



2013 ASSEMBLY BILL 803

February 20, 2014 – Introduced by Representatives KAHL and KUGLITSCH, cosponsored by Senators FARROW and HANSEN. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber and amend* 346.072 (1); *to amend* 103.503 (title), 103.503
2 (1) (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (f), 103.503 (1) (g), 103.503 (2),
3 103.503 (3) (a) (intro.), 103.503 (3) (a) 2., 103.503 (3) (a) 3., 103.503 (4) (a) (intro.)
4 and 346.072 (title); and *to create* 103.503 (1) (h), 103.503 (1) (i), 103.503 (4m)
5 and 346.072 (1g) of the statutes; **relating to:** substance abuse by employees
6 performing work on public utility projects located in public rights-of-way and
7 passing emergency or roadside service vehicles stopped on or near the highway.

Analysis by the Legislative Reference Bureau

Current law provides for a substance abuse prevention program for laborers, workers, mechanics, and truck drivers (employees) employed on projects of public works whose estimated project cost of completion is \$48,000 or more for a single-trade project or \$100,000 or more for a multiple-trade project (projects of public works).

Specifically, current law 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 project of public works (substance abuse prohibition).

In addition, current law requires a contractor, subcontractor, or agent of a contractor or subcontractor that is performing work on a project of public works

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(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. The substance abuse prohibition specified under current law.
2. A requirement that its employees performing work on a project of public works submit to random, reasonable suspicion, and post-accident drug and alcohol testing and to drug and alcohol testing before commencing work on the project.
3. A procedure for notifying an employee who violates the substance abuse prohibition specified under current law, 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 of public works 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 that program.

Further, current law requires an employer to immediately remove an employee from work on a project of public works if any of the following occurs:

1. The employee violates the substance abuse prohibition specified under current law, 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 substance abuse prohibition specified under current law and requests the employer to immediately remove the employee from work on the project.

Under current law, an employee who is barred or removed from work on a project of public works 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.

This bill extends these provisions to employers and employees performing work on a public utility project, which the bill defines as a project erected, constructed, repaired, remodeled, or demolished for a public utility on a public right-of-way. Under the bill:

1. The substance abuse prohibition specified under current law applies to an employee performing work on a public utility project.
2. An employer performing work on a public utility project is required to have in place the substance abuse prevention program that is currently required of an employer performing work on a project of public works.
3. The removal-from-work and return-to-work requirements specified under current law for employees performing work on projects of public works apply to an employee performing work on a public utility project.

The bill, however, does not apply to an employee performing work on a public utility project who is subject to drug or alcohol testing under federal Department of

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Transportation regulations requiring such testing of safety-sensitive transportation employees, commercial motor vehicle operators, and natural gas, hazardous liquids, or carbon dioxide pipeline employees.

Under current law, authorized emergency vehicles, tow trucks, vehicles used in highway construction or maintenance (highway work vehicles), and vehicles used by public utilities are authorized to be equipped with certain flashing warning lamps.

Also under current law, commonly referred to as the “move over or slow down” law, if an authorized emergency vehicle giving visual signal or a tow truck or highway work vehicle displaying flashing warning lamps is parked or standing (parked) on or within 12 feet of a roadway, the operator of another vehicle approaching the stopped vehicle must proceed with due regard for all other traffic and do either of the following: 1) if the roadway has at least two lanes in the applicable direction of travel, move into a lane that is not nearest the parked emergency vehicle, tow truck, or highway work vehicle; or 2) if the roadway has only one lane in the applicable direction of travel or if changing lanes cannot be done safely, slow down while passing the parked emergency vehicle, tow truck, or highway work vehicle.

This bill modifies the “move over or slow down” law to make it applicable to vehicles used by public utilities that are displaying flashing warning lights. If such a vehicle is parked on or within 12 feet of a roadway, the operator of an approaching vehicle must move over or slow down.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 103.503 (title) of the statutes is amended to read:

2 **103.503 (title) Substance abuse prevention on public works and public**
3 **utility projects.**

4 **SECTION 2.** 103.503 (1) (a) of the statutes is amended to read:

5 103.503 (1) (a) “Accident” means an incident caused, contributed to, or
6 otherwise involving an employee that resulted or could have resulted in death,
7 personal injury, or property damage and that occurred while the employee was
8 performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
9 works or while the employee was performing work on a public utility project.

