



1995 ASSEMBLY BILL 313

April 13, 1995 - Introduced by Representatives BRANDEMUEHL, JENSEN, VRAKAS, SILBAUGH, ALBERS, AINSWORTH, LADWIG, OLSEN, OWENS, NASS, WARD, GOETSCH and SCHNEIDERS, cosponsored by Senators FARROW, SCHULTZ and A. LASEE. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 103.50 (3) (b); **to renumber and amend** 103.50 (3) (a); and **to**
2 **amend** 103.49 (1) (d), 103.50 (1) (d), 103.50 (2), 103.50 (4) and 227.01 (13) (t)
3 of the statutes; **relating to:** the method of determining the prevailing wage
4 rate for state and municipal public works projects and state highway projects
5 and the coverage under the prevailing wage rate and hours-of-labor law of
6 truck drivers who work on state highway projects.

Analysis by the Legislative Reference Bureau

Under current law, contracts to perform construction work on state and local public works projects and state highway projects are governed by provisions regarding prevailing wages and hours of labor. The department of industry, labor and human relations (DILHR) determines the prevailing wage that must be paid to an individual working on a public works project based on the wages, plus benefits, paid to the majority of people working in the individual's trade in the area from which labor for the project is secured. If there is no rate at which a majority of individuals employed in a particular trade in the area are paid, the prevailing wage that must be paid to an individual working on a public works project is the rate paid to a larger number of individuals employed in the trade in the area than any other rate paid in the area for work in that trade. DILHR determines the prevailing wage that must be paid to an individual working on a state highway project based on the wages, plus benefits, paid to the largest number of individuals engaged in the same class of labor in the area. Under current law, DILHR also determines truck rental rates for truck drivers who use their own trucks when working on state highway projects.

This bill provides that, if there is no rate at which a majority of individuals employed in a particular trade in an area are paid, the prevailing wage that must be paid to an individual working on a public works project is the average wage, plus the

average benefits, paid in the area for work in that trade, weighted by the number of hours worked in the trade in the area at each wage level. The bill also provides that the prevailing wage that must be paid to an individual working on a state highway project is the average wage, plus the average benefits, paid in the area to workers of the individual's class of labor, weighted by the number of hours worked in the class of labor in the area at each wage level.

Under current law, a contractor working on a state highway project may not employ individuals for longer than the prevailing hours of labor, which may not exceed 8 hours per day and 40 hours per week, unless the contractor pays the employe 1.5 times the employe's basic hourly rate of pay ("overtime pay"), except that a contractor need not pay the truck rental rate to truck drivers for hours worked in excess of 8 hours per day and 40 hours per week.

This bill eliminates truck rental rates under the prevailing wage rate and hours-of-labor law for state highway projects. Under the bill, a contractor working on a state highway project must pay a truck driver, including an owner-operator of a truck, the prevailing wage rate and may not employ a truck driver for longer than the prevailing hours of labor unless the contractor pays the truck driver overtime pay. Under the bill, DILHR determines prevailing wage rates and hours of labor for truck drivers in the same manner that DILHR determines prevailing wage rates and hours of labor for laborers and mechanics.

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

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

1 **SECTION 1.** 103.49 (1) (d) of the statutes is amended to read:

2 103.49 (1) (d) "Prevailing wage rate" in any trade or occupation in any area
3 means the hourly basic rate paid plus the hourly contribution for health and welfare
4 benefits, vacation benefits, pension benefits and any other economic benefit,
5 whether paid directly or indirectly, to a majority of all persons employed in the trade
6 or occupation in the area, or if there is no rate at which a majority are employed then
7 the prevailing wage rate shall be the ~~rate which is paid to a larger number of~~
8 ~~employes than any other rate~~ average hourly basic rate, plus the average hourly
9 contribution for health and welfare benefits, vacation benefits, pension benefits and
10 any other economic benefit, paid in the area for work in the trade or occupation,

1 weighted by the number of hours worked in the trade or occupation in the area at
2 each wage level.

3 **SECTION 2.** 103.50 (1) (d) of the statutes is amended to read:

4 103.50 (1) (d) "Prevailing wage rate" for any class of labor in any area means
5 the average hourly basic rate, plus the average hourly contribution for health and
6 welfare benefits, vacation benefits, pension benefits and any other economic benefit,
7 whether paid directly or indirectly, paid to ~~the largest number of workers engaged~~
8 in the same class of labor within the area, ~~including rental rates for truck hire paid~~
9 ~~to those who own and operate the truck~~ weighted by the number of hours worked in
10 the same class of labor within the area at each wage level. In no event shall the
11 prevailing wage rate for any class of labor be deemed to be less than a reasonable and
12 living wage, ~~nor shall truck rental rates established pursuant to this provision be~~
13 ~~subject to the provisions of sub. (2) relating to hours worked in excess of the~~
14 ~~prevailing hours when operated in excess of 8 hours in any one day or 40 hours in any~~
15 ~~one week.~~

