



State of Wisconsin
2015 - 2016 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 32**

July 6, 2015 - Offered by Representative HUTTON.

1 **AN ACT to repeal** 66.0903 (1) (a), (am), (b), (cm), (dr), (em), (hm) and (im), 66.0903
2 (1m) (a) 1. to 3., 66.0903 (2) to (12), 103.49 (title), 103.49 (1) (a), (bg) and (d),
3 103.49 (3), (4r) and (5), 103.49 (6m) (f), 103.49 (7), 103.50 (title) and (1), 103.50
4 (3) to (5), 103.50 (7) (f), 104.001 (3) (a), 227.01 (13) (t), 229.682 (2) and 229.8275;
5 **to renumber** 103.49 (1) (intro.), (am), (b), (bj), (br), (c), (em), (f), (fm) and (g),
6 (1m) and (3g), 103.49 (6m) (title) and 103.49 (6m) (b) to (e); **to renumber and**
7 **amend** 66.0903 (1m) (a) (intro.), 103.49 (2), 103.49 (2m), 103.49 (6m) (ag),
8 103.49 (6m) (am), 103.50 (2), 103.50 (2g), 103.50 (2m), 103.50 (6), 103.50 (7)
9 (title) and (a) to (e) and 103.50 (8); **to consolidate, renumber and amend**
10 104.001 (3) (intro.) and (b); **to amend** 19.36 (12), 66.0129 (5), 66.0903 (1) (c),
11 66.0903 (1) (f), 66.0903 (1) (j), 66.0903 (1m) (b), 84.41 (3), 103.005 (12) (a),
12 103.503 (1) (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (g), 103.503 (2),
13 103.503 (3) (a) 2., 106.04 (1) (d), 109.09 (1), 111.322 (2m) (a), 111.322 (2m) (b),

1 111.322 (2m) (c), 946.15 (1), 946.15 (2), 946.15 (3), 946.15 (4) and 978.05 (6) (a);
2 **to repeal and recreate** 66.0903 (title) and 66.0903 (1) (g); and **to create**
3 16.856 and 84.062 of the statutes; **relating to:** elimination of the requirement
4 that laborers, workers, mechanics, and truck drivers employed on the site of a
5 local project of public works be paid the prevailing wage, enforcement and
6 administration of the prevailing wage laws, calculation of the prevailing wage
7 rate, persons covered under the prevailing wage law, remedies available for a
8 violation of the prevailing wage law, providing an exemption from emergency
9 rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This substitute amendment: 1) repeals the prevailing wage law that applies to local projects of public works; 2) requires the use of federally determined prevailing wage rates on state projects of public works, instead of rates determined by the Department of Workforce Development (DWD); 3) transfers much of DWD's existing role in enforcing and administering the prevailing wage law to the Department of Administration (DOA); 4) eliminates various statutory provisions with respect to the enforcement and administration of the prevailing wage law for state projects other than state highway projects and provides DOA with rule-making authority to enforce and administer the prevailing wage law for those state projects; 5) excludes certain persons from coverage under the prevailing wage law; 6) restricts the remedies that are available for a violation of the prevailing wage law; and 7) makes certain other changes regarding enforcement of the prevailing wage law.

Applicability of the prevailing wage law

Under the current prevailing wage law, laborers, workers, mechanics, and truck drivers employed on the site of certain state and local projects of public works (generally single-trade projects whose estimated cost of completion is \$48,000 or more and multiple-trade projects whose estimated cost of completion is \$100,000 or more) 1) must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the area in which the project is located, as determined by DWD; and 2) may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, which is no more than 10 hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (commonly referred to as overtime pay) for all hours worked in excess of the prevailing hours of labor. Also under current law, no local government may enact or administer a prevailing wage law ordinance or any similar ordinance.

This substitute amendment eliminates the prevailing wage law with respect to projects of public works undertaken by local governmental units, but retains the prohibition against local governmental units enacting or administering their own prevailing wage laws or similar ordinances.

Determination of prevailing wage rate; enforcement and administration of prevailing wage law

Under current law, the prevailing wage rate is defined as the hourly basic rate of pay, plus the hourly contribution for bona fide economic benefits, paid for a majority of the hours worked in a trade or occupation in the area in which the project is located, except that, if there is no rate at which a majority of those hours is paid, “prevailing wage rate” means the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for the highest-paid 51 percent of hours worked in a trade or occupation in the area. Current law requires DWD to conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects that are subject to the prevailing wage law and to inform itself as to the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. Current law also contains certain other provisions regarding the calculation of prevailing wage rates by DWD, including provisions allowing for persons to request recalculations of the prevailing wage rates.

The substitute amendment repeals all provisions directing DWD to determine prevailing wage rates and redefines “prevailing wage rate” to instead mean the applicable prevailing wage rate as determined by the U.S. Department of Labor under the federal Davis-Bacon Act.

