

2013 DRAFTING REQUEST

Bill

Received:	8/30/2013	Received By:	gmalaise
Wanted:	As time permits	Same as LRB:	
For:	Robb Kahl (608) 266-8570	By/Representing:	Miochael Tierney
May Contact:		Drafter:	gmalaise
Subject:	Employ Priv - health and safety Transportation - traffic laws	Addl. Drafters:	agary
		Extra Copies:	EVM

Submit via email: **YES**
 Requester's email: **Rep.Kahl@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Substance abuse prevention on public utility projects; expanding move over or slow down law to apply to utility vehicles

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 8/30/2013	scalvin 9/9/2013	jfrantze 9/10/2013	_____			
/1	gmalaise 1/10/2014			_____	sbasford 9/10/2013	lparisi 12/13/2013	State
/2	gmalaise	scalvin	jmurphy	_____	sbasford	sbasford	State

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	2/4/2014	1/23/2014	1/23/2014	_____	1/23/2014	1/23/2014	
/3	gmalaise 2/19/2014	scalvin 2/5/2014	rschluet 2/5/2014	_____ _____	mbarman 2/5/2014	mbarman 2/5/2014	State
/4		evinz 2/19/2014	rschluet 2/19/2014	_____ _____	srose 2/19/2014	srose 2/19/2014	State

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*at intro
2/20*

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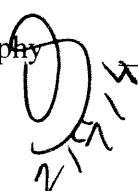
Substance abuse prevention on public utility projects; expanding move over or slow down law to apply to utility vehicles ✓

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See attached

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Handwritten signature and date 25/14

Vers. Drafted

Reviewed

Typed

Proofed

Submitted

Jacketed

Required

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1/3 SAC

02/05/2014

02/05/2014

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/?	gmalaise	/1 sac 09/09/2013		RS 9/10			

FE Sent For:

<END>

Malaise, Gordon

From: LRB.Legal
Sent: Thursday, August 29, 2013 1:34 PM
To: Malaise, Gordon
Subject: FW: Bill drafting request - related to drug testing of utility workers

Gordon, is this one for you?

From: Tierney, Michael
Sent: Thursday, August 29, 2013 1:30 PM
To: LRB.Legal
Subject: Bill drafting request - related to drug testing of utility workers

Rep. Kahl would like to have a bill drafted that would ensure utility workers who are working on projects within a public right-of-way are subject to drug testing.

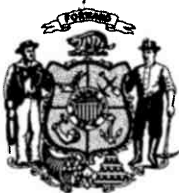
We did consult with Legislative Council staff attorney Margit Kelley to see if there were any provisions in current law requiring this testing and she indicated there was not. However, she noted that Wisconsin law currently requires drug testing for public works projects that are subject to the state or municipal prevailing wage provisions, and she suggested this could be used as a model for requiring drug testing for both public and private utility workers who are working on projects within a public right of way. [s. 103.503, Stats.,]

Rep. Kahl's concern is that while union utility workers are subject to drug testing, there is the potential for utility workers to circumvent testing requirements by working for non-union contractors. A worker who is under the influence of drugs and/or alcohol poses a significant threat to other workers. In cases where work is being done in a public right-of-way public safety concerns would warrant testing procedures for all workers.

I will let Margit know that we have made this drafting request in the event you would like to consult with her.

Thank you

Michael Tierney
Legislative Aide
Office of Representative Robb Kahl
Room 7 West, State Capitol
PO Box 8952
Madison WI 53708
Michael.tierney@legis.wi.gov
608-266-8570



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3039/7

GMM

Sec

IN 8/30

1 AN ACT ^{general} relating to: substance abuse by employees performing work on public
2 utility projects located in public rights-of-way. ^(projects of public works)

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 that are subject to the prevailing wage law, which requires an employee performing work on a project 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 to be paid at the rate paid for a majority of the hours work in the employees trade or occupation in the county in which the project is located.

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 ~~that is subject to the prevailing wage law~~ (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 ~~that is subject to the prevailing wage law~~ (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 a 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

Act is subject

- 2 -

of public works

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 that program.

