

SENATE FILE 340
BY KING

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for drug and alcohol testing of public sector
2 employees and prospective public sector employees,
3 establishing a civil penalty, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 340
BUSINESS & LABOR

1 Section 1. NEW SECTION. 730.6 PUBLIC SECTOR DRUG-FREE
2 WORKPLACES.

3 1. DEFINITIONS. As used in this section, unless the
4 context otherwise requires:

5 a. "Alcohol" means ethanol, isopropanol, or methanol.

6 b. "Drug" means a substance considered a controlled
7 substance and included in schedule I, II, III, IV, or V under
8 the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

9 c. "Employee" means a person in the service of an
10 employer.

11 d. "Employee testing compliance officer" means a licensed
12 chiropractor, nurse practitioner, or physician assistant who
13 has knowledge of substance abuse disorders and has appropriate
14 medical training to perform tasks delegated by a medical
15 review officer consistent with the mandatory guidelines for
16 federal workplace drug testing programs.

17 e. "Employer" means the state of Iowa and its agencies,
18 the counties, cities, public school districts, all political
19 subdivisions, and all of their departments and
20 instrumentalities.

21 f. "Good faith" means reasonable reliance on facts, or
22 that which is held out to be factual, without the intent to be
23 deceived, and without reckless, malicious, or negligent
24 disregard for the truth.

25 g. "Medical review officer" means a physician licensed to
26 practice medicine and surgery or osteopathic medicine and
27 surgery who receives laboratory results generated by an
28 employer's drug or alcohol testing program and who interprets
29 and evaluates an individual's confirmed positive test result,
30 along with the individual's medical history and any other
31 relevant biomedical information, consistent with the mandatory
32 guidelines for federal workplace drug testing programs.

33 h. "Prospective employee" means a person who has made
34 application, whether written or oral, to an employer to become
35 an employee.

1 i. "Reasonable suspicion drug or alcohol testing" means
2 drug or alcohol testing based upon evidence that an employee
3 is using or has used alcohol or other drugs in violation of
4 the employer's written policy drawn from specific objective
5 and articulable facts and reasonable inferences drawn from
6 those facts in light of experience. For purposes of this
7 paragraph, facts and inferences may be based upon, but not
8 limited to, any of the following:

9 (1) Observable phenomena while at work such as direct
10 observation of alcohol or drug use or abuse or of the physical
11 symptoms or manifestations of being impaired due to alcohol or
12 other drug use.

13 (2) Abnormal conduct or erratic behavior while at work or
14 a significant deterioration in work performance.

15 (3) A report of alcohol or other drug use provided by a
16 reliable and credible source.

17 (4) Evidence that an individual has tampered with any drug
18 or alcohol test during the individual's employment with the
19 current employer.

20 (5) Evidence that an employee has endangered the life or
21 safety of a person while at work or has caused an accident
22 while at work which resulted in an injury to a person for
23 which injury, if suffered by an employee, a record or report
24 could be required under chapter 88, or resulted in damage to
25 property, including to equipment, in an amount reasonably
26 estimated at the time of the accident to exceed one thousand
27 dollars.

28 (6) Evidence that an employee has manufactured, sold,
29 distributed, solicited, possessed, used, or transferred drugs
30 while working or while on the employer's premises or while
31 operating the employer's vehicle, machinery, or equipment.

32 j. "Safety-sensitive position" means a job identified by
33 rule or by an employer as safety-sensitive, and includes a job
34 wherein an accident could cause loss of human life, serious
35 bodily injury, or significant property or environmental

1 damage, including a job with duties that include supervision
2 of a person in a job that meets the requirement of this
3 paragraph.

4 k. "Sample" means such sample from the human body capable
5 of revealing the presence of alcohol or other drugs, or their
6 metabolites. However, "sample" does not mean blood except as
7 authorized pursuant to subsection 4 and subsection 6,
8 paragraph "k".

