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Joint Committee on Finance

Paper #880

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

[LFB 2023-25 Budget Summary: Page 715, #6]

CURRENT LAW

Under current law, before an employer may commence work on a project of public works (not including transportation projects) or a public utility project, the employer must 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 the 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. According to several recent studies, the construction industry is heavily affected by employee substance use. A 2020 National Safety Council report entitled "Substance Use and Substance Use Disorder by Industry" shows construction trades and extractions workers with the highest percentage of employees with substance use disorders (19%).¹ Many factors contribute to comparatively higher rates of drug and alcohol use and abuse in the construction industry:

- A large portion of workers with musculoskeletal health conditions caused by the physically demanding work, lack of sick leave to aid recovery, and a culture that prioritizes

¹ National Safety Council and National Opinion Research Center. Substance Use Disorders by Occupation. 2020

productivity over health concerns.²

- Construction workers are seven times more likely to die of opioid-related overdoses than the average worker.³
- One out of three construction workers has a musculoskeletal disorder, and prescription opioid use is three times higher among construction workers with musculoskeletal disorder.⁴
- Workers using opioids have an increased risk of falls and unsafe behaviors, putting themselves and others at risk of workplace injury.⁵

A study⁶ 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, predominately male workforce, 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.

2. According to the Department, current funding and position authority in DWD's Equal Rights Division (ERD) is inadequate to monitor and enforce current law (s. 103.503) relating to the prevention of substance abuse on public works or public utility projects. According to DWD, if current ERD staff (Equal Rights Officers) were reassigned to conduct these investigations, it would divert officers from casework under other equal rights laws, including those under the Wisconsin Fair Employment Act. ERD receives federal funding from the federal Equal Employment Opportunity Commission (EEOC) for cases that it closes under an agreement with EEOC. DWD states that if ERD staff are diverted from that work, federal funding received from the EEOC would be in jeopardy.

3. Assembly Bill 43/Senate Bill 70 (AB 43/SB 70) would provide \$214,700 in 2023-24 and \$286,200 in 2024-25 and 3.0 positions beginning in 2023-24 to the Department of Workforce Development's (DWD) general program operations appropriation for the administration and enforcement of a substance abuse prevention program. In 2023-24, \$99,300 would be provided for salaries, \$44,100 for fringe benefits, and \$71,300 for supplies and services; in 2024-25, \$132,300 would be provided for salaries, \$58,800 for fringe benefits, and \$95,100 for supplies and services.

4. The 3.0 positions authorized under AB 43/SB 70 would provide monitoring and enforcement of current laws relating to substance abuse prevention on public works and public utility

² .S., C. Roelofs, and L. Punnett, Work Environment Factors and Prevention of Opioid-Related Deaths. *American Journal of Public Health*, 2020. 110(8): p. 1235-1241.

³ Hawkins, D., et al., Opioid-related Overdose Deaths by Industry and Occupation-Massachusetts, 2011-2015. *American Journal of Industrial Medicine*, 2019. 62(10): p. 815-825.

⁴ Shaw, W.S., C. Roelofs, and L. Punnett, Work Environment Factors and Prevention of Opioid-Related Deaths. *American Journal of Public Health*, 2020. 110(8): p. 1235-1241.

⁵ Kowalski-McGraw, M., et al., Characterizing the Interrelationships of Prescription Opioid and Benzodiazepine Drugs With Worker Health and Workplace Hazards. *Journal of Occupational and Environmental Medicine*, 2017. 59(11): p. 1114-1126.

⁶ 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.

projects. ERD would administer and enforce the program, including any rules necessary to implement the program and establish compliance. DWD states that the additional positions would form an investigation team that would conduct on-site audits and other inspections, with an emphasis on education and service to employers, to encourage compliance. All three positions would have a title of Labor Standards Investigator and would perform the following duties relating to the enforcement of current law: (a) identify employers who will be commencing work on public works and public utility projects; (b) verify employers have documentation of substance abuse prevention policies and programs; (c) conduct on-site investigations; and (d) provide educational outreach.

5. The following table shows an estimate of the number construction businesses in Wisconsin that could potentially participate in public works and public utility projects each year. The data show the number of employers from the industries deemed most likely by DWD to bid for public works and public utility projects. These data do not include out-of-state employers which could also participate in these projects. Although the entire universe of potential employers in the table is shown to be just under 15,800, in any given year the potential number of employers bidding on, and securing, a public works or public utility construct project would likely be a much smaller percentage of this total figure. In addition, it can also be assumed that many of the employers shown in the following table bid on multiple projects over multiple years which would somewhat reduce the oversight burden on DWD having to provide outreach, education, and compliance services to an entirely new group of employers every year.

**Number of Building and Public Works Construction Contractor
Employers in Wisconsin, 2022**

<u>Industry Description</u>	<u>Number of Employers</u>
Residential & Nonresidential Building Construction	3,931
Building Equipment Contractors	3,756
Building Finishing Contractors	2,460
Building Foundation and Exterior Contractors	2,195
Other Specialty Trade Contractors	1,611
Engineering Services	1,216
Utility System Construction	504
Other Heavy Construction	<u>121</u>
Total	15,794

Source: Quarterly Census of Employment and Wages, end of 3rd Quarter 2022

6. Given the number of companies likely to bid for public works projects, the Department argues that ERD would need 3.0 FTE permanent positions on an ongoing basis to provide continued oversight and enforcement. The Committee could choose to provide DWD with the additional staffing resources as specified in AB 43/SB 70 [Alternative 1].

7. Program enforcement may require more intensive staffing resources within the first years of the program. Accordingly, staffing needs may subside somewhat once administrative rules have been established and the program has been fully implemented. Conversely, DWD may find that as compliance 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 3.0 permanent positions in DWD's general program operations GPR appropriation, the Committee could choose to instead provide 2.0 permanent positions [Alternative 2].

8. The Committee could also take no action. This option would mean that DWD would continue to not actively enforce current law due to lack of ERD staffing resources. Under this alternative, contractors engaging in public works projects would continue to be required to have a written substance abuse prevention program as provided under current law [Alternative 3].

ALTERNATIVES

1. Provide \$214,700 in 2023-24 and \$286,200 in 2024-25 and 3.0 positions beginning in 2023-24 to the Department's general program operations appropriation for the administration and enforcement of a substance abuse prevention program.

ALT 1	Change to Base	
	Funding	Positions
GPR	\$500,900	3.00

2. Provide \$143,200 in 2023-24 and \$190,800 in 2024-25 and 2.0 positions beginning in 2023-24 to the Department's general program operations appropriation for the administration and enforcement of a substance abuse prevention program.

ALT 2	Change to Base	
	Funding	Positions
GPR	\$334,000	2.00

3. Take no action.

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