

AN ACT

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.

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:

Sec. 153.03. (A) As used in this section:

(1) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a public improvement contract.

(2) "Bidder" means a person who submits a bid to a contracting authority to perform work under a public improvement contract.

(3) "Contractor" means any person with whom a contracting authority has entered into a public improvement contract to provide labor for a public improvement.

(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.

(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.

(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.

(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.

(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.

(B) A contracting authority shall not award a public improvement contract to a bidder unless the contract contains both of the following:

(1) The statements described in division (E) of this section;

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

(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.

(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:

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

(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.

(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 to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use;

(e) Require all supervisors and employees to receive the training described in division (B)(2)(d) of this section before work for a public improvement contract commences or during the term of a public improvement contract;

(f) Require that the training described in division (B)(2)(d) of this section be provided using material prepared by an individual who has credentials or experience in substance abuse training;

(g) Assist employees by providing, at a minimum, a list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee tests positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol, or both.

(C) Any time the United States department of health and human services changes the federal testing model that the administrator has incorporated

into the bureau's drug-free workplace program in a manner that allows additional or new products, protocols, procedures, and standards in the model, the administrator may adopt rules establishing standards to allow employers to use those additional or new products, protocols, procedures, or standards to satisfy the requirements of division (B)(2)(c) of this section, and the bureau may approve an employer's drug-free workplace program that meets the administrator's standards and the other requirements specified in division (B)(2) of this section.

(D) A contracting authority shall ensure that money appropriated by the general assembly for the contracting authority's public improvement contract or, in the case of a state institution of higher education, the institution's financing for the public improvement contract, is not expended unless the contractor for that contract is enrolled in and in good standing in a drug-free workplace program described in division (B) of this section. Prior to awarding a contract to a bidder, a contracting authority shall verify that the bidder is enrolled in and in good standing in such a program.

(E) A contracting authority shall include all of the following statements in the public improvement contract entered into between the contracting authority and a contractor for the public improvement:

(1) "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

(2) "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."

(3) "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor

or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(4) "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(F) In the event a construction manager intends and is authorized to provide labor for a public improvement contract, a contracting authority shall verify, prior to awarding a contract for construction management services, that the construction manager was enrolled in and in good standing in a drug-free workplace program described in division (B) of this section prior to entering into the public improvement contract. The contracting authority shall not award a contract for construction manager services to a construction manager if the construction manager is not enrolled in or in good standing in such a program.

Sec. 153.031. The general assembly intends the drug-free workplace programs required by section 153.03 of the Revised Code to be limited to the constructing, altering, or repairing of public improvements of the state and to be of assistance in ensuring that such public improvements are constructed, altered, or repaired in a manner that protects the safety of the citizens of this state.

Speaker _____ of the House of Representatives.

Sub. H. B. No. 80

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President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 80

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____