Further, current law requires an employer to immediately remove an employee from work on a project of public works ~~that is subject to the prevailing wage law~~ 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 ~~that is subject to the prevailing wage law.~~

3. The removal-from-work and return-to-work requirements specified under current law for employees performing work on projects of public works ~~that are subject to the prevailing wage law~~ apply to an employee performing work on a public utility project.

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:

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

3 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✓

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

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

9 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✓

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

10 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
11 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has
12 contracted for the performance of work on a project of public works or a public utility
13 that has contracted for the performance of work on a public utility project.

14 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✓

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

15 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
16 who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
17 works or on a public utility project.

18 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✓

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

19 103.503 (1) (f) "Employer" means a contractor, subcontractor, or agent of a
20 contractor or subcontractor that performs work on a project of public works or on a
21 public utility project.

22 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✓

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

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

3 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✕

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

4 103.503 (1) (h) “Public utility” has the meaning given in s. 196.01 (5) and
5 includes a telecommunications carrier, as defined in s. 196.01 (8m), an alternative
6 telecommunications utility, as defined in s. 196.01 (1d), or a cooperative association
7 organized under ch. 185 to furnish gas, light, heat, power, or water to its members.

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

9 103.503 (1) (i) “Public utility project” means a project erected, constructed,
10 repaired, remodeled, or demolished for a public utility on a public right-of-way.

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

12 103.503 (2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess,
13 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
14 be under the influence of alcohol, while performing the work described in s. 66.0903
15 (4) or 103.49 (2m) on a project of public works or while performing work on a public
16 utility project. An employee is considered to be under the influence of alcohol for
17 purposes of this subsection if he or she has an alcohol concentration that is equal to
18 or greater than the amount specified in s. 885.235 (1g) (d).

19 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✕

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

20 103.503 (3) (a) (intro.) Before an employer may commence work on a project of
21 public works or a public utility project, the employer shall have in place a written
22 program for the prevention of substance abuse among its employees. At a minimum,
23 the program shall include all of the following:

24 History: 2005 a. 181; 2009 a. 28; 2011 a. 32. ✕

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

1 103.503 (3) (a) 2. A requirement that employees performing the work described
2 in s. 66.0903 (4) or 103.49 (2m) on a project of public works or performing work on
3 a public utility project submit to random, reasonable suspicion, and post-accident
4 drug and alcohol testing and to drug and alcohol testing before commencing work on
5 a the project, except that testing of an employee before commencing work on a project
6 is not required if the employee has been participating in a random testing program
7 during the 90 days preceding the date on which the employee commenced work on
8 the project.

History: 2005 a. 181; 2009 a. 28; 2011 a. 32.

✘

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

10 103.503 (3) (a) 3. A procedure for notifying an employee who violates sub. (2),
11 who tests positive for the presence of a drug in his or her system, or who refuses to
12 submit to drug or alcohol testing as required under the program that the employee
13 may not perform work on a project of public works or a public utility project until he
14 or she meets the conditions specified in sub. (4) (b) 1. and 2.

History: 2005 a. 181; 2009 a. 28; 2011 a. 32.

✘

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

16 103.503 (4) (a) (intro.) No employer may permit an employee who violates sub.
17 (2), who tests positive for the presence of a drug in his or her system, or who refuses
18 to submit to drug or alcohol testing as required under the employer's substance abuse
19 prevention program under sub. (3) to perform work on a project of public works or
20 a public utility project until he or she meets the conditions specified in par. (b) 1. and
21 2. An employer shall immediately remove an employee from work on such a project
22 if any of the following occurs:

History: 2005 a. 181; 2009 a. 28; 2011 a. 32.

23 **SECTION 14. Initial applicability.**

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

11

(END)

Parisi, Lori

From: Tierney, Michael
Sent: Thursday, December 12, 2013 11:39 AM
To: LRB.Legal
Subject: Draft Review: LRB -3039/1 Topic: Substance abuse prevention on public utility projects

Please Jacket LRB -3039/1 for the ASSEMBLY.

Malaise, Gordon

From: Tierney, Michael
Sent: Monday, December 23, 2013 2:21 PM
To: Malaise, Gordon
Subject: LRB 3039/1 modifications

Gordon –

You had drafted LRB 3039/1 for Rep. Kahl and we thought we had received all the feedback we were going to on the draft prior to requesting jacketing, but I have to send the bill back with a couple of requests for changes. The changes are noted below. The stripes should be delivered to you this afternoon.

ARG (1) Apparently, under current law, the move over or slow down law that is in place to protect law enforcement officers who are making traffic stops does not include provisions for utility workers who are working on a roadside. Can a provision be added that would require motorists to move over or slow down when approaching utility workers/vehicles?

GMM (2) Please include in the Bill that contractors who are already tested for drugs and alcohol under the DOT and PHMSA regulations would be exempt from testing under this law. This would make the bill target contractors who fall outside of those regulations and who are not subject to drug and alcohol testing today, unless their employers require it.

The Department of Workforce Development is the agency that enforces current law as it pertains to substance abuse and public works project. That would remain the same under this bill and the penalties presently listed under 103.97 would apply, right?

Thank you.

Michael Tierney
Legislative Aide
Office of Representative Robb Kahl
Room 7 West, State Capitol
PO Box 8952
Madison WI 53708
Michael.tierney@legis.wi.gov
608-266-8570



State of Wisconsin
2013 - 2014 LEGISLATURE

En 1110

ARG



LRB-3039/2
GMM:sac:10
RMR

2013 BILL

gmc

Reynolds

1 AN ACT to amend 103.503 (title), 103.503 (1) (a), 103.503 (1) (c), 103.503 (1) (e),
2 103.503 (1) (f), 103.503 (1) (g), 103.503 (2), 103.503 (3) (a) (intro.), 103.503 (3)
3 (a) 2., 103.503 (3) (a) 3. and 103.503 (4) (a) (intro.); and to create 103.503 (1)
4 (h) and 103.503 (1) (i) of the statutes; relating to: substance abuse by
5 employees performing work on public utility projects located in public
6 rights-of-way (insert 1-6)

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 that are subject to the prevailing wage law (projects of public works), which requires an employee performing work on a project 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 to be paid at the rate paid for a majority of the hours work in the employee's trade or occupation in the county in which the project is located.

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).

BILL

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 (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.

employees.

→ ¶ 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 Transportation regulations requiring such testing of safety-sensitive transportation employees and natural gas, hazardous liquids, or carbon dioxide pipeline employees.

BILL

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:

11 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
12 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), that has
13 contracted for the performance of work on a project of public works or a public utility
14 that has contracted for the performance of work on a public utility project.

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

16 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
17 who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
18 works or on a public utility project.

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

Insert
ANAC - AG

BILL

1 103.503 (1) (f) "Employer" means a contractor, subcontractor, or agent of a
2 contractor or subcontractor that performs work on a project of public works or on a
3 public utility project.

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

5 103.503 (1) (g) "~~Project~~" "Project of public works" means a project of public
6 works that is subject to s. 66.0903 or 103.49.

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

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

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

13 103.503 (1) (i) "Public utility project" means a project erected, constructed,
14 repaired, remodeled, or demolished for a public utility on a public right-of-way.

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

16 103.503 (2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess,
17 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
18 be under the influence of alcohol, while performing the work described in s. 66.0903
19 (4) or 103.49 (2m) on a project of public works or while performing work on a public
20 utility project. An employee is considered to be under the influence of alcohol for
21 purposes of this subsection if he or she has an alcohol concentration that is equal to
22 or greater than the amount specified in s. 885.235 (1g) (d).

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

24 103.503 (3) (a) (intro.) Before an employer may commence work on a project of
25 public works or a public utility project, the employer shall have in place a written

BILL

1 program for the prevention of substance abuse among its employees. At a minimum,
2 the program shall include all of the following:

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

4 103.503 (3) (a) 2. A requirement that employees performing the work described
5 in s. 66.0903 (4) or 103.49 (2m) on a project of public works or performing work on
6 a public utility project submit to random, reasonable suspicion, and post-accident
7 drug and alcohol testing and to drug and alcohol testing before commencing work on
8 ~~a~~ the project, except that testing of an employee before commencing work on a project
9 is not required if the employee has been participating in a random testing program
10 during the 90 days preceding the date on which the employee commenced work on
11 the project.

