



Legislative Fiscal Bureau

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October 27, 2021

TO: Representative Scott Krug
Room 207 North, State Capitol

FROM: Bob Lang, Director

SUBJECT: LRB 5138/1: Loan Guarantee and Grant for Two Paper Mills and Expanding DWD Drug Testing Requirements on Public Projects

At your request, this memorandum provides information regarding LRB 5138/1. The bill would: (a) transfer \$16,000,000 from the general fund to the economic development fund for the Wisconsin Economic Development Corporation (WEDC) to make economic development awards for two Wisconsin paper mills; and (b) extend drug testing requirements to certain transportation projects and create a certification requirement.

WEDC Grant and Loan Guarantee for Two Paper Mills

Under current law, WEDC is provided an all moneys received SEG appropriation from the economic development fund. LRB 5138/1 would specify that WEDC may use the \$16.0 million transferred to the economic development fund as follows: (a) to award a one-time grant for up to \$1.0 million in 2021-22 to an eligible recipient for the purposes of maintaining operations at the Verso Paper Mill in Wisconsin Rapids; and (b) to offer a loan guarantee of up to \$15.0 million for an eligible borrower to purchase or make infrastructure improvements to the Park Falls Pulp and Paper Mill in Park Falls. The Department of Administration (DOA) would transfer the \$16.0 million from the general fund to the economic development fund no later than 30 days after the date of publication of the bill. The amount transferred would not be considered in determining GPR appropriated to WEDC under its existing sum sufficient appropriation.

The grant award for maintaining operations at the Verso Paper Mill would be made for the term and upon the conditions determined by WEDC. The loan guarantee could be offered to secure financing that a lender may otherwise not have offered for the purchase of, or improvements made to, the Park Falls Pulp and Paper Mill under the terms and conditions determined by WEDC.

No later than 30 days after publication of the bill, WEDC would be required to submit under s. 13.10 the terms and conditions for the proposed grant award and the loan guarantee offer to the Joint Committee on Finance. The Committee could approve, modify and approve, or deny the terms and conditions for the grant award and/or the loan guarantee offer. If the Committee denied one or

both awards, DOA would have to transfer the dollar amount of the award denied from the economic development fund to the general fund no later than 30 days following the date the Committee denied the award.

If WEDC did not enter into a contract to award all or part of the grant or loan guarantee, as approved by the Committee, prior to June 30, 2023, the unobligated amount would be transferred by DOA from the economic development fund back to the general fund on that date. If the loan guarantee was not drawn upon by the ending date approved by the Committee for the term of the loan guarantee, the funds transferred to the economic development fund to secure the loan guarantee would be transferred back to the general fund within 30 days of the ending date.

There are proportional maintenance of effort (MOE) requirements under the federal Consolidated Appropriations Act and American Rescue Plan Act that apply to moneys received for elementary and secondary schools. Because the MOE calculation is based on GPR expenditures and excludes transfers, the transfer of general fund moneys that would be expended from a SEG fund under LRB 5138/1 would not affect MOE.

Substance Abuse Prevention on Certain Public Projects

LRB 5138/1 would specify that transportation projects under the bill be subject to certain substance abuse prevention provisions in current law that currently only apply to projects of public works and public utility projects. In addition, the proposal would create a certification requirement for certain employers performing work on a transportation project or a public utility project to certify their compliance with the substance abuse prevention requirements.

Under current law, no employee may use, possess, attempt to possess, distribute, deliver, or be under the influence of a drug, or use or be under the influence of alcohol, while performing work on a public works project or public utility project. Employers also must have in place a written program for the prevention of employee substance abuse. At a minimum, the program must include a requirement that employees performing the work on a project of public works or on a public utility project submit to random, reasonable-suspicion, and post-accident drug and alcohol testing and to drug and alcohol testing before commencing work on the project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the project. The program must also include a procedure for notifying an employee who violates the substance abuse provision, who tests positive for the presence of a drug in his or her system, or who refuses to submit to drug or alcohol testing, that the employee may not perform work on a project of public works, or a public utility project, until he or she: (a) has tested negative for the presence of drugs in his or her system and is not under the influence of alcohol; and (b) has been approved in accordance with the employer's substance abuse prevention program to commence or return to work on the project. Also under current law, no employer may permit an employee 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, to perform work on a project of public works or a public

utility project until he or she meets the conditions specified in "(a)" and "(b)". There are no employer certification requirements under current law.

Certification Requirements. LRB 5138/1 would specify that, for an employer that performs work on a transportation project or public utility project, if the cost of the contract to perform the work is more than \$25,000, the employer must: (a) certify its compliance with the substance abuse prevention program statutory requirements annually on forms and in a manner prescribed by the Department of Workforce Development (DWD); or (b) certify, on a per-contract basis, with the contracting agency for the project. If the employer certifies on a per-contract basis, the employer would be required, prior to commencing work on the project, to file the employer's program with the contracting agency. No fee would be required for an employer to file either an annual certification or per-contract certification. An employer that is subject to the certification requirement and that has not complied with that requirement may not commence work on a project for which the employer's contract is subject until the employer is in compliance.

Definitions. Under LRB 5138/1, "transportation project" would be defined to mean the construction or reconstruction of any road or bridge performed under a contract entered into by a local governmental unit. In addition, the definition of a "public works project" would be expanded to include an owner of fiber optics, broadband, or cable. The definitions of "contracting agency," "employer," "employee," and "accident" would generally remain as stated under current law, but would be amended to apply the terms of the substance abuse program to work on a transportation project.

Rules. LRB 5138/1 would require DWD to create rules to implement the annual certification requirement, including: (a) penalties for a failure to comply with the certification requirement, with the exception that the rules must provide for a warning for a first violation of the certification requirement and may provide penalties only for repeated violations; and (b) penalties, not to exceed \$25,000, for a failure to comply with the certification requirement if an accident resulted in reportable property damage, or in a reportable injury or illness under federal Occupational Safety and Health Act rules, while the employer was not so certified. The proposal specifies that the rules created by the Department would not apply to an employer that certifies on a per-contract basis.

Notice. LRB 5138/1 would require DWD to send an annual notice by mail to any business that has performed work on a transportation project or public utility project and to any other contractor likely to bid on such projects describing the certification requirements under this provision. DWD would also be required to maintain a list of all employers certified under the annual certification method that is easily accessible by the public.

Penalties. In addition to any other penalties provided under current law, LRB 5138/1 would require DWD to: (a) assess a penalty for repeat violations of the certification requirement, in accordance with the rules created to implement the annual certification requirement; and (b) assess a penalty against an employer that has failed to comply with the certification requirement, in accordance with the determination that an accident resulted in a reportable injury or illness under

federal Occupational Safety and Health Act rules, or reportable property damage occurs, while the employer was not so certified.

Effective Date. LRB 5138/1 would specify that the substance abuse prevention and certification requirement provisions take effect 90 days after publication of the bill. The other provisions regarding WEDC economic development awards would take effect on the day after publication of the bill.

Prepared by: Ryan Horton and John Gentry