



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0075/1
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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 49**

May 6, 2015 - Offered by Senator NASS.

1 **AN ACT** *to repeal* 66.0903 (1) (b), (cm), (dr), (em), (hm) and (im), 66.0903 (1m) (a)
2 1. to 3., 66.0903 (2) to (12), 104.001 (3) (a), 111.322 (2m) (c), 229.682 (2) and
3 229.8275; *to renumber and amend* 66.0903 (1m) (a) (intro.); *to consolidate,*
4 *renumber and amend* 104.001 (3) (intro.) and (b); *to amend* 19.36 (12),
5 66.0129 (5), 66.0903 (1m) (b), 103.49 (3g) (a), 103.50 (2g), 103.503 (1) (a),
6 103.503 (1) (e), 103.503 (1) (g), 103.503 (2), 103.503 (3) (a) 2., 109.09 (1), 111.322
7 (2m) (a), 111.322 (2m) (b), 111.322 (2m) (d), 227.01 (13) (t), 946.15 (1), 946.15 (2),
8 946.15 (3) and 946.15 (4); and *to repeal and recreate* 66.0903 (title) of the
9 statutes; **relating to:** elimination of the requirement that laborers, workers,
10 mechanics, and truck drivers employed on the site of a local project of public
11 works be paid the prevailing wage and the cost threshold for applicability of the

1 prevailing wage law to state projects of public works, including highway
2 projects.

Analysis by the Legislative Reference Bureau

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 the Department of Workforce Development; 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. For projects of public works undertaken by the state or a state agency, including state highway projects, the substitute amendment raises the cost threshold for applicability of the prevailing wage law to \$1,000,000 for single-trade projects and to \$5,000,000 for multiple-trade projects.

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

3 **SECTION 1.** 19.36 (12) of the statutes is amended to read:

4 19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is
5 specifically authorized or required by statute, an authority shall may not provide
6 access to a record prepared or provided by an employer performing work on a project
7 to which s. ~~66.0903~~, 103.49, or 103.50 applies, or on which the employer is otherwise
8 required to pay prevailing wages, if that record contains the name or other personally
9 identifiable information relating to an employee of that employer, unless the
10 employee authorizes the authority to provide access to that information. In this

1 subsection, “personally identifiable information” does not include an employee’s
2 work classification, hours of work, or wage or benefit payments received for work on
3 such a project.

4 **SECTION 2.** 66.0129 (5) of the statutes is amended to read:

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

10 **SECTION 3.** 66.0903 (title) of the statutes is repealed and recreated to read:

11 **66.0903 (title) Prevailing wage.**

12 **SECTION 4.** 66.0903 (1) (b), (cm), (dr), (em), (hm) and (im) of the statutes are
13 repealed.

14 **SECTION 5.** 66.0903 (1m) (a) (intro.) of the statutes is renumbered 66.0903 (1)
15 (h) and amended to read:

16 66.0903 (1) (h) ~~In this subsection, “publicly~~ “Publicly funded private
17 construction project” means a construction project in which the developer, investor,
18 or owner of the project receives direct financial assistance from a local governmental
19 unit for the erection, construction, repair, remodeling, demolition, including any
20 alteration, painting, decorating, or grading, of a private facility, including land, a
21 building, or other infrastructure. “Publicly funded private construction project” does
22 not include a project of public works ~~or a housing project involving the erection,~~
23 ~~construction, repair, remodeling, or demolition of any of the following:~~

24 **SECTION 6.** 66.0903 (1m) (a) 1. to 3. of the statutes are repealed.

25 **SECTION 7.** 66.0903 (1m) (b) of the statutes is amended to read:

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

15 **SECTION 8.** 66.0903 (2) to (12) of the statutes are repealed.

16 **SECTION 9.** 103.49 (3g) (a) of the statutes is amended to read:

17 103.49 **(3g)** (a) A single-trade project of public works for which the estimated
18 project cost of completion is less than ~~\$48,000~~ \$1,000,000 or a multiple-trade project
19 of public works for which the estimated project cost of completion is less than
20 ~~\$100,000~~ \$5,000,000.

21 **SECTION 10.** 103.50 (2g) of the statutes is amended to read:

22 103.50 **(2g)** NONAPPLICABILITY. This section does not apply to a single-trade
23 project of public works, as defined in s. 103.49 (1) (em), for which the estimated
24 project cost of completion is less than ~~\$48,000~~ \$1,000,000 or a multiple-trade project

1 of public works, as defined in s. 103.49 (1) (br), for which the estimated project cost
2 of completion is less than \$100,000 \$5,000,000.