The substitute amendment eliminates DWD’s other powers and responsibilities with respect to enforcing and administering the prevailing wage laws on state projects of public works, except that the substitute amendment retains DWD’s authority to enforce the prevailing wage law through the wage claim enforcement law. The substitute amendment also eliminates a requirement that state agencies post prevailing wage rates and hours of labor on the sites of state projects other than state highway projects. The substitute amendment instead requires DOA to promulgate rules to enforce the prevailing wage laws on state projects other than state highway projects. The substitute amendment retains enforcement and oversight of the prevailing wage law on state highway projects by the Department of Transportation (DOT).

Coverage under prevailing wage law

Under current law, a person employed to process, manufacture, pick up, or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment supplies processed or manufactured materials or products or from a facility that is not dedicated exclusively, or nearly so, to a project of public works that is subject to the prevailing wage law is not covered under the prevailing wage law unless: 1) the person is employed to go to the source of mineral aggregate such as sand, gravel, or stone and deliver that mineral aggregate to the site of a project of public works that is subject to the prevailing wage law by depositing the material directly in final place; or 2) the person is employed to

go to the site of a project of public works that is subject to the prevailing wage law, pick up excavated material or spoil from the site of the project, and transport it away from the site of the project.

The substitute amendment instead provides that persons who are employed to transport mineral aggregate to the site of a project or to transport excavated material or spoil away from the site of a project are not covered under the prevailing wage law.

Remedies for a violation of the prevailing wage law

Under current law, with respect to projects other than state highway projects, a contractor that fails to pay the prevailing wage rate or overtime pay to an employee as required under the prevailing wage law is liable to the affected employee for the amount of unpaid wages and overtime pay, plus liquidated damages in an amount equal to 100 percent of the unpaid wages and overtime pay.

This substitute amendment eliminates a contractor's liability for those liquidated damages.

Other changes

In addition, the substitute amendment:

1. Provides that DOA or DOT must conduct an investigation to determine compliance with the prevailing wage law upon request, but only if the requestor is a person who is an employee performing work on a prevailing wage project. Current law requires such an inspection on the request of any person.

2. Requires a person not employed by DOA, DOT, or DWD or by a contracting state agency who contacts an employee performing work on a project for the purpose of investigating compliance with the prevailing wage law to provide a written statement to the employee stating that the person is not affiliated with DOA, DOT, or DWD or the contracting state agency and disclosing the principal source of funding for the investigation.

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

1 **SECTION 1.** 16.856 of the statutes is created to read:

2 **16.856 Prevailing wage.** (1) (f) "Prevailing wage rate" means the applicable
3 prevailing wage rate for an area, as determined by the U.S. department of labor
4 under 40 USC 3142.

5 **(5) DISCLOSURE.** If a person who is not an employee of the department or the
6 contracting state agency or who is not an employee of the department of workforce
7 development conducting an investigation under s. 109.09 contacts an employee
8 performing the work described in sub. (2m) for the purpose of investigating

1 compliance with this section, the person shall provide a written statement to the
2 employee stating that the person is not affiliated with the department, the
3 contracting state agency, or the department of workforce development and disclosing
4 the principal source of funding for the investigation.

5 **(7) RULES; ENFORCEMENT.** (a) The department shall promulgate any rules that
6 the department determines are necessary to implement and ensure compliance with
7 this section.

8 (b) If requested by any person performing the work described in sub. (2m), the
9 department shall inspect the payroll records of any contractor, subcontractor, or
10 agent performing work on a project of public works that is subject to this section to
11 ensure compliance with this section.

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

14 **SECTION 2.** 19.36 (12) of the statutes is amended to read:

15 19.36 **(12)** INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is
16 specifically authorized or required by statute, an authority ~~shall~~ may not provide
17 access to a record prepared or provided by an employer performing work on a project
18 to which s. ~~66.0903, 103.49, or 103.50~~ 16.856 or 84.062 applies, or on which the
19 employer is otherwise required to pay prevailing wages, if that record contains the
20 name or other personally identifiable information relating to an employee of that
21 employer, unless the employee authorizes the authority to provide access to that
22 information. In this subsection, "personally identifiable information" does not
23 include an employee's work classification, hours of work, or wage or benefit payments
24 received for work on such a project.

25 **SECTION 3.** 66.0129 (5) of the statutes is amended to read:

1 66.0129 (5) BIDS FOR CONSTRUCTION. The nonprofit corporation shall let all
2 contracts exceeding \$1,000 for the construction, maintenance or repair of hospital
3 facilities to the lowest responsible bidder after advertising for bids by the publication
4 of a class 2 notice under ch. 985. ~~Sections~~ Section 66.0901 and ~~66.0903~~ applies
5 to bids and contracts under this subsection.

6 **SECTION 4.** 66.0903 (title) of the statutes is repealed and recreated to read:

7 **66.0903 (title) Prevailing wage.**

8 **SECTION 5.** 66.0903 (1) (a), (am), (b), (cm), (dr), (em), (hm) and (im) of the
9 statutes are repealed.

