

**2007 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB228)**

Received: **08/29/2007**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Mike Tierney**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact: **David Lovell, Leg Council**

Addl. Drafters:

Subject: **Buildings/Safety - misc.**

Extra Copies: **David Lovell, Leg. Council**

Submit via email: **YES**

Requester's email: **Sen.Wirch@legis.wisconsin.gov**

Carbon copy (CC:) to: **michael.tierney@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Exemptions for certain licensees, handymen, and road builders

---

**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	rkite 09/12/2007	jdyer 09/12/2007	nnatzke 09/12/2007	_____	lparisi 09/12/2007	lparisi 09/12/2007	
/2	rkite 10/12/2007	jdyer 10/12/2007	jfrantze 10/12/2007	_____	mbarman 10/14/2007	mbarman 10/14/2007	
/3	rkite 10/19/2007 rkite	jdyer 10/19/2007 jdyer	nnatzke 10/23/2007	_____	sbasford 10/23/2007	sbasford 10/23/2007	

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Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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/2	rkite 10/12/2007	jdye 10/12/2007	jfrantze 10/12/2007	_____	mbarman 10/14/2007	mbarman 10/14/2007	

FE Sent For:

*13 10/23 jld*  
*nwn 10/23*  
*nwn/rs 10/23*  
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*Handwritten signatures and dates:*  
10/12/07 jld  
10/12/07 Jo  
10/12/07 Jo/WW  
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FE Sent For:

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2. No contractor or subcontractor may enter into a contract for construction services with a person who is not registered as a contractor or subcontractor.
3. No contractor or subcontractor may knowingly and with intent to evade any state or federal law, rule, or regulation coerce or induce a person to falsely declare that he or she is an independent contractor.

The requirements and prohibitions that apply to contractors and subcontractors under the bill do not apply to a person who performs construction work on his or her own property.

Under current law, a contractor can establish a lien on the property on which the contractor performs work as a means of ensuring payment for his or her services and materials purchased under a construction contract. The bill conditions this authority on compliance with the registration requirement of the bill.

The bill also provides that a contractor who is not in compliance with the registration requirement of the bill cannot obtain a building permit to perform work on a one- or two-family dwelling.

The bill authorizes Commerce to enforce the requirements and prohibitions that apply to contractors and subcontractors by directly assessing forfeitures against offenders. The forfeitures may not exceed \$2,000 for each violation. The bill authorizes the Attorney General to bring an action in circuit court to collect any forfeiture imposed by Commerce.

The bill creates a Contractor Advisory Committee to advise Commerce regarding rules required for implementation of Commerce's duties under the bill.

### **APPLICATION OF SENATE BILL 228 TO SPECIFIED ENTITIES**

#### **Road Builders**

At the hearing, Tom Walker, of the Wisconsin Transportation Builders Association, observed that the broad wording of the bill has the result of applying the requirements of the bill to road building contractors. He suggested this is not appropriate, as road builders work with and are regulated by the Department of Transportation; he also opined that this was not the intent of the bill.

Mr. Walker's concern could be addressed by adding to the bill an exemption for road building contractors. Although this could be drafted in any number of ways, one approach would be to modify the definition of "construction" to exclude transportation construction and to create a definition of transportation construction, as follows:

(1) "Construction" means the construction, renovation, repair, remodeling, or demolition of an improvement to real property or of a manufactured home, but does not include transportation construction.

(5) "Transportation construction" includes the construction, renovation, repair, remodeling, or demolition of roads, bridges, sidewalks, parking lots, driveways, rail lines, ports and harbors, airports, transit projects, or

pedestrian and bicycle infrastructure, but does not include the construction, renovation, repair, remodeling, or demolition of any terminals or other buildings associated with any of the foregoing.

This definition of "transportation construction" is in terms of examples of included and excluded types of projects, to make clear what aspects of transportation construction are meant. Mr. Walker is reviewing this language and has promised to have any comments to you early next week.

In addition, Mr. Walker has suggested that it might be appropriate to exclude utility construction, also, as road construction usually involves utility construction. However, he did not wish to speak for that industry, and did not offer a definition of "utility construction."

### **Current Holders of Department of Commerce Licenses**

Also at the hearing, Ross Kinzler, of the Wisconsin Housing Alliance, observed that many contractors already hold a license or other credential from the Department of Commerce. He suggested that the requirement that contractors register with the department is duplicative in these instances, and is an inefficient and potentially burdensome means of meeting the bill's objectives.

The Department of Commerce did not appear at the hearing or present written testimony. However, in subsequent conversations, department staff indicated that the department most likely would implement the registration requirement in a way in which a contractor registration would be issued to any eligible contractor as part of any other department license or approval issued to that person.

It should be noted that the current contractor continuing education requirements do not apply to any person who holds a current license issued by the department, for work authorized by that license. In response to Mr. Kinsler's concern, the bill could be amended to include a similar provision. Alternatively, the bill could remain silent on the question, relying on the department to implement the law in this manner.

### **"Handyman" Contractors**

Committee members asked how the bill would affect "handyman" contractors. Because of the broad wording of the bill, such small contractors would be treated in the same manner as any other contractors. The committee members discussed the appropriateness of applying these requirements to handyman contractors.

In subsequent conversations, department staff indicated that the current continuing education and financial responsibility statutes apply to handymen and opined that the requirements are not overly burdensome on those contractors. It is unclear what level of compliance exists among handymen, but the department staff point out that the inability of non-complying contractors to obtain building permits or to utilize construction liens give contractors of all sizes strong incentives to comply. On the other hand, it is likely that many handymen require that the property owner obtain any required building permit, or simply do the work without a permit, avoiding this enforcement mechanism. The same would be true under the provisions of the bill.

In response to the committee members' questions, the bill could be amended to exclude handyman contractors from the definition of "contractor." Based on dictionary definitions, "handyman" could be defined as "a person who offers, for compensation, to perform miscellaneous small or routine construction tasks."<sup>1</sup> This definition could be limited to construction tasks performed on one- or two-family dwellings or manufactured homes. As a further option, the current certification and education requirements could be amended to exclude handymen.

Alternatively, the bill could remain silent regarding handyman contractors, with the result that it would apply to them as the current certification and education requirements do.

If you have further questions regarding 2007 Senate Bill 228, please contact me directly at the Legislative Council staff offices.

DLL:jal

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<sup>1</sup> Note that this is not a bright line definition. While it would provide general guidance regarding the Legislature's intent, it could be problematic in some settings. For example, a contractor's status as a handyman could be pivotal if a property owner were to contest a construction lien placed by that contractor, on the grounds that the contractor failed to register and so was not eligible to place such a lien, and the contractor claimed to be a handyman and so to be exempt from the registration requirement.

**Kite, Robin**

---

**From:** Tierney, Michael  
**Sent:** Monday, August 20, 2007 12:51 PM  
**To:** Kite, Robin  
**Subject:** FW: SB-228 Language  
**Importance:** High  
**Attachments:** 2007 S. B. 228 - Version 2.DOC

Hi Robin –

Paula in our office told me you were drafting amendments for SB 228.

At this time, it appears Senator Plale's committee will not be holding an exec this week – so the need for the amendments is not as urgent.

David Lovell in Leg Council did provide me with the following note after hearing back from Tom Walker of the road builders:

1. In addition to exempting transportation construction, it exempts "**grading and earthmoving projects to provide access to or prepare a site for a building.**" He explained that the intent is to exempt surface site preparation, but not demolition, excavation or other aspects of site prep.; he intends to exempt grading and earth moving for the construction of individual buildings and of larger, multibuilding developments, e.g., commercial complexes and housing subdivisions.

2. His definition of "transportation construction" includes "**utility construction related to a transportation project.**" obviously getting at the suggestion he made last week that utility construction should be exempt, too.