16 **SECTION 3.** 103.50 (2) of the statutes is amended to read:

17 103.50 (2) HOURS OF LABOR. No laborer ~~or~~, mechanic or truck driver, including
18 an owner-operator of a truck, in the employ of the contractor or of any subcontractor,
19 agent or other person doing or contracting to do all or a part of the work under a
20 contract based on bids as provided in s. 84.06 (2) to which the state is a party for the
21 construction or improvement of any highway shall be permitted to work a longer
22 number of hours per day or per calendar week than the prevailing hours of labor
23 determined pursuant to this section; nor shall he be paid a lesser rate of wages than
24 the prevailing rate of wages thus determined, for the area in which the work is to be
25 done; except that any such laborer ~~or~~, mechanic or truck driver may be permitted or

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1 required to work more than such prevailing number of hours per day and per
2 calendar week if he is paid for all hours in excess of the prevailing hours at a rate of
3 at least 1-1/2 times his hourly basic rate of pay. This section ~~shall~~ does not apply to
4 wage rates and hours of employment of laborers ~~or~~, mechanics or truck drivers
5 engaged in the processing ~~or~~, manufacture or delivery of materials or products ~~or to~~
6 ~~the delivery thereof~~ by or for commercial establishments which have a fixed place of
7 business from which they regularly supply such processed or manufactured
8 materials or products; except that this section ~~shall apply~~ applies to laborers ~~or~~,
9 mechanics or truck drivers who deliver mineral aggregate such as sand, gravel or
10 stone which is incorporated into the work under the contract by depositing the
11 material substantially in place, directly or through spreaders, from the transporting
12 vehicle.

13 **SECTION 4.** 103.50 (3) (a) of the statutes is renumbered 103.50 (3) and amended
14 to read:

15 103.50 (3) INVESTIGATIONS; DETERMINATIONS. The department shall conduct
16 investigations and hold public hearings necessary to define classes of laborers ~~and~~,
17 mechanics and truck drivers and to inform itself as to the hours of labor and wage
18 rates prevailing in all areas of the state for all classes of labor ~~and~~ laborers,
19 mechanics and truck drivers commonly employed in highway construction work,
20 with a view to ascertaining and determining prevailing hours of labor, prevailing
21 wage rates and hourly basic rates of pay accordingly.

22 **SECTION 5.** 103.50 (3) (b) of the statutes is repealed.

23 **SECTION 6.** 103.50 (4) of the statutes is amended to read:

24 103.50 (4) CERTIFICATION OF PREVAILING HOURS AND WAGES. The department shall
25 prior to May 1 of the current calendar year certify to the department of

1 transportation the prevailing hours of labor, the prevailing wage rate and the hourly
2 basic rate of pay for all such classes of laborers ~~and, mechanics~~ and truck drivers in
3 each area. The certification shall in addition to the current prevailing hours of labor,
4 the prevailing wage rates and the hourly basic rates of pay include future hours and
5 rates when such hours and rates can be determined for any such classes of laborers
6 ~~and, mechanics~~ and truck drivers in any area and shall specifically set forth the
7 effective dates thereof when future hours and rates are certified. If a construction
8 project extends into more than one area there shall be but one standard of hours of
9 labor and wage rates for the entire project.

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

11 227.01 (13) (t) Ascertains and determines ~~prevailing hours of labor, wage rates~~
12 ~~and truck rental rates under s. 103.50~~ and prevailing wage rates and hours of labor
13 under s. ss. 103.49 and 103.50, except that any action or inaction which ascertains
14 and determines prevailing hours of labor, and wage rates ~~and truck rental rates~~
15 under ss. 103.49 and 103.50 is subject to judicial review under s. 227.40.

16 **SECTION 8. Nonstatutory provisions.**

17 (1) CERTIFICATION OF PREVAILING WAGES AND HOURS. Notwithstanding section
18 103.50 (4) of the statutes, as affected by this act, the department of industry, labor
19 and human relations shall certify to the department of transportation, within 30
20 days after the effective date of this subsection, the prevailing hours of labor, as
21 defined in section 103.50 (1) (c) of the statutes, and the prevailing wage rate, as
22 defined in section 103.50 (1) (d) of the statutes, as affected by this act, for all classes
23 of laborers, mechanics and truck drivers in each area, as defined in section 103.50
24 (1) (a) of the statutes, in accordance with the methodology provided in section 103.50
25 (1) (d) of the statutes, as affected by this act.

