



Rep. Dave Winters

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LRB095 09720 WGH 33528 a

1 AMENDMENT TO HOUSE BILL 1855

2 AMENDMENT NO. _____. Amend House Bill 1855 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Substance Abuse Prevention on Public Works Projects Act.

6 Section 5. Definitions. As used in this Act:

7 "Accident" means an incident caused, contributed to, or
8 otherwise involving an employee that resulted or could have
9 resulted in death, personal injury, or property damage and that
10 occurred while the employee was performing work on a public
11 works project.

12 "Alcohol" means any substance containing any form of
13 alcohol including, but not limited to, ethanol, methanol,
14 propanol, and isopropanol.

15 "Alcohol concentration" means: (1) the number of grams of
16 alcohol per 210 liters of breath: or (2) the number of grams of

1 alcohol per 100 milliliters of blood.

2 "Drug" means a controlled substance as defined in the
3 Illinois Controlled Substances Act or cannabis as defined in
4 the Cannabis Control Act for which testing is required by an
5 employer under its substance abuse prevention program under
6 this Act. The term "drug" includes prescribed medications not
7 used in accordance with a valid prescription.

8 "Employee" means a laborer, mechanic, or other worker
9 employed in any public works by anyone under a contract for
10 public works.

11 "Employer" means a contractor or subcontractor performing
12 a public works project.

13 "Public works" and "public body" have the meanings ascribed
14 to those terms in the Prevailing Wage Act.

15 Section 10. Substance abuse prohibited. No employee may
16 use, possess, attempt to possess, distribute, deliver, or be
17 under the influence of a drug, or use or be under the influence
18 of alcohol, while performing work on a public works project. An
19 employee is considered to be under the influence of alcohol for
20 purposes of this Act if the alcohol concentration in his or her
21 blood or breath at the time alleged as shown by analysis of the
22 employee's blood or breath is at or above 0.02.

23 Section 15. Substance abuse prevention programs required.

24 (1) Before an employer commences work on a public works

1 project, the employer shall have in place a written program
2 which meets or exceeds the program requirements in this
3 Act, to be filed with the public body engaged in the
4 construction of the public works and made available to the
5 general public, for the prevention of substance abuse among
6 its employees. The testing must be performed by a
7 laboratory that is certified for Federal Workplace Drug
8 Testing Programs by the Substance Abuse and Mental Health
9 Service Administration of the U.S. Department of Health and
10 Human Services. At a minimum, the program shall include all
11 of the following:

12 (A) A minimum requirement of a 9 panel urine drug
13 test plus a test for alcohol. Testing an employee's
14 blood may only be used for post-accident testing,
15 however, blood testing is not mandatory for the
16 employer where a urine test is sufficient.

17 (B) A prohibition against the actions or
18 conditions specified in Section 10.

19 (C) A requirement that employees performing the
20 work on a public works project submit to pre-hire,
21 random, reasonable suspicion, and post-accident drug
22 and alcohol testing. Testing of an employee before
23 commencing work on a public works project is not
24 required if the employee has been participating in a
25 random testing program during the 90 days preceding the
26 date on which the employee commenced work on the public

1 works project.

2 (D) A procedure for notifying an employee who
3 violates Section 10, who tests positive for the
4 presence of a drug in his or her system, or who refuses
5 to submit to drug or alcohol testing as required under
6 the program that the employee may not perform work on a
7 public works project until the employee meets the
8 conditions specified in subdivisions (2) (A) and (2) (B)
9 of Section 20.

10 (2) Reasonable suspicion testing. An employee whose
11 supervisor has reasonable suspicion to believe the
12 employee is in the possession of or under the influence of
13 alcohol or drug is subject to discipline up to and
14 including suspension, and be required to undergo an alcohol
15 or drug test. "Reasonable suspicion" means a belief, based
16 on behavioral observations or other evidence, sufficient
17 to lead a prudent or reasonable person to suspect an
18 employee is under the influence and exhibits slurred
19 speech, inappropriate behavior, decreased motor skills, or
20 other such traits. Circumstances, both physical and
21 psychological, shall be given consideration. Whenever
22 possible before an employee is required to submit to
23 testing based on reasonable suspicion, the employee shall
24 be observed by more than one supervisory or managerial
25 employee. It is encouraged that observation of an employee
26 should be performed by a supervisory or managerial employee