Please see the attached word doc for suggested language. Could you incorporate this language? Also, David will probably meet with our office sometime tomorrow, but I also suggested that he should call you if he has any suggestions based upon the conversations and correspondence I've shared with him.

Thank you.

Mike Tierney  
Office of Senator Wirch

(1) "Construction" means the construction, renovation, repair, remodeling, or demolition of an improvement to real property or of a manufactured home, but does not include transportation or grading and earthmoving projects to provide access to or prepare a site for a building.

(5) "Transportation construction" includes the construction, renovation, improvement, reconstruction, or demolition of roads, bridges, sidewalks, parking lots, driveways, freight and passenger rail lines, ports and harbors, airports, transit projects, parking lots and ramps, pedestrian and bicycle infrastructure, and utility construction related to a transportation project, but does not include the construction, renovation, repair, remodeling, or demolition of any terminals, stations or other buildings associated with any of the foregoing.

**Lovell, David**

---

**To:** Lovell, David

**Subject:** RE: SB-228 Language

Mike,

Here is language offered by Tom Walker to exempt transportation contractors from the requirements of SB 228 :

(1) "Construction" means the construction, renovation, repair, remodeling, or <sup>construction</sup> demolition of an improvement to real property or of a manufactured home, but does not include transportation or grading and earthmoving projects to provide access to or prepare a site for a building.

(5) "Transportation construction" includes the construction, renovation, improvement, <sup>railroads</sup> reconstruction, or demolition of roads, bridges, sidewalks, parking lots, driveways, freight and passenger rail lines, ports and harbors, airports, transit projects, parking lots and ramps, pedestrian and bicycle infrastructure, and utility construction related to a transportation project, but does not include the construction, renovation, repair, remodeling, or demolition of any terminals, stations or other buildings associated with any of the foregoing.

I have just talked with him about it. It differs from the language I sent you last Thursday in two significant ways:

1. In addition to exempting transportation construction, it exempts "**grading and earthmoving projects to provide access to or prepare a site for a building.**" He explained that the intent is to exempt surface site preparation, but not demolition, excavation or other aspects of site prep.; he intends to exempt grading and earth moving for the construction of individual buildings and of larger, multibuilding developments, e.g., commercial complexes and housing subdivisions.

2. His definition of "transportation construction" includes "**utility construction related to a transportation project,**" obviously getting at the suggestion he made last week that utility construction should be exempt, too.

Tom's parting comment to me was that his opinion is that the bill should be limited to construction of buildings, but that he is content to simply exclude transportation projects, as defined.

On a technical level, I think Tom's suggested language is workable, with just a little massaging. We should get together to discuss what policy the Senator wants to pursue.

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

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**From:** Tom Walker [mailto:twalker@wtba.org]  
**Sent:** Monday, August 20, 2007 11:02 AM  
**To:** Lovell, David  
**Subject:** SB-228 Language  
**Importance:** High

This will do what we need, without compromising in any way the real focus of the bill.

08/21/2007

## Kite, Robin

---

**From:** Lovell, David  
**Sent:** Wednesday, August 22, 2007 12:56 PM  
**To:** Kite, Robin  
**Subject:** Sub. to SB 228

Robin,

I have previously given you suggested language to exempt transportation contractors, and you have drafted language to exempt persons who hold other approvals from Commerce. The third piece is to exempt handyman contractors. The suggested definition of "handyman" in my 8-16 memo is:

*only* < "a person who offers, for compensation, to perform miscellaneous small or routine construction tasks."

1. I would revise that to refer to "construction **services**" (as opposed to "tasks"), since that is the defined term in that statutory section.
2. Also, Senator Wirch wants the definition made more specific by adding: "and who does not hire or subcontract with any person to perform construction services," or words to that effect.

Finally, this should all be drafted as a substitute amendment, rolling in the technical corrections.

Thanks--

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

## Kite, Robin

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**From:** Lovell, David  
**Sent:** Monday, September 10, 2007 9:06 AM  
**To:** Kite, Robin  
**Subject:** RE: Contractor registration

Robin,

Thank you for copying me.

I would be happy to (read: would like to) sit in on any conversation with Mark Reihl. This sounds like a good entrée for us to discuss the fundamental issues of the bill with its originators.

By the way, it strikes me that progressive penalties would be hard to implement with either a direct forfeiture or a citation system. The person assessing the forfeiture or writing the citation would need information on the individual's enforcement history to know what level of penalty to impose. This would mean either making all building inspectors or other Commerce agents into law enforcement officers and giving them access to the TIME system or creating a parallel system just for this information. (DNR wardens are law enforcement officers and so have such access. I don't know for sure, but I think they get information on a person's history of conservation violations from the TIME system. I have left a message with Mike Lutz (DNR atty.) to check on that.)

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

*9/12 - Called Mike Tierney  
& discussed the problem  
as outlined by David Lovell.  
He said to leave out  
progressive penalties for now.*

---

**From:** Kite, Robin  
**Sent:** Friday, September 07, 2007 3:44 PM  
**To:** Tierney, Michael  
**Cc:** Lovell, David  
**Subject:** RE: Contractor registration

Mike:

With regard to your question about progressive penalties, there are examples in the statutes where a smaller fine or forfeiture is imposed for a first offense and then a higher fine or forfeiture is imposed for a second or subsequent offense. The statutes have more examples of this progressive penalty structure where a fine is imposed rather than a forfeiture. For examples of forfeitures that are higher for a second offense, see ss. 95.99 (3) and 134.43 (4), stats. If you would like to revise the penalties in the substitute amendment or would like to discuss this issue, please let me know.

Robin

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**From:** Tierney, Michael  
**Sent:** Friday, August 31, 2007 12:23 PM  
**To:** Kite, Robin  
**Subject:** Contractor registration

Hi Robin and David –

After speaking with you, I called Mark Reihl from the State Council of Carpenters. Our office wanted to provide you with his contact information and let you know that if you would want to speak with him about the bill and specific content of amendment drafts that are being prepared that is fine with Senator Wirch.

His phone number is 256-1206 and his email is [mreihl@sbcglobal.net](mailto:mreihl@sbcglobal.net)

Another issue Mark raised was the penalty contained in the bill. He asked if there would be a way to provide for a lighter

fine for a first offense and make the penalty progressively higher for a second and subsequent offense. What are your thoughts? Are there penalties in other area of law that we may want to model the penalty in this bill after, or is the present language sufficient?

Thanks

Mike

Per conf call w/ Mike Tierney & David Lovell

Draft sub to cover contractors under:

- 1 & 2 family bldg code
- commercial building code
- multifamily building code
- manuf. building code

this will then exempt transportation, utility etc.  
construction

2005

Date (time) needed 3:00pm

LRBs 012911 <sup>RM</sup>

# SUBSTITUTE AMENDMENT [TO A BILL]

RNK:jld:

Use the appropriate components and routines developed for substitute amendments.

*LPS  
check  
out please*

## S A SUBSTITUTE AMENDMENT

TO 2005 7 SB AB 228 LRB- 1

AN ACT... [generate catalog] *to repeal*...; *to renumber*...; *to consolidate and renumber*...; *to renumber and amend*...; *to consolidate, renumber and amend*...; *to amend*...; *to repeal and recreate*...; and *to create*... of the statutes; **relating to:**

.....  
.....  
.....  
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

soon

# 2007 SENATE BILL 228

July 9, 2007 - Introduced by Senators WIRCH, HANSEN, LEHMAN, DECKER, COWLES, SCHULTZ, HARSDÖRE, SULLIVAN, OLSEN, LASSA and ERPENBACH, cosponsored by Representatives KAUFERT, MASON, STEINBRINK, KREUSER, BOYLE, HAHN, MONTGOMERY, JESKEWITZ, SHERIDAN, JORGENSEN, BIES, ALBERS, A. OTT, PETROWSKI, TOWNSEND and MUSSER. Referred to Committee on Commerce, Utilities and Rail.