10 **SECTION 3.** 103.503 (1) (c) of the statutes is amended to read:

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1 103.503 (1) (c) “Contracting agency” means a local governmental unit, as
2 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has
3 contracted for the performance of work on a project of public works or a public utility
4 that has contracted for the performance of work on a public utility project.

5 **SECTION 4.** 103.503 (1) (e) of the statutes is amended to read:

6 103.503 (1) (e) “Employee” means a laborer, worker, mechanic, or truck driver
7 who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
8 works or on a public utility project.

9 **SECTION 5.** 103.503 (1) (f) of the statutes is amended to read:

10 103.503 (1) (f) “Employer” means a contractor, subcontractor, or agent of a
11 contractor or subcontractor that performs work on a project of public works or on a
12 public utility project.

13 **SECTION 6.** 103.503 (1) (g) of the statutes is amended to read:

14 103.503 (1) (g) “~~Project~~” “Project of public works” means a project of public
15 works that is subject to s. 66.0903 or 103.49.

16 **SECTION 7.** 103.503 (1) (h) of the statutes is created to read:

17 103.503 (1) (h) “Public utility” has the meaning given in s. 196.01 (5) and
18 includes a telecommunications carrier, as defined in s. 196.01 (8m), an alternative
19 telecommunications utility, as defined in s. 196.01 (1d), or a cooperative association
20 organized under ch. 185 to furnish gas, light, heat, power, or water to its members.

21 **SECTION 8.** 103.503 (1) (i) of the statutes is created to read:

22 103.503 (1) (i) “Public utility project” means a project erected, constructed,
23 repaired, remodeled, or demolished for a public utility on a public right-of-way.

24 **SECTION 9.** 103.503 (2) of the statutes is amended to read:

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1 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
2 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
3 be under the influence of alcohol, while performing the work described in s. 66.0903
4 (4) or 103.49 (2m) on a project of public works or while performing work on a public
5 utility project. An employee is considered to be under the influence of alcohol for
6 purposes of this subsection if he or she has an alcohol concentration that is equal to
7 or greater than the amount specified in s. 885.235 (1g) (d).

8 **SECTION 10.** 103.503 (3) (a) (intro.) of the statutes is amended to read:

9 103.503 (3) (a) (intro.) Before an employer may commence work on a project of
10 public works or a public utility project, the employer shall have in place a written
11 program for the prevention of substance abuse among its employees. At a minimum,
12 the program shall include all of the following:

13 **SECTION 11.** 103.503 (3) (a) 2. of the statutes is amended to read:

14 103.503 (3) (a) 2. A requirement that employees performing the work described
15 in s. 66.0903 (4) or 103.49 (2m) on a project of public works or performing work on
16 a public utility project submit to random, reasonable suspicion, and post-accident
17 drug and alcohol testing and to drug and alcohol testing before commencing work on
18 -a- the project, except that testing of an employee before commencing work on a
19 project is not required if the employee has been participating in a random testing
20 program during the 90 days preceding the date on which the employee commenced
21 work on the project.

22 **SECTION 12.** 103.503 (3) (a) 3. of the statutes is amended to read:

23 103.503 (3) (a) 3. A procedure for notifying an employee who violates sub. (2),
24 who tests positive for the presence of a drug in his or her system, or who refuses to
25 submit to drug or alcohol testing as required under the program that the employee

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1 may not perform work on a project of public works or a public utility project until he
2 or she meets the conditions specified in sub. (4) (b) 1. and 2.

