

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB736)

Received: 10/14/2005

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: Jeff Stone (608) 266-8590

By/Representing: Marsha Dake

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Add. Drafters:

Subject: **Employ Priv - prevailing wage**

Extra Copies:

Submit via email: YES

Requester's email: **Rep.Stone@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Drug-free construction sites

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/21/2005	kfollett 11/04/2005		_____			
/1			pgreensl 11/04/2005	_____	lnorthro 11/04/2005	lnorthro 11/04/2005	
/2	gmalaise 12/12/2005	kfollett 12/13/2005	jfrantze 12/13/2005	_____	lnorthro 12/14/2005	lnorthro 12/14/2005	
/3	gmalaise	kfollett	pgreensl	_____	lemery	lemery	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/19/2005	12/19/2005	12/19/2005 _____		12/19/2005	12/19/2005	

FE Sent For:

<END>

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FE Sent For:

gmalaise
12/13
J/RS
12/13
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FE Sent For:

<END>

Malaise, Gordon

From: Dake, Marsha
Sent: Friday, October 14, 2005 11:59 AM
To: Malaise, Gordon
Subject: Sub Amend language for AB 736/Rep. Stone

Attachments: Revision for Sub Amend.DOC



Revision for Sub
Amend.DOC (38...

Substance Abuse Prevention

Mission/Purpose: The State of Wisconsin recognizes and supports drug-free and alcohol-free workplace programs as an important element in the national strategy to reduce the devastating effects of drug and alcohol abuse in our society. The State ~~urges~~ requires contractors, subcontractors, suppliers and vendors to establish and enforce drug-free and alcohol-free workplace policies and programs.

Statement: The possession, use of, distribution or purchase of illegal drugs, or use of alcohol at work by any employee on ~~State of Wisconsin~~ a project of public works that is subject to s. 103.49 or s. 66.0903 ~~should be~~ is strictly prohibited.

The terms of this Substance Abuse ~~Statement~~ Policy will cover all construction personnel who are working on ~~State of Wisconsin~~ covered job sites. This will include employees of all contractors, subcontractors, contractor suppliers, and their employees, who come to the job sites to do work.

Contractor's Written Program: Each contractor ~~should~~ shall have in place a written Substance Abuse Program. Each contractor's Substance Abuse Program should have, as a minimum, the following:

A statement of the provisions for pre-hire, random, reasonable suspicion and post-accident testing of employees who are involved in an accident relating to work on the job site. An accident is defined as any incident, including "near misses," where injury or damage to property did or could have occurred.

~~employees who give their supervisors or company officials sufficient reason to believe that they may be under the influence of alcohol or drugs and therefore may endanger the well-being of other employees or themselves while working on the job site.~~

Representatives of the State contracting agency ~~who~~ which believes that any contractor's employee may be under the influence of alcohol or drugs shall, where deemed appropriate, contact the contractor's appropriate management/supervision authority and request that appropriate action be taken. The individual's employer ~~should~~ shall ensure that the employee who is suspected of being under the influence of illegal drugs or alcohol will be immediately removed from the job site.

~~Provisions for testing employees who are involved in an accident relating to work on the job site. An accident is defined as any incident, including "near misses", where injury or damage to property did or could have occurred.~~

Any employee who tests positive for illegal drugs or alcohol ~~should~~ shall not be allowed to continue working on the job site until after the employer has provided documentation to the State that the employee has tested negative for drugs and/or alcohol and has been approved to return to work by an employee assistance provider and local drug and alcohol rehabilitation counselor.

Where there is substantiated evidence that an employee has violated this policy, provisions to notify the employee that will result in the employee being denied further access to any state-owned job site.

Procedures for testing and handling of positive drug and alcohol tests must be in compliance and consistent with State and Federal laws.

Costs of Substance Abuse Programs and Testing: The cost associated with the development, implementation and enforcement of Substance Abuse Programs and any testing required will be the responsibility of each individual contractor for the respective employees working on the job site. The State contracting agency will not be responsible for any cost of substance abuse testing, rehabilitation or medical reviews related to substance abuse. The contractor further agrees to indemnify and hold the State contracting agency harmless from any damages or other costs incurred which are related to the implementation or enforcement of any substance abuse policy or program.

