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DATE: February 23, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: PCS/HB 359

RELATING TO: Drug-free Workplaces

SPONSOR(S): Committee on State Administration and Representative(s) Andrews

TIED BILL(S): None

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

- (1) STATE ADMINISTRATION
- (2) INSURANCE
- (3) BUSINESS REGULATION
- (4) COUNCIL FOR SMARTER GOVERNMENT
- (5)

I. SUMMARY:

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

This proposed committee substitute requires the implementation of a drug-free workforce program by each construction contractor (as regulated under part I of chapter 489, F.S.); and each electrical contractor and alarm system contractor (as regulated under part II of chapter 489, F.S.), who contract to perform construction work pursuant to a state contract let under chapter 235, F.S., regarding educational facilities; chapter 255, F.S., regarding public property and publicly owned buildings; or chapter 944, F.S., regarding state correctional facilities.

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

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

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:

This proposed committee substitute creates new responsibilities and obligations for the agencies involved in maintaining the drug-free workplace program requirements and, for the contractors required to implement a drug-free workplace program.

This proposed committee substitute decreases the allowable options that construction contractors have in conducting their own affairs by requiring the contractors to implement a drug-free workplace program.

B. PRESENT SITUATION:

Presently, there are two drug-free workplace programs codified in the Florida Statutes: the Drug-Free Workplace Act and the Drug-Free Workplace Program under Florida's Workers' Compensation Law.

Drug-Free Workplace Act

Section 112.0455, F.S., contains the Drug-Free Workplace Act. It only applies to agencies within state government. This act encourages state employers to implement drug-free workplace programs in order to maintain a safe and healthy workforce. Its purpose is to

- (a) Promote the goal of drug-free workplaces within government through fair and reasonable drug-testing methods for the protection of public employees and employers.
- (b) Encourage employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or an alcohol and drug rehabilitation program.
- (c) Provide for confidentiality of testing results.¹

Drug-Free Workplace Program / Florida's Workers' Compensation Law

Section 440.102, F.S., allows employers to implement a drug-free workplace program under Florida's Workers' Compensation Law. Under s. 440.102, F.S., if an employer implements a drug-free workplace program and the employer's insurance carrier determines that the employee has

¹ Section 112.0455(2), Florida Statutes.

met the statutory requirements, the Department of Insurance requires the carrier to give the employer a five percent discount on the employer's workers' compensation insurance premium.²

Section 440.102, F.S., establishes the parameters for drug-free workplace programs for state and private employers required to provide workers' compensation coverage. To implement a drug-free workplace program that complies with this section, an employer must meet certain notice, education, and procedural requirements. One time only, prior to testing, an employer must give all employees and job applicants for employment a written policy statement which contains, in part:

- A general statement of the employer's policy on employee drug use that identifies the employer's prohibition of drug use, the types of tests required, and the actions the employer may take as a result of a positive test result;
- A statement advising the employee or job applicant of the existence of the drug-free workplace program;
- A list of all drugs for which the employer will test, described by brand name or common name, as well as by chemical name;
- A general statement concerning confidentiality and procedures for employees or job applicants to confidentially report use of prescription and nonprescription medications;
- A list of over-the-counter medications which may alter or affect drug testing results; and
- A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.³

Furthermore, an employer who implements a drug-free workplace program in accordance with s. 440.102, F.S., and requires an employee to submit to a test for the presence of drugs or alcohol, may terminate the employee if a drug or alcohol is found to be in the employee's system at a level prescribed by rules adopted by the Agency for Health Care Administration.⁴ The employee would then forfeit eligibility for medical and indemnity benefits under the Workers' Compensation Law.⁵

Workers' Compensation Coverage

Florida law requires employers to provide workers' compensation coverage for their employees. Section 440.03, F.S., states that every employer⁶ and employee⁷ shall be bound by the provisions of chapter 440, F.S.

² Section 627.0915, Florida Statutes.

³ See s. 440.102(3), F.S.; see also Senate Staff Analysis and Economic Impact Statement for CS/SB 868 by the Committee on Governmental Oversight and Productivity, March 15, 2000.