10 **SECTION 6.** 66.0903 (1) (c) of the statutes is amended to read:

11 66.0903 (1) (c) “Hourly basic rate of pay” has the meaning given in s. ~~103.49~~
12 16.856 (1) (b).

13 **SECTION 7.** 66.0903 (1) (f) of the statutes is amended to read:

14 66.0903 (1) (f) “Prevailing hours of labor” has the meaning given in s. ~~103.49~~
15 16.856 (1) ~~(e)~~ (e).

16 **SECTION 8.** 66.0903 (1) (g) of the statutes is repealed and recreated to read:

17 66.0903 (1) (g) “Prevailing wage rate” includes the meanings given under s.
18 66.0903 (1) (g), 2013 stats., and s. 16.856 (1) (f).

19 **SECTION 9.** 66.0903 (1) (j) of the statutes is amended to read:

20 66.0903 (1) (j) “Truck driver” has the meaning given in s. ~~103.49~~ 16.856 (1) ~~(g)~~
21 (j).

22 **SECTION 10.** 66.0903 (1m) (a) (intro.) of the statutes is renumbered 66.0903 (1)
23 (h) and amended to read:

24 66.0903 (1) (h) ~~In this subsection, “publicly~~ Publicly funded private
25 construction project” means a construction project in which the developer, investor,

1 or owner of the project receives direct financial assistance from a local governmental
2 unit for the erection, construction, repair, remodeling, demolition, including any
3 alteration, painting, decorating, or grading, of a private facility, including land, a
4 building, or other infrastructure. “Publicly funded private construction project” does
5 not include a project of public works ~~or a housing project involving the erection,~~
6 ~~construction, repair, remodeling, or demolition of any of the following:~~

7 **SECTION 11.** 66.0903 (1m) (a) 1. to 3. of the statutes are repealed.

8 **SECTION 12.** 66.0903 (1m) (b) of the statutes is amended to read:

9 66.0903 (**1m**) (b) The legislature finds that the enactment of ordinances or
10 other enactments by local governmental units requiring laborers, workers,
11 mechanics, and truck drivers employed on projects of public works or on publicly
12 funded private construction projects to be paid the prevailing wage rate and to be
13 paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the
14 prevailing hours of labor would be logically inconsistent with, would defeat the
15 purpose of, and would go against the ~~spirit of this section and the repeal~~ repeals of
16 s. 66.0904, 2009 stats, and s. 66.0903 (2) to (12), 2013 stats. Therefore, this section
17 shall be construed as an enactment of statewide concern for the ~~purpose of providing~~
18 ~~uniform prevailing wage rate and prevailing hours of labor requirements throughout~~
19 ~~the state~~ purposes of facilitating broader participation with respect to bidding on
20 projects of public works, ensuring that wages accurately reflect market conditions,
21 providing local governments with the flexibility to reduce costs on capital projects,
22 and reducing spending at all levels of government in this state.

23 **SECTION 13.** 66.0903 (2) to (12) of the statutes are repealed.

24 **SECTION 14.** 84.062 of the statutes is created to read:

25 **84.062 Prevailing wage. (1) DEFINITIONS.** In this section:

1 (a) “Hourly basic rate of pay” has the meaning given in s. 16.856 (1) (b).

2 (b) “Prevailing hours of labor” has the meaning given in s. 16.856 (1) (e).

3 (c) “Prevailing wage rate” has the meaning given in s. 16.856 (1) (f).

4 (d) “Truck driver” has the meaning given in s. 16.856 (1) (j).

5 **(5) DISCLOSURE.** If a person who is not an employee of the department or the
6 contracting state agency contacts an employee performing the work described in sub.
7 (2m) for the purpose of investigating compliance with this section, the person shall
8 provide a written statement to the employee stating that the person is not affiliated
9 with the department or the contracting state agency and disclosing the principal
10 source of funding for the investigation.

11 **SECTION 15.** 84.41 (3) of the statutes is amended to read:

12 84.41 **(3) EMPLOYMENT REGULATIONS.** Employment regulations set forth in s.
13 ~~103.50~~ 84.062 pertaining to wages and hours shall apply to all projects constructed
14 under s. 84.40 in the same manner as such laws apply to projects on other state
15 highways. Where applicable, the federal wages and hours law known as the
16 Davis-Bacon act shall apply.

17 **SECTION 16.** 103.005 (12) (a) of the statutes is amended to read:

18 103.005 **(12)** (a) If any employer, employee, owner, or other person violates chs.
19 103 to 106, or fails or refuses to perform any duty required under chs. 103 to 106,
20 within the time prescribed by the department, for which no penalty has been
21 specifically provided, or fails, neglects or refuses to obey any lawful order given or
22 made by the department or any judgment or decree made by any court in connection
23 with chs. 103 to 106, for each such violation, failure or refusal, the employer,
24 employee, owner or other person shall forfeit not less than \$10 nor more than \$100
25 for each offense. ~~This paragraph does not apply to any person who fails to provide~~

1 ~~any information to the department to assist the department in determining~~
2 ~~prevailing wage rates or prevailing hours of labor under s. 103.49 (3) (a) or (am) or~~
3 ~~103.50 (3) or (4).~~

4 **SECTION 17.** 103.49 (title) of the statutes is repealed.