9 1. "Unannounced drug or alcohol testing" means testing for
10 the purposes of detecting drugs or alcohol which is conducted
11 on a periodic basis, without advance notice of the test to
12 employees, other than employees whose duties include
13 responsibility for administration of the employer's drug or
14 alcohol testing program, subject to testing prior to the day
15 of testing, and without individualized suspicion. The
16 selection of employees to be tested from the pool of employees
17 subject to testing shall be done based on a neutral and
18 objective selection process by an entity independent from the
19 employer and shall be made by a computer-based random number
20 generator that is matched with employees' social security
21 numbers, payroll identification numbers, or other comparable
22 identifying numbers in which each member of the employee
23 population subject to testing has an equal chance of selection
24 for initial testing, regardless of whether the employee has
25 been selected or tested previously. The random selection
26 process shall be conducted through a computer program that
27 records each selection attempt by date, time, and employee
28 number.

29 2. APPLICABILITY. This section does not apply to drug or
30 alcohol tests conducted on employees pursuant to federal
31 statutes, federal regulations, or orders issued pursuant to
32 federal law, or conducted on employees or prospective
33 employees pursuant to section 730.5.

34 3. TESTING AS CONDITION OF EMPLOYMENT -- REQUIREMENTS. To
35 the extent provided in subsection 7, an employer may test

1 employees and prospective employees for the presence of drugs
2 or alcohol as a condition of continued employment or hiring.
3 An employer shall adhere to the requirements of this section
4 concerning the conduct of such testing and the use and
5 disposition of the results of such testing.

6 4. COLLECTION OF SAMPLES. In conducting drug or alcohol
7 testing, an employer may require the collection of samples
8 from its employees and prospective employees, and may require
9 presentation of reliable individual identification from the
10 person being tested to the person collecting the samples.
11 Collection of a sample shall be in conformance with the
12 requirements of this section. If the employer requests that a
13 urine sample be provided in conducting drug or alcohol testing
14 under this section, the employer shall provide the employee or
15 prospective employee with an opportunity to have a blood
16 sample drawn instead of providing a urine sample.

17 5. SCHEDULING OF TESTS.

18 a. Drug or alcohol testing of employees conducted by an
19 employer shall normally occur during, or immediately before or
20 after, a regular work period. The time required for such
21 testing by an employer shall be deemed work time for the
22 purposes of compensation and benefits for employees.

23 b. An employer shall pay all actual costs for drug or
24 alcohol testing of employees and prospective employees
25 required by the employer.

26 c. An employer shall provide transportation or pay
27 reasonable transportation costs to employees for all drug or
28 alcohol testing under this section.

29 6. TESTING PROCEDURES. All sample collection and testing
30 for drugs or alcohol under this section shall be performed in
31 accordance with the following conditions:

32 a. The collection of samples shall be performed under
33 sanitary conditions and with regard for the privacy of the
34 individual from whom the specimen is being obtained and in a
35 manner reasonably calculated to preclude contamination or

1 substitution of the specimen.

2 b. Sample collection for drug testing of current employees
3 shall be performed so that the specimen is split into two
4 components at the time of collection in the presence of the
5 individual from whom the sample or specimen is collected. The
6 second portion of the specimen or sample shall be of
7 sufficient quantity to permit a second, independent
8 confirmatory test as provided in paragraph "i". If the
9 specimen is urine, the sample shall be split such that the
10 primary sample contains at least thirty milliliters and the
11 secondary sample contains at least fifteen milliliters. Both
12 portions of the sample shall be forwarded to the laboratory
13 conducting the initial confirmatory testing. In addition to
14 any requirements for storage of the initial sample that may be
15 imposed upon the laboratory as a condition for certification
16 or approval, the laboratory shall store the second portion of
17 any sample until receipt of a confirmed negative test result
18 or for a period of at least forty-five calendar days following
19 the completion of the initial confirmatory testing, if the
20 first portion yielded a confirmed positive test result.

21 c. Sample collections shall be documented, and the
22 procedure for documentation shall include the following:

23 (1) Samples, except for samples collected for alcohol
24 testing conducted pursuant to paragraph "f", subparagraph (2),
25 shall be labeled so as to reasonably preclude the possibility
26 of misidentification of the individual tested in relation to
27 the test result provided, and samples shall be handled and
28 tracked in a manner such that control and accountability are
29 maintained from initial collection to each stage in handling,
30 testing, and storage, through final disposition.

