time as a drug or alcohol test is performed and the results of the test are available (sec. 153.73(C)(8)).

- Require that a contractor terminate the employment of any employee found in possession of, selling, or distributing a drug of abuse at work (sec. 153.73(C)(9)).

- Require that a contractor encourage employees testing positive for a drug of abuse or alcohol to seek a suitable substance abuse rehabilitation program for treatment (sec. 153.73(C)(10)).

- Require that a contractor assist an employee who voluntarily acknowledges that the employee may have a substance abuse problem in locating a suitable substance abuse rehabilitation program for treatment (sec. 153.73(C)(11)).

- Require that a contractor establish a written policy regarding substance abuse and provide a copy of the written policy to each of its employees and to each applicant for employment. The rules must also require that the written policy contain, at a minimum, each of the following:

(1) A summary of all of the elements of the drug-free workplace program;

(2) A statement that it is the contractor's intention to create a drug-free workplace environment;

(3) Identification of an employee who has been designated the contractor's drug-free workplace coordinator; and

(4) Any other information that the Director of DAS determines is necessary. (Sec. 153.73(C)(12).)

- Establish reasonable financial penalties for contractors who fail to properly implement a drug-free workplace program after being awarded a public contract (sec. 153.73(C)(13)).

- Establish any other procedures or requirements that the Director of DAS determines are necessary to implement and administer drug-free workplace programs (sec. 153.73(C)(14)).

Statement of intent

The bill states that the General Assembly intends that the drug and alcohol testing required by the bill will assist in assuring that any public work is

constructed, engineered, altered, or repaired so as to ensure the safety of Ohio's citizens (Section 2).

COMMENT

1. With regard to written safety programs and written site-specific safety plans under R.C. 153.121, it is not clear what difference, if any, there is between a program and a plan.

2. It is not clear whether the drug-free workplace program requirement under R.C. 153.73 applies to subcontractors. R.C. 153.121 states that contractors and subcontractors may have to have a written safety program or written site-specific safety plan. Furthermore, R.C. 153.121 appears to indicate that both contractors and subcontractors may potentially have to comply with the drug-free workplace requirements of R.C. 153.73. However, within R.C. 153.73 itself, no reference is made specifically to subcontractors, only to contractors.

3. Under the bill, it is possible that a contractor or subcontractor may be required to have both a written safety program (under R.C. 153.121) and a drug-free workforce program (under R.C. 153.73). Both of these programs require drug and alcohol testing. R.C. 153.73 provides definitions for both "drug testing" and "alcohol testing" that are applicable to that section. However, since it is possible that a contractor or subcontractor may have to have both a written safety program and a drug-free workforce program and each must include alcohol and drug testing, it is unclear if the definitions of these terms in R.C. 153.73 also apply to R.C. 153.121 or if the testing under a written safety program differs in any way from the testing under a drug-free workplace program.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 277

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