Malaise, Gordon

From: Dake, Marsha
Sent: Tuesday, October 18, 2005 9:41 AM
To: Malaise, Gordon
Subject: FW: Substance Abuse Testing on Public Sector Projects
Attachments: 7c#p04!.DOC

Gordon,

Below are additional points for consideration in the substitute amendment to AB 736.

Thank you,

Marsha Dake
Rep. Stone Office

From: Beiriger, Jeffrey J. [mailto:beiriger@cf-law.com]
Sent: Tuesday, October 18, 2005 9:25 AM
To: Dake, Marsha
Cc: Brian Mitchell
Subject: Substance Abuse Testing on Public Sector Projects

Marsha,

I know that this went to the drafter, but we have some feedback that we thought we'd share. As you see fit, this may be useful to share this with the drafter sooner rather than later.

First, we've eliminated the preamble language. That is a convention not often used these days.

Second, John at ABC suggested we look at the language on suppliers and vendors and decide whether they should be among those required to comply. We were thinking along the lines of the prevailing wage, where off-site work is not covered and where suppliers/vendors are generally not subject to that law. It may be helpful to the drafter to see the language in the prevailing wage law to see specifically how suppliers/vendors are exempted.

Third, there is a reference to an employee being denied access to "state-owned" job sites. This should be the job sites owned by the public-sector contracting agency and not just limited to state jobs.

Finally, the language suggests that the handling of "positive" tests be in conformance with applicable state and federal laws. I think this is a reference to the manner in which confidentiality is maintained, but it seems to suggest that only "positive" tests need to be conducted in accordance with recognized standards. We suggest removing "positive" so that it is clear that all testing is done in compliance with state and federal laws.

If you have any questions, please call me at (414) 227-1202.

Thanks,

Jeff

Jeffrey J. Beiriger, CAE
Cook & Franke SC
660 East Mason Street
Milwaukee, WI 53202-3877
Direct: (414) 227-1202
Mobile: (414) 331-2059

10/18/2005

Substance Abuse Prevention

~~Mission/Purpose: The State of Wisconsin recognizes and supports drug free and alcohol free workplace programs as an important element in the national strategy to reduce the devastating effects of drug and alcohol abuse in our society. The State urges requires contractors, and subcontractors, suppliers and vendors to establish and enforce drug free and alcohol free workplace policies and programs.~~

✓ ~~Statement: The possession, use of, distribution or purchase of illegal drugs, or use of alcohol at work by any employee on State of Wisconsin a project of public works that is subject to s. 103.49 or s. 66.0903 should be~~ is strictly prohibited.

✓ The terms of this Substance Abuse ~~Statement~~ Policy will cover all construction personnel who are working on ~~State of Wisconsin~~ covered job sites. This will include employees of all contractors; and subcontractors; ~~contractor suppliers, and their employees,~~ who come to the job sites to do work.

✓ Contractor's Written Program: Each contractor ~~should~~ shall have in place a written Substance Abuse Program. Each contractor's Substance Abuse Program should have, as a minimum, ~~the following: a~~ A statement of the provisions for pre-hire, random, reasonable suspicion and post-accident testing of employees who are involved in an accident relating to work on the job site. An accident is defined as any incident, including "near misses," where injury or damage to property did or could have occurred.

~~employees who give their supervisors or company officials sufficient reason to believe that they may be under the influence of alcohol or drugs and therefore may endanger the well-being of other employees or themselves while working on the job site.~~

Representatives of the State contracting agency ~~who~~ which believes that any contractor's employee may be under the influence of alcohol or drugs shall, where deemed appropriate, contact the contractor's appropriate management/supervision authority and request that appropriate action be taken. The individual's employer ~~should~~ shall ensure that the employee who is suspected of being under the influence of illegal drugs or alcohol will be immediately removed from the job site.

~~Provisions for testing employees who are involved in an accident relating to work on the job site. An accident is defined as any incident, including "near misses", where injury or damage to property did or could have occurred.~~

Any employee who tests positive for illegal drugs or alcohol ~~should~~ shall not be allowed to continue working on the job site until after the employer has provided documentation to the State that the employee has tested negative for drugs and/or alcohol and has been approved to return to work by an employee assistance provider and local drug and alcohol rehabilitation counselor.

Where there is substantiated evidence that an employee has violated this policy, provisions to notify the employee that will result in the employee being denied further access to any ~~state~~ of the contracting agency's owned job sites.