31 (2) An employee or prospective employee shall be provided
32 an opportunity to provide any information which may be
33 considered relevant to the test, including identification of
34 prescription or nonprescription drugs currently or recently
35 used, or other relevant medical information. Information

1 provided by the employee or prospective employee shall not be
2 disclosed to the employer but shall be delivered to the
3 facility conducting confirmatory testing.

4 d. Sample collection, storage, and transportation to the
5 place of testing shall be performed so as to reasonably
6 preclude the possibility of sample contamination,
7 adulteration, or misidentification.

8 e. All confirmatory drug testing shall be conducted at a
9 laboratory certified by the United States department of health
10 and human services' substance abuse and mental health services
11 administration or approved under rules adopted by the Iowa
12 department of public health.

13 f. Drug or alcohol testing shall include confirmation of
14 any initial positive test results.

15 (1) For drug testing, confirmation shall be by a
16 chromatographic technique such as gas chromatography/mass
17 spectrometry, or another comparably reliable analytical
18 method.

19 (2) Notwithstanding any provision of this section to the
20 contrary, alcohol testing, including initial and confirmatory
21 testing, may be conducted pursuant to requirements established
22 by the employer's written policy. The written policy shall
23 include requirements governing evidential breath testing
24 devices, alcohol screening devices, and the qualifications for
25 personnel administering initial and confirmatory testing,
26 which shall be consistent with regulations adopted as of
27 January 1, 1999, by the United States department of
28 transportation governing alcohol testing required to be
29 conducted pursuant to the federal Omnibus Transportation
30 Employee Testing Act of 1991.

31 g. A medical review officer shall, prior to the results
32 being reported to an employer and the employee or prospective
33 employee tested, review and interpret any confirmed positive
34 test results, including both quantitative and qualitative test
35 results, to ensure that the chain of custody is complete and

1 sufficient on its face and that any information provided by
2 the individual pursuant to paragraph "c", subparagraph (2), is
3 considered. An employee testing compliance officer may assist
4 a medical review officer in conducting the review required by
5 this paragraph. This paragraph shall not apply to alcohol
6 testing conducted pursuant to paragraph "f", subparagraph (2).

7 h. In conducting drug or alcohol testing pursuant to this
8 section, the employer shall ensure that the testing only
9 measure, and the records concerning the testing only show or
10 make use of information regarding, alcohol or drugs in the
11 body.

12 i. If a positive drug test for an employee or prospective
13 employee is confirmed by the medical review officer, the
14 medical review officer shall notify the employee or
15 prospective employee in writing of the results of the test, of
16 the employee's or prospective employee's right to request and
17 obtain a confirmatory test of the second sample collected
18 pursuant to paragraph "b" at a certified or approved
19 laboratory of the employee's or prospective employee's choice,
20 and of the fee established by the employer's written policy to
21 be payable by the employee or prospective employee for
22 reimbursement of expenses concerning the test. The fee
23 charged an employee or prospective employee shall be an amount
24 that represents the costs associated with conducting the
25 second confirmatory test on an employee's or prospective
26 employee's sample. If the employee or prospective employee
27 requests a second confirmatory test, identifies a certified or
28 approved laboratory to conduct the test, and pays the medical
29 review officer the fee for the test within fifteen days from
30 the date the employee or prospective employee receives written
31 notice of the right to request a test, a second confirmatory
32 test shall be conducted at the laboratory chosen by the
33 employee or prospective employee. The results of the second
34 confirmatory test shall be reported to the medical review
35 officer who reviewed the initial confirmatory test results and

1 the medical review officer shall review the results and issue
2 a report to the employer and the employee or prospective
3 employee tested that ~~the~~ results of the drug test were
4 confirmed as positive if the results of the second
5 confirmatory test confirmed the initial confirmatory test as
6 to the presence of a specific drug. If the results of the
7 second test do not confirm the results of the initial
8 confirmatory test, the medical review officer shall report to
9 the employer that the result of the drug test is negative and
10 not a confirmed positive test result for purposes of this
11 section.

12 j. A report of the results of a drug or alcohol test
13 issued to an employer and the employee or prospective employee
14 tested shall indicate, as to an employee or prospective
15 employee, whether the test results were positive or negative.
16 An inconclusive test result shall be reported as a negative
17 test result. If the test results are positive, the report
18 shall indicate whether drugs or alcohol were present, which
19 drugs were present if applicable, information concerning the
20 amount of alcohol present, and, if applicable, a statement
21 that any information provided by the employee or prospective
22 employee fails to explain the results.

