



April 6, 2007

**ENGROSSED
HOUSE BILL No. 1608**

DIGEST OF HB 1608 (Updated April 4, 2007 11:46 am - DI 102)

Citations Affected: IC 4-13; IC 5-16; IC 36-1.

Synopsis: Drug testing of public works contractor's employees. Reenacts the statute that requires the employees of public works contractors to submit to drug testing so that the statute applies to public works contracts of all public entities. Repeals the current drug testing statute. Specifies requirements for a contractor's employees drug testing program. Requires that a contractor's program be certified by and actively report test results to Construction Safe Site. Provides that a contract that complied with the current statute is considered to comply with the new statute.

Effective: July 1, 2007.

Van Haften, Crouch

(SENATE SPONSORS — HERSHMAN, DEIG)

January 23, 2007, read first time and referred to Committee on Labor and Employment.
February 8, 2007, amended, reported — Do Pass.
February 15, 2007, read second time, amended, ordered engrossed.
February 16, 2007, engrossed.
February 22, 2007, read third time, passed. Yeas 88, nays 9.

SENATE ACTION

February 27, 2007, read first time and referred to Committee on Pensions and Labor.
April 5, 2007, amended, reported favorably — Do Pass.

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EH 1608—LS 7686/DI 75+



April 6, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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ENGROSSED HOUSE BILL No. 1608

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-16-12 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2007]:
- 4 **Chapter 12. Drug Testing of Employees of Public Works**
- 5 **Contractors**
- 6 **Sec. 1. (a) This chapter applies only to a public works contract**
- 7 **awarded after June 30, 2007.**
- 8 **(b) This chapter does not apply to a public works contract when**
- 9 **the estimated cost of the public works project is less than one**
- 10 **hundred fifty thousand dollars (\$150,000).**
- 11 **(c) This chapter does not apply to a person who is subject to**
- 12 **drug testing requirements under IC 8-2.1-24-18.**
- 13 **Sec. 2. A public works contract awarded before July 1, 2007,**
- 14 **that complied with IC 4-13-18 (before its repeal), is considered to**
- 15 **comply with this chapter.**
- 16 **Sec. 3. As used in this chapter, "bid" includes a quotation.**
- 17 **Sec. 4. As used in this chapter, "Construction Safe Site" refers**

EH 1608—LS 7686/DI 75+



1 to the Construction Safe Site program established and operated by
2 the Metropolitan Indianapolis Coalition for Construction Safety.

3 Sec. 5. (a) As used in this chapter, "contractor" refers to a
4 person that:

- 5 (1) submits a bid to do work under a public works contract;
- 6 or
- 7 (2) does any work under a public works contract.

8 (b) The term includes a subcontractor of a contractor.

9 Sec. 6. As used in this chapter, "employee" means a person who
10 is employed by:

- 11 (1) a contractor; or
- 12 (2) a labor union that is a signatory with a contractor.

13 Sec. 7. As used in this chapter, "public money" means any
14 money raised by fees, taxes, or special assessments imposed by an
15 entity created by statute.

16 Sec. 8. As used in this chapter, "public works contract" refers
17 to a contract to perform a public works project.

18 Sec. 9. (a) As used in this chapter, "public works project" means
19 the construction, reconstruction, alteration, or renovation of a
20 public building, facility, or other structure that is paid for, in whole
21 or in part, from public money.

22 (b) The term includes any of the following:

- 23 (1) The construction, alteration, or repair of:
- 24 (A) a highway, street, alley, bridge, sewer, drain, or other
25 improvement; or
- 26 (B) a building, facility, or other structure leased by an
27 entity created by statute under a lease containing an option
28 to purchase.

29 (2) A project covered by any of the following:

- 30 (A) IC 4-13.6.
- 31 (B) IC 5-16.
- 32 (C) IC 5-23.
- 33 (D) IC 8-23-9.
- 34 (E) IC 36-1-12.