5 **SECTION 18.** 103.49 (1) (intro.), (am), (b), (bj), (br), (c), (em), (f), (fm) and (g), (1m)
6 and (3g) of the statutes are renumbered 16.856 (1) (intro.), (a), (b), (c), (d), (e), (g), (h),
7 (i) and (j), (1m) and (3g).

8 **SECTION 19.** 103.49 (1) (a), (bg) and (d) of the statutes are repealed.

9 **SECTION 20.** 103.49 (2) of the statutes is renumbered 16.856 (2) and amended
10 to read:

11 16.856 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract made for
12 the erection, construction, remodeling, repairing, or demolition of any project of
13 public works to which the state or any state agency is a party shall contain a
14 stipulation that no person performing the work described in sub. (2m) may be
15 permitted to work a greater number of hours per day or per week than the prevailing
16 hours of labor, except that any such person may be permitted or required to work
17 more than such prevailing hours of labor per day and per week if he or she is paid
18 for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5
19 times his or her hourly basic rate of pay; nor may he or she be paid less than the
20 prevailing wage rate ~~determined under sub. (3)~~ in the same or most similar trade or
21 occupation in the area in which the project of public works is situated. A reference
22 to the prevailing wage rates ~~determined under sub. (3)~~ and the prevailing hours of
23 labor shall be published in the notice issued for the purpose of securing bids for the
24 project. If any contract or subcontract for a project of public works that is subject to
25 this section is entered into, the prevailing wage rates ~~determined under sub. (3)~~ and

1 the prevailing hours of labor shall be physically incorporated into and made a part
2 of the contract or subcontract, except that for a minor subcontract, as determined by
3 the department, the department shall prescribe by rule the method of notifying the
4 minor subcontractor of the prevailing wage rates and prevailing hours of labor
5 applicable to the minor subcontract. The prevailing wage rates and prevailing hours
6 of labor applicable to a contract or subcontract may not be changed during the time
7 that the contract or subcontract is in force.

8 **SECTION 21.** 103.49 (2m) of the statutes is renumbered 16.856 (2m), and 16.856
9 (2m) (a) (intro.) and (b), as renumbered, are amended to read:

10 16.856 **(2m)** (a) (intro.) Subject to par. (b), all of the following employees shall
11 be paid the prevailing wage rate ~~determined under sub. (3)~~ and may not be permitted
12 to work a greater number of hours per day or per week than the prevailing hours of
13 labor, unless they are paid for all hours worked in excess of the prevailing hours of
14 labor at a rate of at least 1.5 times their hourly basic rate of pay:

15 (b) A laborer, worker, mechanic, or truck driver who is employed to process,
16 manufacture, pick up, or deliver materials or products from a commercial
17 establishment that has a fixed place of business from which the establishment
18 supplies processed or manufactured materials or products or from a facility that is
19 not dedicated exclusively, or nearly so, to a project of public works that is subject to
20 this section, including any of the following, is not entitled to receive the prevailing
21 wage rate ~~determined under sub. (3)~~ or to receive at least 1.5 times his or her hourly
22 basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless~~
23 ~~any of the following applies:~~

24 1. The A laborer, worker, mechanic, or truck driver who is employed to go to the
25 source of mineral aggregate such as sand, gravel, or stone and deliver that mineral

1 aggregate to the site of a project of public works that is subject to this section by
2 ~~depositing the material directly in final place, from the transporting vehicle or~~
3 ~~through spreaders from the transporting vehicle.~~

4 2. The A laborer, worker, mechanic, or truck driver who is employed to go to the
5 site of a project that is subject to this section, pick up excavated material or spoil from
6 the site of the project of public works, and transport that excavated material or spoil
7 away from the site of the project.

8 **SECTION 22.** 103.49 (3), (4r) and (5) of the statutes are repealed.

9 **SECTION 23.** 103.49 (6m) (title) of the statutes is renumbered 16.856 (6m)
10 (title).

11 **SECTION 24.** 103.49 (6m) (ag) of the statutes is renumbered 16.856 (6m) (ag),
12 and 16.856 (6m) (ag) 1., 2. and 3., as renumbered, are amended to read:

13 16.856 **(6m)** (ag) 1. Any contractor, subcontractor, or contractor's or
14 subcontractor's agent who fails to pay the prevailing wage rate determined by the
15 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of
16 pay for all hours worked in excess of the prevailing hours of labor is liable to any
17 affected employee in the amount of his or her unpaid wages or his or her unpaid
18 overtime compensation and in an additional amount as liquidated damages as
19 provided in subd. 2. or 3., whichever is applicable.

20 2. If the department determines ~~upon inspection under sub. (5) (b) or (c)~~ that
21 a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay
22 the prevailing wage rate ~~determined by the department under sub. (3)~~ or has paid
23 less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
24 prevailing hours of labor, the department shall order the contractor to pay to any
25 affected employee the amount of his or her unpaid wages or his or her unpaid

1 overtime compensation and an additional amount equal to 100 percent of the amount
2 of those unpaid wages or that unpaid overtime compensation as liquidated damages
3 within a period specified by the department in the order.

4 3. In addition to or in lieu of recovering the liability specified in subd. 1. as
5 provided in subd. 2., any employee for and in behalf of that employee and other
6 employees similarly situated may commence an action to recover that liability in any
7 court of competent jurisdiction. If the court finds that a contractor, subcontractor,
8 or contractor's or subcontractor's agent has failed to pay the prevailing wage rate
9 determined by the department under sub. (3) or has paid less than 1.5 times the
10 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor,
11 the court shall order the contractor, subcontractor, or agent to pay to any affected
12 employee the amount of his or her unpaid wages or his or her unpaid overtime
13 compensation and an additional amount equal to 100 percent of the amount of those
14 unpaid wages or that unpaid overtime compensation as liquidated damages.

15 **SECTION 25.** 103.49 (6m) (am) of the statutes is renumbered 16.856 (6m) (am)
16 and amended to read:

17 16.856 **(6m)** (am) Except as provided in pars. (b), and (d) and (f), any contractor,
18 subcontractor or contractor's or subcontractor's agent who violates this section may
19 be fined not more than \$200 or imprisoned for not more than 6 months or both. Each
20 day that a violation continues is a separate offense.

21 **SECTION 26.** 103.49 (6m) (b) to (e) of the statutes are renumbered 16.856 (6m)
22 (b) to (e).

23 **SECTION 27.** 103.49 (6m) (f) of the statutes is repealed.

24 **SECTION 28.** 103.49 (7) of the statutes is repealed.

25 **SECTION 29.** 103.50 (title) and (1) of the statutes are repealed.

1 **SECTION 30.** 103.50 (2) of the statutes is renumbered 84.062 (2) and amended
2 to read:

3 **84.062 (2) PREVAILING WAGE RATES AND HOURS OF LABOR.** No person performing
4 the work described in sub. (2m) in the employ of a contractor, subcontractor, agent
5 or other person performing any work on a project under a contract based on bids as
6 provided in s. 84.06 (2) to which the state is a party for the construction or
7 improvement of any highway may be permitted to work a greater number of hours
8 per day or per week than the prevailing hours of labor; nor may he or she be paid a
9 lesser rate of wages than the prevailing wage rate in the area in which the work is
10 to be done ~~determined under sub. (3)~~; except that any such person may be permitted
11 or required to work more than such prevailing hours of labor per day and per week
12 if he or she is paid for all hours worked in excess of the prevailing hours of labor at
13 a rate of at least 1.5 times his or her hourly basic rate of pay.

14 **SECTION 31.** 103.50 (2g) of the statutes is renumbered 84.062 (2g) and amended
15 to read:

16 **84.062 (2g) NONAPPLICABILITY.** This section does not apply to a single-trade
17 project of public works, as defined in s. ~~103.49~~ 16.856 (1) ~~(em)~~ (g), for which the
18 estimated project cost of completion is less than \$48,000 or a multiple-trade project
19 of public works, as defined in s. ~~103.49~~ 16.856 (1) ~~(br)~~ (d), for which the estimated
20 project cost of completion is less than \$100,000.

21 **SECTION 32.** 103.50 (2m) of the statutes is renumbered 84.062 (2m), and 84.062
22 (2m) (a) (intro.) and (b), as renumbered, are amended to read:

23 **84.062 (2m) (a) (intro.)** Subject to par. (b), all of the following employees shall
24 be paid the prevailing wage rate ~~determined under sub. (3)~~ and may not be permitted
25 to work a greater number of hours per day or per week than the prevailing hours of

1 labor, unless they are paid for all hours worked in excess of the prevailing hours of
2 labor at a rate of at least 1.5 times their hourly basic rate of pay:

3 (b) A laborer, worker, mechanic, or truck driver who is employed to process,
4 manufacture, pick up, or deliver materials or products from a commercial
5 establishment that has a fixed place of business from which the establishment
6 supplies processed or manufactured materials or products or from a facility that is
7 not dedicated exclusively, or nearly so, to a project that is subject to this section,
8 including any of the following, is not entitled to receive the prevailing wage rate
9 ~~determined under sub. (3)~~ or to receive at least 1.5 times his or her hourly basic rate
10 of pay for all hours worked in excess of the prevailing hours of labor ~~unless any of the~~
11 ~~following applies:~~

12 1. The A laborer, worker, mechanic or truck driver who is employed to go to the
13 source of mineral aggregate such as sand, gravel or stone and deliver that mineral
14 aggregate to the site of a project that is subject to this section ~~by depositing the~~
15 ~~material directly in final place, from the transporting vehicle or through spreaders~~
16 ~~from the transporting vehicle.~~

17 2. The A laborer, worker, mechanic or truck driver who is employed to go to the
18 site of a project that is subject to this section, pick up excavated material or spoil from
19 the site of the project, and transport that excavated material or spoil away from the
20 site of the project and return to the site of the project.