23 k. Notwithstanding the provisions of this subsection, an
24 employer may rely and take action upon the results of any
25 blood test for drugs or alcohol made on any employee involved
26 in an accident at work if the test is administered by or at
27 the direction of the person providing treatment or care to the
28 employee without request or suggestion by the employer that a
29 test be conducted, and the employer has lawfully obtained the
30 results of the test. For purposes of this paragraph, an
31 employer shall not be deemed to have requested or required a
32 test in conjunction with the provision of medical treatment
33 following a workplace accident by providing information
34 concerning the circumstance of the accident.

35 7. DRUG OR ALCOHOL TESTING. Employers may conduct drug or

1 alcohol testing as provided in this subsection:

2 a. Employers may conduct unannounced drug or alcohol
3 testing of employees who are selected from a pool of employees
4 in a safety-sensitive position and who are scheduled to be at
5 work at the time testing is conducted, other than employees
6 who are not scheduled to be at work at the time the testing is
7 to be conducted or who have been excused from work pursuant to
8 the employer's work policy prior to the time the testing is
9 announced to employees.

10 b. Employers may conduct drug or alcohol testing of
11 employees for up to two years after completion of drug or
12 alcohol rehabilitation.

13 c. Employers may conduct reasonable suspicion drug or
14 alcohol testing.

15 d. Employers may conduct drug or alcohol testing of
16 prospective employees.

17 e. Employers may conduct drug or alcohol testing in
18 investigating accidents in the workplace which result, or
19 could have resulted, in a personal injury which required
20 medical treatment away from the workplace or damage to
21 property, including equipment, in an amount reasonably
22 estimated to exceed one thousand dollars at the time of the
23 accident.

24 f. Employers may conduct drug or alcohol testing of
25 employees who volunteer to be tested at the time drug or
26 alcohol testing is being conducted by the employer.

27 8. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

28 a. Prior to conducting drug or alcohol testing under this
29 section, an employer shall establish a written policy
30 consistent with the requirements of this section governing
31 such testing. The employer shall comply with this section and
32 the requirements of the written policy to conduct drug or
33 alcohol testing of employees and prospective employees and
34 shall provide the written policy to every employee subject to
35 testing and shall make the policy available for review by

1 employees and prospective employees.

2 b. Employers shall establish an awareness program to
3 inform employees of the dangers of drug and alcohol use in the
4 workplace and shall comply with the following requirements in
5 order to conduct drug or alcohol testing under this section:

6 (1) If an employer has an employee assistance program, the
7 employer must inform the employee of the benefits and services
8 of the employee assistance program. An employer shall post
9 notice of the employee assistance program in conspicuous
10 places and explore alternative routine and reinforcing means
11 of publicizing such services. In addition, the employer must
12 provide the employee with notice of the policies and
13 procedures regarding access to and utilization of the program.

14 (2) If an employer does not have an employee assistance
15 program, the employer must maintain a resource file of alcohol
16 and other drug abuse programs certified by the Iowa department
17 of public health, mental health providers, and other persons,
18 entities, or organizations available to assist employees with
19 personal or behavioral problems. The employer shall provide
20 all employees information about the existence of the resource
21 file and a summary of the information contained within the
22 resource file. The summary should contain, but need not be
23 limited to, all information necessary to access the services
24 listed in the resource file.

25 c. An employee or prospective employee whose drug or
26 alcohol test results are confirmed as positive in accordance
27 with this section shall not, by virtue of those results alone,
28 be considered as a person with a disability for purposes of
29 any state or local law or regulation.

30 d. If the written policy provides for alcohol testing, the
31 employer shall establish in the written policy a standard for
32 alcohol concentration which shall be deemed to violate the
33 policy. The standard for alcohol concentration shall not be
34 less than .04, expressed in terms of grams of alcohol per two
35 hundred ten liters of breath, or its equivalent.