35 Sec. 10. (a) A solicitation for a public works contract must
36 require each contractor that submits a bid for the work to submit
37 with the bid:

- 38 (1) a statement that the contractor has an existing drug testing
39 program that complies with this chapter; or
- 40 (2) a statement that the contractor's drug testing program has
41 been prequalified under subsection (c).

42 (b) A public works contract may not be awarded to a contractor

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that:

- (1) is not prequalified under subsection (c); or
- (2) that does not submit within three (3) days after the bid opening a written plan for an employee drug testing program that complies with this chapter.

(c) An agency that has a prequalification process for contractors must require a contractor seeking a certificate of qualification to demonstrate that the contractor maintains an employee drug testing program that satisfies the requirements listed in section 11 of this chapter.

Sec. 11. (a) A contractor's employee drug testing program must satisfy all of the following:

- (1) The contractor's employees must be randomly selected for testing with not more than twelve (12) hours notice given to the employees before the employees take the test. All employees must be included in the pool from which names randomly are selected for drug tests. A contractor must test not less than fifty percent (50%) of the contractor's employees each year.
- (2) The program must contain at least a five (5) drug panel that tests for the following:
 - (A) Amphetamines.
 - (B) Cocaine.
 - (C) Opiates (2000 ng/ml).
 - (D) PCP.
 - (E) THC.
- (3) The program uses as the applicable cutoff levels for positive test results the levels set forth in the federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40.87).
- (4) The program:
 - (A) must be certified by; and
 - (B) must actively report employee test results to; Construction Safe Site. An employee must be listed as available for work through Construction Safe Site in order for the employee to be used on a public works project.
- (5) The program imposes disciplinary measures on an employee who fails a drug test. The disciplinary measures must include, at a minimum, all of the following:
 - (A) The employee is subject to suspension or immediate termination from employment.
 - (B) The employee is not eligible for reinstatement to

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employment until the employee tests negative on a five (5) drug panel test certified by a medical review officer.

(C) The employee is subject to unscheduled random testing for not less than one (1) year after reinstatement to employment.

(D) The employee successfully completes a rehabilitation program recommended by a substance abuse professional if the employee fails more than one (1) drug test.

(6) After June 30, 2009, a contractor's drug testing program must contain the additional requirement that a construction employee:

- (A) must have successfully passed an initial or pre-employment drug test; and
- (B) possess an identification card from the drug testing program that indicates that the employee is available for work;

before being eligible to work for the contractor.

(b) A contractor complies with the requirement of subsection (a) to direct an employee to a program of treatment or rehabilitation if the contractor does either of the following:

- (1) Advises the employee of any program of treatment or rehabilitation covered by insurance provided by the contractor.
- (2) If the contractor does not provide insurance that covers drug treatment or rehabilitation programs, the contractor advises the employee of agencies known to the contractor that provide drug treatment or rehabilitation programs.

Sec. 12. (a) The public works contract must provide for the following:

- (1) That the contractor implement the employee drug testing program described in section 11 of this chapter.
- (2) Cancellation of the contract by the agency awarding the contract if the contractor:
 - (A) fails to implement its employee drug testing program during the term of the contract;
 - (B) fails to provide information regarding implementation of the contractor's employee drug testing program at the request of the agency; or
 - (C) provides to the agency false information regarding the contractor's employee drug testing program.

(b) The provisions of the public works contract relating to cancellation of the contract by the agency awarding the contract

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1 **apply to cancellation of the public works contract under this**
2 **section.**
3 SECTION 2. IC 36-1-12-15 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. ~~(a)~~ A contract by
5 the board for public work must conform to **all of the following:**
6 **(1)** The wage scale provisions of IC 5-16-7.
7 ~~(b) A contract by the board for public work must conform with~~
8 **(2)** The antidiscrimination provisions of IC 5-16-6. The board
9 may consider a violation of IC 5-16-6 a material breach of the
10 contract, as provided in IC 22-9-1-10.
11 **(3) The employee drug testing provisions of IC 5-16-12.**
12 SECTION 3. IC 4-13-18 IS REPEALED [EFFECTIVE JULY 1,
13 2007].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1608, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"(c) This chapter does not apply to a person who is subject to drug testing requirements under IC 8-2.1-24-18."