Regen

1 AN ACT *to amend* 101.02 (20) (a) and 101.02 (21) (a); and *to create* 101.19 (1) \*  
2 (m), 101.65 (1p) and subchapter VIII of chapter 101 [precedes 101.99] of the  
3 statutes; **relating to:** the regulation of construction contractors and  
4 subcontractors, granting rule-making authority, and providing a penalty. ✓

### *Analysis by the Legislative Reference Bureau*

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades such as electricians and plumbers. Commerce also administers and issues licenses in connection with the administration of other laws relating to public safety such as those regulating fireworks and the storage of flammable liquids.

This bill requires Commerce to register any person who desires to act as a contractor or subcontractor and who meets certain registration requirements established by Commerce. Under the bill, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of ~~real property~~ to construct, or supervise the construction of, an improvement to that real property. The bill specifies that a subcontractor is a person who enters into a contract with a contractor or a subcontractor to perform part or all of a contract to ~~construct or supervise the construction of an improvement to real property.~~

substitute amendment ✓

a structure  
perform, or supervise, construction services ✓

**SENATE BILL 228**

*Substitute amendment*

Under the ~~bill~~, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The ~~bill~~ also requires Commerce to promulgate rules establishing standards for the registration of contractors and subcontractors, application procedures for persons who apply for such registration, and conditions under which Commerce may suspend or revoke such a registration. The ~~bill~~ creates a contractor advisory committee that is required to make recommendations to Commerce regarding the promulgation of these rules.

The ~~bill~~ provides that, *with certain exceptions,* a person may not hold himself or herself out or act as a contractor or subcontractor or perform construction services unless the person is registered as a contractor or subcontractor by Commerce. The ~~bill~~ also prohibits a contractor or subcontractor from entering into contracts for construction services with a person who is not registered as a contractor or subcontractor with Commerce. Further, the ~~bill~~ prohibits a contractor or subcontractor from claiming a lien for construction services performed or materials procured if the contractor or subcontractor is not registered with Commerce.

The ~~bill~~ authorizes Commerce to directly assess a forfeiture by issuing an order against any person who violates the requirements imposed upon contractors and subcontractors under the bill.

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

*insert analysis*

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

1           SECTION 1. 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act  
2 456, is amended to read:

3           101.02 (20) (a) For purposes of this subsection, "license" means a license,  
4 permit or certificate of certification or registration issued by the department under  
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),  
6 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,  
7 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035,  
8 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

9           SECTION 2. 101.02 (21) (a) of the statutes, as affected by 2005 Wisconsin Act  
10 456, is amended to read:

**SENATE BILL 228**

1           101.02 (21) (a) In this subsection, "license" means a license, permit or  
 2 certificate of certification or registration issued by the department under s. 101.09  
 3 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a), 101.178  
 4 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95,  
 5 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035, 145.045, 145.15,  
 6 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

7           **SECTION 3.** 101.19 (1) (m) of the statutes is created to read:

8           101.19 (1) (m) The registration of contractors and subcontractors under subch.  
 9 VIII.

10          **SECTION 4.** 101.65 (1p) of the statutes is created to read:

11          101.65 (1p) May not issue a building permit to a person who is required to be  
 12 registered under subch. VIII unless that person, on applying for a building permit,  
 13 produces proof of registration.

14          **SECTION 5.** Subchapter VIII of chapter 101 [precedes 101.99] of the statutes is  
 15 created to read:

**CHAPTER 101**

**SUBCHAPTER VIII**

**REGULATION OF CONSTRUCTION**

**CONTRACTORS AND SUBCONTRACTORS**

20          **101.99 Definitions.** In this subchapter:

21          (1) "Construction" means the construction, renovation, repair, remodeling, or  
 22 demolition of an improvement to real property or of a manufactured home. *a structure*

23          (2) "Construction services" means mechanical or structural activities relating  
 24 to construction including carpentry, concrete work, landscaping, masonry work,  
 25 painting, plastering, insulation work, roofing, erection of scaffolding, or the

SENATE BILL 228

SECTION 5

1 installation or repair of floor coverings, drywall, wall coverings, tile, cabinets,  
2 countertops, or siding.

3 (3) "Contractor" means <sup>any</sup> a person engaged in the business of construction who  
4 contracts with the owner or lessor of <sup>a structure</sup> real property to construct, or supervise the  
5 construction of, an improvement to that real property. <sup>to perform, or supervise,</sup>

6 (4) "Subcontractor" means a person who enters into a contract with a  
7 contractor or subcontractor to perform part or all of a contract to ~~construct or~~  
8 supervise the construction of an improvement to real property.

9 **101.991 Departmental powers and duties.** The department shall do all of  
10 the following:

11 (1) Register, and issue a unique registration number to, any person who desires  
12 to act as a contractor or a subcontractor and who meets the requirements for  
13 registration established by the department under this subchapter.

14 (2) Establish an Internet site that consumers may use to determine all of the  
15 following:

16 (a) The name and address of every contractor and subcontractor registered by  
17 the department under this subchapter.

18 (b) The name of the contact person for every contractor and subcontractor  
19 registered by the department under this subchapter.

20 (c) Whether a contractor or subcontractor registered by the department under  
21 this subchapter carries a performance bond or other financial assurance to ensure  
22 the work of the contractor or subcontractor.

23 (3) Promulgate rules establishing all of the following:

24 (a) Standards for the registration of contractors and subcontractors.

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to perform, or supervise,  
construction services

(8) D

## SENATE BILL 228

1 (b) Application procedures for persons applying for registration under this  
2 subchapter.

3 (c) Conditions under which the department may suspend or revoke the  
4 registration of a contractor or subcontractor.

5 **101.992 Prohibitions. (1)** No person may hold himself or herself out or act  
6 as a contractor or subcontractor or perform construction services unless that person  
7 is registered as a contractor or subcontractor by the department under this  
8 subchapter.

9 (2) No contractor or subcontractor may enter into a contract for construction  
10 services with a person who is not registered as a contractor or subcontractor by the  
11 department <sup>as required</sup> under this subchapter.

12 (3) No contractor or subcontractor may claim or maintain an action to enforce  
13 a lien under s. 779.01 for construction services performed or materials procured if the  
14 contractor or subcontractor was not registered as a contractor or a subcontractor by  
15 the department under this subchapter at the time that the services were performed  
16 or the materials were procured.

17 (4) No contractor or subcontractor may knowingly and with intent to evade any  
18 state or federal law, rule, or regulation coerce or induce a person to falsely declare  
19 that he or she is an independent contractor.

20 **101.993 Requirements.** Every person who is registered as a contractor or  
21 subcontractor by the department under this subchapter shall do all of the following:

22 (1) Display his or her registration number at his or her principal place of  
23 business.

24 (2) Include his or her registration number on all construction bids and  
25 contracts and on all advertising.

SENATE BILL 228

SECTION 5

1 **101.994 Registration term.** Registration under this subchapter shall be  
2 valid for a period of not more than 4 years and shall be renewable.

3 **101.995 Exception.** Sections 101.992 and 101.993 do not apply to a person  
4 who performs construction work on real property, an improvement to real property,  
5 or a manufactured home if the real property, improvement, or manufactured home  
6 is owned or leased by that person.

any of the following:  
4 over (1) (B)

7 **101.997 Penalties. (1)** The department may directly assess a forfeiture by  
8 issuing an order against any person who violates s. 101.992 or 101.993. The  
9 department may not assess a forfeiture exceeding \$2,000 for each violation.