1 e. In order to conduct drug or alcohol testing under this
2 section, an employer shall require supervisory personnel of
3 the employer involved with drug or alcohol testing under this
4 section to attend a minimum of two hours of initial training
5 and to attend, on an annual basis thereafter, a minimum of one
6 hour of subsequent training. The training shall include, but
7 is not limited to, information concerning the recognition of
8 evidence of employee alcohol and other drug abuse, the
9 documentation and corroboration of employee alcohol and other
10 drug abuse, and the referral of employees who abuse alcohol or
11 other drugs to the employee assistance program or to the
12 resource file of alcohol and other certified drug abuse
13 programs.

14 9. DISCIPLINARY PROCEDURES. Upon receipt of a confirmed
15 positive drug or alcohol test result, upon the failure of an
16 employee to comply with the requirements of paragraph "a", or
17 upon the refusal of an employee or prospective employee to
18 provide a testing sample, an employer may use that test result
19 or test refusal as a valid basis for disciplinary or

20 rehabilitative actions consistent with the employer's written
21 policy, which may include, among other actions, the following:

22 a. A requirement that the employee enroll in an employer-
23 provided or approved rehabilitation, treatment, or counseling
24 program, which may include additional drug or alcohol testing,
25 participation in and successful completion of which may be a
26 condition of continued employment, and the costs of which may
27 or may not be covered by the employer's health plan or
28 policies.

29 b. Suspension of the employee, with or without pay, for a
30 designated period of time.

31 c. Termination of employment.

32 d. Refusal to hire a prospective employee.

33 e. Other adverse employment action in conformance with the
34 employer's written policy and procedures, including any
35 relevant collective bargaining agreement provisions.

1 10. EMPLOYER IMMUNITY. A cause of action shall not arise
2 against an employer who, in good faith, has established a
3 written policy in accordance with this section and has
4 complied with the requirements of the written policy and this
5 section for testing or taking action based on the results of a
6 confirmed positive drug or alcohol test result, indicating the
7 presence of drugs or alcohol, or the refusal of an employee or
8 prospective employee to submit to a drug or alcohol test.

9 11. RELEASE OF INFORMATION -- CONFIDENTIALITY --
10 EXCEPTIONS.

11 a. Except as provided in paragraph "b", all communications
12 received by an employer relevant to employee or prospective
13 employee drug or alcohol test results, or otherwise received
14 through the employer's drug or alcohol testing program, are
15 confidential communications and shall not be used or received
16 in evidence, obtained in discovery, or disclosed in any public
17 or private proceeding, except as provided by this section or
18 in a proceeding related to an action taken by an employer
19 under this section or by an employee under this section.

20 b. An employee, or a prospective employee, who is the
21 subject of a drug or alcohol test conducted under this section
22 pursuant to an employer's written policy and for whom a
23 confirmed positive test result is reported shall receive, at
24 the same time the report is issued to the employer, a copy of
25 the report issued to the employer and shall receive any
26 records relating to the employee's drug or alcohol test,
27 including records of the laboratory where the testing was
28 conducted and any records relating to the results of any
29 relevant review by a medical review officer.

30 12. CIVIL REMEDIES. This section may be enforced through
31 a civil action.

32 a. A person who violates this section or who aids in the
33 violation of this section, is liable to an aggrieved employee
34 or prospective employee for affirmative relief including
35 reinstatement or hiring, with or without back pay, or any

1 other equitable relief as the court deems appropriate
2 including attorney fees and court costs.

3 b. When a person commits, is committing, or proposes to
4 commit, an act in violation of this section, an injunction may
5 be granted through an action in district court to prohibit the
6 person from continuing such acts. The action for injunctive
7 relief may be brought by an aggrieved employee or prospective
8 employee, the county attorney, or the attorney general.

9 In an action brought under this subsection alleging that an
10 employer has required a drug or alcohol test in violation of
11 this section, the employer has the burden of proving that the
12 requirements of this section were met.

13 13. CIVIL PENALTIES -- JURISDICTION.

14 a. Any laboratory, employee testing compliance officer, or
15 medical review officer who discloses information in violation
16 of the provisions of subsection 6, paragraph "h" or "j", or
17 any employer who, through the selection process described in
18 subsection 1, paragraph "l", improperly targets or exempts
19 employees subject to unannounced drug or alcohol testing,
20 shall be subject to a civil penalty of one thousand dollars
21 for each violation. The attorney general or the attorney
22 general's designee may maintain a civil action to enforce this
23 subsection. Any civil penalty recovered shall be deposited in
24 the general fund of the state.