Page 1, line 16, delete "who:" and insert **"that:"**

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"Section 5. As used in this chapter, "employee" means a person who is employed by a contractor at the worksite of a public works project."

Page 2, line 4, delete "5." and insert **"6."**

Page 2, line 7, delete "6." and insert **"7."**

Page 2, line 9, delete "7." and insert **"8."**

Page 2, line 26, delete "8." and insert **"9."**

Page 2, line 28, after "bid" insert **":**

(1) a statement that the contractor has an existing drug testing program that complies with this chapter; or

(2) a statement that the contractor's drug testing program has been prequalified under subsection (d)."

Page 2, line 28, delete "a written plan for a program to test the contractor's".

Page 2, delete line 29.

Page 2, line 30, after "contractor" insert **"that:**

(1) is not prequalified under subsection (d); or

(2) that does not submit within three (3) days after the bid opening a written plan for an employee drug testing program that complies with this chapter."

Page 2, delete lines 31 through 32.

Page 2, line 34, delete "shall be treated as having an employee drug testing".

Page 2, line 35, delete "program that".

Page 2, line 41, delete "9(a)(3)" and insert **"10(a)(3)"**.

Page 3, line 14, after "section." insert **"The contractor may use the employee drug testing program included in the collective bargaining agreement to test its own employees who are not members of the collective bargaining unit.**

(d) An agency that has a prequalification process for contractors must require a contractor seeking a certificate of qualification to demonstrate that the contractor maintains an

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employee drug testing program that complies with this chapter."

Page 3, line 15, delete "9." and insert "10."

Page 4, line 10, before "The program" insert **"In addition to the disciplinary measures in this section, the employee is not eligible for reinstatement to employment until the employee tests negative on a five (5) drug panel test certified by a medical review officer."**

Page 4, line 23, delete "10." and insert "11."

and when so amended that said bill do pass.

(Reference is to HB 1608 as introduced.)

CHENEY, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1608 be amended to read as follows:

Page 3, line 3, delete "collective bargaining" and insert **"collectively bargained"**.

Page 3, line 4, delete "agreement establishes an".

Page 3, line 4, delete "that" and insert **"satisfies the requirements listed in section 10 of this chapter."**

Page 3, delete lines 5 through 22.

Page 3, line 32, delete "program" and insert **"policy"**.

Page 3, delete lines 34 through 39, begin a new line block indented and insert:

"(1) The contractor's employees must be randomly selected for unannounced testing. All employees must be included in the pool from which names randomly are selected for unannounced drug tests. A contractor must either:

(A) test not less than two percent (2%) of the contractor's employees each month; or

(B) participate in a collectively bargained multi-employer substance abuse testing program in which the number of random drug tests administered each year totals not less than twenty-five percent (25%) of the reported employees in the multi-employer pool."

Page 3, line 40, delete "(3)" and insert **"(2)"**.

Page 4, delete lines 5 through 32, begin a new line block indented and insert:

EH 1608—LS 7686/DI 75+



"(3) The program imposes disciplinary measures on an employee who fails a drug test. The disciplinary measures must include, at a minimum, all of the following:

(A) The employee is subject to suspension or immediate termination from employment.

(B) The employee is not eligible for reinstatement to employment until the employee tests negative on a five (5) drug panel test certified by a medical review officer.

(C) The employee is subject to unscheduled sporadic testing for not less than one (1) year after reinstatement to employment.

(D) The employee successfully completes a rehabilitation program recommended by a substance abuse professional if the employee fails more than one (1) drug test.