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

13 103.503 (3) (a) 3. A procedure for notifying an employee who violates sub. (2),
14 who tests positive for the presence of a drug in his or her system, or who refuses to
15 submit to drug or alcohol testing as required under the program that the employee
16 may not perform work on a project of public works or a public utility project until he
17 or she meets the conditions specified in sub. (4) (b) 1. and 2.

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

19 103.503 (4) (a) (intro.) No employer may permit an employee who violates sub.
20 (2), who tests positive for the presence of a drug in his or her system, or who refuses
21 to submit to drug or alcohol testing as required under the employer's substance abuse
22 prevention program under sub. (3) to perform work on a project of public works or
23 a public utility project until he or she meets the conditions specified in par. (b) 1. and

24 2. An employer shall immediately remove an employee from work on such a project
25 if any of the following occurs;

SEC CR; 103.503 (4m)
103.503 (4m) (b) Public utility, project employees; non applicability. This
section does not apply to an employee performing work on a public utility project
who is subject to drug or alcohol testing under 49 CFR Parts 40 or 199.199

BILL

*insert
6 ->*

SECTION 14. Initial applicability.

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

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3039/2insAG
ARG:.....

1 ^{not} ^{and} **INSERT 1-6:**

2 \ passing emergency or roadside service vehicles stopped on or near the highway

3 **INSERT ANAL-AG:**

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.

4

5

6

7 **INSERT 6-1:**

x

8 **SECTION 1.** 346.072 (title) of the statutes is amended to read:

9 **346.072 (title) Passing stopped emergency or roadside service vehicles,**

10 **~~tow trucks and highway machinery equipment.~~**

History: 2001 a. 15.

11

x

12 **SECTION 2.** 346.072 (1) of the statutes is renumbered 346.072 (1m) and

13 amended to read:

1 346.072 (1m) If an ~~authorized emergency vehicle giving visual signal, a tow~~
 2 ~~truck flashing red lamps, as required by s. 347.26 (6) (b), or any road machinery or~~
 3 ~~motor vehicle used in highway construction or maintenance displaying the lights~~
 4 ~~specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the~~
 5 ~~lights specified in s. 347.26 (7), emergency or roadside service vehicle is parked or~~
 6 standing on or within 12 feet of a roadway, the operator of a motor vehicle
 7 approaching such ~~vehicle or machinery~~ the emergency or roadside service vehicle
 8 shall proceed with due regard for all other traffic and shall do either of the following:

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

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

22 History: 2001 a. 15.

22 **SECTION 3.** 346.072 (1g) of the statutes is created to read:

23 346.072 (1g) In this section, "emergency or roadside service vehicle" means any
 24 of the following:

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

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

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

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

9

10

Malaise, Gordon

From: Tierney, Michael
Sent: Tuesday, February 04, 2014 1:55 PM
To: Malaise, Gordon
Subject: RE: Question re: LRB 3039

Hi Gordon –

We are not hearing back from DWD re enforcement. So, could you just make this change and get a new jacket to us?

I will send the jacket we have back over to you via messenger.

Mike

From: Malaise, Gordon
Sent: Thursday, January 23, 2014 2:06 PM
To: Tierney, Michael
Subject: RE: Question re: LRB 3039

Michael:

Actually, the language does not. Commercial motor vehicle operators are subject to 49 CFR Part 382, which is not referenced in the language. The current language only references 49 CFR Parts 40 (safety-sensitive transportation employees) and 199 (pipeline employees).

Should I go ahead and make this change or wait until you talk to DWD in case more changes are needed?

Gordon

From: Tierney, Michael
Sent: Thursday, January 23, 2014 1:21 PM
To: Malaise, Gordon
Subject: Question re: LRB 3039

Please see attached. Just need to confirm that wording on Page 6 lines 15-17 exempts persons tested under DOT/FMCSA Drug and Alcohol Testing program.

Thank you.