Procedures for testing and handling of ~~positive~~ drug and alcohol tests must be in compliance and consistent with State and Federal laws.

Costs of Substance Abuse Programs and Testing: The cost associated with the development, implementation and enforcement of Substance Abuse Programs and any

testing required will be the responsibility of each individual contractor for the respective employees working on the job site. The State contracting agency will not be responsible for any cost of substance abuse testing, rehabilitation or medical reviews related to substance abuse. The contractor further agrees to indemnify and hold the State contracting agency harmless from any damages or other costs incurred which are related to the implementation or enforcement of any substance abuse policy or program.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0259/7
GMM. kjf

Soon

Nov 4 (if possible)

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

Gen

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

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:

X
1. A prohibition against its employees 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. The employer's policy concerning pre-hire, random, reasonable suspicion, and post-accident drug and alcohol testing of its employees.

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

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 or alcohol 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. A representative 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 and alcohol in his or her system and is approved to commence or return to work on the project by an employee assistance counselor and by a substance abuse counselor.

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

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

2 **103.503 Substance abuse prevention on public works projects. (1)**

3 DEFINITIONS. In this section:

4 (a) "Accident" means an incident caused, contributed to, or otherwise involving
5 an employee that resulted or could have resulted in death, personal injury, or

1 property damage and that occurred while the employee was performing the work
2 described in s. 66.0903 (4) or 103.49 (4) (2m) on a project.

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

4 (c) “Contracting agency” means a local governmental unit, as defined in s.
5 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted
6 for the performance of work on a project.

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

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

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

15 (g) “Project” mean a project of public works that is subject to s. 66.0903 or
16 103.49.

17 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess, attempt to
18 possess, distribute, deliver, or be under the influence of a drug, or use or be under the
19 influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49
20 (2m) on a project.

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. The employer's policy concerning pre-hire, random, reasonable suspicion,
2 and post-accident drug and alcohol testing of its employees.

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

8 (b) Each employer shall be responsible for the cost of developing,
9 implementing, and enforcing its substance abuse prevention program, including the
10 cost of drug and alcohol testing of its employees under the program. The contracting
11 agency is not responsible for that cost, for the cost of any medical review of a test
12 result, or for any rehabilitation provided to an employee. An employer shall agree,
13 as a condition of receiving a contract to perform work on a project, to indemnify and
14 hold harmless the contracting agency against any loss, expense, liability, damage, or
15 other costs, including reasonable attorney fees, that the contracting agency may
16 incur as a result of implementation and enforcement of this section or of an
17 employer's substance abuse prevention program under this section.

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

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

4 2. A representative of the contracting agency has a reasonable suspicion that
5 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 and alcohol
11 in his or her system.

12 2. That the employee has been approved to commence or return to work on the
13 project by an employee assistance counselor and by a substance abuse counselor,
14 clinical supervisor, or prevention specialist certified under s. 440.88, an alcohol and
15 drug counselor or chemical dependency counselor certified as described under s.
16 457.02 (5), or a social worker authorized under s. 457.02 (5m) to treat alcohol or
17 substance dependency or abuse as a specialty.

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

23 **SECTION 2. Nonstatutory provisions.**

24 (1) TRANSITIONAL PROVISIONS. An employer, as defined in section 103.503 (1) (f)
25 of the statutes, as created by this act, that is required under section 103.503 (3) of

have such
but ~~that~~ that does not have such a
program in place,

1 the statutes, as created by this act, to have ~~but that does not have~~ a substance abuse
2 prevention program in place on the effective date of this subsection, shall provide
3 notice to all of its employees, as defined in section 103.503 (1) (e) of the statutes, as
4 created by this act, that a substance abuse prevention program is being implemented
5 and may not begin drug and alcohol testing under that program until 60 days after
6 the date of the notice. An employer that has a substance abuse prevention program
7 that includes drug and alcohol testing in place on the effective date of this subsection
8 is not required to provide notice under this subsection.

SECTION 3. Initial applicability.

10 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee
11 who is affected by a collective bargaining agreement that contains provisions
12 inconsistent with this act on the day on which the collective bargaining agreement
13 expires or is extended, modified, or renewed, whichever occurs first.

SECTION 4. Effective date.

15 (1) This act takes effect on the first day of the 19th month beginning after
16 publication.

