



February 9, 2007

---

---

## HOUSE BILL No. 1608

---

DIGEST OF HB 1608 (Updated February 8, 2007 1:24 pm - DI 96)

**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. Provides that a contract that complied with the current statute is considered to comply with the new statute.

**Effective:** July 1, 2007.

---

---

### Van Haften

---

---

January 23, 2007, read first time and referred to Committee on Labor and Employment.  
February 8, 2007, amended, reported — Do Pass.

---

---

C  
o  
p  
y

HB 1608—LS 7686/DI 75+



February 9, 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.

C  
O  
P  
Y

## 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, 2006.**

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. (a) As used in this chapter, "contractor" refers to a**

HB 1608—LS 7686/DI 75+



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

person that:

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

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

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

Sec. 6. As used in this chapter, "public money" means any money raised by fees, taxes, or special assessments imposed by an entity created by statute.

Sec. 7. As used in this chapter, "public works contract" refers to a contract to perform a public works project.

Sec. 8. (a) As used in this chapter, "public works project" means the construction, reconstruction, alteration, or renovation of a public building, facility, or other structure that is paid for, in whole or in part, from public money.

(b) The term includes any of the following:

- (1) The construction, alteration, or repair of:
  - (A) a highway, street, alley, bridge, sewer, drain, or other improvement; or
  - (B) a building, facility, or other structure leased by an entity created by statute under a lease containing an option to purchase.
- (2) A project covered by any of the following:
  - (A) IC 4-13.6.
  - (B) IC 5-16.
  - (C) IC 5-23.
  - (D) IC 8-23-9.
  - (E) IC 36-1-12.

Sec. 9. (a) A solicitation for a public works contract must require each contractor that submits a bid for the work to submit with the bid:

- (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).

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

C  
O  
P  
Y



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

that complies with this chapter.  
(c) A contractor that is subject to a collective bargaining agreement complies with this chapter if the collective bargaining agreement establishes an employee drug testing program that includes the following:

- (1) The program provides for the random testing of the contractor's employees.
- (2) The program contains a five (5) drug panel that tests for the substances identified in section 10(a)(3) of this chapter.
- (3) The program imposes disciplinary measures on an employee who fails a drug test. The disciplinary measures must include at a minimum, all the following:
  - (A) The employee is subject to suspension or immediate termination.
  - (B) The employee is not eligible for reinstatement 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 at least one (1) year after reinstatement.
  - (D) The employee successfully completes a rehabilitation program recommended by a substance abuse professional if the employee fails more than one (1) drug test.

A copy of the relevant part of the collective bargaining agreement constitutes a written plan under this section. 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 employee drug testing program that complies with this chapter.

Sec. 10. (a) A contractor's employee drug testing program must satisfy all of the following:

- (1) Each of the contractor's employees must be subject to a drug test at least one (1) time each year.
- (2) Subject to subdivision (1), the contractor's employees must be tested randomly. At least two percent (2%) of the contractor's employees must be randomly selected each month for testing.
- (3) The program must contain at least a five (5) drug panel that tests for the following:
  - (A) Amphetamines.

C  
O  
P  
Y



- 1                   **(B) Cocaine.**
- 2                   **(C) Opiates (2000 ng/ml).**
- 3                   **(D) PCP.**
- 4                   **(E) THC.**
- 5                   **(4) The program must impose progressive discipline on an**
- 6                   **employee who fails a drug test. The discipline must have at**
- 7                   **least the following progression:**
- 8                   **(A) After the first positive test, an employee must be:**
  - 9                   **(i) suspended from work for thirty (30) days;**
  - 10                   **(ii) directed to a program of treatment or rehabilitation;**
  - 11                   **and**
  - 12                   **(iii) subject to unannounced drug testing for one (1) year,**
  - 13                   **beginning the day the employee returns to work.**
- 14                   **(B) After a second positive test, an employee must be:**
  - 15                   **(i) suspended from work for ninety (90) days;**
  - 16                   **(ii) directed to a program of treatment or rehabilitation;**
  - 17                   **and**
  - 18                   **(iii) subject to unannounced drug testing for one (1) year,**
  - 19                   **beginning the day the employee returns to work.**
- 20                   **(C) After a third or subsequent positive test, an employee**
- 21                   **must be:**
  - 22                   **(i) suspended from work for one (1) year;**
  - 23                   **(ii) directed to a program of treatment or rehabilitation;**
  - 24                   **and**
  - 25                   **(iii) subject to unannounced drug testing for one (1) year,**
  - 26                   **beginning the day the employee returns to work.**
- 27                   **In addition to the disciplinary measures in this section, the**
- 28                   **employee is not eligible for reinstatement to employment until the**
- 29                   **employee tests negative on a five (5) drug panel test certified by a**
- 30                   **medical review officer. The program may require dismissal of the**
- 31                   **employee after any positive drug test or other discipline more**
- 32                   **severe than is described in this subdivision.**
- 33                   **(b) An employer complies with the requirement of subsection (a)**
- 34                   **to direct an employee to a program of treatment or rehabilitation**
- 35                   **if the employer does either of the following:**
  - 36                   **(1) Advises the employee of any program of treatment or**
  - 37                   **rehabilitation covered by insurance provided by the**
  - 38                   **employer.**
  - 39                   **(2) If the employer does not provide insurance that covers**
  - 40                   **drug treatment or rehabilitation programs, the employer**
  - 41                   **advises the employee of agencies known to the employer that**
  - 42                   **provide drug treatment or rehabilitation programs.**

**C  
O  
P  
Y**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Sec. 11. (a) The public works contract must provide for the following:**

**(1) That the contractor implement the employee drug testing program described in the contractor's plan.**

**(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 apply to cancellation of the public works contract under this section.**

SECTION 2. IC 36-1-12-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. ~~(a)~~ A contract by the board for public work must conform to **all of the following:**

**(1) The wage scale provisions of IC 5-16-7.**

~~(b) A contract by the board for public work must conform with~~

**(2) The antidiscrimination provisions of IC 5-16-6. The board may consider a violation of IC 5-16-6 a material breach of the contract, as provided in IC 22-9-1-10.**

**(3) The employee drug testing provisions of IC 5-16-12.**

SECTION 3. IC 4-13-18 IS REPEALED [EFFECTIVE JULY 1, 2007].

**C  
o  
p  
y**



## 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**

C  
O  
P  
Y



**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.

**C  
o  
p  
y**