10 **(2)** The department shall promulgate rules specifying the procedures  
11 governing the assessment of forfeitures under this section including the following:

- 12 (a) The procedure for issuing an order for an alleged violation.
- 13 (b) The amount of a forfeiture that the department may assess for an alleged  
14 violation, subject to the limit under sub. (1).
- 15 (c) The procedure for contesting an order issued for an alleged violation.
- 16 (d) The procedure for contesting the assessment of a forfeiture for an alleged  
17 violation.

18 **(3)** The department shall remit all forfeitures paid under this section to the  
19 secretary of administration for deposit in the school fund.

20 **(4)** All forfeitures that are not paid as required under this section shall accrue  
21 interest at the rate of 12 percent per year.

22 **(5)** The attorney general may bring an action in the name of the state to collect  
23 any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or  
24 interest has not been paid after the exhaustion of all administrative and judicial  
25 reviews.

insert 6-6



2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0129/1ins.  
RNK:.....

INSERT ANALYSIS

Generally, under the substitute amendment, the registration requirements only apply to a person who performs or supervises the construction, renovation, repair, remodeling, or demolition of a structure that is regulated by the department of commerce as a public building, a place of employment, or a manufactured home or that is covered by the one- and two-family dwelling code or the multifamily dwelling code. The substitute amendment also exempts certain persons from the requirements established in the substitute amendment. The exemption applies to any person who performs construction services on a structure that he or she owns or leases, any person who is otherwise licensed by Commerce to perform construction services, and any person who performs only small or routine construction services.

INSERT 4-4

- (4) "Dwelling" has the meaning given in s. 101.61.
- (5) "Manufactured home" has the meaning given in s. 101.91 (2).
- (6) "Multifamily dwelling" has the meaning given in s. 101.971 (2).
- (7) "Structure" means a public building, a place of employment, a dwelling, a multifamily dwelling, or a manufactured home.

INSERT 6-6

A person who performs construction services and who holds a valid license, permit, certification, or registration issued by the department to perform those construction services.

A person who performs, for compensation, miscellaneous small or routine construction services and who does not employ any other person to perform construction services.

(end ins. 6-6)

**Wisconsin State Council  
of Carpenters**

United Brotherhood of Carpenters  
and Joiners of America



**Mark S. Reihl**  
Executive Director

115 West Main Street  
Madison, Wisconsin 53703  
voice 608 256 1206 fax 608 256 2978  
e-mail mreihl@sbcglobal.net

**Kite, Robin**

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**From:** DuPont, Robert - COMMERCE [Robert.DuPont@wisconsin.gov]  
**Sent:** Tuesday, October 02, 2007 12:10 PM  
**To:** Tierney, Michael  
**Cc:** Kite, Robin; mreihl@sbcglobal.net  
**Subject:** SB 228 Comments and Recommendations  
**Attachments:** SB 228 comments from S&B.doc

Thank you for inviting me to the meeting on September 28th to discuss the draft Senate Substitute Amendment to 2007 Senate Bill 228. I think that the discussions were fruitful.

As requested, I discussed the Substitute Amendment with staff and we developed the attached text relative to the proposed definitions on page 4, lines 1 through 18, of the Substitute Amendment.

We recommend defining the term "construction" without use of the term structure (or construction). Instead, we recommend direct use of terms already defined in Chapter 101. We included erection of scaffolding, painting and installation of wall finishes as we discussed on Friday. We also recommend a sentence that clearly says what construction does not include. For this portion we listed activities that are already regulated by Chapter 443 of the statutes. We also recommend not including "demolition" in this definition. Demolition, especially razing of a building, is not construction (although we don't know if the demolition industry is experiencing the same problems associated with "independent contractors vs.. employees" as portions of the construction industry reportedly are).

Likewise, the definition of the term "contractor" as we recommend it, does not contain the word "structure". We also recommend it should not include the word "supervision" for the same reason that we recommend supervision not be included in the definition of construction.

We recommend deleting the definitions for "manufactured home" and "multifamily dwelling" because they are subsets of dwelling and public building respectively.

Relative to our discussion about deleting the exception contained on page 6, lines 16 through 18, of the substitute amendment, regarding holders of other licenses from Commerce, I have the following to offer - regarding how Commerce expects to implement the substitute amendment if it were to become law without the aforementioned exception.

Commerce would add the registration requirements and business obligations contained in SB 228 to the administrative rules now in place for Dwelling Contractors, Electrical Contractors and HVAC Contractors. Such entities would be required to hold just one contractor credential from Commerce, but such entities would be regulated by SB 228. We do not foresee increasing the costs of those credentials due to passage of SB 228.

*Per Mike Tierney -  
redraft per Bob DuPont's recommendations*

(1) "Construction" means and includes all the associated activities to build, assemble, erect, renovate, repair or remodel a structure that serves as a place of employment, a public building or dwelling. Construction includes erection of scaffolding, painting and the installation of wall finishes. Construction does not include the practice of architecture, engineering or the design of the building or building components.

(2) "Contractor" means a person engaged or offering to engage in the business of construction who contracts with the owner or tenant of a place of employment, public building or dwelling to perform construction.

(3) "Dwelling" has the meaning given in s. 101.61 (1).

(4) "Subcontractor" means a person who enters into a contract with a contractor or another subcontractor to perform construction.



Wanted 10/16

State of Wisconsin  
2007 - 2008 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT ,  
TO 2007 SENATE BILL 228

D-Note

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1 AN ACT *to amend* 101.02 (20) (a) and 101.02 (21) (a); and *to create* 101.19 (1)  
2 (m), 101.65 (1p) and subchapter VIII of chapter 101 [precedes 101.99] of the  
3 statutes; **relating to:** the regulation of construction contractors and  
4 subcontractors, granting rule-making authority, and providing a penalty.

***Analysis by the Legislative Reference Bureau***

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades such as electricians and plumbers. Commerce also administers and issues licenses in connection with the administration of other laws relating to public safety such as those regulating fireworks and the storage of flammable liquids.

This substitute amendment requires Commerce to register any person who desires to act as a contractor or subcontractor and who meets certain registration requirements established by Commerce. Under the substitute amendment, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of a structure to perform, or supervise, construction services. The substitute amendment specifies that a subcontractor is a person who enters into a

place of employment, a public building, or a dwelling ✓

activities ✓

contract with a contractor or a subcontractor to perform part or all of a contract to perform, or supervise, construction services

Under the substitute amendment, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The substitute amendment also requires Commerce to promulgate rules establishing standards for the registration of contractors and subcontractors, application procedures for persons who apply for such registration, and conditions under which Commerce may suspend or revoke such a registration. The substitute amendment creates a contractor advisory committee that is required to make recommendations to Commerce regarding the promulgation of these rules.

The substitute amendment provides that, with certain exceptions, a person may not hold himself or herself out or act as a contractor or subcontractor or perform construction services unless the person is registered as a contractor or subcontractor by Commerce. The substitute amendment also prohibits a contractor or subcontractor from entering into contracts for construction services with a person who is not registered as a contractor or subcontractor with Commerce. Further, the substitute amendment prohibits a contractor or subcontractor from claiming a lien for construction services performed or materials procured if the contractor or subcontractor is not registered with Commerce.

Generally, under the substitute amendment, the registration requirements only apply to a person who performs or supervises the construction, renovation, repair, remodeling, or demolition of a structure that is regulated by Commerce as a public building, a place of employment, or a manufactured home or that is covered by the one- and two-family dwelling code or the multifamily dwelling code. The substitute amendment also exempts certain persons from the requirements established in the substitute amendment. The exemption applies to any person who performs construction services on a structure that he or she owns or leases, any person who is otherwise licensed by Commerce to perform construction services, and any person who performs only small or routine construction services.

