

**2013 DRAFTING REQUEST**

**Bill**

Received: 2/4/2014 Received By: gmalaise  
Wanted: As time permits Same as LRB:  
For: Cory Mason (608) 266-0634 By/Representing: Alex Madorsky  
May Contact: Drafter: gmalaise  
Subject: Employ Priv - job training Addl. Drafters:  
Employ Priv - prevailing wage Extra Copies:

Submit via email: YES  
Requester's email: Rep.Mason@legis.wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Employment of apprentices on state public works projects

**Instructions:**

See attached--draft up Governor Doyle's Executive Order No. 108

**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>
/?	gmalaise 2/4/2014	scalvin 2/14/2014		_____			
/P1	gmalaise 2/20/2014		jmurphy 2/14/2014	_____	lparisi 2/14/2014		State
/1		scalvin 2/20/2014	rschluet 2/20/2014	_____	sbasford 2/20/2014	rosrose 2/28/2014	State

FE Sent For:

@INTRO.

<END>

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FE Sent For:		/1 SAC 02/20/2014	/1 SAC 02/20/2014				

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/?	gmalaise						

\_\_\_\_\_

*Jm  
2/25*

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Gary, Aaron  
**Sent:** Monday, February 03, 2014 11:32 AM  
**To:** Hanaman, Cathlene; Malaise, Gordon  
**Subject:** FW: Drafting Request  
**Attachments:** Executive Order 108.pdf

Sorry, but here's a drafting request. I think the DOT part is secondary. Who wants to be the primary drafter on this one?

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

---

**From:** Madorsky, Alex  
**Sent:** Monday, February 03, 2014 11:20 AM  
**To:** Gary, Aaron  
**Subject:** Drafting Request

Good Morning Aaron,

Rep. Mason is hoping to have Gov. Doyle's Executive Order 108, attached, pertaining to use of apprentices by contractors in state construction projects, drafted as legislation. (The order was rescinded by Governor Walker). A preliminary draft would be great for now. Thanks!

**Alex Madorsky**  
**Office of State Representative Cory Mason**  
**66<sup>th</sup> Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0066



# The State of Wisconsin

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER # 108

#### Reaffirming Executive Branch Practice Relating to the Employment of Apprentices on State Construction Projects

**WHEREAS**, a well-trained construction workforce is critical to the ability of the State of Wisconsin to construct public projects; and

**WHEREAS**, apprenticeship training programs are very effective in providing training and experience to individuals seeking to enter or advance in the workforce; and

**WHEREAS**, by providing for apprenticeship utilization on public projects, state government can help create opportunities for training and experience that will help ensure a trained workforce for the future; and

**WHEREAS**, former Governor Patrick Lucey, by Executive Order, directed state governmental agencies to include a clause in state construction contracts requiring the employment of apprentices on such projects; and

**WHEREAS**, it is desirable to reaffirm the state's commitment to employment of apprentices on state construction projects;

**NOW THEREFORE, I, JIM DOYLE**, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the laws of this State, do hereby:

1. Direct the Departments of Administration and Transportation to include in chapters 16 and 84 construction contracts, a clause providing that as a condition to performing work under such contracts, contractors and subcontractors employing five (5) or more craft workers of trades apprenticeable in the state of Wisconsin, as determined by the Department of Workforce Development, shall meet one of the following requirements:
  - a. Employ or have employed at any time during the current or previous calendar year the maximum number of apprentices allowed by the training ratio for each trade included in the bid; or
  - b. Employ or have employed at any time during the current or previous calendar year a skilled workforce of at least ten percent apprentices for projects performed under Chapter 16 of the Wisconsin Statutes, and five percent for projects performed under Chapter 84 of the Wisconsin Statutes; or
  - c. Employ apprentices on a contract jobsite at the maximum ratio or, where the ratio is not jobsite specific, at ten percent of the contract hours to be performed on that site for projects performed under Chapter 16 of the Wisconsin Statutes, and five percent for projects performed under Chapter 84 of the Wisconsin Statutes; or

- d. Agree that "new hire apprentices" will be engaged at least at the maximum ratio of journey level workers to apprentices allowed under the standards established by the Department of Workforce Development; and
2. **Apprenticeship Program.** Consistent with this order, the Departments of Administration and Transportation shall ensure that no contracts or subcontracts are awarded for construction work performed on state-owned projects in Wisconsin unless the contractor is currently approved as a Wisconsin Trade Trainer or has applied for approval as an Apprenticeship Trade Trainer to the Department of Workforce Development and agrees to an acceptable apprenticeship program which includes specific ratios of apprentices in skills trades which have been determined as apprenticeable by the Department of Workforce Development; and
3. **Invitations for Bids.** The Departments of Administration and Transportation shall include in all invitations for bids or other solicitations used for construction contracts, a notice stating that as a condition to performing work under the contract, each contractor or subcontractor shall be required to agree to employ apprentices in accordance with this order; and
4. **Demonstration of Compliance.** All construction contracts subject to this order shall contain a provision requiring all contractors and subcontractors to maintain records to demonstrate compliance with the contract provisions implementing this order.

