

STORAGE NAME: h0195s1a.brc

DATE: March 7, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS**

BILL #: CS/HB 195

RELATING TO: Drug-free Workplaces

SPONSOR(S): Committee on Governmental Operations and Representative Suarez

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (2) INSURANCE YEAS 14 NAYS 0
 - (3) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Currently, employers are encouraged, but not required, to adopt drug-free workplace programs.

The committee substitute amends s. 440.102, F.S., to require contractors working on certain state construction contracts to implement a drug-free workplace.

The cost to the private sector would be the contractors' expense in implementing a drug-free workplace when working on certain state construction contracts. However, employers implementing a drug-free workplace program may qualify for a reduction in their workers' compensation insurance premiums.

The committee substitute does not appear to have a fiscal impact on state or local governments.

The committee substitute has an effective date of October 1, 2000.

On March 7, 2000, the Committee on Business Regulation & Consumer Affairs adopted a clarifying amendment that is traveling with the committee substitute.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The committee substitute does not support less government because it creates new responsibilities and obligations for the agencies involved in maintaining the drug-free workplace program requirements and the contractors required to implement a drug-free workplace program.

The committee substitute does not support individual freedom because it decreases the allowable options of construction contractors to conduct their own affairs by requiring the contractors to implement a drug-free workplace.

B. PRESENT SITUATION:

Drug-Free Workplace Requirements

Section 112.0455, F.S., contains the Drug-Free Workplace Act, which is applicable to state government employers. This act encourages (but does not require) state employers to implement drug-free workplace programs in order to maintain a safe and healthy workforce.

Similar to the act applicable to state employers, s. 440.102, F.S., establishes the parameters for drug-free workplace programs for employers (state and private) required to provide workers' compensation coverage. Employers are not required to implement a "drug-free workplace" program under s. 440.102, F.S., but should they choose to do so they are granted a credit¹ on their workers' compensation premiums (currently 5%).

Employers implementing a drug-free workplace program under s, 440.102, F.S., must provide written notice to all employees and job applicants containing information relating to:

- the employer's policy on drug use,
- the types of drug testing an employee or job applicant may be required to submit to,
- the consequences of positive drug tests,
- common medications which may alter a drug test, and
- confidentiality.

¹ See s. 627.0915, F.S.

In addition employers must conduct drug testing in certain circumstances, including first-time job applicants, upon reasonable suspicion; and as a part of routine fitness-for-duty examinations.

Workers' Compensation Coverage

Florida law requires the following employers to secure workers' compensation coverage for their employees:

- employers in the construction industry with one or more employees; and
- non-construction employers with four or more employees.²

C. EFFECT OF PROPOSED CHANGES:

Construction contractors and electrical and alarm system contractors, as defined in Part I or Part II of Chapter 489, F.S., performing construction work pursuant to certain state contracts, would be required to implement a drug-free workplace program. This requirement would specifically relate to state contracts where construction work is performed pursuant to a contract for public school system facilities (Ch. 235, F.S.), public property and publicly-owned buildings (Ch. 255, F.S.), or state correctional system facilities (Ch. 944, F.S.). Third party contractors who are performing construction pursuant to a contract let under the stated chapters will be required to implement a drug-free workplace program.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

² Section 440.02(16)(b)2., F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those construction contractors doing construction work under certain state contracts which have not implemented a drug-free workplace program would incur additional costs if they are awarded certain state contracts after the effective date of the committee substitute. Those that do not implement a drug-free workplace program will breach a state contract requirement. The cost to implement a drug-free workplace includes administrative costs, such as policy determination, notification and application, and the cost to administer drug tests.

The direct private sector benefits include a drug-free workplace which could result in fewer work-related accidents, increased productivity and a reduction in workers' compensation insurance premiums.

The committee substitute could have a positive effect on competition, private enterprise and employment markets. Employers implementing a drug-free workplace program could enhance their positions in the workplace. The cost of compliance could be offset by the reduction in workers' compensation insurance premiums. In addition, the savings in workers' compensation insurance premiums may be passed on to the state in terms of lower bids on state contracts.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on Business Regulation & Consumer Affairs:

Proponents of the committee substitute assert that this legislation should be generally applicable to all entities contracting to perform construction pursuant to contracts let under the stated chapters of statute. However, the term "contractor", used in the committee substitute, is defined by Ch. 489.105(3), F.S., in perhaps a more narrow way than would serve the goals of the committee substitute. Ch. 489.105(13), F.S., defines the term "business organization." Perhaps the intent of the sponsor would be better served by incorporating "business organization" in the place of the term "contractor" in the committee substitute.

The committee substitute places the new language in chapter 440, Workers' Compensation. However, the committee substitute only pertains to workers' compensation to the extent that a contractor may qualify for a credit against his or her workers' compensation rate pursuant to s. 627.0915, F.S. The committee substitute creates a new requirement on state contracts and may be more properly placed in ch. 255, Public Lands and Public Buildings, where other bid requirements are located or in ch. 489, Contracting, where other requirements on contractors reside.

The committee substitute does not address the required extent of the drug-free workplace program. The committee substitute clearly indicates that the program must be in accordance with s. 440.102, F.S. This section requires that an employer test employees in certain circumstances. An employee is defined as "**any person** who works for salary, wages, or other remuneration for an employer"³ (emphasis supplied). Does this provision require that all employees be tested whether or not they are involved in the state contract work and regardless of their location?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its January 19, 2000, meeting, the Committee on Governmental Operations adopted two amendments to HB 195 and approved the bill as a committee substitute. The committee substitute differs from the original bill in that it:

- does not contain a dollar limitation regarding the size of the state contract (the original bill required contractors to implement of a drug-free workplace only if the state contract is in excess of \$10,000;
- does not contain a limitation regarding the number of employees employed by the contractor (the original bill required implementation of a drug-free workplace if the contractor employs more than three employees).

³S. 440.102(1)(f), F.S.

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On March 7, 2000, the Committee on Business Regulation & Consumer Affairs adopted a clarifying amendment by Representative Suarez that is traveling with the committee substitute. The amendment replaces term "contractor" with term "person or legal entity" to properly indicate those impacted by provisions of the bill. The amendment also restructures references to ch. 489, Pt. I and Pt. II and replaces word "pursuant" on page 1, line 19, of the committee substitute with the word "under" to eliminate parallel structure within the amendment.

VII. SIGNATURES:

COMMITTEE ON HOUSE GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Amy K. Tuck

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge

AS FURTHER REVISED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

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Eric Lloyd

Rebecca R. Everhart