



Legislative Fiscal Bureau

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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.

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