The Department of Workforce Development - Bureau of Apprenticeship Standards shall review the training programs with respect to meeting and maintaining an acceptable quality of training. In the event of failure to meet the contract provisions implementing this order, contractors and subcontractors shall be given an opportunity to demonstrate that every good faith effort was made to meet contract requirements. If the contractor or subcontractor is determined to be in compliance with the contract provisions implementing this order, or demonstrates that every good faith effort has been made to meet requirements of this order, no further action will be taken; and

5. **Subcontractor Compliance.** Contractors shall not be responsible for their subcontractors complying with any contract provisions implementing this order; and
6. **Exemptions and Modifications.** Reasonable exemptions and modifications to and from any or all requirements of this order and its policy guidelines will be determined by the Department of Workforce Development - Bureau of Apprenticeship Standards using criteria that may include but is not limited to the following:
  - a. The occupation is apprenticeable;
  - b. A demonstrated lack of availability of apprentices in specific geographic areas;
  - c. Program unsuitability or unavailability;
  - d. A disproportionately high ratio of material costs to labor hours;
  - e. A documented depression of the local construction market;
  - f. Specific safety or certification considerations;

- g. The necessity to meet Equal Employment Opportunity or other legal workforce participation requirements; or
- h. Receipt and approval by the Department of Workforce Development of an "intent to comply" letter in regard to work performed on future projects from a "first time contractor," where applicable;

A request for an exemption or modification, with justification, shall be made in writing, addressed to Department of Workforce Development - Bureau of Apprenticeship Standards, P.O. Box 7972, Madison, WI 53707; and

**7. Definitions.**

- a. The term "apprentice" refers to a person registered as such under Chapter 106 of the Wisconsin Statutes;
- b. The term "Apprenticeship Trade Trainer" refers to contractors and sub-contractors who meet the specific established trade standards for training apprentices and have been approved by the Department of Workforce Development. Contractors who do not meet the standards for a Trade Trainer established by the Department of Workforce Development will not be excluded from bidding on state projects;
- c. The term "First Time Contractor" refers to a contractor or subcontractor who was or is unintentionally not in compliance with the provisions of this order on the first project performed under contract covered by this order, after the effective date of this order; and
- d. The term "new hire apprentices" refers to apprentices or journey workers hired in addition to a contractor's or subcontractor's existing or pre-existing workforce, or, as a replacement for an employee disengaged from employment by said contractor. A "new hire" does not include the reemployment of an employee who was temporarily laid off; and

**8. Scope and Effective Date.**

- a. This order shall apply to projects for which the invitations for bids or other solicitations for bids are published on or after January 1, 2006;
- b. This order shall apply to all projects under Chapters 16 and 84 of the Wisconsin Statutes that meet the minimum cost thresholds for prevailing wage determinations under Chapter 66 of the Wisconsin Statutes; and

**9. General Provisions.**

- a. Nothing in this order shall require the Departments of Administration or Transportation to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law;
- b. If any provision in this order conflicts with any laws, rules, or other legal requirements or obligations imposed by state or federal law, the state or federal law shall control;
- c. Nothing in this order creates any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Wisconsin, its agencies or any person; and

d. Nothing in this order shall be interpreted to require the employment of apprentices to the extent that employment may result in the displacement of journey workers employed by a performing contractor.



By the Governor:

*Douglas La Follette*  
DOUGLAS LA FOLLETTE  
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twenty-ninth day of June, in the year two thousand five.

*Jim Doyle*  
\_\_\_\_\_  
JIM DOYLE  
Governor



State of Wisconsin  
2009 - 2010 LEGISLATURE

IN 214

Free if possible  
(cmh)  
stays

- 4189 / P1

LRB-1686/31  
GMM: [unclear] sac

18

2009 BILL

relating to the employment and training of apprentices

Also, under current law, if DWD grants an exception or modification to any requirement in any contract for the performance of work on a state public works project relating to the employment and training of apprentices in which work is performed by employees employed in apprenticeable trades (project), DWD must post that information on its Internet site, together with a detailed explanation of why the exception or modification was granted.

