

Workforce Development

Equal Rights and Employment Regulation

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LFB Summary Items for Which Issue Papers Have Been Prepared

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June, 2021

Joint Committee on Finance

Paper #675

Substance Abuse Prevention on Public Works and Public Utility Projects (Workforce Development -- Equal Rights and Employment Regulation)

[LFB 2021-23 Budget Summary: Page 643, #1]

CURRENT LAW

Under current law, s. 103.503(3) of the statutes requires contractors engaging in public works projects to have a written substance abuse prevention program that prohibits employees from possessing, attempting to possess, distributing, delivering, using, or being under the influence of a drug or alcohol, while performing work on a public works project or public utility project. At a minimum, a substance abuse prevention program must require: (a) employees to submit to random, reasonable-suspicion, and post-accident drug and alcohol testing and to drug and alcohol testing before commencing work on the project; and (b) a procedure for notifying an employee who tests positive for drugs or alcohol, or who refuses to submit to testing, that the employee may not perform work on a project of public works or a public utility project until the employee has tested negative and been approved to commence or return to work on the project. Each employer is 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.

DISCUSSION POINTS

1. The construction industry is heavily affected by employee substance use. A 2015 Substance Abuse and Mental Health Services Administration (SAMHSA) report entitled "Substance Use and Substance Use Disorder by Industry" shows construction with the second-highest percentage (16.5%) of employees with heavy alcohol use and the fifth-highest percentage (11.6%) of employees using illicit drugs. Finally, the report shows construction with the second-highest percentage of employees with substance use disorders (14.3%).

2. Many factors contribute to comparatively higher rates of drug and alcohol use and abuse

in the construction industry. A recent study¹ of the construction industry in the United Kingdom, consisting of data collected from interviews and questionnaires from industry participants, had concluded with findings suggesting that the problem of alcohol and substance abuse was largely caused and exacerbated by mental strain, site working conditions, male dominance and ineffective human resources management. Additional screening and educational approaches were confirmed as the "carrot and stick" methods for mitigating this issue in the construction industry.

3. Assembly Bill 68/Senate Bill 111 (AB 68/SB 111) would provide \$173,300 (\$115,200 GPR and \$58,100 PR) in 2021-22 and \$232,500 (\$155,000 GPR and \$77,500 PR) in 2022-23 and 3.0 positions (2.0 GPR and 1.0 PR) annually for the administration and enforcement of a substance abuse prevention program. Funding would be provided to DWD's general program operations GPR appropriation and to a new PR continuing appropriation that would receive all moneys collected from the registration fees under the provision. Every employer subject to the substance abuse prevention requirements under current law [s. 103.503(3)] would be required to register with DWD in the manner prescribed by the Department by rule. DWD would also be required to charge a fee for registration and to establish by rule a tiered fee structure so that fees be set at a level necessary to pay the costs of the Department that are attributable to administering and enforcing the program. Any person found to be in violation of the registration requirement would be required to forfeit no less than \$10,000 and not more than \$25,000 for each occurrence.

4. According to DWD, the registry, registry fee, and penalty for non-compliance in AB 68/SB 111 would support the work needed to increase compliance with current law. DWD states that oversight and monitoring is difficult without accessible data on public works projects and their contractors and that a registry is needed to collect this information. DWD also states that the registration process would be coupled with educational outreach to increase awareness of, and resources to assist with, employees' substance use.

5. The 3.0 positions created under the provision would provide monitoring and enforcement of current laws relating to substance abuse prevention on public works and public utility projects. DWD's Equal Rights Division (ERD) would administer and enforce the program, including any rules necessary to implement the program or establish compliance with the registration requirement. The Department indicates that the registry would become a data resource for ERD's Labor Standards Investigators to use in their efforts to conduct on-site investigations, providing data to better predict which sites to prioritize for investigation. DWD envisions an investigation team that would conduct on-site audits and other inspections to confirm compliance. The Committee could choose to provide DWD with the additional staffing resources and regulatory provisions (registration requirement, registration fees, and penalties for non-compliance) as specified in AB 68/SB 111 [Alternative 1].

6. Implementing the program's registration requirements, fee structure, administrative rules and penalties would likely require more intensive staffing resources within the first years of the program. Accordingly, staffing needs may subside somewhat once the program has been fully implemented. Conversely, DWD may find that as the program registration and compliance

¹ Flannery, J, Ajayi, S., and Oyegoke A.S. (2019). Alcohol and Substance Misuse in the Construction Industry. *International Journal of Occupational Safety and Ergonomics*, 27(2), 1-32.

requirements become fully implemented, the amount of staffing required for enforcement activities is greater than anticipated. In either case, a reassessment of staffing resources would likely be needed after the initial start-up phase of the program. Instead of providing the Department with an additional 2.0 permanent positions in DWD's general program operations GPR appropriation, the Committee could choose to instead provide 2.0 two-year project positions and GPR funding on a one-time basis in the 2021-23 biennium [Alternative 2].