1 who has successfully completed a certified training
2 program to recognize drug and alcohol abuse. The employer
3 who is requiring an employee to be tested based upon
4 reasonable suspicion shall provide transportation for the
5 employee to the testing facility and may send a
6 representative to accompany the employee to the testing
7 facility. Under no circumstances may an employee thought to
8 be under the influence of alcohol or a drug be allowed to
9 operate a vehicle or other equipment for any purpose. The
10 employee shall be removed from the job site and placed on
11 inactive status pending the employer's receipt of notice of
12 the test results. The employee shall have the right to
13 request a representative or designee to be present at the
14 time he or she is directed to provide a specimen for
15 testing based upon reasonable suspicion. If the test result
16 is positive for drugs or alcohol, the employee shall be
17 subject to termination. The employer shall pay all costs
18 related to this testing. If the test result is negative,
19 the employee shall be placed on active status and shall be
20 put back to work by the employer. The employee shall be
21 paid for all lost time to include all time needed to
22 complete the drug or alcohol test and any and all overtime
23 according to the employee's contract.

24 (3) An employer is responsible for the cost of
25 developing, implementing, and enforcing its substance
26 abuse prevention program, including the cost of drug and

1 alcohol testing of its employees under the program. The
2 testing must be performed by a laboratory that is certified
3 for Federal Workplace Drug Testing Programs by the
4 Substance Abuse and Mental Health Service Administration
5 of the U.S. Department of Health and Human Services. The
6 contracting agency is not responsible for that cost, for
7 the cost of any medical review of a test result, or for any
8 rehabilitation provided to an employee.

9 Section 20. Employee access to project.

10 (1) An employer may not permit an employee who violates
11 Section 10, who tests positive for the presence of a drug
12 in his or her system, or who refuses to submit to drug or
13 alcohol testing as required under the employer's substance
14 abuse prevention program under Section 15 to perform work
15 on a public works project until the employee meets the
16 conditions specified in subdivisions (2) (A) and (2) (B). An
17 employer shall immediately remove an employee from work on
18 a public works project if any of the following occurs:

19 (A) The employee violates Section 10, tests
20 positive for the presence of a drug in his or her
21 system, or refuses to submit to drug or alcohol testing
22 as required under the employer's substance abuse
23 prevention program.

24 (B) An officer or employee of the contracting
25 agency, preferably one trained to recognize drug and

1 alcohol abuse, has a reasonable suspicion that the
2 employee is in violation of Section 10 and requests the
3 employer to immediately remove the employee from work
4 on the public works project for reasonable suspicion
5 testing.

6 (2) An employee who is barred or removed from work on a
7 public works project under subsection (1) may commence or
8 return to work on the public works project upon his or her
9 employer providing to the contracting agency documentation
10 showing all of the following:

11 (A) That the employee has tested negative for the
12 presence of drugs in his or her system and is not under
13 the influence of alcohol as described in Section 10.

14 (B) That the employee has been approved to commence
15 or return to work on the public works project in
16 accordance with the employer's substance abuse
17 prevention program.

18 (C) Testing for the presence of drugs or alcohol in
19 an employee's system and the handling of test specimens
20 was conducted in accordance with guidelines for
21 laboratory testing procedures and chain-of-custody
22 procedures established by the Substance Abuse and
23 Mental Health Service Administration of the U.S.
24 Department of Health and Human Services.

25 (3) Upon successfully completing a rehabilitation
26 program, an employee shall be reinstated to his or her

1 former employment status if work for which he or she is
2 qualified exists.

3 Section 25. Applicability. This Act applies to a contract
4 to perform work on a public works project for which bids are
5 opened on or after January 1, 2008, or, if bids are not
6 solicited for the contract, to a contract to perform such work
7 entered into on or after January 1, 2008. The provisions of
8 this Act apply only to the extent there is no collective
9 bargaining agreement in effect dealing with the subject matter
10 of this Act.

11 Section 99. Effective date. This Act takes effect January
12 1, 2008.".