

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 736**

1 **AN ACT** *to create* 103.503 of the statutes; **relating to:** substance abuse by
2 employees who are required to be paid the prevailing wage rate for work
3 performed on projects of public works, other than state highway projects.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 103.503 of the statutes is created to read:

5 **103.503 Substance abuse prevention on public works projects. (1)**

6 **DEFINITIONS.** In this section:

7 (a) "Accident" means an incident caused, contributed to, or otherwise involving
8 an employee that resulted or could have resulted in death, personal injury, or
9 property damage and that occurred while the employee was performing the work
10 described in s. 66.0903 (4) or 103.49 (2m) on a project.

1 (b) “Alcohol” has the meaning given in s. 340.01 (1q).

2 (c) “Contracting agency” means a local governmental unit, as defined in s.
3 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted
4 for the performance of work on a project.

5 (d) “Drug” means any controlled substance, as defined in s. 961.01 (4), or
6 controlled substance analog, as defined in s. 961.01 (4m), for which testing is
7 required by an employer under its substance abuse prevention program under this
8 section.

9 (e) “Employee” means a laborer, worker, mechanic, or truck driver who
10 performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project.

11 (f) “Employer” means a contractor, subcontractor, or agent of a contractor or
12 subcontractor that performs work on a project.

13 (g) “Project” mean a project of public works that is subject to s. 66.0903 or
14 103.49.

15 **(2) SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess, attempt to
16 possess, distribute, deliver, or be under the influence of a drug, or use or be under the
17 influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49
18 (2m) on a project. An employee is considered to be under the influence of alcohol for
19 purposes of this subsection if he or she has an alcohol concentration that is equal to
20 or greater than the amount specified in s. 885.235 (1g) (d).

21 **(3) SUBSTANCE ABUSE PREVENTION PROGRAMS REQUIRED.** (a) Before an employer
22 may commence work on a project, the employer shall have in place a written program
23 for the prevention of substance abuse among its employees. At a minimum, the
24 program shall include all of the following:

25 1. A prohibition against the actions or conditions specified in sub. (2).

1 2. A requirement that employees performing the work described in s. 66.0903
2 (4) or 103.49 (2m) on a project submit to random, reasonable suspicion, and
3 post-accident drug and alcohol testing and to drug and alcohol testing before
4 commencing work on a project, except that testing of an employee before commencing
5 work on a project is not required if the employee has been participating in a random
6 testing program during the 90 days preceding the date on which the employee
7 commenced work on the project.

8 3. A procedure for notifying an employee who violates sub. (2), who tests
9 positive for the presence of a drug in his or her system, or who refuses to submit to
10 drug or alcohol testing as required under the program that the employee may not
11 perform work on a project until he or she meets the conditions specified in sub. (4)
12 (b) 1. and 2.

13 (b) Each employer shall be responsible for the cost of developing,
14 implementing, and enforcing its substance abuse prevention program, including the
15 cost of drug and alcohol testing of its employees under the program. The contracting
16 agency is not responsible for that cost, for the cost of any medical review of a test
17 result, or for any rehabilitation provided to an employee.

18 **(4) EMPLOYEE ACCESS TO PROJECT.** (a) No employer may permit an employee who
19 violates sub. (2), who tests positive for the presence of a drug in his or her system,
20 or who refuses to submit to drug or alcohol testing as required under the employer's
21 substance abuse prevention program under sub. (3) to perform work on a project
22 until he or she meets the conditions specified in par. (b) 1. and 2. An employer shall
23 immediately remove an employee from work on a project if any of the following
24 occurs:

1 1. The employee violates sub. (2), tests positive for the presence of a drug in his
2 or her system, or refuses to submit to drug or alcohol testing as required under the
3 employer’s substance abuse prevention program.

4 2. An officer or employee of the contracting agency has a reasonable suspicion
5 that the employee is in violation of sub. (2) and requests the employer to immediately
6 remove the employee from work on the project.

7 (b) An employee who is barred or removed from work on a project under par.
8 (a) may commence or return to work on the project upon his or her employer
9 providing to the contracting agency documentation showing all of the following:

10 1. That the employee has tested negative for the presence of drugs in his or her
11 system and is not under the influence of alcohol as described in sub. (2).

12 2. That the employee has been approved to commence or return to work on the
13 project in accordance with the employer’s substance abuse prevention program.

14 (c) Testing for the presence of drugs or alcohol in an employee’s system and the
15 handling of test specimens shall be conducted in accordance with guidelines for
16 laboratory testing procedures and chain-of-custody procedures established by the
17 substance abuse and mental health services administration of the federal
18 department of health and human services.

19 **(5) LOCAL ORDINANCES; STRICT CONFORMITY REQUIRED.** A local governmental unit,
20 as defined in s. 66.0903 (1) (d), may enact an ordinance regulating the conduct
21 regulated under this section only if the ordinance strictly conforms to this section.

22 **SECTION 2. Initial applicability.**

23 (1) This act first applies to a contract to perform work on a project, as defined
24 in section 103.503 (1) (g) of the statutes, as created by this act, for which bids are
25 opened on the effective date of this subsection or, if bids are not solicited for the

1 contract, to a contract to perform such work entered into on the effective date of this
2 subsection, except that this This act first applies to an employee who is affected by
3 a collective bargaining agreement that contains provisions inconsistent with this act
4 on the day on which the collective bargaining agreement expires or is extended,
5 modified, or renewed, whichever occurs first.

6 **SECTION 3. Effective date.**

7 (1) This act takes effect on the first day of the 13th month beginning after
8 publication.

9 (END)