

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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
17 alcohol per 100 milliliters of blood.

18 "Drug" means a controlled substance as defined in the
19 Illinois Controlled Substances Act or cannabis as defined in
20 the Cannabis Control Act for which testing is required by an
21 employer under its substance abuse prevention program under
22 this Act. The term "drug" includes prescribed medications not
23 used in accordance with a valid prescription.

1 "Employee" means a laborer, mechanic, or other worker
2 employed in any public works by anyone under a contract for
3 public works.

4 "Employer" means a contractor or subcontractor performing
5 a public works project.

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

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

16 Section 15. Substance abuse prevention programs required.

17 (1) Before an employer commences work on a public works
18 project, the employer shall have in place a written program
19 which meets or exceeds the program requirements in this
20 Act, to be filed with the public body engaged in the
21 construction of the public works and made available to the
22 general public, for the prevention of substance abuse among
23 its employees. The testing must be performed by a
24 laboratory that is certified for Federal Workplace Drug

1 Testing Programs by the Substance Abuse and Mental Health
2 Service Administration of the U.S. Department of Health and
3 Human Services. At a minimum, the program shall include all
4 of the following:

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

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

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

21 (D) A procedure for notifying an employee who
22 violates Section 10, who tests positive for the
23 presence of a drug in his or her system, or who refuses
24 to submit to drug or alcohol testing as required under
25 the program that the employee may not perform work on a
26 public works project until the employee meets the

1 conditions specified in subdivisions (2) (A) and (2) (B)
2 of Section 20.

3 (2) Reasonable suspicion testing. An employee whose
4 supervisor has reasonable suspicion to believe the
5 employee is in the possession of or under the influence of
6 alcohol or a drug is subject to discipline up to and
7 including suspension, and be required to undergo an alcohol
8 or drug test. "Reasonable suspicion" means a belief, based
9 on behavioral observations or other evidence, sufficient
10 to lead a prudent or reasonable person to suspect an
11 employee is under the influence and exhibits slurred
12 speech, inappropriate behavior, decreased motor skills, or
13 other such traits. Circumstances, both physical and
14 psychological, shall be given consideration. Whenever
15 possible before an employee is required to submit to
16 testing based on reasonable suspicion, the employee shall
17 be observed by more than one supervisory or managerial
18 employee. It is encouraged that observation of an employee
19 should be performed by a supervisory or managerial employee
20 who has successfully completed a certified training
21 program to recognize drug and alcohol abuse. The employer
22 who is requiring an employee to be tested based upon
23 reasonable suspicion shall provide transportation for the
24 employee to the testing facility and may send a
25 representative to accompany the employee to the testing
26 facility. Under no circumstances may an employee thought to

1 be under the influence of alcohol or a drug be allowed to
2 operate a vehicle or other equipment for any purpose. The
3 employee shall be removed from the job site and placed on
4 inactive status pending the employer's receipt of notice of
5 the test results. The employee shall have the right to
6 request a representative or designee to be present at the
7 time he or she is directed to provide a specimen for
8 testing based upon reasonable suspicion. If the test result
9 is positive for drugs or alcohol, the employee shall be
10 subject to termination. The employer shall pay all costs
11 related to this testing. If the test result is negative,
12 the employee shall be placed on active status and shall be
13 put back to work by the employer. The employee shall be
14 paid for all lost time to include all time needed to
15 complete the drug or alcohol test and any and all overtime
16 according to the employee's contract.

17 (3) An employer is responsible for the cost of
18 developing, implementing, and enforcing its substance
19 abuse prevention program, including the cost of drug and
20 alcohol testing of its employees under the program. The
21 testing must be performed by a laboratory that is certified
22 for Federal Workplace Drug Testing Programs by the
23 Substance Abuse and Mental Health Service Administration
24 of the U.S. Department of Health and Human Services. The
25 contracting agency is not responsible for that cost, for
26 the cost of any medical review of a test result, or for any

1 rehabilitation provided to an employee.

2 Section 20. Employee access to project.

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

12 (A) The employee violates Section 10, tests
13 positive for the presence of a drug in his or her
14 system, or refuses to submit to drug or alcohol testing
15 as required under the employer's substance abuse
16 prevention program.

17 (B) An officer or employee of the contracting
18 agency, preferably one trained to recognize drug and
19 alcohol abuse, has a reasonable suspicion that the
20 employee is in violation of Section 10 and requests the
21 employer to immediately remove the employee from work
22 on the public works project for reasonable suspicion
23 testing.

24 (2) An employee who is barred or removed from work on a
25 public works project under subsection (1) may commence or

1 return to work on the public works project upon his or her
2 employer providing to the contracting agency documentation
3 showing all of the following:

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

7 (B) That the employee has been approved to commence
8 or return to work on the public works project in
9 accordance with the employer's substance abuse
10 prevention program.

11 (C) Testing for the presence of drugs or alcohol in
12 an employee's system and the handling of test specimens
13 was conducted in accordance with guidelines for
14 laboratory testing procedures and chain-of-custody
15 procedures established by the Substance Abuse and
16 Mental Health Service Administration of the U.S.
17 Department of Health and Human Services.

18 (3) Upon successfully completing a rehabilitation
19 program, an employee shall be reinstated to his or her
20 former employment status if work for which he or she is
21 qualified exists.

22 Section 25. Applicability. This Act applies to a contract
23 to perform work on a public works project for which bids are
24 opened on or after January 1, 2008, or, if bids are not
25 solicited for the contract, to a contract to perform such work

1 entered into on or after January 1, 2008. The provisions of
2 this Act apply only to the extent there is no collective
3 bargaining agreement in effect dealing with the subject matter
4 of this Act.

5 Section 99. Effective date. This Act takes effect January
6 1, 2008.