Regulate

- 1 AN ACT to amend 111.322 (2m) (a) and 111.322 (2m) (b); and to create 106.04
- 2 of the statutes; relating to: the employment of apprentices on state public
- 3 works projects.

\$100,000

Analysis by the Legislative Reference Bureau

Under current law, a multiple-trade state public works project whose estimated project cost of completion is ~~\$234,000~~ or more and a single-trade state public works project whose estimated project cost of completion is \$48,000 or more are subject to the prevailing wage law, which requires workers employed on the site of the project to be paid at a prevailing wage rate determined by the Department of Workforce Development (DWD).

This bill requires a state agency that enters into a contract for the performance of work on a public works project in which work is performed by employees employed in apprenticeable trades (project) to include in that contract a provision requiring that as a condition to performing that work a contractor, subcontractor, or agent of a contractor or subcontractor that employs five or more employees in apprenticeable trades (employer): 1) have an apprenticeship training program that has been approved by DWD or have an application pending for that approval at the time the bid to perform work on the project is submitted; and 2) be certified by DWD as the sponsor of an acceptable apprenticeship program. Under the bill, if a state agency determines that an employer is not in compliance with those requirements and has not demonstrated that every good faith effort was made to meet those requirements, the state agency must bring an action for breach of contract.

Eliminate that posting requirement and instead

**BILL**

To be certified as the sponsor of an acceptable apprenticeship program, an employer must show that at any time in the current or preceding year the employer employed either of the following:

1. The maximum number of apprentices allowed under the employer's training ratio for each trade employed by the employer. (The bill defines "training ratio" as the ratio of apprentices to journeymen that may be employed by an employer in a given trade under standards adopted, recognized, or approved by DWD.)

2. In the case of an employer that is seeking certification to perform work on projects other than highway projects, a skilled workforce in which not less than ten percent of the employees are apprentices or, in the case of an employer seeking certification to perform work on highway projects, a skilled workforce in which not less than five percent of the employees are apprentices. (The bill defines "skilled workforce" as that portion of an employer's workforce that consists of employees who are employed in apprenticeable trades.)

If an employer is unable to meet either of those requirements, the employer still may be certified as the sponsor of an acceptable apprenticeship program for a particular project by making a commitment that the employer will employ on the project any of the following:

1. The maximum number of apprentices allowed under the employer's training ratio for each trade included in the bid to perform work on the project.

2. In the case of an employer that is seeking certification to perform work on a project other than a highway project, a skilled workforce in which not less than ten percent of the hours of work that will be performed on the site of the project will be performed by apprentices or, in the case of an employer seeking certification to perform work on a highway project, a skilled workforce in which not less than five percent of the hours of work that will be performed on the site of the project will be performed by apprentices.

3. New hires so as to achieve the maximum number of apprentices allowed under the employer's training ratio for each trade included in the bid to perform work on the project.

The bill permits DWD to grant an exemption from or modification to the requirements under the bill on a showing of good cause why the employer cannot comply with those requirements. Reasons for granting an exemption or modification include a demonstrated lack of apprentices available in the area of the project, the unsuitability of the employer's apprenticeship training program for the project or the unavailability of that program at the site of the project, a disproportionately high ratio of material costs to labor hours on the project, a documented depression in the construction industry in the area of the project, specific safety or certification considerations, or the necessity of meeting any equal employment opportunity, affirmative action, or other workforce participation requirements.

Finally, the bill requires DWD to monitor compliance with the bill and to monitor the age, race, and sex of the apprentices employed by an employer and the hours worked by those apprentices.

\*

As under current law, if DWD grants such an exemption or modification, DWD must post that information on its internet site together with a detailed explanation of why the exemption or modification was granted.

**BILL**

For further information see the *state* 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:*

SECTION 1. 106.04 of the statutes is created to read:

~~106.04 Employment of apprentices on state public works projects. (1)~~

DEFINITIONS. In this section:

(a) "Apprenticeship trade trainer" means an employer whose apprenticeship training program has been approved by the department under sub. ~~(3)~~ <sup>(3m)</sup>

(b) "Employer" means a contractor, subcontractor, or agent of a contractor or subcontractor that employs 5 or more employees in trades that are apprenticeable under this subchapter.