(4) After June 30, 2009, a contractor's drug testing policy must contain the additional requirement that a construction employee:

(A) must have successfully passed an initial or pre-employment drug test; and

(B) possess an identification card from the drug testing program that indicates that the employee is available for work;

before being eligible to work for the contractor. For a contractor participating in a collectively bargained substance abuse testing program, this requirement is satisfied if the pre-employment drug test is conducted as a part of that program."

(Reference is to HB 1608 as printed February 9, 2007.)

VAN HAAFTEN

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1608 be amended to read as follows:

Page 1, line 7, delete "2006." and insert "**2007.**".

(Reference is to HB 1608 as printed February 9, 2007.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1608, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 16 and 17, begin a new paragraph and insert:

"Sec. 4. As used in this chapter, "Construction Safe Site" refers to the Construction Safe Site program established and operated by the Metropolitan Indianapolis Coalition for Construction Safety."

Page 1, line 17, delete "Sec. 4." and insert "Sec. 5."

Page 2, line 6, delete "Sec. 5." and insert "Sec. 6."

Page 2, line 7, after "by" insert ":

(1)".

Page 2, line 7, delete "contractor at the worksite of a public works" and insert "**contractor; or**

(2) a labor union that is a signatory with a contractor."

Page 2, delete line 8.

Page 2, line 9, delete "Sec. 6." and insert "Sec. 7."

Page 2, line 12, delete "Sec. 7." and insert "Sec. 8."

Page 2, line 14, delete "Sec. 8." and insert "Sec. 9."

Page 2, line 31, delete "Sec. 9." and insert "Sec. 10."

Page 2, line 37, delete "(d)." and insert "(c)".

Page 2, line 40, delete "(d);" and insert "(c);".

Page 3, delete lines 2 through 10.

Page 3, line 11, delete "(d)" and insert "(c)".

Page 3, line 14, delete "complies with" and insert "**satisfies the requirements listed in section 11 of**".

Page 3, line 15, delete "Sec. 10." and insert "Sec. 11."

Page 3, line 15, delete "policy" and insert "**program**".

Page 3, line 18, delete "unannounced testing." and insert "**testing with not more than twelve (12) hours notice given to the employees before the employees take the test."**

Page 3, line 20, delete "unannounced".

Page 3, line 20, delete "either:".

Page 3, line 21, delete "(A)".

Page 3, line 21, delete "two" and insert "**fifty**".

Page 3, line 21, delete "(2%)" and insert "**(50%)**".

Page 3, line 22, delete "month; or" and insert "**year**".

Page 3, run in lines 20 through 22.

Page 3, delete lines 23 through 27.

Page 3, between lines 34 and 35, begin a new line block indented

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and insert:

"(3) The program uses as the applicable cutoff levels for positive test results the levels set forth in the federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40.87).

(4) The program:

(A) must be certified by; and

(B) must actively report employee test results to; Construction Safe Site. An employee must be listed as available for work through Construction Safe Site in order for the employee to be used on a public works project."

Page 3, line 35, delete "(3)" and insert "**(5)**".

Page 4, line 1, delete "sporadic" and insert "**random**".

Page 4, line 7, delete "(4)" and insert "**(6)**".

Page 4, line 7, delete "policy" and insert "**program**".

Page 4, line 15, delete "For a".

Page 4, delete lines 16 through 19.

Page 4, line 20, delete "An employer" and insert "**A contractor**".

Page 4, line 22, delete "employer" and insert "**contractor**".

Page 4, line 25, delete "employer." and insert "**contractor.**".

Page 4, line 26, delete "employer" and insert "**contractor**".

Page 4, line 27, delete "employer" and insert "**contractor**".

Page 4, line 28, delete "employer" and insert "**contractor**".

Page 4, line 30, delete "Sec. 11." and insert "**Sec. 12.**".

Page 4, line 33, delete "the contractor's plan." and insert "**section 11 of this chapter.**".

and when so amended that said bill do pass.

(Reference is to HB 1608 as reprinted February 16, 2007.)

KRUSE, Chairperson

Committee Vote: Yeas 11, Nays 0.

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