(END)

Annie Early

From: Beiriger, Jeffrey J. [beiriger@cf-law.com]
Sent: Monday, November 14, 2005 6:29 AM
To: Marsha.Dake@legis.state.wi.us
Subject: Substance Abuse Testing - Substitute Amendment

Marsha,

We have reviewed the Substitute Amendment for AB 736 and have the following comments:

- ✓ On page 3, lines 17-20, there is discussion regarding the definition of substance abuse. Our concern is that the language regarding alcohol (here and in other places in the draft) is more restrictive than most policies. Every policy we know of prohibits the use of alcohol on the jobsite, but does not use a zero cut-off level for testing. The policies we are aware of refer to blood alcohol levels of 0.04 or 0.08. The previous draft used 0.04 blood alcohol content and we would suggest that level. A statutory reference may be appropriate, so that any further reduction in the BAC would be adopted by reference.
- ✓ On page 4, line 1, we think the language should be clear that prehire, random, post-accident, and reasonable suspicion testing are all required elements of the employer's testing program. Perhaps the use of "encompassing" rather than "concerning" in line 1?
- ✓ On page 4, line 18, we're not certain about the word "debarment." That has a certain meaning for contractors and we're not familiar with its use with regard to employees. It may be enough to simply eliminate it along with the word "or."
- ✓ On page 5, line 4, we would like to get a sense from the drafter of who he has in mind with respect to the "representative of the contracting agency," just to be certain we're all on the same page.
- ✓ On page 5, lines 12-17, we would prefer to see the language regarding return-to-work refer back to the employer's program, rather than specifically set forth the return-to-work provisions. The provision requiring a negative drug test before returning to the project is fine, it's just that not all treatment is referred to a substance abuse counselor. Some matters are handled at the employee assistance level alone.
- ✓ On page 6, line 16, we suggest an implementation date on the first day of the 13th month. The 19th month was selected for the previous draft to allow 6 month's notice and 12 months of participation in a random testing pool. With the changes made in the substitute amendment, we think 12 months is adequate notice for employees and for employers, associations, unions, etc. to find a source for or develop a program.

One of us will be in contact today should you have any questions.

Sincerely,

Jeffrey J. Beiriger
Cok & Franke, SC
414/227-1202

Malaise, Gordon

From: Dake, Marsha
Sent: Wednesday, December 07, 2005 11:32 AM
To: Malaise, Gordon
Subject: FW: AB 736 - Substance Abuse Testing
Attachments: Substance Abuse Testing - Substitute Amendment.txt

Gordon,

Here are the changes for the Sub amendment to AB 736. One document is an attachment, the other appears below.

Please call me with an questions or concerns.

Thanks,

Marsha Dake
Rep. Stone
6-8590

From: Beiriger, Jeffrey J. [mailto:beiriger@cf-law.com]
Sent: Wednesday, November 30, 2005 3:46 PM
To: Dake, Marsha
Cc: Brian Mitchell; Annie Early
Subject: AB 736 - Substance Abuse Testing

Marsha,

The changes that were suggested last week are all good with everyone. There were two additional things we checked on. My follow up and questions to AGC-WI and ABC follow:

.....
Two things.....

✓ I checked with an employment attorney at my office and they are unaware of any Wisconsin statute which requires a specific amount of advance notice for implementing a drug testing policy. He suggested there may be some practical reasons, but nothing legal. To that end, we could eliminate the 60 day notice requirement. My gut tells me to include something, however, even if it's three days or seven days, so long as it is less than the time from project award to project start. Any thoughts?

(yes)

And with respect to pre-job testing, I'm assuming that we still want to exempt from pre-job testing those employees who have been subject to random testing for a period of time prior to the start of the project (3 months, 6 months). We didn't really talk about it, but most everyone who has an existing testing program would need to pre-job test their employees the way the bill is currently drafted. This may work for the casual bidder of public-sector projects, but for the contractors who do already have testing or who would choose to comply by implementing random testing on a company-wide basis, it would be the more effective and efficient means to comply. Any thoughts?

.....
The answers they provided were to proceed with the first issue without the 60 day notice. It's not required by law and no matter what number of days we write into the bill, there's going to be somebody who will not like it. In any event, this issue really only comes up the first time someone bids a public sector project and we're giving people 12 months to get ready for the bill to be effective.