(c) "New hire" means an apprentice or journeyman who is hired by an employer after the employer submits a bid to perform work on a project.

~~(d) "Project" means a project of public works that is subject to s. 103.49 or 103.50 in which work is performed by employees employed in trades that are apprenticeable under this subchapter.~~

(e) "Skilled workforce" means that portion of the workforce of an employer that consists of employees who are employed in trades that are apprenticeable under this subchapter.

(f) "Training ratio" means the ratio of apprentices to journeymen that may be employed by an employer in a given trade under standards adopted, recognized, or approved by the department.

(2) EMPLOYMENT OF APPRENTICES. (a) Subject to par. (b) and sub. (5), a state agency that enters into a contract for the performance of work on a project shall

(use twice)

106.04 (1)

(1) (a) to (c) are

(3) (3m)

106.04  
106.04

(a)

(20)

SEC CR; 106.04 (1) (e) and (f)

SEC CR; 106.04 (2)

**BILL**

~~SECRET 106.04 (2) 3m~~

Insert 4-13

1 include in that contract a provision requiring that as a condition to performing that  
2 work an employer meet all of the following requirements:

3 1. Be approved as an apprenticeship trade trainer or have an application  
4 pending for that approval at the time the bid to perform work on the project is  
5 submitted.

6 2. Be certified as the sponsor of an acceptable apprenticeship program under  
7 sub. (4).

8 (b) Paragraph (a) does not require the employment of an apprentice if that  
9 employment would displace any journeyman employed by an employer.

10 (c) A reference to the requirements under par. (a) shall be published in the  
11 notice issued for the purpose of securing bids for the project and shall be posted by  
12 the state agency in at least one conspicuous and easily accessible place on the site  
13 of the project. 106.04 (3m)

14 (3) APPRENTICESHIP TRAINING. Before submitting a bid to perform work on a  
15 project, an employer shall apply to the department for approval of the employer's  
16 apprenticeship training program. If the training program meets an acceptable  
17 quality of training, as determined by the department, the department shall approve  
18 that training program and certify the employer as an apprenticeship trade trainer.  
19 After certification, the department shall periodically review an apprenticeship trade  
20 trainer's apprentice training program to ensure that the trainer is meeting an  
21 acceptable quality of training. 106.04 (3m)

22 (4) ACCEPTABLE APPRENTICESHIP PROGRAM. (a) Before submitting a bid to  
23 perform work on a project, an employer shall submit information to the department  
24 showing that the employer's total skilled workforce meets any of the requirements  
25 specified in par. (b) 1. or 2. or, if the employer cannot meet any of those requirements,

~~SECRET 106.04 (2) (17)~~

**BILL**

skilled

1 the employer shall make a commitment that the employer's skilled workforce for the  
2 project will meet any of the requirements specified in par. (c) 1., 2., or 3. If an  
3 employer's total skilled workforce or workforce for the project meets any of those  
4 requirements, the department shall certify that the employer is the sponsor of an  
5 acceptable apprenticeship program. A certification under par. (b) is valid for one year  
6 after the date of the certification. A certification under par. (c) is valid for the  
7 duration of the project, so long as the employer submits payrolls and other records  
8 and information to the department showing the employer's compliance with the  
9 commitment made under par. (c).

10 (b) The department shall certify that an employer is the sponsor of an  
11 acceptable apprenticeship program if at any time in the current or preceding year the  
12 employer employed any of the following:

13 1. The maximum number of apprentices allowed under the employer's training  
14 ratio for each trade employed by the employer.

15 2. In the case of an employer that is seeking certification to perform work on  
16 projects that are subject to s. 103.49, a skilled workforce in which not less than 10  
17 percent of the employees are apprentices or, in the case of an employer seeking  
18 certification to perform work on projects that are subject to s. 103.50, a skilled  
19 workforce in which not less than 5 percent of the employees are apprentices.

20 (c) The department shall certify that an employer is the sponsor of an  
21 acceptable apprenticeship program for purposes of performing work on a particular  
22 project if the employer commits to employing on the project any of the following:

23 1. The maximum number of apprentices allowed under the employer's training  
24 ratio for each trade included in the bid to perform work on the project.

**BILL**

1           2. In the case of an employer that is seeking certification to perform work on  
 2 a project that is subject to s. 103.49, a skilled workforce in which not less than 10  
 3 percent of the hours of work that will be performed on the site of the project will be  
 4 performed by apprentices or, in the case of an employer seeking certification to  
 5 perform work on a project that is subject to s. 103.50, a skilled workforce in which  
 6 not less than 5 percent of the hours of work that will be performed on the site of the  
 7 project will be performed by apprentices.