3 **SECTION 13.** 103.503 (4) (a) (intro.) of the statutes is amended to read:

4 103.503 (4) (a) (intro.) No employer may permit an employee who violates sub.
5 (2), who tests positive for the presence of a drug in his or her system, or who refuses
6 to submit to drug or alcohol testing as required under the employer's substance abuse
7 prevention program under sub. (3) to perform work on a project of public works or
8 a public utility project until he or she meets the conditions specified in par. (b) 1. and
9 2. An employer shall immediately remove an employee from work on such a project
10 if any of the following occurs:

11 **SECTION 14.** 103.503 (4m) of the statutes is created to read:

12 103.503 (4m) PUBLIC UTILITY PROJECT EMPLOYEES; NONAPPLICABILITY. This
13 section does not apply to an employee performing work on a public utility project who
14 is subject to drug or alcohol testing under 49 CFR Parts 40, 199, or 382.

15 **SECTION 15.** 346.072 (title) of the statutes is amended to read:

16 **346.072 (title) Passing stopped emergency or roadside service vehicles,**
17 **tow trucks and highway machinery equipment.**

18 **SECTION 16.** 346.072 (1) of the statutes is renumbered 346.072 (1m) and
19 amended to read:

20 346.072 (1m) If an ~~authorized emergency vehicle giving visual signal, a tow~~
21 ~~truck flashing red lamps, as required by s. 347.26 (6) (b), or any road machinery or~~
22 ~~motor vehicle used in highway construction or maintenance displaying the lights~~
23 ~~specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the~~
24 ~~lights specified in s. 347.26 (7), emergency or roadside service vehicle is parked or~~
25 ~~standing on or within 12 feet of a roadway, the operator of a motor vehicle~~

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1 approaching ~~such vehicle or machinery~~ the emergency or roadside service vehicle
2 shall proceed with due regard for all other traffic and shall do either of the following:

3 (a) Move the motor vehicle into a lane that is not the lane nearest the parked
4 or standing ~~vehicle or machinery~~ emergency or roadside service vehicle and continue
5 traveling in that lane until safely clear of the ~~vehicle or machinery~~ emergency or
6 roadside service vehicle. This paragraph applies only if the roadway has at least two
7 lanes for traffic proceeding in the direction of the approaching motor vehicle and if
8 the approaching motor vehicle may change lanes safely and without interfering with
9 any vehicular traffic.

10 (b) Slow the motor vehicle, maintaining a safe speed for traffic conditions, and
11 operate the motor vehicle at a reduced speed until completely past the ~~vehicle or~~
12 ~~machinery~~ emergency or roadside service vehicle. This paragraph applies only if the
13 roadway has only one lane for traffic proceeding in the direction of the approaching
14 motor vehicle or if the approaching motor vehicle may not change lanes safely and
15 without interfering with any vehicular traffic.

16 **SECTION 17.** 346.072 (1g) of the statutes is created to read:

17 346.072 (1g) In this section, “emergency or roadside service vehicle” means any
18 of the following:

19 (a) An authorized emergency vehicle giving visual signal.

20 (b) A tow truck flashing red lamps, as required by s. 347.26 (6) (b).

21 (c) Any road machinery or motor vehicle used in highway construction or
22 maintenance displaying the lights specified in s. 347.23 (1) (a) or (b) or, with respect
23 to a motor vehicle, displaying the lights specified in s. 347.26 (7).

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1 (d) Any vehicle of a public utility, telecommunications carrier, or cooperative
2 association described in s. 347.26 (9) displaying one or more flashing amber lamps
3 as provided in s. 347.26 (9).

SECTION 18. Initial applicability.

4
5 (1) SUBSTANCE ABUSE PREVENTION ON PUBLIC UTILITY PROJECTS. This act first
6 applies, with respect to a public utility project, as defined in section 103.503 (1) (i)
7 of the statutes, as created by this act, that is subject to bidding, to a project for which
8 the request for bids is issued on the effective date of this subsection and, with respect
9 to a public utility project, as so defined, that is not subject to bidding, to a project the
10 contract for which is entered into on the effective date of this subsection, except that
11 this act first applies to an employee who is affected by a collective bargaining
12 agreement that contains provisions that are inconsistent with this act on the day on
13 which the collective bargaining agreement expires or is extended, modified, or
14 renewed, whichever occurs first.

15 (END)