


OFFICE OF CONGRESSIONAL AFFAIRS

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	ACTION	INFO
1. D/OCA		
2. DD/Legislation		
3. DD/Senate Affairs		
4. Ch/Senate Affairs		
5. DD/House Affairs		
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. 	XX	
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SUSPENSE

17MAY88

Date

STAT

Action Officer: 

Remarks:

Just for OCA info - per

STAT

ECF 10MAY88

Name/Date

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Name/Date

OCA FILE *Ref/WH*

{REC'D IN OCA 10MAY88}

OCA 88-1461

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WASHINGTON, D.C. 20500

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100TH CONGRESS
2D SESSION

H. R. 4467

To make ineligible for Federal financial assistance and Government contracts any entity that does not maintain a drug-free workplace.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1988

Mr. WALKER introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Government Operations

A BILL

To make ineligible for Federal financial assistance and Government contracts any entity that does not maintain a drug-free workplace.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Drug-Free Workplace
5 Act of 1988".

6 **SEC. 2. INELIGIBILITY TO RECEIVE FEDERAL ASSISTANCE**
7 **AND GOVERNMENT CONTRACTS.**

8 (a) **IN GENERAL.**—Except as provided in subsection (b),
9 an Executive agency may not make Federal financial assist-
10 ance available to, or enter into any contract with, any entity

1 that fails to maintain each workplace of such entity as a
2 drug-free workplace.

3 (b) EXCEPTION.—Subsection (a) shall not apply to an
4 entity if the head of the Executive agency involved deter-
5 mines, in the discretion of such head, that—

6 (1) such entity implemented measures sufficient to
7 maintain each workplace of such entity as a drug-free
8 workplace; or

9 (2) withholding the Federal financial assistance in-
10 volved or failure to enter into the contract involved, as
11 the case may be, would severely disrupt the operation
12 of such entity to the detriment of the Federal Govern-
13 ment or the general public.

14 SEC. 3. DEFINITIONS.

15 For purposes of this Act—

16 (1) the term “entity” means any person (including
17 any educational institution) which is regularly engaged,
18 whether or not for profit, in an activity relating to—

19 (A) the purchase, sale, lease, manufacture, or
20 production of property; or

21 (B) the provision of services;

22 (2) the term “controlled substance” has the mean-
23 ing given to such term in section 102(6) of the Con-
24 trolled Substances Act (21 U.S.C. 802(6));

1 (3) the term "drug-free workplace" means a
2 workplace of an entity at which no employee of such
3 entity manufactures, distributes, dispenses, or possesses
4 a controlled substance in violation of—

5 (A) the Controlled Substances Act (21
6 U.S.C. 801 et seq.); or

7 (B) the applicable law of a State that prohib-
8 its manufacturing, distributing, dispensing, or pos-
9 sessed a substance that is a controlled substance;

10 (4) the term "educational institution" includes—

11 (A) any public or private elementary or sec-
12 ondary school; and

13 (B) any institution of vocational, professional,
14 or higher education;

15 (5) the term "Executive agency" has the meaning
16 given to such term in section 105 of title 5, United
17 States Code;

18 (6) the term "person" has the meaning given to
19 such term in section 1 of title 1, United States Code,
20 except that such term also includes any State and any
21 political subdivision of a State; and

22 (7) the term "State" means one of the several
23 States, the District of Columbia, the Commonwealth of
24 Puerto Rico, the Commonwealth of the Northern Mari-

4

1 ana Islands, or any territory or possession of the
2 United States.

○

Amendment offered by Mr. Walker

To The Amendment in the Nature of a Substitute

At the end of the bill, insert the following new section:

DRUG FREE WORKPLACE

Sec. 13 (a) GRANTS. No person or organization shall receive a grant authorized under this Act unless such person or organization has certified to the granting agency that it will provide a drug-free workplace by____

(1) publishing a statement of policy prohibiting the unlawful manufacture, distribution, dispensation, or possession of a controlled substance while in the workplace; and

(2) requiring that each employee, as a condition of employment, certify that he or she has received a copy of such statement of policy and understands its contents, and that he will abide by such policy. Such employee shall further agree as a condition of employment to notify the employer of any conviction no later than the employee's next working day after such conviction. The employer shall notify the granting or contracting agency within 72 hours of notification to it by the employee.