8           3. New hires so as to achieve the maximum number of apprentices allowed  
 9 under the employer's training ratio for each trade included in the bid to perform work  
 10 on the project.

11           (5) EXEMPTIONS AND MODIFICATIONS. An employer may apply to the department  
 12 for an exemption from or modification to the requirements under sub. (2) (a). A  
 13 request for an exemption or modification shall include a showing of good cause why  
 14 the employer cannot comply with those requirements. If the department finds good  
 15 cause for an employer's inability to comply with those requirements, the department  
 16 may grant the requested exemption or modification. Reasons for granting an  
 17 exemption or modification include all of the following:

18           1. A demonstrated lack of apprentices available in the area of the project.

19           2. The unsuitability of the employer's apprenticeship training program for the  
 20 project or the unavailability of that program at the site of the project.

21           3. A disproportionately high ratio of material costs to labor hours on the  
 22 project.

23           4. A documented depression in the construction industry in the area of the  
 24 project.

25           5. Specific safety or certification considerations.

**BILL**

1

2     6. (6) The necessity of meeting any equal employment opportunity, affirmative  
3     action, or other workforce participation requirements under any federal, state, or  
4     local laws, regulations, rules, or ordinances.

4

5           (6) COMPLIANCE. (a) The department shall monitor compliance with this  
6     section. In monitoring that compliance the department shall also monitor the age,  
7     race, and sex of the apprentices employed by an employer performing work on a  
8     project and the hours worked by those apprentices. To that end, each employer  
9     performing work on a project shall keep copies of payrolls and other records and  
10    information as necessary for the department to perform that monitoring. The  
11    department may demand and examine, and each employer shall furnish upon  
12    request by the department, copies of those payrolls and other records and  
13    information. The department may inspect records in the manner provided in ch. 103.  
14    Every employer performing work on a project is subject to the requirements of ch. 103  
15    relating to the examination of records.

15

(b) If an employer fails to meet the requirements of a contract under sub. (2)

16

17    (a) implementing this section, the state agency that entered into the contract shall  
18    give the employer the opportunity to demonstrate that every good faith effort was  
19    made to meet the requirements of the contract. If the state agency determines that  
20    the employer is in compliance with the contract or has demonstrated that every good  
21    faith effort was made to meet those requirements, no further action shall be taken.  
22    If the state agency determines that the employer is not in compliance with the  
23    contract and has not demonstrated that every good faith effort was made to meet  
24    those requirements, the state agency shall bring an action for breach of contract.

**BILL**

1 (c) An employer is responsible only for its own compliance with the  
 2 requirements of a contract under sub. (2) (a) and is not responsible for compliance  
 3 with those requirements by any other employer.

4 (d) Section 111.322 (2m) applies to discharge and other discriminatory acts  
 5 arising in connection with any proceeding under this section.

6 (7) CONSTRUCTION. Nothing in this section shall be construed as creating any  
 7 right, benefit, claim, or remedy enforceable against the state, any state agency, or  
 8 any officer or employee of the state or of any state agency.

9 ~~SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:~~

10 ~~111.322 (2m) (a) The individual files a complaint or attempts to enforce any~~  
 11 ~~right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,~~  
 12 ~~106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to~~  
 13 ~~103.82.~~

14 ~~SECTION 3. 111.322 (2m) (b) of the statutes is amended to read:~~

15 ~~111.322 (2m) (b) The individual testifies or assists in any action or proceeding~~  
 16 ~~held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,~~  
 17 ~~103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to~~  
 18 ~~101.599 or 103.64 to 103.82.~~

19 (END)

Insert #4-13

SEC RA 106.04 (5)(b)

Section #. 106.04 (3) of the statutes is amended to read:

(5)(b)  
(5)(b)

exemption  
exemption

(use twice)  
(use twice)

under par. (a)

106.04 (3) ~~Waiver~~. If the department grants an ~~exception~~ or modification to ~~any requirement~~ in any contract for the performance of work on a project relating to the employment and training of ~~apprentices~~, the department shall post that information on its Internet site, together with a detailed explanation of why the ~~exception~~ or modification was granted.

History: 2009 a. 28.