7. The Committee could choose to take no action [Alternative 3]. This alternative could allow for additional feedback from large and small construction contractors, union representatives, and employees on the merits and details of the proposal. Any registration requirements and program staffing could be considered in subsequent legislation.

ALTERNATIVES

1. Provide \$173,300 (\$115,200 GPR and \$58,100 PR) in 2021-22 and \$232,500 (\$155,000 GPR and \$77,500 PR) in 2022-23 and 3.0 positions (2.0 GPR and 1.0 PR) annually for the administration and enforcement of a substance abuse prevention program. Require every employer that is subject to the substance abuse prevention requirements to register with DWD in the manner prescribed by the Department by rule. Require DWD to charge a fee for registration and to establish by rule a tiered fee structure so that fees be set at a level necessary to pay the costs of the Department that are attributable to administering and enforcing the program. Require any person in violation of the registration requirement to forfeit no less than \$10,000 and not more than \$25,000 for each occurrence.

ALT 1	Change to Base	
	Funding	Positions
GPR	\$270,200	2.00
PR	<u>135,600</u>	<u>1.00</u>
Total	\$405,800	3.00

2. Adopt Alternative 1, but specify that the additional 2.0 GPR positions would be two-year project positions. Further, specify GPR funding is on a one-time basis in the 2021-23 biennium.

ALT 2	Change to Base	
	Funding	Positions
GPR	\$270,200	2.00
PR	<u>135,600</u>	<u>1.00</u>
Total	\$405,800	3.00

3. Take no action.

Prepared by: Ryan Horton



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June, 2021

Joint Committee on Finance

Paper #676

Child Work Permits and Equal Rights Division Funding (Workforce Development -- Equal Rights and Employment Regulation)

[LFB 2021-23 Budget Summary: Page 645, #4, #5 and #6]

CURRENT LAW

Subject to certain exceptions, current law requires child work permits for the lawful employment of minors under 16 years of age. Employers must have a work permit on file for the minor being employed before they may allow the minor to begin work. Child work permits are issued by permit officers, such as a school district, high school, or local government designated by the Department of Workforce Development (DWD). To obtain a work permit, either the minor alone or the minor and a parent must visit the permit officer, and present: (a) the minor's birth certificate or other proof of age; (b) the minor's Social Security card; (c) a letter from the employer expressing intent to hire, description of job duties and hours of work; (d) a written parents' consent; and (e) a \$10 permit fee. The employer must reimburse the \$10 permit fee to the minor by no later than the date of the first paycheck.

DISCUSSION POINTS

1. The issuance of a child work permit provides DWD, the issuing party, and the state general fund with revenue. For each \$10 permit issued, \$5 is deposited into DWD's equal rights program revenue appropriation, \$2.50 is deposited to the general fund, and \$2.50 is retained by the local permit issuer. Revenues received by DWD from permit fees were \$105,300 in 2019-20. These revenues are credited to DWD's annual PR appropriation account for permit fees [s. 20.445 (1) (gk)], which would have \$385,600 in funding and 6.0 authorized positions in the 2021-23 biennium through Committee action to date. All 6.0 positions are currently filled. These positions provide operational support to DWD's Equal Rights Division (ERD), including the enforcement of child labor laws, investigation of alleged violations, outreach to employers, and maintenance of a statewide permit system. ERD is also supported with \$5,541,200 GPR annually and 53.0 positions from DWD's

general program operations appropriation, and \$915,500 annually and 5.5 positions from DWD's equal rights FED appropriation.

2. 2017 Wisconsin Act 11 eliminated the requirement that minors aged 16 or 17 obtain a child work permit or street trade work permit. Act 11 eliminated approximately 75% of program revenue into DWD's appropriation used to support the cost of ERD's information technology (IT) systems, including DWD's permit system for the employment of minors, and to fund other operational expenses within ERD.

3. At the time Act 11 was signed into law, it was projected that revenues to DWD's permit system fees appropriation would be unable to support authorized expenditure levels after the 2017-19 biennium. Due in part to the expected reduced revenues resulting from Act 11, DWD reduced expenditures in subsequent years by holding authorized positions vacant. ERD has maintained overall vacancy rates in the range of approximately 20% since 2017-18. Managing vacancies is ERD's main cost reduction practice, but the Division reports it has also reduced or delayed IT work.

