



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBa0692/1
MED&ZDW:skw

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 408**

June 29, 2021 - Offered by Representative J. RODRIGUEZ.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 5: after "Milwaukee" insert ", substance abuse prevention on
3 certain public projects, and granting rule-making authority".

4 **2.** Page 2, line 1: before that line insert:

5 "SECTION 1c. 103.503 (title) of the statutes is amended to read:

6 **103.503 (title) Substance abuse prevention on ~~public works and public~~
7 ~~utility~~ certain projects; certification.**

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

9 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
10 otherwise involving an employee that resulted or could have resulted in death,
11 personal injury, or property damage and that occurred while the employee was
12 performing the work described in s. 66.0903 (4), 2013 stats., or s. 16.856 (2m), 2015

1 stats., on a project of public works or transportation project or while the employee
2 was performing work on a public utility project.

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

4 103.503 (1) (c) “Contracting agency” means a local governmental unit or a state
5 agency that has contracted for the performance of work on a project of public works
6 or transportation project or a public utility that has contracted for the performance
7 of work on a public utility project.

8 **SECTION 1i.** 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), 2013 stats., or s. 16.856 (2m), 2015
11 stats., on a project of public works, on a transportation project, or on a public utility
12 project.

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

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

17 **SECTION 1n.** 103.503 (1) (h) of the statutes is amended to read:

18 103.503 (1) (h) “Public utility” has the meaning given in s. 196.01 (5) and
19 includes a telecommunications carrier, as defined in s. 196.01 (8m), an alternative
20 telecommunications utility, as defined in s. 196.01 (1d), an owner of fiber optics,
21 broadband, or cable, or, for purposes of subs. (2) and (4), a cooperative association
22 organized under ch. 185 for the purpose of producing or furnishing heat, light, power,
23 or water to its members only.

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

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. For
3 purposes of ~~sub. subs. (3), (6), and (7)~~, “public utility project” does not include a
4 project erected, constructed, repaired, remodeled, or demolished for a cooperative
5 association organized under ch. 185 for the purpose of producing or furnishing heat,
6 light, power, or water to its members only.

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

8 103.503 (1) (k) “Transportation project” means the construction or
9 reconstruction of any road or bridge performed under a contract entered into by a
10 local governmental unit.

11 **SECTION 1t.** 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), 2013 stats., or s. 16.856 (2m), 2015 stats., on a project of public works or a
16 transportation project or while performing work on a public utility project. An
17 employee is considered to be under the influence of alcohol for purposes of this
18 subsection if he or she has an alcohol concentration that is equal to or greater than
19 the amount specified in s. 885.235 (1g) (d).

20 **SECTION 1v.** 103.503 (3) (a) (intro.), 2. and 3. of the statutes are amended to
21 read:

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

1 2. A requirement that employees performing the work described in s. 66.0903
2 (4), 2013 stats., or s. 16.856 (2m), 2015 stats., on a project of public works or a
3 transportation project or performing work on a public utility project submit to
4 random, reasonable suspicion, and post-accident drug and alcohol testing and to
5 drug and alcohol testing before commencing work on the project, except that testing
6 of an employee before commencing work on a project is not required if the employee
7 has been participating in a random testing program during the 90 days preceding the
8 date on which the employee commenced work on the project.

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

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

15 103.503 (4) (a) (intro.) No employer may permit an employee who violates sub.
16 (2), who tests positive for the presence of a drug in his or her system, or who refuses
17 to submit to drug or alcohol testing as required under the employer's substance abuse
18 prevention program under sub. (3) to perform work on a project of public works, a
19 transportation project, or a public utility project until he or she meets the conditions
20 specified in par. (b) 1. and 2. An employer shall immediately remove an employee
21 from work on such a project if any of the following occurs:

22 **SECTION 1y.** 103.503 (4m) (b) of the statutes is amended to read:

23 103.503 (4m) (b) ~~Subsection~~ Subsections (3) ~~does~~, (6), and (7) do not apply to
24 an employer that performs work on a public utility project for a cooperative

1 association organized under ch. 185 for the purpose of producing or furnishing heat,
2 light, power, or water to its members only.

3 **SECTION 1z.** 103.503 (6) and (7) of the statutes are created to read:

4 103.503 (6) CERTIFICATION. (a) This subsection applies only with respect to an
5 employer that performs work on a transportation project or public utility project, if
6 the cost of the contract to perform the work is more than \$25,000.

7 (b) 1. An employer that performs work as described in par. (a) shall do one of
8 the following:

9 a. Certify its compliance with the requirements under this section annually on
10 forms and in a manner prescribed by the department.

11 b. Certify, on a per-contract basis, with the contracting agency for the project.
12 If the employer certifies on a per-contract basis as provided in this subd. 1. b., the
13 employer shall, prior to commencing work on the project, file the employer's program
14 under sub. (3) with the contracting agency.

15 2. No fee shall be required for a certification under subd. 1. a. or b.

16 (c) The department shall do all of the following:

17 1. Promulgate rules to implement par. (b) 1. a. The rules shall not apply to an
18 employer that certifies on a per-contract basis as provided in par. (b) 1. b.

19 2. Promulgate rules to determine all of the following:

20 a. Penalties for a failure to comply with the certification requirement under
21 par. (b) 1. The rules shall, except as provided in subd. 2. b., provide for a warning for
22 a first violation of the certification requirement under par. (b) 1. and may provide
23 penalties only for repeated violations.

24 b. Penalties for a failure to comply with the certification requirement under
25 par. (b) 1. if an accident that results in a reportable injury or illness under 29 CFR

1 1904 or reportable property damage occurs while the employer was not so certified.
2 A penalty under this subd. 2. b. may not exceed \$25,000.

3 3. Send an annual notice by mail to any business that has performed work on
4 a transportation project or public utility project and to any other contractor likely to
5 bid on such projects describing the certification requirements under this subsection.

6 4. Maintain a list of all employers certified under par. (b) 1. a. that is easily
7 accessible by the public.

8 (d) An employer that is subject to the certification requirement under par. (b)
9 and that has not complied with that requirement may not commence work on a
10 project for which the employer's contract is subject to par. (a) until the employer is
11 in compliance.

12 (7) PENALTIES. In addition to any other penalties provided under this chapter,
13 the department shall do all of the following:

14 (a) Assess a penalty for repeat violations of the certification requirement under
15 sub. (6) (b), in accordance with the rules promulgated under sub. (6) (c) 2. a.

16 (b) Assess a penalty against an employer that has failed to comply with the
17 certification requirement under sub. (6) (b), in accordance with the rules
18 promulgated under sub. (6) (c) 2. b., when the department determines that an
19 accident that resulted in a reportable injury or illness under 29 CFR 1904 or
20 reportable property damage occurred while the employer was not so certified.”.

21 **3.** Page 3, line 16: delete that line and substitute “**SECTION 7c. Nonstatutory**
22 **provisions.**”.

23 **4.** Page 4, line 3: after that line insert:

