



2001 SENATE BILL 491

March 8, 2002 - Introduced by Senator BURKE, cosponsored by Representative BOCK. Referred to Committee on Labor and Agriculture.

1 **AN ACT** *to renumber* 103.49 (6m) (a) and 103.50 (7) (a); *to amend* 66.0903 (11)
2 (a), 103.49 (6m) (f), 103.50 (7) (f), 103.50 (8), 109.03 (5), 109.09 (1) and 109.11
3 (1) (c); and *to create* 103.49 (6m) (ag), 103.50 (7) (ag) and 103.50 (7) (am) of the
4 statutes; **relating to:** authorizing the department of justice to enforce the
5 prevailing wage law.

Analysis by the Legislative Reference Bureau

Under current law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located (prevailing wage law). Currently, the department of workforce development (DWD) enforces the prevailing wage law with respect to state and local public works projects, other than state highway projects, and the department of transportation (DOT) enforces the prevailing wage law with respect to state highway projects. To this end, current law permits DWD to sue an employer on behalf of an employee employed on a state or local public works project, other than a state highway project, or to refer the matter to the district attorney of the county in which a violation of the prevailing wage law occurs, to collect any wages owed under the prevailing wage law. Similarly, current law permits DOT to request the district attorney of the county in which a state highway project is located to investigate and prosecute a violation of the prevailing wage law relating to that highway project. Current law also permits an employee to commence an action in

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court on his or her own behalf and on behalf of other employees who are similarly situated to recover unpaid wages owed under the prevailing wage law.

This bill requires DWD or DOT to refer a violation of the prevailing wage law to the department of justice (DOJ) for prosecution and collection if DWD or DOT decides not to sue the employer, or refer the matter to the district attorney, to collect any wages owed under the prevailing wage law. On receipt of such a referral, DOJ must investigate as necessary and, if the claim appears to be valid, commence an action to collect the wages owed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0903 (11) (a) of the statutes is amended to read:

2 66.0903 (11) (a) Any contractor, subcontractor, or contractor's or
3 subcontractor's agent who fails to pay the prevailing wage rate determined by the
4 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of
5 pay for all hours worked in excess of the prevailing hours of labor is liable to any
6 affected employee in the amount of his or her the employee's unpaid wages or his or
7 her unpaid overtime compensation and in an additional equal amount as liquidated
8 damages. ~~An action to recover the liability may be maintained~~ employee may recover
9 that liability by filing a wage claim with the department under s. 109.09 (1) or by
10 commencing an action under s. 109.03 (5) in any court of competent jurisdiction by
11 ~~any employee,~~ for and in behalf of that employee and other employees similarly
12 situated. No employee may be a party plaintiff to ~~the~~ an action commenced under
13 s. 109.03 (5) unless the employee consents in writing to become a party and the
14 consent is filed in the court in which the action is brought. Notwithstanding s. 814.04
15 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow
16 reasonable attorney fees and costs to be paid by the defendant.

17 **SECTION 2.** 103.49 (6m) (a) of the statutes is renumbered 103.49 (6m) (ar).

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1 **SECTION 3.** 103.49 (6m) (ag) of the statutes is created to read:

2 103.49 **(6m)** (ag) Any contractor, subcontractor, or contractor's or
3 subcontractor's agent who fails to pay the prevailing wage rate determined by the
4 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of
5 pay for all hours worked in excess of the prevailing hours of labor is liable to any
6 affected employee in the amount of the employee's unpaid wages or unpaid overtime
7 compensation. An employee may recover that liability by filing a wage claim with
8 the department under s. 109.09 (1) or by commencing an action under s. 109.03 (5)
9 in any court of competent jurisdiction, for and in behalf of that employee and other
10 employees similarly situated. No employee may be a party plaintiff to an action
11 commenced under s. 109.03 (5) unless the employee consents in writing to become
12 a party and the consent is filed in the court in which the action is brought.
13 Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded
14 to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

15 **SECTION 4.** 103.49 (6m) (f) of the statutes is amended to read:

16 103.49 **(6m)** (f) Paragraph ~~(a)~~ (ar) does not apply to any person who fails to
17 provide any information to the department to assist the department in determining
18 prevailing wage rates under sub. (3) (a) or (am).

19 **SECTION 5.** 103.50 (7) (a) of the statutes is renumbered 103.50 (7) (ar).

20 **SECTION 6.** 103.50 (7) (ag) of the statutes is created to read:

21 103.50 **(7)** (ag) Any contractor, subcontractor, or contractor's or subcontractor's
22 agent who fails to pay the prevailing wage rate determined under sub. (3) or (4) or
23 who pays less than 1.5 times the hourly basic rate of pay for all hours worked in
24 excess of the prevailing hours of labor is liable to any affected employee in the amount
25 of the employee's unpaid wages or unpaid overtime compensation. An employee may

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1 recover that liability by filing a wage claim with the department of transportation
2 under par. (am) or by commencing an action under s. 109.03 (5) in any court of
3 competent jurisdiction, for and in behalf of that employee and other employees
4 similarly situated. No employee may be a party plaintiff to an action commenced
5 under s. 109.03 (5) unless the employee consents in writing to become a party and
6 the consent is filed in the court in which the action is brought. Notwithstanding s.
7 814.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow
8 reasonable attorney fees and costs to be paid by the defendant.

9 **SECTION 7.** 103.50 (7) (am) of the statutes is created to read:

10 103.50 (7) (am) An employee may also recover the liability specified in par. (ag)
11 by filing a wage claim with the department of transportation for and in behalf of that
12 employee and other employees similarly situated. On receipt of a wage claim filed
13 under this paragraph, the department of transportation shall investigate the wage
14 claim and, on completion of the investigation, may sue the employer on behalf of the
15 employee to collect the wage claim or refer the wage claim to the district attorney of
16 the county in which the work is located for prosecution and collection. If the
17 department of transportation decides not to sue the employer to collect the wage
18 claim or refer the wage claim to the district attorney, the department of
19 transportation shall refer the wage claim to the department of justice for prosecution
20 and collection. On receipt of a wage claim, a district attorney or the department of
21 justice shall investigate as necessary and, if the wage claim appears to be valid,
22 commence an action in the circuit court having appropriate jurisdiction to collect the
23 wage claim. The department of transportation may receive and investigate a wage
24 claim under this paragraph that is filed no later than 2 years after the date on which
25 the unpaid wages or unpaid overtime compensation was due. After receiving a wage

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1 claim under this paragraph, the department of transportation may investigate any
2 unpaid wages or unpaid overtime compensation due from the contractor,
3 subcontractor, or agent against whom the wage claim was filed to any employee
4 during the period commencing 2 years before the date on which the wage claim was
5 filed.

6 **SECTION 8.** 103.50 (7) (f) of the statutes is amended to read:

7 103.50 (7) (f) Paragraph (a) ~~(ar)~~ does not apply to any person who fails to
8 provide any information to the department to assist the department in determining
9 prevailing wage rates under sub. (3) or (4).

10 **SECTION 9.** 103.50 (8) of the statutes is amended to read:

11 103.50 (8) ENFORCEMENT AND PROSECUTION. The department of transportation
12 shall require adherence to subs. (2), (2m), and (6). The department of transportation
13 may demand and examine, and every contractor, subcontractor, and contractor's or
14 subcontractor's agent shall keep and furnish, upon request by the department of
15 transportation, copies of payrolls and other records and information relating to
16 compliance with this section. ~~Upon request of the department of transportation or~~
17 ~~upon complaint of alleged violation, the district attorney of the county in which the~~
18 ~~work is located shall investigate as necessary and prosecute violations in a court of~~
19 ~~competent jurisdiction.~~ Section 111.322 (2m) applies to discharge and other
20 discriminatory acts arising in connection with any proceeding under this section.

21 **SECTION 10.** 109.03 (5) of the statutes is amended to read:

22 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by
23 special contract with employees or by any other means secure exemption from this
24 section. Each employee shall have a right of action against any employer for the full
25 amount of the employee's wages due on each regular pay day as provided in this

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1 section and for increased wages as provided in s. 109.11 (2), in any court of competent
2 jurisdiction. An employee may bring an action against an employer under this
3 subsection without first filing a wage claim with the department of workforce
4 development under s. 109.09 (1) or with the department of transportation under s.
5 103.50 (7) (am). An employee who brings an action against an employer under this
6 subsection shall have a lien upon all property of the employer, real or personal,
7 located in this state as described in s. 109.09 (2).

8 **SECTION 11.** 109.09 (1) of the statutes is amended to read:

9 109.09 (1) The department shall investigate and attempt equitably to adjust
10 controversies between employers and employees as to alleged wage claims. The
11 department may receive and investigate any wage claim ~~which~~ that is filed with the
12 department, or received by the department under s. 109.10 (4), no later than 2 years
13 after the date the wages are due. The department may, after receiving a wage claim,
14 investigate any wages due from the employer against whom the claim is filed to any
15 employee during the period commencing 2 years before the date the claim is filed.
16 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.32, 103.49,
17 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
18 employer on behalf of the employee to collect any wage claim or wage deficiency, and
19 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
20 under s. 109.10, the department may refer such an action to the district attorney of
21 the county in which the violation occurs for prosecution and collection, and the
22 district attorney shall investigate as necessary and, if the wage claim or wage
23 deficiency appears to be valid, commence an action in the circuit court having
24 appropriate jurisdiction to collect the wage claim or wage deficiency. If the
25 department decides not to sue the employer to collect a wage claim or wage deficiency

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1 arising under s. 66.0903 or 103.49 or refer such a wage claim or wage deficiency to
2 the district attorney, the department shall refer the wage claim or wage deficiency
3 to the department of justice, and the department of justice shall investigate as
4 necessary and, if the wage claim or wage deficiency appears to be valid, commence
5 an action in the circuit court having appropriate jurisdiction to collect the wage claim
6 or wage deficiency. Any number of wage claims or wage deficiencies against the same
7 employer may be joined in a single proceeding, but the court may order separate
8 trials or hearings. In actions that are referred to a district attorney under this
9 subsection, any taxable costs recovered by the district attorney shall be paid into the
10 general fund of the county in which the violation occurs and used by that county to
11 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
12 the district attorney who prosecuted the action.

13 **SECTION 12.** 109.11 (1) (c) of the statutes is amended to read:

14 109.11 (1) (c) If an employer does not agree to compromise and settle a wage
15 claim under this subsection, the department may refer the wage claim to a district
16 attorney under s. 109.09 (1) or to the department of justice under s. 109.09 (1) or
17 109.10 (3) for commencement of an action in circuit court to collect the amount of
18 wages due and unpaid plus increased wages as specified in sub. (2) (b).

19 (END)