(b) **CONTRACTS.** No person or organization shall be considered a

responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services authorized under this Act unless such person or organization has certified to the contracting agency that it will provide a drug free workplace by____

(1) publishing a statement of policy prohibiting the unlawful manufacture, distribution, dispensation, or possession of a controlled substance while in the workplace; and

(2) requiring that each employee, as a condition of employment, certify that he or she has received a copy of such statement of policy and understands its contents, and that he will abide by such a policy. Such employee shall further agree as a condition of employment to notify the employer of any conviction no later than the employee's next working day after such conviction. The employer shall notify the granting or contracting agency within 72 hours of notification to it by the employee.

(c) DEFINITIONS. For purposes of this section --

(1) the term "drug-free workplace" is defined as a workplace for the performance of work done in connection with a specific grant or contract described in subsections (a) and (b) of an entity at which no employee of such entity unlawfully manufactures, distributes, dispenses, or possesses a controlled substance;

(2) the term "employee" is defined as the employee of a contractor or grantee engaged in the performance of work pursuant to the provisions of the contract or grant described in subsections (a) and (b);

(3) the term "controlled substance" is defined as a controlled substance in schedule I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812); and

(4) the term "conviction" is defined as a finding of guilt and/or imposition of sentence by any judicial body charged with the responsibility to determine violations of the Federal, state (or governmental subdivisions thereof) criminal statutes described in subsection (d).

(d) WITHHOLDING OF PAYMENTS.

(1) Each contract and grant authorized pursuant to this Act shall contain a provision through which the granting or contracting agency shall withhold subsequent payments due under the terms and conditions of the grant or contract under applicable law upon the occurrence of conviction of an employee for violation of a Federal, state (or governmental subdivision thereof) criminal statute involving manufacture, distribution, dispensation, or possession of any controlled substance, for a violation occurring in the workplace.

(2) Notice of the granting or contracting agency's intent to withhold payments shall be given to the grantee or contractor by certified U.S. mail, return receipt requested, at the grantee's or contractor's address as shown in the contract or grant, or as amended thereafter.

(3) Upon receipt of said proof of notification by the granting or contracting agency from the grantee or contractor, evidenced by the return receipt referenced in paragraph (2), the granting or contracting agency upon the passage of 14 days from the date of return receipt to the agency shall withhold such payment unless, within such

14 day period, the granting or contracting agency receives notice from the contractor or grantee of a request for an agency hearing to determine whether such contractor or grantee was at the time of said conviction or is at the time of hearing in compliance with the requirement of this section. Upon such request for hearing, the granting or contracting agency shall conduct the requested hearing within 14 days from the date of receipt by the granting or contracting agency of the request for hearing but in no event less than 72 hours prior to the contractor's or grantee's receipt of notice of the hearing. Failure of the granting or contracting agency to timely notify the contractor or grantee shall suspend withholding payment until such time as the granting or contracting agency has afforded the grantee or contractor actual notice of no less than 72 hours prior to such hearing.

(4) Within five (5) days from the date of the hearing described in paragraph (3), the determination as to whether withholding of payment should occur, continue, or terminate shall be made by the granting or contracting agency. Failure of the granting or contracting agency to make such determination within the above stated five (5) day period, shall be deemed a decision to resume or continue all payments thereafter due.

(5) The determination required of the granting or contracting agency as provided in paragraph (4) shall be made favorable to the contractor or grantee, upon a showing by the contractor or grantee, by a preponderance of the evidence, that it is in compliance with subsections (a) and (b) and it is making good faith efforts to maintain a drug free workplace. If a conviction reflects good faith

efforts made by a contractor or grantee to enforce a drug-free workplace by compliance with this section or through other workplace policy, such conviction for unlawful manufacture, distribution, dispensation, or possession of a controlled substance in the workplace, shall be considered substantial evidence that the employer is taking sufficient action to maintain a drug-free workplace and shall require a favorable determination for the contractor or grantee.

(6) In the event of a determination by the granting or contracting agency that the contractor or grantee has failed to comply with the requirements of paragraphs (3) and (4) the contractor or grantee may request a reconsideration of such determination based upon the contractor's or grantee's previous or subsequent efforts to comply within the 14 day and 5 day time periods contained within paragraphs (3)(B) and (4) respectively.

(e) EXCEPTION. This section shall not apply to an entity if the head of the granting or contracting agencies involved determines, in his or her discretion, that withholding payments due under a grant or contract, or not issuing such a grant or not awarding such a contract authorized under this Act, as the case may be, would severely disrupt the operation of such entity to the detriment of the Federal Government or the general public.