

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

January 11, 2006 – Offered by Representatives STONE and NASS.

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

Under current law, subject to certain exceptions, a contractor, subcontractor, or agent of a contractor or subcontractor that is performing work on a a state or local public works project whose estimated cost of completion is \$41,000 or more for a single–trade public works project or \$200,000 or more for a multiple–trade public works project (employer) must pay all laborers, workers, mechanics, and truck drivers employed on the project (employees) at the rate paid for a majority of the hours worked in the employee’s trade or occupation in the county in which the project is located (prevailing wage law).

This substitute amendment prohibits an employee from using, possessing, attempting to possess, distributing, delivering, or being under the influence of a controlled substance or controlled substance analog (drug), and from using or being under the influence of alcohol, while performing work on a public works project, other than a state highway project, that is subject to the prevailing wage law (project). For purposes of the substitute amendment, an employee is considered to be under the influence of alcohol if he or she has an alcohol concentration that is equal to or greater than 0.04.

The substitute amendment requires an employer to have in place a written program for the prevention of substance abuse among its employees that, at a minimum, includes all of the following:

1. A prohibition against its employees performing work on a project using, possessing, attempting to possess, distributing, delivering, or being under the influence of a drug, and using or being under the influence of alcohol, while performing work on a project.

2. A requirement that its employees performing work on a project submit to random, reasonable suspicion, and post-accident drug and alcohol testing and to drug and alcohol testing before commencing work on a project (prejob testing), except that prejob testing of an employee is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the project.

3. A procedure for notifying an employee who violates the prohibition under the substitute amendment, who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program that the employee may not perform work on a project until he or she tests negative for the presence of drugs in his or her system, is not under the influence of alcohol, and is approved to commence or return to work on the project in accordance with the employer's substance abuse prevention program.

The substitute amendment requires an employer to immediately remove an employee from work on a project if any of the following occurs:

1. The employee violates the prohibition under the substitute amendment, tests positive for the presence of a drug in his or her system, or refuses to submit to drug or alcohol testing as required under the employer's substance abuse prevention program.

2. An officer or employee of the local governmental unit or state agency that has contracted for the performance of work on the project (contracting agency) has a reasonable suspicion that the employee is in violation of the prohibition under the substitute amendment and requests the employer to immediately remove the employee from work on the project.

Under the substitute amendment, an employee who is barred or removed from work on a project may commence or return to work on the project upon his or her employer providing to the contracting agency documentation showing that the employee has tested negative for the presence of drugs in his or her system, is not under the influence of alcohol, and is approved to commence or return to work on the project in accordance with the employer's substance abuse prevention program.

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

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

2 DEFINITIONS. In this section:

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

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

8 (c) “Contracting agency” means a local governmental unit, as defined in s.
9 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted
10 for the performance of work on a project.

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

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

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

19 (g) “Project” mean a project of public works that is subject to s. 66.0903 or
20 103.49.

21 **(2) SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess, attempt to
22 possess, distribute, deliver, or be under the influence of a drug, or use or be under the
23 influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49
24 (2m) on a project. An employee is considered to be under the influence of alcohol for

1 purposes of this subsection if he or she has an alcohol concentration that is equal to
2 or greater than the amount specified in s. 885.235 (1g) (d).

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

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

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

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

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

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

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

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

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

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

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

21 (c) Testing for the presence of drugs or alcohol in an employee's system and the
22 handling of test specimens shall be conducted in accordance with guidelines for
23 laboratory testing procedures and chain-of-custody procedures established by the
24 substance abuse and mental health services administration of the federal
25 department of health and human services.