4. The Department notes that there is a potential for ERD's workload to increase if the labor market contraction from the pandemic continues. In a contracted economy, individuals typically have fewer opportunities to leave an employer with whom they are dissatisfied and obtain other employment at a potentially higher wage. Rather, employees who continue in work circumstances they find unsatisfactory tend to file more complaints with ERD. In the 2017-2019 biennium, ERD investigated 10,124 complaints. During the last recession, in the 2009-2011 biennium, ERD investigated 13,898 complaints. If complaints were to increase to 2009-2011 levels, the Department states that ERD may be unable to accommodate the increased workload with current funding and staffing.

5. 2009 Wisconsin Act 28 (2009-2011 biennial budget) increased the child work permit fee from \$5 to \$10. Prior to Act 28, revenues from the \$5 work permit fee were distributed with \$2.50 retained by the issuing agency (schools and municipalities) and \$2.50 deposited in the general fund. Act 28 provided the additional \$5 in fee revenue to the new PR appropriation created in DWD. Act 28 also transferred 6.0 GPR positions and associated salary and fringe benefits from DWD general operations to the PR appropriation supported by work permits. However, the Act 28 provisions did not result in sufficient revenue to support the 6.0 positions and IT upgrades for the ERD labor permit system, which were also to be supported by the appropriation.

6. Table 1 shows the condition of the child labor permit system PR appropriation under current law and base funding, including standard budget adjustments approved to date by the Committee. In 2020-21, DWD indicates it plans to expend \$273,400, or \$106,100 less than the authorized amount of \$379,500, and the appropriation is estimated to have a June 30, 2021, balance of \$313,600. Under current law, the Department would be required to reduce expenditures by at least \$237,600 to maintain a balance in the appropriation through June 30, 2023.

TABLE 1

Child Work Permit System PR Appropriation -- Current Law

	<u>Actual</u> <u>2019-20</u>	<u>Estimated</u> <u>2020-21</u>	<u>Base</u> <u>2021-22</u>	<u>Base</u> <u>2022-23</u>
Opening Balance	\$668,000	\$515,300	\$313,600	\$38,000
Revenues	105,300	71,700	110,000	110,000
Expenditures	<u>- 258,000</u>	<u>- 273,400</u>	<u>- 385,600</u>	<u>- 385,600</u>
Closing Balance	\$515,300	\$313,600	\$38,000	- \$237,600

7. To address the issue of insufficient revenue to fund ERD's efforts to oversee the enforcement of child labor laws, Assembly Bill 68 / Senate Bill 111 would specify that the entire state portion of the child work permit fee be retained by the Department, instead of partly remitted to the general fund. This would decrease general fund revenues by \$55,000 annually. Under this provision, \$7.50 of each \$10 permit issued would be deposited into DWD's child work permit PR appropriation and \$2.50 would be retained by the local permit issuer.

8. AB 68/SB 111 would also reallocate \$96,200 PR and 3.0 positions from DWD's child work permit system PR appropriation to the Department's equal rights FED appropriation. The federal revenue credited to ERD's equal rights appropriation is generated from a contract with the Equal Employment Opportunity Commission (EEOC) that defines parameters for ERD's reimbursement, on a per-case-completed basis, for cases with which EEOC needs state assistance. According to DWD, revenue projections indicate this appropriation could support the additional 3.0 positions. This provision transferring 3.0 positions from PR to FED would have these positions work on only EEOC-related activities.

9. Table 2 shows the condition of the child work permit system PR appropriation under AB 68/SB 111. Revenues in 2021-22 and 2022-23 reflect an additional \$55,000 annually. Budget authority in each year would be \$344,400 with 3.0 positions authorized positions. Annual revenues are estimated to be less than budgeted expenditures of \$344,400 in each fiscal year of the biennium. The appropriation balance would be estimated to overdraw available balances and revenues by \$45,200 as of June 30, 2023, should all authorized expenditures be made in each fiscal year of the biennium. DWD acknowledges it would be incumbent on the Department to manage expenditures so as not to overdraw the appropriation.

TABLE 2

Child Work Permit System PR Appropriation -- AB 68/SB 111

	<u>Actual</u> <u>2019-20</u>	<u>Estimated</u> <u>2020-21</u>	<u>Bill</u> <u>2021-22</u>	<u>Bill</u> <u>2022-23</u>
Opening Balance	\$668,000	\$515,300	\$313,600	\$134,200
Revenues	105,300	71,700	165,000	165,000
Expenditures	<u>- 258,000</u>	<u>- 273,400</u>	<u>- 344,400</u>	<u>- 344,400</u>
Closing Balance	\$515,300	\$313,600	\$134,200	-\$45,200

10. To better align budgeted PR expenditures with anticipated revenues, the Committee could transfer \$96,200 PR and 3.0 positions from DWD's child work permit system PR appropriation to the Department's equal rights FED appropriation [Alternative 1], and amend the statutes to deposit the state's \$7.50 share of child work permits to the DWD PR appropriation [Alternative 2]. This would shift \$55,000 each year from general fund revenue to program revenue. AB 68/SB 111 would increase the appropriation by \$55,000 PR annually, equal to the amount of the additional program revenue [Alternative 3]. The administration indicates funding is intended to support regular ERD IT system costs.