The substitute amendment authorizes Commerce to directly assess a forfeiture by issuing an order against any person who violates the requirements imposed upon contractors and subcontractors under the bill.

activities associated with ✓

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

1 SECTION 1. 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act  
2 456, is amended to read:

3 101.02 (20) (a) For purposes of this subsection, "license" means a license,  
4 permit or certificate of certification or registration issued by the department under  
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),

1 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,  
2 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035,  
3 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

4 **SECTION 2.** 101.02 (21) (a) of the statutes, as affected by 2005 Wisconsin Act  
5 456, is amended to read:

6 101.02 (21) (a) In this subsection, "license" means a license, permit or  
7 certificate of certification or registration issued by the department under s. 101.09  
8 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a), 101.178  
9 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95,  
10 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035, 145.045, 145.15,  
11 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

12 **SECTION 3.** 101.19 (1) (m) of the statutes is created to read:

13 101.19 (1) (m) The registration of contractors and subcontractors under subch.

14 VIII.

15 **SECTION 4.** 101.65 (1p) of the statutes is created to read:

16 101.65 (1p) May not issue a building permit to a person who is required to be  
17 registered under subch. VIII unless that person, on applying for a building permit,  
18 produces proof of registration.

19 **SECTION 5.** Subchapter VIII of chapter 101 [precedes 101.99] of the statutes is  
20 created to read:

21 **CHAPTER 101**

22 **SUBCHAPTER VIII**

23 **REGULATION OF CONSTRUCTION**

24 **CONTRACTORS AND SUBCONTRACTORS**

25 **101.99 Definitions.** In this subchapter:

1 (1) "Construction" means ~~the~~ construction, renovation, repair, remodeling, or  
2 demolition of a structure. *activities* ✓ *insert 4-2* ✓

3 (2) "Construction services" means mechanical or structural activities relating  
4 to construction including carpentry, concrete work, landscaping, masonry work,  
5 painting, plastering, insulation work, roofing, erection of scaffolding, or the  
6 installation or repair of floor coverings, drywall, wall coverings, tile, cabinets,  
7 countertops, or siding.

8 (3) "Contractor" means a person engaged in the business of construction *who engages, or offers to engage,*  
9 contracts with the owner or lessor of a structure *and* to perform or supervise  
10 construction services. *a place of employment, a public building, or a dwelling* ✓

11 (4) "Dwelling" has the meaning given in s. 101.61 (1). *activities* ✓

12 (5) "Manufactured home" has the meaning given in s. 101.91 (2).

13 (6) "Multifamily dwelling" has the meaning given in s. 101.971 (2).

14 (7) "Structure" means a public building, a place of employment, a dwelling, a  
15 multifamily dwelling, or a manufactured home.

16 (8) "Subcontractor" means a person who enters into a contract with a  
17 contractor or subcontractor to perform part or all of a contract to perform, or  
18 supervise construction services. *activities* ✓

19 **101.991 Departmental powers and duties.** The department shall do all of  
20 the following:

21 (1) Register, and issue a unique registration number to, any person who desires  
22 to act as a contractor or a subcontractor and who meets the requirements for  
23 registration established by the department under this subchapter.

24 (2) Establish an Internet site that consumers may use to determine all of the  
25 following:

1 (a) The name and address of every contractor and subcontractor registered by  
2 the department under this subchapter.

3 (b) The name of the contact person for every contractor and subcontractor  
4 registered by the department under this subchapter.

5 (c) Whether a contractor or subcontractor registered by the department under  
6 this subchapter carries a performance bond or other financial assurance to ensure  
7 the work of the contractor or subcontractor.

8 (3) Promulgate rules establishing all of the following:

9 (a) Standards for the registration of contractors and subcontractors.

10 (b) Application procedures for persons applying for registration under this  
11 subchapter.

12 (c) Conditions under which the department may suspend or revoke the  
13 registration of a contractor or subcontractor.

14 **101.992 Prohibitions.** (1) No person may hold himself or herself out or act  
15 as a contractor or subcontractor or perform construction ~~services~~ <sup>activities</sup> unless that person  
16 is registered as a contractor or subcontractor by the department under this  
17 subchapter.

18 (2) No contractor or subcontractor may enter into a contract for construction  
19 ~~services~~ with a person who is not registered as a contractor or subcontractor by the  
20 department as required under this subchapter.

21 (3) No contractor or subcontractor may claim or maintain an action to enforce  
22 a lien under s. 779.01 for construction ~~services~~ performed or materials procured if ~~the~~  
23 contractor or subcontractor was not registered as a contractor or a subcontractor by  
24 the department under this subchapter at the time that the ~~services were~~  
25 or the materials were procured.

1 (4) No contractor or subcontractor may knowingly and with intent to evade any  
 2 state or federal law, rule, or regulation coerce or induce a person to falsely declare  
 3 that he or she is an independent contractor.

4 **101.993 Requirements.** Every person who is registered as a contractor or  
 5 subcontractor by the department under this subchapter shall do all of the following:

6 (1) Display his or her registration number at his or her principal place of  
 7 business.

8 (2) Include his or her registration number on all construction bids and  
 9 contracts and on all advertising.

10 **101.994 Registration term.** Registration under this subchapter shall be  
 11 valid for a period of not more than 4 years and shall be renewable.

12 **101.995 Exceptions.** Sections 101.992 and 101.993 do not apply to any of the  
 13 following:

14 (1) A person who performs construction services on a structure that is owned  
 15 or leased by that person.

16 (2) A person who performs construction services and who holds a valid license,  
 17 permit, certification, or registration issued by the department to perform those  
 18 construction services.

19 (3) A person who performs, for compensation, miscellaneous small or routine  
 20 construction services and who does not employ any other person to perform  
 21 construction services.

22 **101.997 Penalties.** (1) The department may directly assess a forfeiture by  
 23 issuing an order against any person who violates s. 101.992 or 101.993. The  
 24 department may not assess a forfeiture exceeding \$2,000 for each violation.

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1           (2) The department shall promulgate rules specifying the procedures  
2 governing the assessment of forfeitures under this section including the following:

3           (a) The procedure for issuing an order for an alleged violation.

4           (b) The amount of a forfeiture that the department may assess for an alleged  
5 violation, subject to the limit under sub. (1). ✓

6           (c) The procedure for contesting an order issued for an alleged violation.

7           (d) The procedure for contesting the assessment of a forfeiture for an alleged  
8 violation.

9           (3) The department shall remit all forfeitures paid under this section to the  
10 secretary of administration for deposit in the school fund.

11           (4) All forfeitures that are not paid as required under this section shall accrue  
12 interest at the rate of 12 percent per year.

13           (5) The attorney general may bring an action in the name of the state to collect  
14 any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or  
15 interest has not been paid after the exhaustion of all administrative and judicial  
16 reviews.

17           **SECTION 6. Nonstatutory provisions.**

18           (1) ~~PROPOSED RULES~~ No later than the first day of the 12th month beginning  
19 after the effective date of this subsection, the department of commerce shall submit  
20 in proposed form the rules required under sections ✓ 101.991 (3) and ✓ 101.997 (2) <sup>995</sup> of the  
21 statutes, as created by this act, to the legislative council staff under section 227.15  
22 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes the secretary  
23 of administration may not require the department of commerce to prepare an  
24 economic impact report for the proposed rules.