As for the second issue, the group agreed that participation in a random testing pool for a period of ninety

days prior to the beginning of the project will exempt the employee from having to take a pre-job drug/alcohol test. If you're not in a pool, you would need to test. In effect, random testing is the deterrent and the most cost-effective way to comply. If we don't add this provision, every employee would need to be tested before going on every public sector site. The drafter should be able to preserve some of the language from the original draft with respect to this provision.

With the provisions of last week and the above, we think we're where we need to be on the redraft.

Thanks for your help!

Jeff

Jeffrey J. Beiriger, CAE
Cook & Franke SC
660 East Mason Street
Milwaukee, WI 53202-3877
Direct: (414) 227-1202
Mobile: (414) 331-2059
beiriger@cf-law.com
www.cf-law.com



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0259/1

GMM:kjf:gg

Wed. 12/14

2
RMR

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 736

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.

Regen

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).

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:

A requirement that employees performing work on a project submit to

is not under the influence of alcohol,

1. A prohibition against its employees, 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. ~~The employer's policy concerning prehire, random, reasonable suspicion, and post-accident drug and alcohol testing of its employees.~~

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

Insert
A
Substance abuse prevention

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 or alcohol 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. ~~A representative~~ 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.

An officer or employee

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 and alcohol in his or her system, and is approved to commence or return to work on the project by an employee assistance counselor and by a substance abuse counselor.

is not under the influence of alcohol

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

- 1 SECTION 1. 103.503 of the statutes is created to read:
- 2 103.503 Substance abuse prevention on public works projects. (1)
- 3 DEFINITIONS. In this section:
- 4 (a) "Accident" means an incident caused, contributed to, or otherwise involving
- 5 an employee that resulted or could have resulted in death, personal injury, or

1 property damage and that occurred while the employee was performing the work
2 described in s. 66.0903 (4) or 103.49 (2m) on a project.

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

4 (c) “Contracting agency” means a local governmental unit, as defined in s.
5 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has contracted
6 for the performance of work on a project.

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

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

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

15 (g) “Project” mean a project of public works that is subject to s. 66.0903 or
16 103.49.

17 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess, attempt to
18 possess, distribute, deliver, or be under the influence of a drug, or use or be under the
19 influence of alcohol, while performing the work described in s. 66.0903 (4) or 103.49
20 (2m) on a project.

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).

An employee is considered to be under the influence of alcohol for purposes of this subsection if he or she has an alcohol concentration that is equal to or greater than the amount specified in s. 825.235 (1g)(d).

~~A requirement that employees performing the work described in s. 66.2903 (4) or 103.49 (2m) on a project submit to~~

2. ~~The employer's policy concerning prehire, random, reasonable suspicion, and post-accident drug and alcohol testing of its employees,~~ in accordance with the emp.

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

(b) Each employer shall be responsible for the cost of developing, implementing, and enforcing its substance abuse prevention program, including the cost of drug and alcohol testing of its employees under the program. The contracting agency is not responsible for that cost, for the cost of any medical review of a test result, or for any rehabilitation provided to an employee. An employer shall agree, as a condition of receiving a contract to perform work on a project, to indemnify and hold harmless the contracting agency against any loss, expense, liability, damage, or other costs, including reasonable attorney fees, that the contracting agency may incur as a result of implementation and enforcement of this section or of an employer's substance abuse prevention program under this section.

ACCESS TO

(4) ~~DEBARMENT OR REMOVAL OF EMPLOYEE FROM~~ PROJECT. (a) No employer may permit an employee who violates sub. (2), who tests positive for the presence of a drug or alcohol 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 under sub. (3) to perform work on a project until he or she meets the conditions specified in par. (b) 1. and 2. An employer shall immediately remove an employee from work on a project if any of the following occurs:

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Insert ②
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An officer or employee

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

4) 2. ~~A representative~~ of the contracting agency has a reasonable suspicion that
5) 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 ~~and alcohol~~
11) in his or her system ~~and is not under the influence of alcohol as described in~~
12) ~~sub. (2)~~

13) 2. That the employee has been approved to commence or return to work on the
14) project ~~by an employee assistance counselor and by a substance abuse counselor,~~
15) ~~clinical supervisor, or prevention specialist certified under s. 440.88, an alcohol and~~
16) ~~drug counselor or chemical dependency counselor certified as described under s.~~
17) ~~457.02 (5), or a social worker authorized under s. 457.02 (5m) to treat alcohol or~~
18) ~~substance dependency or abuse as a specialty.~~ ~~in accordance with the employer's~~
19) ~~substance abuse prevention program~~