11. The Committee could consider action to balance ongoing revenues and expenditures in DWD's child labor permit program revenue appropriation. Table 2 shows that the PR appropriation account is estimated to end the biennium with a \$45,200 overdraft under Alternatives 1 and 2. Together with the selection of the these two alternatives, the Committee could also delete 1.0 position [Alternative 4a] or 2.0 positions [Alternative 4b] and related salary and fringe funding from DWD's child labor permit PR appropriation and direct the Department to fill the position(s) from existing vacant positions in DWD's general operation GPR appropriation.

12. Under Alternative 4a, when selected together with Alternatives 1 and 2, the child work permit system PR appropriation would end the 2021-23 biennium with an estimated closing balance of \$104,000 with estimated ongoing expenditures exceeding revenues by \$104,800 annually in 2021-22 and thereafter. Under Alternative 4b, when selected together with Alternatives 1 and 2, the child work permit system PR appropriation would end the 2021-23 biennium with an estimated closing balance of \$253,200 with estimated ongoing expenditures exceeding revenues by \$30,200 annually in 2021-22 and thereafter.

13. As of May 25, 2021, there were 9.90 vacant ERD positions in the Department's general operations GPR appropriation, of which: (a) 2.0 position vacancies were recently vacated in March, 2021, and (b) 7.9 positions were listed as vacant on December 20, 2020. (DWD reports it has completed recruitment, with accepted offers, for 4.0 ERD positions that had recently been vacant.) According to DWD, hiring limits and cost management strategies have contributed to the length of time that ERD's positions have remained open. The Department states that it has followed the Department of Administration directive to limit hiring to those positions that perform essential functions during the pandemic, and that this has affected ERD's ability to fill positions. ERD also

indicates that it continues to hold certain positions vacant to help manage overall costs within available funding. However, the Division plans to continue filling certain vacancies during the remainder of 2021.

14. In addition, AB 68/SB 111 would provide \$35,000 GPR annually to the Department's general program operations appropriation for technology upgrades in the Equal Rights Division. (The Department of Administration indicates the funding is intended on a one-time basis.) The additional funding would be for the development of a new online form for submitting equal rights complaints, the enforcement of child labor laws, and investigations of alleged violations [Alternative 5].

15. The Committee could take no action [Alternative 6]. Under this alternative, DWD could request that DOA authorize additional funding and position authority in ERD's equal rights FED appropriation. DWD and the administration also could adjust the level of PR positions through a request under s. 16.505 of the statutes, which would be reviewed by the Committee. No changes would be made to the deposit of child work permit fees or the authorized expenditures for the PR appropriation, and no additional funding would be provided to support IT upgrades.

ALTERNATIVES

The Committee may select any combination of Alternatives 1 through 5.

1. Transfer \$96,200 PR and 3.0 positions annually from the Department of Workforce Development's child work permit system appropriation to the Department's equal rights FED appropriation.

ALT 1	Change to Base	
	Funding	Positions
PR	- \$192,400	- 3.00
FED	<u>192,400</u>	<u>3.00</u>
Total	\$0	0.00

2. Specify that for each child work permit issued, DWD retain 75% of the program revenue. (DWD would retain \$2.50 of each \$10 child work permit, in addition to \$5 per permit retained under current law.)

ALT 2	Change to Base
GPR-REV	- \$110,000
PR-REV	<u>110,000</u>
Total	\$0

3. Provide \$55,000 PR each year to the DWD child work permit system PR appropriation.

ALT 3	Change to Base
PR	\$110,000

4. Delete one of the following from the child work permit system PR appropriation:

a. 1.0 position and \$74,600 PR annually from the Department's PR appropriation and direct DWD to use one vacant position in the Department's GPR general operations appropriation.

ALT 4a	Change to Base	
	Funding	Positions
PR	- \$149,200	- 1.00

b. 2.0 positions and \$149,200 PR annually from the Department's PR appropriation and direct DWD to use one vacant position in the Department's GPR general operations appropriation.

ALT 4b	Change to Base	
	Funding	Positions
PR	- \$298,400	- 2.00

5. Provide \$35,000 annually in DWD's general operations appropriation for one-time funding for IT upgrades in the Equal Rights Division.

ALT 5	Change to Base
GPR	\$70,000

6. Take no action.

Prepared by: Ryan Horton

Workforce Development -- Equal Rights and Employment Regulation

LFB Summary Items for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
7	Migrant Labor Inspector