1 (2) CONTRACTOR ADVISORY COMMITTEE. There is created a contractor advisory  
 2 committee that shall consist of 7 members appointed by the secretary of commerce.  
 3 Of the members appointed to the committee, 4 members shall be contractors, as  
 4 defined in section 101.99 <sup>(2)</sup> ~~(3)~~ of the statutes, as created by this act, or subcontractors,  
 5 as defined in section 101.99 <sup>(4)</sup> ~~(4)~~ of the statutes, as created by this act, 2 members shall  
 6 be representatives of labor unions, and one member shall be a public member. The  
 7 committee shall make recommendations to the department of commerce regarding  
 8 the promulgation of rules under sections 101.991 (3) and <sup>101.995</sup> ~~101.997~~ (2) of the statutes,  
 9 as created by this act. The committee shall cease to exist on the first day of the 12th  
 10 month beginning after the day on which the rules required under sections <sup>101.991</sup>  
 11 (3) and <sup>995</sup> ~~101.997~~ (2) of the statutes, as created by this act, are promulgated by the  
 12 department of commerce.

13 **SECTION 7. Effective dates.** This act takes effect on the first day of the <sup>24</sup> ~~18~~th  
 14 month beginning after publication, except as follows:

15 (1) SECTION 6 (1) and (2) <sup>(2)</sup> of this act take effect on the day after publication.

16 (END)

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FROM THE  
LEGISLATIVE REFERENCE BUREAU

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RNK:.....

INSERT 4-2

RS activities associated with building, repairing, or remodeling a structure that serves as a place of employment, a public building, or a dwelling. "Construction activities" includes erection of scaffolding, painting, and installation of wall finishes. "Construction activities" does not include the practice of architecture or engineering or the design of a structure or its components.

INSERT 6-3

(2) No contractor or subcontractor may do any of the following:

(a) Knowingly and with intent to evade any state or federal law, rule, or regulation coerce or induce a person to falsely declare that he or she is an independent contractor.

(b) Enter into a subcontract with a person who agrees to perform construction activities on a project unless that person is registered as a contractor or subcontractor by the department in the manner required under this subchapter.

(3) No contractor or subcontractor may claim or maintain an action to enforce a lien on an interest in land under s. 779.01 if any of the following apply: *applies*

(a) The contractor or subcontractor was not registered by the department, in the manner required under this subchapter, at the time the construction activities on the land were performed.

(b) The claim for the lien is for construction activities on the land performed by a subcontractor who was not registered by the department in the manner required under this subchapter.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0129/2dn

RNK: ^....

date

JLD

Mike Tierney:

This note incorporates the changes you requested at our recent meeting as well as some follow-up suggestions from Bob DuPont at the Department of Commerce. ✓ Please note the following:

1. I have slightly modified some of the language suggested by Bob DuPont to avoid redundancies. See, for example, the definition of "construction activities" in the draft.
2. I have extended the delayed effective date so that the provisions of the draft take effect on the first day of the 24th<sup>✓</sup> month after publication instead of the 18th month. ✓ Please confirm that this is consistent with your intent.
3. Please look closely at the language in the draft that relates to lien rights. I want to make sure that the draft accurately reflects your intent on this issue. ✓
4. At our meeting, I recommended that the draft include a provision giving the Department of Commerce<sup>✓</sup> authority to promulgate emergency rules. Upon further thought, I do not think such a provision is necessary given the long delayed effective date in the redraft. Do you concur?

Please feel free to contact me if you have any questions with regard to this draft. ✓

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0129/2dn  
RNK:jld:jf

October 12, 2007

Mike Tierney:

This note incorporates the changes you requested at our recent meeting as well as some follow-up suggestions from Bob DuPont at the Department of Commerce. Please note the following:

1. I have slightly modified some of the language suggested by Bob DuPont to avoid redundancies. See, for example, the definition of "construction activities" in the draft.
2. I have extended the delayed effective date so that the provisions of the draft take effect on the first day of the 24th month after publication instead of the 18th month. Please confirm that this is consistent with your intent.
3. Please look closely at the language in the draft that relates to lien rights. I want to make sure that the draft accurately reflects your intent on this issue.
4. At our meeting, I recommended that the draft include a provision giving the Department of Commerce authority to promulgate emergency rules. Upon further thought, I do not think such a provision is necessary given the long delayed effective date in the redraft. Do you concur?

Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

10/19/07

Per Mike Tierney

make clear that waiver of lien rights  
applies only to the person that the  
contractor or subcontractor contracts with -  
the waiver does apply to further subcontractors

## Kite, Robin

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**From:** Lovell, David  
**Sent:** Friday, October 19, 2007 4:57 PM  
**To:** Tierney, Michael  
**Cc:** Kite, Robin  
**Subject:** RE: SB 228

Mike,

I just talked to Robin Kite about the attached version of your sub.

First, I talked with her about the lien question. I concur with her and, it appears, everyone else, that some clarification is in order. I will wait to see what she comes up with for that.

Second, I see a problem with the definition of "construction activities," in particular the words "activities associated with." It is good that the definition specifies certain things that are included and excluded from this meaning, but I think there are too many other activities that are "associated with" construction for comfort. For example, delivery of materials to a job site is clearly associated with construction, but you don't want the supplier or truck driver to have to be a registered contractor or subcontractor, do you? I fear there may be other such examples that we cannot anticipate in drafted exceptions to the definition and so suggest using the term "construction" instead of "construction activities" and defining it as "building, repairing, or maintaining a structure ...".

Third, I was surprised to see that all exceptions had been removed. Robin said that the exceptions for holders of other Commerce licenses and for handymen were taken out for policy reasons, which is fine.

She said that the exception for a person working on his or her own property was taken out because that person was not holding himself or herself out as a contractor or subcontractor and so was not covered by the draft. However, the draft also applies to a person who performs construction activities, which would include a person conducting construction activities on his or her own property. I think the exception in the original bill should be reinserted.

Robin said that the redraft to address the lien questions is still in editing, meaning that she could call it back and make additional changes, if needed. We should talk first thing on Monday to get instructions to her as soon as possible. You can call me, if you like, or call Robin directly. Either way, please let me know your decisions.

When we have a final draft, I will revise the memo describing it.

I told Robin that you are interested in having this ready for the exec next Thursday, and she will do what she can, of course. Please be cognizant, though, that they are still under a lot of pressure with drafting for the budget.

I'll talk with you Monday morning.

David

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David L. Lovell, Senior Analyst  
Wisconsin Legislative Council Staff  
608/266-1537

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**From:** Tierney, Michael  
**Sent:** Thursday, October 18, 2007 3:39 PM  
**To:** Lovell, David  
**Subject:** SB 228

Hi David –

We received a draft back from Robin Kite for the contractor registration bill SB 228 (the draft is LRBs0129/2). I've attached that draft to this email along with a drafting note from Robin.

Bob DuPont at Commerce thought it was Ok.

The one question raised by Mark Reihl was whether the language on page 5 lines 14 through 21 would impact the lien rights of a general contractor who hired a registered subcontractor who, unbeknownst, to the general contractor then violated the provisions of the bill.

Our intent is to only have the loss of line rights go up as high as the wrongdoer.

I left a voicemail for Robin, but I also wanted to have your perspective.

We are talking with Senator Plale's office about having this bill added to the exec calendar for October 25<sup>th</sup>. Commerce is going to prepare a letter outlining how they would proceed under the provisions found in this draft – do you think you could prepare a memo as well?

Also, will there have to be another fiscal estimate prepared prior to an exec being held on the amendment?

Thank you.

Mike Tierney  
Office of Senator Wirch

<< File: LRB s0129\_2 >> << File: LRB s0129/2 >>



SENATE SUBSTITUTE AMENDMENT ,  
TO 2007 SENATE BILL 228

Regen

1 AN ACT *to amend* 101.02 (20) (a) and 101.02 (21) (a); and *to create* 101.19 (1)  
2 (m) and subchapter VIII of chapter 101 [precedes 101.99] of the statutes;  
3 **relating to:** the regulation of construction contractors and subcontractors,  
4 granting rule-making authority, and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades such as electricians and plumbers. Commerce also administers and issues licenses in connection with the administration of other laws relating to public safety such as those regulating fireworks and the storage of flammable liquids.