21 **SECTION 33.** 103.50 (3) to (5) of the statutes are repealed.

22 **SECTION 34.** 103.50 (6) of the statutes is renumbered 84.062 (6) and amended
23 to read:

24 84.062 (6) CONTENTS OF CONTRACTS; NOTIFICATION. A reference to the prevailing
25 wage rates ~~determined under sub. (3)~~ and the prevailing hours of labor shall be

1 published in the notice issued for the purpose of securing bids for a project. If any
2 contract or subcontract for a project that is subject to this section is entered into, the
3 prevailing wage rates ~~determined under sub. (3)~~ and the prevailing hours of labor
4 shall be physically incorporated into and made a part of the contract or subcontract,
5 except that for a minor subcontract, ~~as determined by the department of workforce~~
6 ~~development, that department~~ the department of administration shall prescribe by
7 rule under s. 16.856 (2) the method of notifying the minor subcontractor of the
8 prevailing wage rates and prevailing hours of labor applicable to the minor
9 subcontract. The prevailing wage rates and prevailing hours of labor applicable to
10 a contract or subcontract may not be changed during the time that the contract or
11 subcontract is in force. For the information of the employees working on the project,
12 the prevailing wage rates ~~determined by the department~~, the prevailing hours of
13 labor, and the provisions of subs. (2) and (7) shall be kept posted by the department
14 ~~of transportation~~ in at least one conspicuous and easily accessible place on the site
15 of the project.

16 **SECTION 35.** 103.50 (7) (title) and (a) to (e) of the statutes are renumbered
17 84.062 (7) (title) and (a) to (e), and 84.062 (7) (a), as renumbered, is amended to read:

18 84.062 (7) (a) Except as provided in pars. (b), and (d) ~~and~~ (f), any contractor,
19 subcontractor, or contractor's or subcontractor's agent who violates this section may
20 be fined not more than \$200 or imprisoned for not more than 6 months or both. Each
21 day that a violation continues is a separate offense.

22 **SECTION 36.** 103.50 (7) (f) of the statutes is repealed.

23 **SECTION 37.** 103.50 (8) of the statutes is renumbered 84.062 (8) and amended
24 to read:

1 84.062 (8) ENFORCEMENT AND PROSECUTION. The department of transportation
2 shall require adherence to subs. (2), (2m), and (6). The department of transportation
3 may demand and examine, and every contractor, subcontractor, and contractor's or
4 subcontractor's agent shall keep and furnish upon request by the department of
5 transportation, copies of payrolls and other records and information relating to
6 compliance with this section. If requested by any person performing the work
7 described in sub. (2m), the department shall conduct an investigation to ensure
8 compliance with this section. Upon request of the department of transportation or
9 upon complaint of alleged violation, the district attorney of the county in which the
10 work is located shall investigate as necessary and prosecute violations in a court of
11 competent jurisdiction. Section 111.322 (2m) applies to discharge and other
12 discriminatory acts arising in connection with any proceeding under this section.

13 **SECTION 38.** 103.503 (1) (a) of the statutes is amended to read:

14 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
15 otherwise involving an employee that resulted or could have resulted in death,
16 personal injury, or property damage and that occurred while the employee was
17 performing the work described in s. 66.0903 (4), 2013 stats., or ~~103.49 s. 16.856~~ (2m)
18 on a project of public works or while the employee was performing work on a public
19 utility project.

20 **SECTION 39.** 103.503 (1) (c) of the statutes is amended to read:

21 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
22 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. ~~103.49~~ 16.856 (1) (~~f~~)
23 (h), that has contracted for the performance of work on a project of public works or
24 a public utility that has contracted for the performance of work on a public utility
25 project.

1 **SECTION 40.** 103.503 (1) (e) of the statutes is amended to read:

2 103.503 (1) (e) “Employee” means a laborer, worker, mechanic, or truck driver
3 who performs the work described in s. 66.0903 (4), 2013 stats., or ~~103.49 s. 16.856~~
4 (2m) on a project of public works or on a public utility project.

5 **SECTION 41.** 103.503 (1) (g) of the statutes is amended to read:

6 103.503 (1) (g) “Project of public works” means a project of public works that
7 is subject to s. 16.856 or that would be subject to s. 66.0903 or 103.49, 2013 stats., if
8 the project were erected, constructed, repaired, remodeled, or demolished prior to the
9 effective date of this paragraph [LRB inserts date].

10 **SECTION 42.** 103.503 (2) of the statutes is amended to read:

11 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
12 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
13 be under the influence of alcohol, while performing the work described in s. 66.0903
14 (4), 2013 stats., or ~~103.49 s. 16.856~~ (2m) on a project of public works or while
15 performing work on a public utility project. An employee is considered to be under
16 the influence of alcohol for purposes of this subsection if he or she has an alcohol
17 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
18 (d).