(4), (5), (6) and

CR 106.04 (3m) (7)  
SEC (12); 106.04 (3m) (7)

(end of insert)  
(end of X)

## **Malaise, Gordon**

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**From:** Madorsky, Alex  
**Sent:** Thursday, February 20, 2014 9:00 AM  
**To:** Malaise, Gordon  
**Subject:** LRB-4189/P!

Good Morning Gordon,

We'd like this preliminary draft re-drafted so it's ready for introduction. Thank you!

**Alex Madorsky**  
**Office of State Representative Cory Mason**  
**66<sup>th</sup> Assembly District**  
State Capitol, Room 6 North  
PO Box 8953, Madison, WI 53708  
Phone: (608) 266-0634  
Toll-free: (888) 534-0066



State of Wisconsin  
2013-2014 LEGISLATURE



LRB-4189/P1

GMM:sac:jmg

IV 2/20  
convert k/l

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

no change  
Today if possible

Gen cost

1 AN ACT to renumber and amend 106.04 (3); and to create 106.04 (1) (a) to (c),  
2 106.04 (1) (e) and (f); 106.04 (2) and 106.04 (3m), (4), (5), (6) and (7) of the  
3 statutes; relating to: the employment of apprentices on state public works  
4 projects.

**Analysis by the Legislative Reference Bureau**

Under current law, a multiple-trade state public works project whose estimated project cost of completion is \$100,000 or more and a single-trade state public works project whose estimated project cost of completion is \$48,000 or more are subject to the prevailing wage law, which requires workers employed on the site of the project to be paid at a prevailing wage rate determined by the Department of Workforce Development (DWD). Also, under current law, if DWD grants an exception or modification to any requirement relating to the employment and training of apprentices in any contract for the performance of work on a state public works project in which work is performed by employees employed in apprenticeable trades (project), DWD must post that information on its Internet site, together with a detailed explanation of why the exception or modification was granted.

This bill requires a state agency that enters into a contract for the performance of work on a project to include in that contract a provision requiring that as a condition to performing that work a contractor, subcontractor, or agent of a contractor or subcontractor that employs five or more employees in apprenticeable trades (employer): 1) have an apprenticeship training program that has been approved by DWD or have an application pending for that approval at the time the

bid to perform work on the project is submitted; and 2) be certified by DWD as the sponsor of an acceptable apprenticeship program. Under the bill, if a state agency determines that an employer is not in compliance with those requirements and has not demonstrated that every good faith effort was made to meet those requirements, the state agency must bring an action for breach of contract.

To be certified as the sponsor of an acceptable apprenticeship program, an employer must show that at any time in the current or preceding year the employer employed either of the following:

1. The maximum number of apprentices allowed under the employer's training ratio for each trade employed by the employer. (The bill defines "training ratio" as the ratio of apprentices to journeymen that may be employed by an employer in a given trade under standards adopted, recognized, or approved by DWD.)

2. In the case of an employer that is seeking certification to perform work on projects other than highway projects, a skilled workforce in which not less than ten percent of the employees are apprentices or, in the case of an employer seeking certification to perform work on highway projects, a skilled workforce in which not less than five percent of the employees are apprentices. (The bill defines "skilled workforce" as that portion of an employer's workforce that consists of employees who are employed in apprenticeable trades.)

If an employer is unable to meet either of those requirements, the employer still may be certified as the sponsor of an acceptable apprenticeship program for a particular project by making a commitment that the employer will employ on the project any of the following:

1. The maximum number of apprentices allowed under the employer's training ratio for each trade included in the bid to perform work on the project.

2. In the case of an employer that is seeking certification to perform work on a project other than a highway project, a skilled workforce in which not less than ten percent of the hours of work that will be performed on the site of the project will be performed by apprentices or, in the case of an employer seeking certification to perform work on a highway project, a skilled workforce in which not less than five percent of the hours of work that will be performed on the site of the project will be performed by apprentices.

3. New hires so as to achieve the maximum number of apprentices allowed under the employer's training ratio for each trade included in the bid to perform work on the project.

The bill permits DWD to grant an exemption from or modification to the requirements under the bill on a showing of good cause why the employer cannot comply with those requirements. Reasons for granting an exemption or modification include a demonstrated lack of apprentices available in the area of the project, the unsuitability of the employer's apprenticeship training program for the project or the unavailability of that program at the site of the project, a disproportionately high ratio of material costs to labor hours on the project, a documented depression in the construction industry in the area of the project, specific safety or certification considerations, or the necessity of meeting any equal employment opportunity, affirmative action, or other workforce participation requirements. As under current

law, if DWD grants such an exemption or modification, DWD must post that information on its Internet site, together with a detailed explanation of why the exemption or modification was granted.