This substitute amendment requires Commerce to register any person who desires to act as a contractor or subcontractor and who meets certain registration requirements established by Commerce. Under the substitute amendment, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of a place of employment, a public building, or a dwelling to perform, or supervise construction activities. The substitute amendment specifies that a

200

The substitute amendment provides generally that construction activities are activities associated with building, repairing, or remodeling a structure that serves as a public building, a place of employment, or a dwelling.

subcontractor is a person who enters into a contract with a contractor or a subcontractor to perform construction activities.

Under the substitute amendment, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The substitute amendment also requires Commerce to promulgate rules establishing standards for the registration of contractors and subcontractors, application procedures for persons who apply for such registration, and conditions under which Commerce may suspend or revoke such a registration. The substitute amendment creates a contractor advisory committee that is required to make recommendations to Commerce regarding the promulgation of these rules.

200

The substitute amendment provides that, with certain exceptions, a person may not hold himself or herself out or act as a contractor or subcontractor or perform construction activities unless the person is registered as a contractor or subcontractor by Commerce. The substitute amendment also prohibits a contractor or subcontractor from entering into contracts for construction activities with a person who is not registered as a contractor or subcontractor with Commerce. Further, the substitute amendment prohibits a contractor or subcontractor from claiming a lien for construction activities performed if the contractor or subcontractor is not registered with Commerce or if the contractor or subcontractor uses an unregistered subcontractor.

Generally, under the substitute amendment, the registration requirements only apply to a person who performs construction activities associated with a public building, a place of employment, or a dwelling.

The substitute amendment authorizes Commerce to directly assess a forfeiture by issuing an order against any person who violates the requirements imposed upon contractors and subcontractors under the ~~bill~~ substitute amendment

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

1 SECTION 1. 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act  
2 456, is amended to read:

3 101.02 (20) (a) For purposes of this subsection, "license" means a license,  
4 permit or certificate of certification or registration issued by the department under  
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),  
6 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,  
7 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035,  
8 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).



1           (2) "Contractor" means a person who engages, or offers to engage, in the  
2 business of construction and who contracts with the owner or lessor of a place of  
3 employment, a public building, or a dwelling to perform construction activities.

4           (3) "Dwelling" has the meaning given in s. 101.61 (1).

5           (4) "Subcontractor" means a person who enters into a contract with a  
6 contractor or subcontractor to perform construction activities.

7           **101.991 Departmental powers and duties.** The department shall do all of  
8 the following:

9           (1) Register, and issue a unique registration number to, any person who desires  
10 to act as a contractor or a subcontractor and who meets the requirements for  
11 registration established by the department under this subchapter.

12           (2) Establish an Internet site that consumers may use to determine all of the  
13 following:

14           (a) The name and address of every contractor and subcontractor registered by  
15 the department under this subchapter.

16           (b) The name of the contact person for every contractor and subcontractor  
17 registered by the department under this subchapter.

18           (c) Whether a contractor or subcontractor registered by the department under  
19 this subchapter carries a performance bond or other financial assurance to ensure  
20 the work of the contractor or subcontractor.

21           (3) Promulgate rules establishing all of the following:

22           (a) Standards for the registration of contractors and subcontractors.

23           (b) Application procedures for persons applying for registration under this  
24 subchapter.

1 (c) Conditions under which the department may suspend or revoke the  
2 registration of a contractor or subcontractor.

3 **101.992 Prohibitions.** (1) No person may hold himself or herself out or act  
4 as a contractor or subcontractor ~~or perform construction activities~~ unless that person  
5 is registered as a contractor or subcontractor by the department under this  
6 subchapter.

7 (2) No contractor or subcontractor may do any of the following:

8 (a) Knowingly and with intent to evade any state or federal law, rule, or  
9 regulation coerce or induce a person to falsely declare that he or she is an  
10 independent contractor.

11 (b) Enter into a subcontract with a person who agrees to perform construction  
12 activities on a project unless that person is registered as a contractor or  
13 subcontractor by the department in the manner required under this subchapter.

14 (3) No contractor or subcontractor may claim or maintain an action to enforce  
15 a lien on an interest in land under s. 779.01 if any of the following applies:

16 (a) <sup>A contractor</sup> The contractor or subcontractor was not registered by the department <sup>in</sup>  
17 the manner required under this subchapter, at the time the construction activities  
18 on the land were performed.

19 (b) The claim for the lien is for construction activities on the land performed  
20 by a subcontractor who was not registered by the department in the manner required  
21 under this subchapter.

insert  
5-21

22 **101.993 Requirements.** Every person who is registered as a contractor or  
23 subcontractor by the department under this subchapter shall do all of the following:

24 (1) Display his or her registration number at his or her principal place of  
25 business.

1           (2) Include his or her registration number on all construction bids and  
2 contracts and on all advertising.

3           **101.994 Registration term.** Registration under this subchapter shall be  
4 valid for a period of not more than 4 years and shall be renewable.

5           **101.995 Penalties.** (1) The department may directly assess a forfeiture by  
6 issuing an order against any person who violates s. 101.992 or 101.993. The  
7 department may not assess a forfeiture exceeding \$2,000 for each violation.

8           (2) The department shall promulgate rules specifying the procedures  
9 governing the assessment of forfeitures under this section including the following:

10           (a) The procedure for issuing an order for an alleged violation.

11           (b) The amount of a forfeiture that the department may assess for an alleged  
12 violation, subject to the limit under sub. (1). ✓

13           (c) The procedure for contesting an order issued for an alleged violation.

14           (d) The procedure for contesting the assessment of a forfeiture for an alleged  
15 violation.

16           (3) The department shall remit all forfeitures paid under this section to the  
17 secretary of administration for deposit in the school fund.

18           (4) All forfeitures that are not paid as required under this section shall accrue  
19 interest at the rate of 12 percent per year.

20           (5) The attorney general may bring an action in the name of the state to collect  
21 any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or  
22 interest has not been paid after the exhaustion of all administrative and judicial  
23 reviews.

24           **SECTION 5. Nonstatutory provisions.**

1 (1) RULES. No later than the first day of the 12th month beginning after the  
2 effective date of this subsection, the department of commerce shall submit in  
3 proposed form the rules required under sections 101.991 (3) and 101.995 (2) of the  
4 statutes, as created by this act, to the legislative council staff under section 227.15  
5 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes the secretary  
6 of administration may not require the department of commerce to prepare an  
7 economic impact report for the proposed rules.

8 (2) CONTRACTOR ADVISORY COMMITTEE. There is created a contractor advisory  
9 committee that shall consist of 7 members appointed by the secretary of commerce.  
10 Of the members appointed to the committee, 4 members shall be contractors, as  
11 defined in section 101.99 (2) of the statutes, as created by this act, or subcontractors,  
12 as defined in section 101.99 (4) of the statutes, as created by this act, 2 members shall  
13 be representatives of labor unions, and one member shall be a public member. The  
14 committee shall make recommendations to the department of commerce regarding  
15 the promulgation of rules under sections 101.991 (3) and 101.995 (2) of the statutes,  
16 as created by this act. The committee shall cease to exist on the first day of the 12th  
17 month beginning after the day on which the rules required under sections 101.991  
18 (3) and 101.995 (2) of the statutes, as created by this act, are promulgated by the  
19 department of commerce.

20 **SECTION 6. Effective dates.** This act takes effect on the first day of the 24th  
21 month beginning after publication, except as follows:

22 (1) SECTION 5 (1) and (2) of this act take effect on the day after publication.

23 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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*letter*  
*(b)*  
X (3) (a) No contractor or subcontractor may claim or maintain an action to enforce a lien described under s. 779.01 (3) if the contractor or subcontractor was not registered, as required under this subchapter, at the time the construction activities were performed.