3 **SECTION 11.** 103.503 (1) (a) of the statutes is amended to read:

4 103.503 (1) (a) “Accident” means an incident caused, contributed to, or
5 otherwise involving an employee that resulted or could have resulted in death,
6 personal injury, or property damage and that occurred while the employee was
7 performing the work described in s. 66.0903 (4), 2013 stats., or s. 103.49 (2m) on a
8 project of public works or while the employee was performing work on a public utility
9 project.

10 **SECTION 12.** 103.503 (1) (e) of the statutes is amended to read:

11 103.503 (1) (e) “Employee” means a laborer, worker, mechanic, or truck driver
12 who performs the work described in s. 66.0903 (4), 2013 stats., or s. 103.49 (2m) on
13 a project of public works or on a public utility project.

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

15 103.503 (1) (g) “Project of public works” means a project of public works that
16 is subject to s. 103.49 or that would be subject to s. 66.0903 or 103.49, 2013 stats., if
17 the project were erected, constructed, repaired, remodeled, or demolished prior to the
18 effective date of this paragraph [LRB inserts date].

19 **SECTION 14.** 103.503 (2) of the statutes is amended to read:

20 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
21 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
22 be under the influence of alcohol, while performing the work described in s. 66.0903
23 (4), 2013 stats., or s. 103.49 (2m) on a project of public works or while performing
24 work on a public utility project. An employee is considered to be under the influence

1 of alcohol for purposes of this subsection if he or she has an alcohol concentration that
2 is equal to or greater than the amount specified in s. 885.235 (1g) (d).

3 **SECTION 15.** 103.503 (3) (a) 2. of the statutes is amended to read:

4 103.503 (3) (a) 2. A requirement that employees performing the work described
5 in s. 66.0903 (4), 2013 stats., or s. 103.49 (2m) on a project of public works or
6 performing work on a public utility project submit to random, reasonable suspicion,
7 and post-accident drug and alcohol testing and to drug and alcohol testing before
8 commencing work on the project, except that testing of an employee before
9 commencing work on a project is not required if the employee has been participating
10 in a random testing program during the 90 days preceding the date on which the
11 employee commenced work on the project.

12 **SECTION 16.** 104.001 (3) (intro.) and (b) of the statutes are consolidated,
13 renumbered 104.001 (3) and amended to read:

14 104.001 (3) This section does not affect any of the following: ~~(b)~~ An an
15 ordinance that, subject to s. 66.0903, requires an employee of a county, city, village,
16 or town, an employee who performs work under a contract for the provision of
17 services to a county, city, village, or town, or an employee who performs work that is
18 funded by financial assistance from a county, city, village, or town, to be paid at a
19 minimum wage rate specified in the ordinance.

20 **SECTION 17.** 104.001 (3) (a) of the statutes is repealed.

21 **SECTION 18.** 109.09 (1) of the statutes is amended to read:

22 109.09 (1) The department shall investigate and attempt equitably to adjust
23 controversies between employers and employees as to alleged wage claims. The
24 department may receive and investigate any wage claim ~~which~~ that is filed with the
25 department, or received by the department under s. 109.10 (4), no later than 2 years

1 after the date the wages are due. The department may, after receiving a wage claim,
2 investigate any wages due from the employer against whom the claim is filed to any
3 employee during the period commencing 2 years before the date the claim is filed.
4 The department shall enforce this chapter and ss. ~~66.0903~~, 103.02, 103.49, 103.82,
5 and 104.12, ~~and 229.8275~~. In pursuance of this duty, the department may sue the
6 employer on behalf of the employee to collect any wage claim or wage deficiency and
7 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
8 under s. 109.10, the department may refer such an action to the district attorney of
9 the county in which the violation occurs for prosecution and collection and the
10 district attorney shall commence an action in the circuit court having appropriate
11 jurisdiction. Any number of wage claims or wage deficiencies against the same
12 employer may be joined in a single proceeding, but the court may order separate
13 trials or hearings. In actions that are referred to a district attorney under this
14 subsection, any taxable costs recovered by the district attorney shall be paid into the
15 general fund of the county in which the violation occurs and used by that county to
16 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
17 of the district attorney who prosecuted the action.

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

19 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
20 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.49,
21 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
22 or 103.64 to 103.82.

23 **SECTION 20.** 111.322 (2m) (b) of the statutes is amended to read:

24 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
25 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,

1 103.34, 103.455, 103.49, 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
2 or ss. 101.58 to 101.599 or 103.64 to 103.82.

3 **SECTION 21.** 111.322 (2m) (c) of the statutes is repealed.

4 **SECTION 22.** 111.322 (2m) (d) of the statutes is amended to read:

5 111.322 (**2m**) (d) The individual's employer believes that the individual
6 engaged or may engage in any activity described in pars. (a) to (e) (bm).