19 **SECTION 43.** 103.503 (3) (a) 2. of the statutes is amended to read:

20 103.503 (3) (a) 2. A requirement that employees performing the work described
21 in s. 66.0903 (4), 2013 stats., or ~~103.49 s. 16.856~~ (2m) on a project of public works or
22 performing work on a public utility project submit to random, reasonable suspicion,
23 and post-accident drug and alcohol testing and to drug and alcohol testing before
24 commencing work on the project, except that testing of an employee before
25 commencing work on a project is not required if the employee has been participating

1 in a random testing program during the 90 days preceding the date on which the
2 employee commenced work on the project.

3 **SECTION 44.** 104.001 (3) (intro.) and (b) of the statutes are consolidated,
4 renumbered 104.001 (3) and amended to read:

5 104.001 (3) This section does not affect any of the following: (b) An an
6 ordinance that, subject to s. 66.0903, requires an employee of a county, city, village,
7 or town, an employee who performs work under a contract for the provision of
8 services to a county, city, village, or town, or an employee who performs work that is
9 funded by financial assistance from a county, city, village, or town, to be paid at a
10 minimum wage rate specified in the ordinance.

11 **SECTION 45.** 104.001 (3) (a) of the statutes is repealed.

12 **SECTION 46.** 106.04 (1) (d) of the statutes is amended to read:

13 106.04 (1) (d) "Project" means a project of public works that is subject to s.
14 ~~103.49 or 103.50~~ 16.856 or 84.062 in which work is performed by employees employed
15 in trades that are apprenticeable under this subchapter.

16 **SECTION 47.** 109.09 (1) of the statutes is amended to read:

17 109.09 (1) The department shall investigate and attempt equitably to adjust
18 controversies between employers and employees as to alleged wage claims. The
19 department may receive and investigate any wage claim ~~which~~ that is filed with the
20 department, or received by the department under s. 109.10 (4), no later than 2 years
21 after the date the wages are due. The department may, after receiving a wage claim,
22 investigate any wages due from the employer against whom the claim is filed to any
23 employee during the period commencing 2 years before the date the claim is filed.
24 The department shall enforce this chapter and ~~ss. s. 66.0903, 2013 stats., s. 103.49,~~
25 2013 stats., and s. 229.8275, 2013 stats., and ss. 16.856, 103.02, 103.49, 103.82, and

1 104.12, ~~and 229.8275~~. In pursuance of this duty, the department may sue the
2 employer on behalf of the employee to collect any wage claim or wage deficiency and
3 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
4 under s. 109.10, the department may refer such an action to the district attorney of
5 the county in which the violation occurs for prosecution and collection and the
6 district attorney shall commence an action in the circuit court having appropriate
7 jurisdiction. Any number of wage claims or wage deficiencies against the same
8 employer may be joined in a single proceeding, but the court may order separate
9 trials or hearings. In actions that are referred to a district attorney under this
10 subsection, any taxable costs recovered by the district attorney shall be paid into the
11 general fund of the county in which the violation occurs and used by that county to
12 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
13 of the district attorney who prosecuted the action.

14 **SECTION 48.** 111.322 (2m) (a) of the statutes is amended to read:

15 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
16 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, ~~103.50~~,
17 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64
18 to 103.82.

19 **SECTION 49.** 111.322 (2m) (b) of the statutes is amended to read:

20 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
21 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
22 103.34, 103.455, ~~103.50~~, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss.
23 101.58 to 101.599 or 103.64 to 103.82.

24 **SECTION 50.** 111.322 (2m) (c) of the statutes is amended to read:

1 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right
2 under s. ~~66.0903, 103.49, or 229.8275~~ 16.856 or 84.062 or testifies or assists in any
3 action or proceeding under s. ~~66.0903, 103.49, or 229.8275~~ 16.856 or 84.062.

4 **SECTION 51.** 227.01 (13) (t) of the statutes is repealed.

5 **SECTION 52.** 229.682 (2) of the statutes is repealed.

6 **SECTION 53.** 229.8275 of the statutes is repealed.

7 **SECTION 54.** 946.15 (1) of the statutes is amended to read:

8 946.15 **(1)** Any employer, or any agent or employee of an employer, who induces
9 any person who seeks to be or is employed pursuant to a public contract, as defined
10 in s. 66.0901 (1) (c), or who seeks to be or is employed on a project ~~on which a~~
11 ~~prevailing wage rate determination has been issued by the department of workforce~~
12 ~~development under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3)~~ that is
13 subject to s. 16.856 or 84.062 to give up, waive, or return any part of the compensation
14 to which that person is entitled under his or her contract of employment or under the
15 ~~prevailing wage rate determination issued by the department~~ s. 16.856 or 84.062, or
16 who reduces the hourly basic rate of pay normally paid to an employee for work on
17 a project ~~on which a prevailing wage rate determination has not been issued under~~
18 ~~s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3)~~ that is not subject to s. 16.856
19 or 84.062 during a week in which the employee works both on a project ~~on which a~~
20 ~~prevailing wage rate determination has been issued~~ that is subject to s. 16.856 or
21 84.062 and on a project ~~on which a prevailing wage rate determination has not been~~
22 ~~issued~~ that is not subject to s. 16.856 or 84.062, is guilty of a Class I felony.