Michael Tierney
Legislative Aide
Office of Representative Robb Kahl
Room 7 West, State Capitol
PO Box 8952
Madison WI 53708
Michael.tierney@legis.wi.gov
608-266-8570



Search All FMCSA Sites

DOT/FMCSA Drug & Alcohol Testing Program



↑ Safety & Security

DOT/FMCSA Drug & Alcohol Testing Program

Frequently Asked Questions (FAQ)

Drivers

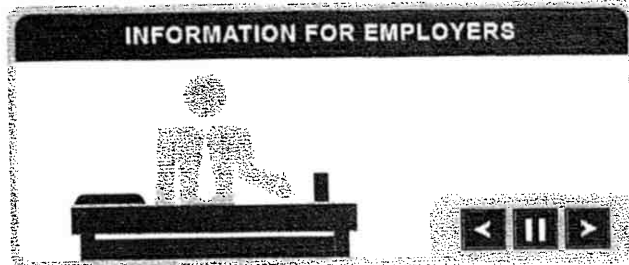
- Rules & Regulations
- Who is Tested?
- Which Substances are Tested?
- When Does Testing Occur?
- Testing Procedures
- Test Failure or Refusal
- Driver Resources

Employers

- Rules & Regulations
- When are Tests Administered?
- Which Substances are Tested?
- Testing Procedures
- Test Failure or Refusal
- Training Responsibilities
- Employer Resources

Service Agents

- Overview
- Medical Review Officers
- Urine Collectors
- Drug Testing Labs
- Substance Abuse Professionals
- Alcohol Technicians
- Consortium/Third-Party Administrators (C/TPAs)
- Service Agent Resources



Tools to help employers implement and conduct DOT/FMCSA drug and alcohol testing programs. Find Helpful Tools and Resources for Employers >>

News & Alerts

- USDOT Notice Clarifying Position for "Medical Marijuana"
- USDOT Notice on State Website Regarding "Recreational Marijuana"

See More News >>

✓ Stay Clean. ✓ Stay Sober. ✓ Stay Safe.

The Federal Motor Carrier Safety Administration (FMCSA), along with the Department of Transportation (DOT), requires that persons subject to the commercial driver's license (CDL) requirements and their employers follow alcohol and drug testing rules. These rules include procedures for testing, frequency of tests, and substances tested for.

Who's Impacted?

- Anyone employing CDL drivers to operate commercial motor vehicles (CMVs) on public roads
- CDL drivers who operate CMVs on public roads
- Interstate motor carriers
- Intrastate motor carriers
- Federal, State, and local governments
- Civic organizations (disabled veteran transport, boy/girl scouts, etc.)
- Faith-based organizations

Resources for Drivers*

While it is the responsibility of your employer to provide you with information on drug and alcohol testing programs, it is still ultimately your responsibility to obey all rules and regulations in order to keep our roadways safe. Drivers of CMVs can learn about drug and alcohol rules, types of tests required and their rights, responsibilities and requirements here.

Resources for Employers*

As an employer, you have a responsibility to implement and conduct drug and alcohol testing programs. Learn about drug and alcohol rules and how they affect your business here.

**An employer who employs himself/herself as a driver must comply with requirements of 49 CFR Part 382 that apply to both employers and drivers.*

Resources for Service Agents

Service agents that administer drug and alcohol tests can find general information and other resources here.

DRIVERS

EMPLOYERS

SERVICE AGENTS

Does p. 6 line 15-17 also exempt persons tested under DOT/FMCSA Drug & Alcohol testing program?



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3039/2
GMM&ARG:sac: [initials]

3
RNR

IN 214
Wanted 215

2013 BILL

Today

gen act

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 that are subject to the prevailing wage law (projects of public works), which requires an employee performing work on a project 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 to be paid at the rate paid for a majority of the hours work in the employee's trade or occupation in the county in which the project is located.

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

BILL

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 (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.

BILL

, commercial motor vehicle operators,
operators,

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 Transportation regulations requiring such testing of safety-sensitive transportation employees 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.

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BILL**SECTION 2**

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2 works or while the employee was performing work on a public utility project.

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BILL

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BILL

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11 a public utility project until he or she meets the conditions specified in par. (b) 1. and
12 2. An employer shall immediately remove an employee from work on such a project
13 if any of the following occurs:

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

15 103.503 (4m) PUBLIC UTILITY PROJECT EMPLOYEES; NONAPPLICABILITY. This
16 section does not apply to an employee performing work on a public utility project who
17 is subject to drug or alcohol testing under 49 CFR Parts 40 ^{or} 199.