25 b. A laboratory, employee testing compliance officer, or
26 medical review officer involved in the conducting of a drug or
27 alcohol test pursuant to this section shall be deemed to have
28 the necessary contact with this state for the purpose of
29 subjecting the laboratory, employee testing compliance
30 officer, or medical review officer to the jurisdiction of the
31 courts of this state.

32 14. REPORTS. A laboratory doing business for an employer
33 who conducts drug or alcohol tests pursuant to this section
34 shall file an annual report with the Iowa department of public
35 health by March 1 of each year concerning the number of drug

1 or alcohol tests conducted on employees who work in this state
2 pursuant to this section, and the number of positive and
3 negative results of the tests, during the previous calendar
4 year. The department of public health shall compile the
5 information received and make it available to the public. In
6 addition, the laboratory shall include in its annual report
7 the specific basis for each test as authorized in subsection
8 7, the type of drug or drugs which were found in the positive
9 drug tests, and all significant available demographic factors
10 relating to the positive test pool.

11 Sec. 2. EFFECTIVE DATE. This Act takes effect on January
12 1, 2000.

13 EXPLANATION

14 This bill provides guidelines governing drug and alcohol
15 testing of employees employed by the public sector employer.
16 Employees subject to testing under Code section 730.5 or under
17 federal law are excluded from this bill.

18 The bill defines "employer" to mean the state and its
19 agencies, as well as counties, cities, public school
20 districts, all political subdivisions, and all of their
21 departments and instrumentalities. The bill includes
22 definitions for "safety-sensitive position", "unannounced drug
23 or alcohol testing", and "reasonable suspicion drug or alcohol
24 testing".

25 The bill governs the procedures for conducting a drug or
26 alcohol test by an employer, including the collection of
27 samples and the scheduling of tests. The bill also requires
28 that the results of drug or alcohol testing be confirmed and
29 specifies the methodology by which a drug test shall be
30 confirmed and that alcohol testing shall be conducted pursuant
31 to applicable federal department of transportation
32 regulations. The bill provides that samples collected from
33 current employees for drug testing shall be split into two
34 components so that an employee has an opportunity to have the
35 second sample tested if the first sample yields a confirmed

1 positive test result.

2 The bill permits unannounced drug or alcohol testing of
3 employees working in a safety-sensitive position, and permits
4 testing of employees during and after completion of drug or
5 alcohol rehabilitation. The bill also permits drug or alcohol
6 testing based on reasonable suspicion, of prospective
7 employees, in investigating an accident at work, and of
8 employees who volunteer to be tested.

9 The bill requires an employer to establish a written
10 policy, available to employees and prospective employees,
11 governing drug or alcohol testing. The bill also provides
12 what disciplinary or rehabilitative actions are permissible as
13 a part of the employer's written policy. The written policy
14 shall also provide, if applicable, a minimum level for a
15 positive alcohol test result, but in no event lower than 0.04,
16 and information about the employer's employee assistance
17 program, if applicable, or community services concerning
18 alcohol and drug abuse.

19 The bill also makes provisions governing the liability of
20 an employer. The bill provides that an employer shall not be
21 liable, who, in good faith, has established a written policy
22 in accordance with this bill and has complied with the law and
23 with the written policy.

24 The bill also provides for the confidentiality of test
25 results and provides that information collected to conduct
26 drug or alcohol testing shall not be disseminated or
27 disclosed. The bill provides that a violation of disclosure
28 requirements by a laboratory, employee testing compliance
29 officer, or medical review officer is subject to a \$1,000
30 civil penalty. The bill also provides that a person who
31 violates the provisions of this new Code section is liable to
32 an aggrieved employee or prospective employee through a civil
33 action for affirmative relief such as reinstatement or for
34 injunctive relief, as applicable.

35 The bill further provides that laboratories conducting drug

1 or alcohol tests pursuant to this bill shall report the number
2 and results of the drug or alcohol tests conducted during a
3 calendar year to the department of public health by March 1 of
4 the subsequent year.

5 This bill takes effect January 1, 2000.

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