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

25) ~~SECTION 2. Nonstatutory provisions.~~
26) (1) TRANSITIONAL PROVISIONS. An employer, as defined in section 103.503 (1) (f)
27) of the statutes, as created by this act, that is required under section 103.503 (3) of

1 the statutes, as created by this act, to have, but that does not have such a program
 2 in place, a substance abuse prevention program in place on the effective date of this
 3 subsection shall provide notice to all of its employees, as defined in section 103.503
 4 (1) (e) of the statutes, as created by this act, that a substance abuse prevention
 5 program is being implemented and may not begin drug and alcohol testing under
 6 that program until 60 days after the date of the notice. An employer that has a
 7 substance abuse prevention program that includes drug and alcohol testing in place
 8 on the effective date of this subsection is not required to provide notice under this
 9 subsection.

SECTION 3. Initial applicability.

10
 11 (1) ~~COLLECTIVE BARGAINING AGREEMENTS.~~ This act first applies to an employee
 12 who is affected by a collective bargaining agreement that contains provisions
 13 inconsistent with this act on the day on which the collective bargaining agreement
 14 expires or is extended, modified, or renewed, whichever occurs first.

SECTION 4. Effective date.

15
 16 (1) This act takes effect on the first day of the 19th month beginning after
 17 publication.

(END)

Insert 6-9

This

Subject to Section 22 (1) of this act, this act first applies to a contract to perform work on a project, as defined in section 103.503 (1)(g) of the statutes, as created by this act, for which bids are opened on the effective date of this subsection or, if bids are not solicited for the contract, to a contract to perform such work entered into on the effective date of this subsection, except that this

Insert A

2.

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.

(end of insert)

Insert 4-2

2. A requirement that employees performing the work
 66.0903 ✓
 described in s. 66.0903 (4) or 103.49 (2m) 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 ^{the} project, except that testing of an employee
 before commencing work on a project is not required if
 during the 90 days preceding the date on which the
 employee commenced work on the project, the employee has been
 participating in a random testing program

(ed & met)

Insert 6-9

(S)

(S)

LOCAL ORDINANCES; STRICT CONFORMITY REQUIRED.

A local governmental unit, as defined in s. 66.0933(1)(b),

may enact an ordinance regulating the conduct regulated under this

section only if the ordinance strictly conforms to this section.

(edit mat)



Barman, Mike

From: Barman, Mike
Sent: Wednesday, December 14, 2005 3:06 PM
To: Rep.Stone
Cc: Malaise, Gordon; Dake, Marsha
Subject: LRB 05s0259 re-draft

The re-draft of LRB 05s0259/2 has been ready to go since 12:07 PM Tuesday (12/13/2005).

We need the amendment jacket back from the "/1" version before we can send you the new "/2" version. Please give us a call if you have any questions. Thanks

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-3561 / mike.barman@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0259/2

GMM:kjf:jk

TODAY !!!
12/19

3
RWR

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

Regen

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 ~~by an employee assistance counselor and by a substance abuse counselor.~~

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

1

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

In accordance with the
employer's
employer's substance abuse
prevention program

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. ~~An employer shall agree,
25 as a condition of receiving a contract to perform work on a project, to indemnify and~~

1 ~~hold harmless the contracting agency against any loss, expense, liability, damage, or,~~
2 ~~other costs, including reasonable attorney fees, that the contracting agency may~~
3 ~~incur as a result of implementation and enforcement of this section or of an~~
4 ~~employer's substance abuse prevention program under this section.~~

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

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

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

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

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

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

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

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

9 **SECTION 2. Initial applicability.**

10 (1) This act first applies to a contract to perform work on a project, as defined
11 in section 103.503 (1) (g) of the statutes, as created by this act, for which bids are
12 opened on the effective date of this subsection or, if bids are not solicited for the
13 contract, to a contract to perform such work entered into on the effective date of this
14 subsection, except that this This act first applies to an employee who is affected by
15 a collective bargaining agreement that contains provisions inconsistent with this act
16 on the day on which the collective bargaining agreement expires or is extended,
17 modified, or renewed, whichever occurs first.

18 **SECTION 3. Effective date.**

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

21 (END)