23 **SECTION 55.** 946.15 (2) of the statutes is amended to read:

24 946.15 **(2)** Any person employed pursuant to a public contract, as defined in s.
25 66.0901 (1) (c), or employed on a project ~~on which a prevailing wage rate~~

1 determination has been issued by the department of workforce development under
2 s. ~~66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3)~~ s. 16.856 or
3 84.062 who gives up, waives, or returns to the employer or agent of the employer any
4 part of the compensation to which the employee is entitled under his or her contract
5 of employment or under the ~~prevailing wage determination issued by the~~
6 ~~department s. 16.856 or 84.062,~~ or who gives up any part of the compensation to
7 which he or she is normally entitled for work on a project ~~on which a prevailing wage~~
8 ~~rate determination has not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3),~~
9 ~~or 229.8275 (3)~~ that is not subject to s. 16.856 or 84.062 during a week in which the
10 person works part-time on a project ~~on which a prevailing wage rate determination~~
11 ~~has been issued that is subject to s. 16.856 or 84.062~~ and part-time on a project ~~on~~
12 ~~which a prevailing wage rate determination has not been issued that is not subject~~
13 to s. 16.856 or 84.062, is guilty of a Class C misdemeanor.

14 **SECTION 56.** 946.15 (3) of the statutes is amended to read:

15 946.15 (3) Any employer or labor organization, or any agent or employee of an
16 employer or labor organization, who induces any person who seeks to be or is
17 employed on a project ~~on which a prevailing wage rate determination has been issued~~
18 ~~by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50~~
19 ~~(3), or 229.8275 (3)~~ that is subject to s. 16.856 or 84.062 to permit any part of the
20 wages to which that person is entitled under the ~~prevailing wage rate determination~~
21 ~~issued by the department or local governmental unit s. 16.856 or 84.062~~ to be
22 deducted from the person's pay is guilty of a Class I felony, unless the deduction
23 would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project
24 that is subject to 40 USC 3142.

25 **SECTION 57.** 946.15 (4) of the statutes is amended to read:

1 946.15 (4) Any person employed on a project ~~on which a prevailing wage rate~~
2 ~~determination has been issued by the department of workforce development under~~
3 ~~s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) that is subject to s. 16.856 or~~
4 84.062 who permits any part of the wages to which that person is entitled under the
5 ~~prevailing wage rate determination issued by the department or local governmental~~
6 ~~unit s. 16.856 or 84.062~~ to be deducted from his or her pay is guilty of a Class C
7 misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from
8 a person who is working on a project that is subject to 40 USC 3142.

9 **SECTION 58.** 978.05 (6) (a) of the statutes is amended to read:

10 978.05 (6) (a) Institute, commence or appear in all civil actions or special
11 proceedings under and perform the duties set forth for the district attorney under ch.
12 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, ~~103.50~~ 84.062 (8),
13 103.92 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and
14 (6g) (a), 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties
15 in connection with court proceedings in a court assigned to exercise jurisdiction
16 under chs. 48 and 938 as the judge may request and perform all appropriate duties
17 and appear if the district attorney is designated in specific statutes, including
18 matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this
19 paragraph limits the authority of the county board to designate, under s. 48.09 (5),
20 that the corporation counsel provide representation as specified in s. 48.09 (5) or to
21 designate, under s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate
22 person to represent the interests of the public under s. 48.14 or 938.14.

23 **SECTION 59. Nonstatutory provisions.**

24 (1) Using the procedure under section 227.24 of the statutes, the department
25 of administration may promulgate rules under section 16.856 (7) of the statutes, as

1 created by this act, for the period before the effective date of any corresponding
2 permanent rules, but not to exceed the period authorized under section 227.24 (1) (c)
3 of the statutes, subject to extension under section 227.24 (2) of the statutes.
4 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
5 is not required to provide evidence that promulgating a rule under this subsection
6 as an emergency rule is necessary for the preservation of the public peace, health,
7 safety, or welfare and is not required to provide a finding of emergency for a rule
8 promulgated under this subsection.

9 **SECTION 60. Initial applicability.**

10 (1) This act first applies, with respect to a project of public works that is subject
11 to bidding, to a project for which the request for bids is issued on the effective date
12 of this subsection and, with respect to a project of public works that is not subject to
13 bidding, to a project the contract for which is entered into on the effective date of this
14 subsection.

15 (2) The treatment of sections 66.0903 (10) (d), 111.322 (2m) (c), and 229.8275
16 of the statutes first applies to acts of discrimination that occur on the effective date
17 of this subsection.

18 **SECTION 61. Effective date.**

19 (1) This act takes effect on January 1, 2016, or on the day after publication,
20 whichever is later.

21 (END)