⁴ Section 440.101(2), Florida Statutes.

⁵ *Id.*

⁶ Section 440.02(15), Florida Statutes, defines "employer" to mean "the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer".

⁷ Section 440.02(14), Florida Statutes, defines "employee" as:

Chapters 235, 255, and 944, F.S.

Chapter 235, F.S., governs the establishment and maintenance of education plants⁸ by state and local officials. Public property and publicly owned buildings are governed under chapter 255, F.S. Chapter 944, F.S., governs the state correctional system, which includes construction of state correctional facilities.

C. EFFECT OF PROPOSED CHANGES:

This proposed committee substitute amends s. 440.102, F.S., to require that each construction contractor, as regulated under part I of chapter 489, F.S., and each electrical contractor and alarm system contractor, as regulated under part II of chapter 489, F.S., who contract to perform construction work pursuant to a state contract let under chapter 235, F.S., regarding educational facilities; chapter 255, F.S., regarding public property and publicly owned buildings; or chapter 944, F.S., regarding state correctional facilities, implement a drug-free workplace program.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

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. Expenditures:

None.

(a) "Employee" means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

(b) "Employee" includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

(c) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and, except as provided in this paragraph, elects to be included in the definition of employee by filing notice thereof as provided in section 440.05, Florida Statutes.

⁸ "Educational plant" comprises the "educational facilities, site and site improvements necessary to accommodate students, faculty, administrators, staff, and the activities of the educational program of each plant". Section 235.011(7), Florida Statutes

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

After the effective date of this proposed committee substitute, construction contractors and electrical and alarm system contractors performing construction work, who have not implemented a drug-free workplace program, would have to do so if they were to be awarded certain state contracts. The cost to implement a drug-free workplace program includes administrative costs, such as policy determination, notification, and application, and the cost to administer drug tests.⁹

The direct private sector benefits of this proposed committee substitute include a drug-free workplace, which could result in fewer work-related accidents, increased productivity, and a reduction in workers' compensation insurance premiums.¹⁰

This proposed 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.¹¹

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This proposed 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:

This proposed 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:

This proposed 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.

⁹ See House Analysis on CS/HB 195 as further revised by the Committee on Business Regulation & Consumer Affairs, March 7, 2000; and Mike Williams, President, Florida Building and Construction Trades Council, February 20, 2001, meeting.

¹⁰ See House Analysis on CS/HB 195 as further revised by the Committee on Business Regulation & Consumer Affairs, March 7, 2000; and Mike Williams, February 20, 2001, meeting.

¹¹ See House Analysis on CS/HB 195 as further revised by the Committee on Business Regulation & Consumer Affairs, March 7, 2001.

C. OTHER COMMENTS:

Proponents of this proposed committee substitute believe that “freeing businesses of employees who are under the influence of alcohol or illegal drugs will yield great benefits in terms of workplace safety, reduced costs and improved quality of construction for the consumer”.¹² They believe that implementing this proposed committee substitute will result in construction cost savings to the state because of the five percent savings employers receive through their workers’ compensation premiums when they implement a drug-free workplace program. In addition, proponents believe increased productivity and a reduction of injury and death to construction workers will result if this proposed committee substitute becomes law.¹³

Opponents of this proposed committee substitute believe that it is not necessary to require that businesses implement a drug-free workplace program.¹⁴ They feel the five percent discount for workers’ compensation premiums provides enough of an encouragement for contractors to implement a drug-free workplace program. Opponents also say that most contractors have already implemented a drug-free workplace program in their businesses.¹⁵ Some opponents think this proposed committee substitute will have an “adverse affect on small and merging businesses as well as minority businesses”.¹⁶ How this could result is unclear.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

J. Marleen Ahearn, Ph.D., J.D.

¹² Mike Williams, President, February 14, 2001, telephone conference.

¹³ *Id.*

¹⁴ Rick Watson, Associated Builders and Contractors of Florida, Inc. (A.B.C.), February 16, 2001, telephone call.

¹⁵ *Id.*

¹⁶ *Id.*