7 **SECTION 23.** 227.01 (13) (t) of the statutes is amended to read:

8 227.01 (**13**) (t) Ascertain and determines prevailing wage rates under ss.
9 ~~66.0903~~, s. 103.49, or 103.50, and ~~229.8275~~, except that any action or inaction which
10 that ascertain and determines prevailing wage rates under ss. ~~66.0903~~, s. 103.49,
11 or 103.50, and ~~229.8275~~ is subject to judicial review under s. 227.40.

12 **SECTION 24.** 229.682 (2) of the statutes is repealed.

13 **SECTION 25.** 229.8275 of the statutes is repealed.

14 **SECTION 26.** 946.15 (1) of the statutes is amended to read:

15 946.15 (**1**) Any employer, or any agent or employee of an employer, who induces
16 any person who seeks to be or is employed pursuant to a public contract, as defined
17 in s. 66.0901 (1) (c), or who seeks to be or is employed on a project on which a
18 prevailing wage rate determination has been issued by the department of workforce
19 development under s. ~~66.0903 (3)~~, 103.49 (3), or 103.50 (3), ~~or 229.8275 (3)~~ to give up,
20 waive, or return any part of the compensation to which that person is entitled under
21 his or her contract of employment or under the prevailing wage rate determination
22 issued by ~~the~~ that department, or who reduces the hourly basic rate of pay normally
23 paid to an employee for work on a project on which a prevailing wage rate
24 determination has not been issued under s. ~~66.0903 (3)~~, 103.49 (3), or 103.50 (3), ~~or~~
25 ~~229.8275 (3)~~ during a week in which the employee works both on a project on which

1 a prevailing wage rate determination has been issued and on a project on which a
2 prevailing wage rate determination has not been issued, is guilty of a Class I felony.

3 **SECTION 27.** 946.15 (2) of the statutes is amended to read:

4 946.15 (2) Any person employed pursuant to a public contract, as defined in s.
5 66.0901 (1) (c), or employed on a project on which a prevailing wage rate
6 determination has been issued by the department of workforce development under
7 s. ~~66.0903 (3)~~, 103.49 (3), or 103.50 (3), ~~or 229.8275 (3)~~ who gives up, waives, or
8 returns to the employer or agent of the employer any part of the compensation to
9 which the employee is entitled under his or her contract of employment or under the
10 prevailing wage determination issued by the that department, or who gives up any
11 part of the compensation to which he or she is normally entitled for work on a project
12 on which a prevailing wage rate determination has not been issued under s. ~~66.0903~~
13 ~~(3)~~, 103.49 (3), or 103.50 (3), ~~or 229.8275 (3)~~ during a week in which the person works
14 part-time on a project on which a prevailing wage rate determination has been
15 issued and part-time on a project on which a prevailing wage rate determination has
16 not been issued, is guilty of a Class C misdemeanor.

17 **SECTION 28.** 946.15 (3) of the statutes is amended to read:

18 946.15 (3) Any employer or labor organization, or any agent or employee of an
19 employer or labor organization, who induces any person who seeks to be or is
20 employed on a project on which a prevailing wage rate determination has been issued
21 by the department of workforce development under s. ~~66.0903 (3)~~, 103.49 (3), or
22 103.50 (3), ~~or 229.8275 (3)~~ to permit any part of the wages to which that person is
23 entitled under the prevailing wage rate determination issued by the that department
24 ~~or local governmental unit~~ to be deducted from the person's pay is guilty of a Class I

1 felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a
2 person who is working on a project that is subject to 40 USC 3142.

3 **SECTION 29.** 946.15 (4) of the statutes is amended to read:

4 946.15 (4) Any person employed on a project on which a prevailing wage rate
5 determination has been issued by the department of workforce development under
6 s. ~~66.0903 (3)~~, 103.49 (3), or 103.50 (3), ~~or 229.8275 (3)~~ who permits any part of the
7 wages to which that person is entitled under the prevailing wage rate determination
8 issued by the that department ~~or local governmental unit~~ to be deducted from his or
9 her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted
10 under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to
11 40 USC 3142.

12 **SECTION 30. Initial applicability.**

13 (1) ELIMINATION OF LOCAL PREVAILING WAGE LAW. This act first applies, with
14 respect to a project of public works that is subject to bidding, to a project for which
15 the request for bids is issued on the effective date of this subsection and, with respect
16 to a project of public works that is not subject to bidding, to a project the contract for
17 which is entered into on the effective date of this subsection.

18 **SECTION 31. Effective date.**

19 (1) ELIMINATION OF LOCAL PREVAILING WAGE LAW. This act takes effect on the
20 January 1 after publication.

21 (END)