

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 in death,  
9 personal injury, or property damage and that occurred while the  
10 employee was performing work on a public works project.

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

14 "Alcohol concentration" means: (1) the number of grams of  
15 alcohol per 210 liters of breath; or (2) the number of grams of  
16 alcohol per 100 milliliters of blood.

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

23 "Employee" means a laborer, mechanic, or other worker

1 employed in any public works by anyone under a contract for  
2 public works.

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

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

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

15 Section 15. Substance abuse prevention programs required.

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

1 Service Administration of the U.S. Department of Health and  
2 Human Services. At a minimum, the program shall include all  
3 of the following:

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

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

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

20 (D) A procedure for notifying an employee who  
21 violates Section 10, who tests positive for the  
22 presence of a drug in his or her system, or who refuses  
23 to submit to drug or alcohol testing as required under  
24 the program that the employee may not perform work on a  
25 public works project until the employee meets the  
26 conditions specified in subdivisions (2) (A) and (2) (B)

1           of Section 20.

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

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

16 (3) An employer is responsible for the cost of  
17 developing, implementing, and enforcing its substance  
18 abuse prevention program, including the cost of drug and  
19 alcohol testing of its employees under the program, except  
20 when these costs are covered under provisions in a  
21 collective bargaining agreement. The testing must be  
22 performed by a laboratory that is certified for Federal  
23 Workplace Drug Testing Programs by the Substance Abuse and  
24 Mental Health Service Administration of the U.S.  
25 Department of Health and Human Services. The contracting  
26 agency is not responsible for that cost, for the cost of

1 any medical review of a test result, or for any  
2 rehabilitation provided to an employee.

3 Section 20. Employee access to project.

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

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

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

25 (2) An employee who is barred or removed from work on a

1 public works project under subsection (1) may commence or  
2 return to work on the public works project upon his or her  
3 employer providing to the contracting agency documentation  
4 showing all of the following:

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

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

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

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

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

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

6 Section 99. Effective date. This Act takes effect January  
7 1, 2008.