*(3)*  
X (b) No contractor may claim or maintain an action to enforce a lien described under s. 779.01 (3) for construction activities performed by a subcontractor if that subcontractor was not registered, as required under this subchapter, at the time the construction activities were performed.

*(4)*  
X (c) No subcontractor may claim or maintain an action to enforce a lien described under s. 779.01 (3) for construction activities performed by another subcontractor if that other subcontractor was not registered, as required under this subchapter, at the time the construction activities were performed.

*(end ins)*



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State of Wisconsin  
2007 - 2008 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT ,  
TO 2007 SENATE BILL 228**

ReGen      VT

1      **AN ACT to amend** 101.02 (20) (a) and 101.02 (21) (a); and **to create** 101.19 (1)  
2                    (m) and subchapter VIII of chapter 101 [precedes 101.99] of the statutes;  
3      **relating to:** the regulation of construction contractors and subcontractors,  
4                    granting rule-making authority, and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades such as electricians and plumbers. Commerce also administers and issues licenses in connection with the administration of other laws relating to public safety such as those regulating fireworks and the storage of flammable liquids.

This substitute amendment requires Commerce to register any person who desires to act as a contractor or subcontractor and who meets certain registration requirements established by Commerce. Under the substitute amendment, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of a place of employment, a public building, or a dwelling to perform construction activities. The substitute amendment specifies that a subcontractor is a person who enters into a contract with a contractor or a subcontractor to perform

construction activities. The substitute amendment provides generally that construction activities are activities associated with building, repairing, or remodeling a structure that serves as a public building, a place of employment, or a dwelling.

Under the substitute amendment, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The substitute amendment also requires Commerce to promulgate rules establishing standards for the registration of contractors and subcontractors, application procedures for persons who apply for such registration, and conditions under which Commerce may suspend or revoke such a registration. The substitute amendment creates a contractor advisory committee that is required to make recommendations to Commerce regarding the promulgation of these rules.

The substitute amendment provides that, with certain exceptions, a person may not hold himself or herself out or act as a contractor or subcontractor unless the person is registered as a contractor or subcontractor by Commerce. The substitute amendment also prohibits a contractor or subcontractor from entering into contracts for construction activities with a person who is not registered as a contractor or subcontractor with Commerce. Further, the substitute amendment prohibits a contractor or subcontractor from claiming a lien for construction activities performed if the contractor or subcontractor is not registered with Commerce or if the contractor or subcontractor uses an unregistered subcontractor.

The substitute amendment authorizes Commerce to directly assess a forfeiture by issuing an order against any person who violates the requirements imposed upon contractors and subcontractors under the substitute amendment.

---

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

1           **SECTION 1.** 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act  
2 456, is amended to read:

3           101.02 **(20)** (a) For purposes of this subsection, "license" means a license,  
4 permit or certificate of certification or registration issued by the department under  
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),  
6 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,  
7 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035,  
8 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).



1           (2) "Contractor" means a person who engages, or offers to engage, in the  
2 business of construction and who contracts with the owner or lessor of a place of  
3 employment, a public building, or a dwelling to perform construction activities.

4           (3) "Dwelling" has the meaning given in s. 101.61 (1).

5           (4) "Subcontractor" means a person who enters into a contract with a  
6 contractor or subcontractor to perform construction activities.

7           **101.991 Departmental powers and duties.** The department shall do all of  
8 the following:

9           (1) Register, and issue a unique registration number to, any person who desires  
10 to act as a contractor or a subcontractor and who meets the requirements for  
11 registration established by the department under this subchapter.

12           (2) Establish an Internet site that consumers may use to determine all of the  
13 following:

14           (a) The name and address of every contractor and subcontractor registered by  
15 the department under this subchapter.

16           (b) The name of the contact person for every contractor and subcontractor  
17 registered by the department under this subchapter.

18           (c) Whether a contractor or subcontractor registered by the department under  
19 this subchapter carries a performance bond or other financial assurance to ensure  
20 the work of the contractor or subcontractor.

21           (3) Promulgate rules establishing all of the following:

22           (a) Standards for the registration of contractors and subcontractors.

23           (b) Application procedures for persons applying for registration under this  
24 subchapter.

1 (c) Conditions under which the department may suspend or revoke the  
2 registration of a contractor or subcontractor.

3 **101.992 Prohibitions.** (1) No person may hold himself or herself out or act  
4 as a contractor or subcontractor unless that person is registered as a contractor or  
5 subcontractor by the department under this subchapter.

6 (2) No contractor or subcontractor may do any of the following:

7 (a) Knowingly and with intent to evade any state or federal law, rule, or  
8 regulation coerce or induce a person to falsely declare that he or she is an  
9 independent contractor.

10 (b) Claim or maintain an action to enforce a lien described under s. 779.01 (3)  
11 if the contractor or subcontractor was not registered, as required under this  
12 subchapter, at the time the construction activities were performed.

13 ~~(3) No contractor may claim or maintain an action to enforce a lien described  
14 under s. 779.01 (3) for construction activities performed by a subcontractor, if that  
15 the construction activities were performed under a contract with the contractor and  
16 subcontractor was not registered, as required under this subchapter, at the time the  
17 the person who performed the construction activities  
18 construction activities were performed.  
19 (4) No subcontractor may claim or maintain an action to enforce a lien  
20 described under s. 779.01 (3) for construction activities performed by another  
21 subcontractor if that other subcontractor was not registered, as required under this  
22 subchapter, at the time the construction activities were performed.~~

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21 **101.993 Requirements.** Every person who is registered as a contractor or  
22 subcontractor by the department under this subchapter shall do all of the following:

23 (1) Display his or her registration number at his or her principal place of  
24 business.

*the construction activities were performed under a contract with the subcontractor and the person who performed the construction activities*

1           (2) Include his or her registration number on all construction bids and  
2 contracts and on all advertising.

3           **101.994 Registration term.** Registration under this subchapter shall be  
4 valid for a period of not more than 4 years and shall be renewable.

5           **101.995 Penalties. (1)** The department may directly assess a forfeiture by  
6 issuing an order against any person who violates s. 101.992 or 101.993. The  
7 department may not assess a forfeiture exceeding \$2,000 for each violation.

8           (2) The department shall promulgate rules specifying the procedures  
9 governing the assessment of forfeitures under this section including the following:

10           (a) The procedure for issuing an order for an alleged violation.

11           (b) The amount of a forfeiture that the department may assess for an alleged  
12 violation, subject to the limit under sub. (1).

13           (c) The procedure for contesting an order issued for an alleged violation.

14           (d) The procedure for contesting the assessment of a forfeiture for an alleged  
15 violation.

16           (3) The department shall remit all forfeitures paid under this section to the  
17 secretary of administration for deposit in the school fund.

18           (4) All forfeitures that are not paid as required under this section shall accrue  
19 interest at the rate of 12 percent per year.

20           (5) The attorney general may bring an action in the name of the state to collect  
21 any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or  
22 interest has not been paid after the exhaustion of all administrative and judicial  
23 reviews.

24           **SECTION 5. Nonstatutory provisions.**



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FROM THE  
LEGISLATIVE REFERENCE BUREAU**

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(3) No contractor may claim or maintain an action to enforce a lien described under s. 779.01 (3) for construction activities performed by another person if that person performed those construction activities under a contract with the contractor and that person was not registered, as required under this subchapter, at the time that the person performed the construction activities. ✓

(4) No subcontractor may claim or maintain an action to enforce a lien described under s. 779.01 (3) for construction activities performed by another person if that person performed those construction activities under a contract with the subcontractor and that person was not registered, as required under this subchapter, at the time that the person performed the construction activities. ✓