Finally, the bill requires DWD to monitor compliance with the bill and to monitor the age, race, and sex of the apprentices employed by an employer and the hours worked by those apprentices.

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

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

1           **SECTION 1.** 106.04 (1) (a) to (c) of the statutes are created to read:

2           106.04 (1) (a) “Apprenticeship trade trainer” means an employer whose  
3           apprenticeship training program has been approved by the department under sub.  
4           (3m).

5           (b) “Employer” means a contractor, subcontractor, or agent of a contractor or  
6           subcontractor that employs 5 or more employees in trades that are apprenticeable  
7           under this subchapter.

8           (c) “New hire” means an apprentice or journeyman who is hired by an employer  
9           after the employer submits a bid to perform work on a project.

10          **SECTION 2.** 106.04 (1) (e) and (f) of the statutes are created to read:

11          106.04 (1) (e) “Skilled workforce” means that portion of the workforce of an  
12          employer that consists of employees who are employed in trades that are  
13          apprenticeable under this subchapter.

14          (f) “Training ratio” means the ratio of apprentices to journeymen that may be  
15          employed by an employer in a given trade under standards adopted, recognized, or  
16          approved by the department.

17          **SECTION 3.** 106.04 (2) of the statutes is created to read:

1           **106.04 (2) EMPLOYMENT OF APPRENTICES.** (a) Subject to par. (b) and sub. (5) (a),  
2 a state agency that enters into a contract for the performance of work on a project  
3 shall include in that contract a provision requiring that as a condition to performing  
4 that work an employer meet all of the following requirements:

5           1. Be approved as an apprenticeship trade trainer or have an application  
6 pending for that approval at the time the bid to perform work on the project is  
7 submitted.

8           2. Be certified as the sponsor of an acceptable apprenticeship program under  
9 sub. (4).

10           (b) Paragraph (a) does not require the employment of an apprentice if that  
11 employment would displace any journeyman employed by an employer.

12           (c) A reference to the requirements under par. (a) shall be published in the  
13 notice issued for the purpose of securing bids for the project and shall be posted by  
14 the state agency in at least one conspicuous and easily accessible place on the site  
15 of the project.

16           **SECTION 4.** 106.04 (3) of the statutes is renumbered 106.04 (5) (b) and amended  
17 to read:

18           **106.04 (5) (b) ~~WAIVER.~~** If the department grants an ~~exception~~ exemption or  
19 ~~modification to any requirement in any contract for the performance of work on a~~  
20 ~~project relating to the employment and training of apprentices under par. (a),~~ the  
21 department shall post that information on its Internet site, together with a detailed  
22 explanation of why the ~~exception~~ exemption or modification was granted.

23           **SECTION 5.** 106.04 (3m), (4), (5), (6) and (7) of the statutes are created to read:

24           **106.04 (3m) APPRENTICESHIP TRAINING.** Before submitting a bid to perform work  
25 on a project, an employer shall apply to the department for approval of the employer's

1 apprenticeship training program. If the training program meets an acceptable  
2 quality of training, as determined by the department, the department shall approve  
3 that training program and certify the employer as an apprenticeship trade trainer.  
4 After certification, the department shall periodically review an apprenticeship trade  
5 trainer's apprentice training program to ensure that the trainer is meeting an  
6 acceptable quality of training.

7 (4) ACCEPTABLE APPRENTICESHIP PROGRAM. (a) Before submitting a bid to  
8 perform work on a project, an employer shall submit information to the department  
9 showing that the employer's total skilled workforce meets any of the requirements  
10 specified in par. (b) 1. or 2. or, if the employer cannot meet any of those requirements,  
11 the employer shall make a commitment that the employer's skilled workforce for the  
12 project will meet any of the requirements specified in par. (c) 1., 2., or 3. If an  
13 employer's total skilled workforce or skilled workforce for the project meets any of  
14 those requirements, the department shall certify that the employer is the sponsor of  
15 an acceptable apprenticeship program. A certification under par. (b) is valid for one  
16 year after the date of the certification. A certification under par. (c) is valid for the  
17 duration of the project, so long as the employer submits payrolls and other records  
18 and information to the department showing the employer's compliance with the  
19 commitment made under par. (c).

20 (b) The department shall certify that an employer is the sponsor of an  
21 acceptable apprenticeship program if at any time in the current or preceding year the  
22 employer employed any of the following:

23 1. The maximum number of apprentices allowed under the employer's training  
24 ratio for each trade employed by the employer.