LPS: ends up as
40, 199, or 382.
or
1 382 0

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

19 **346.072 (title) Passing stopped emergency or roadside service vehicles,**
20 **tow trucks and highway machinery equipment.**

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

23 346.072 (1m) If an ~~authorized emergency vehicle giving visual signal, a tow~~
24 ~~truck flashing red lamps, as required by s. 347.26 (6) (b), or any road machinery or~~
25 ~~motor vehicle used in highway construction or maintenance displaying the lights~~

BILL

1 ~~specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the~~
2 ~~lights specified in s. 347.26 (7),~~ emergency or roadside service vehicle is parked or
3 standing on or within 12 feet of a roadway, the operator of a motor vehicle
4 approaching ~~such vehicle or machinery~~ the emergency or roadside service vehicle
5 shall proceed with due regard for all other traffic and shall do either of the following:

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

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

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

20 346.072 (1g) In this section, “emergency or roadside service vehicle” means any
21 of the following:

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

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

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

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

7 **SECTION 18. Initial applicability.**

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

18 (END)

Barman, Mike

From: LRB.Legal
To: Rep.Kahl
Subject: Draft review: LRB -3039/3 Topic: Substance abuse prevention on public utility projects; expanding move over or slow down law to apply to utility vehicles
Attachments: 13-3039/3

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Gordon M. Malaise, Senior Attorney, at (608) 266-9738, at gordon.malaise@legis.wisconsin.gov, or at One East Main Street, Suite 200.

We will re-jacket this draft for the Assembly and send it (by page) to your office this afternoon.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3039/8
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2013 BILL

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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 that are subject to the prevailing wage law (projects of public works), which requires an employee performing work on a project 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 to be paid at the rate paid for a majority of the hours work in the employee's trade or occupation in the county in which the project is located.

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

Projects & public works

BILL

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 (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.

BILL

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 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

BILL**SECTION 2**

1 performing the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
2 works or while the employee was performing work on a public utility project.

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

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

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

9 103.503 (1) (e) “Employee” means a laborer, worker, mechanic, or truck driver
10 who performs the work described in s. 66.0903 (4) or 103.49 (2m) on a project of public
11 works or on a public utility project.

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

13 103.503 (1) (f) “Employer” means a contractor, subcontractor, or agent of a
14 contractor or subcontractor that performs work on a project of public works or on a
15 public utility project.

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

17 103.503 (1) (g) “Project” “Project of public works” means a project of public
18 works that is subject to s. 66.0903 or 103.49.

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

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

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

BILL

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

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

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

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

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

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

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

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

BILL**SECTION 12**

1 103.503 (3) (a) 3. A procedure for notifying an employee who violates sub. (2),
2 who tests positive for the presence of a drug in his or her system, or who refuses to
3 submit to drug or alcohol testing as required under the program that the employee
4 may not perform work on a project of public works or a public utility project until he
5 or she meets the conditions specified in sub. (4) (b) 1. and 2.

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

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

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

15 103.503 (4m) PUBLIC UTILITY PROJECT EMPLOYEES; NONAPPLICABILITY. This
16 section does not apply to an employee performing work on a public utility project who
17 is subject to drug or alcohol testing under 49 CFR Parts 40, 199, or 382.

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

19 **346.072 (title) Passing stopped emergency or roadside service vehicles,**
20 **tow trucks and highway machinery equipment.**

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

23 346.072 (1m) If an authorized ~~emergency vehicle giving visual signal, a tow~~
24 ~~truck flashing red lamps, as required by s. 347.26 (6) (b), or any road machinery or~~
25 ~~motor vehicle used in highway construction or maintenance displaying the lights~~

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1 ~~specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the~~
2 ~~lights specified in s. 347.26 (7),~~ emergency or roadside service vehicle is parked or
3 standing on or within 12 feet of a roadway, the operator of a motor vehicle
4 approaching such ~~vehicle or machinery~~ the emergency or roadside service vehicle
5 shall proceed with due regard for all other traffic and shall do either of the following:

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

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

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

20 346.072 (1g) In this section, "emergency or roadside service vehicle" means any
21 of the following:

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

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

BILL**SECTION 17**

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

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

7 **SECTION 18. Initial applicability.**

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

18

(END)