1           2. In the case of an employer that is seeking certification to perform work on  
2 projects that are subject to s. 103.49, a skilled workforce in which not less than 10  
3 percent of the employees are apprentices or, in the case of an employer seeking  
4 certification to perform work on projects that are subject to s. 103.50, a skilled  
5 workforce in which not less than 5 percent of the employees are apprentices.

6           (c) The department shall certify that an employer is the sponsor of an  
7 acceptable apprenticeship program for purposes of performing work on a particular  
8 project if the employer commits to employing on the project any of the following:

9           1. The maximum number of apprentices allowed under the employer's training  
10 ratio for each trade included in the bid to perform work on the project.

11           2. In the case of an employer that is seeking certification to perform work on  
12 a project that is subject to s. 103.49, a skilled workforce in which not less than 10  
13 percent of the hours of work that will be performed on the site of the project will be  
14 performed by apprentices or, in the case of an employer seeking certification to  
15 perform work on a project that is subject to s. 103.50, a skilled workforce in which  
16 not less than 5 percent of the hours of work that will be performed on the site of the  
17 project will be performed by apprentices.

18           3. New hires so as to achieve the maximum number of apprentices allowed  
19 under the employer's training ratio for each trade included in the bid to perform work  
20 on the project.

21           (5) EXEMPTIONS AND MODIFICATIONS. (a) An employer may apply to the  
22 department for an exemption from or modification to the requirements under sub.  
23 (2) (a). A request for an exemption or modification shall include a showing of good  
24 cause why the employer cannot comply with those requirements. If the department  
25 finds good cause for an employer's inability to comply with those requirements, the

1 department may grant the requested exemption or modification. Reasons for  
2 granting an exemption or modification include all of the following:

- 3 1. A demonstrated lack of apprentices available in the area of the project.
- 4 2. The unsuitability of the employer's apprenticeship training program for the  
5 project or the unavailability of that program at the site of the project.
- 6 3. A disproportionately high ratio of material costs to labor hours on the project.
- 7 4. A documented depression in the construction industry in the area of the  
8 project.
- 9 5. Specific safety or certification considerations.
- 10 6. The necessity of meeting any equal employment opportunity, affirmative  
11 action, or other workforce participation requirements under any federal, state, or  
12 local laws, regulations, rules, or ordinances.

13 **(6) COMPLIANCE.** (a) The department shall monitor compliance with this  
14 section. In monitoring that compliance the department shall also monitor the age,  
15 race, and sex of the apprentices employed by an employer performing work on a  
16 project and the hours worked by those apprentices. To that end, each employer  
17 performing work on a project shall keep copies of payrolls and other records and  
18 information as necessary for the department to perform that monitoring. The  
19 department may demand and examine, and each employer shall furnish upon  
20 request by the department, copies of those payrolls and other records and  
21 information. The department may inspect records in the manner provided in ch. 103.  
22 Every employer performing work on a project is subject to the requirements of ch. 103  
23 relating to the examination of records.

24 (b) If an employer fails to meet the requirements of a contract under sub. (2)  
25 (a) implementing this section, the state agency that entered into the contract shall

1 give the employer the opportunity to demonstrate that every good faith effort was  
2 made to meet the requirements of the contract. If the state agency determines that  
3 the employer is in compliance with the contract or has demonstrated that every good  
4 faith effort was made to meet those requirements, no further action shall be taken.  
5 If the state agency determines that the employer is not in compliance with the  
6 contract and has not demonstrated that every good faith effort was made to meet  
7 those requirements, the state agency shall bring an action for breach of contract.

8 (c) An employer is responsible only for its own compliance with the  
9 requirements of a contract under sub. (2) (a) and is not responsible for compliance  
10 with those requirements by any other employer.

11 (d) Section 111.322 (2m) applies to discharge and other discriminatory acts  
12 arising in connection with any proceeding under this section.

13 (7) CONSTRUCTION. Nothing in this section shall be construed as creating any  
14 right, benefit, claim, or remedy enforceable against the state, any state agency, or  
15 any officer or employee of the state or of any state agency.

16 (END)

**Rose, Stefanie**

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**From:** Madorsky, Alex  
**Sent:** Friday, February 28, 2014 2:00 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -4189/1 Topic: Employment of apprentices on state public works projects

Please Jacket LRB -4189/1 for the ASSEMBLY.