



## 2013 ASSEMBLY BILL 888

March 25, 2014 - Introduced by Representatives MASON, BARCA, BERCEAU, GENRICH, GOYKE, HEBL, HESSELBEIN, HULSEY, JOHNSON, JORGENSEN, KAHL, MILROY, OHNSTAD, POPE, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, WRIGHT and ZAMARRIPA, cosponsored by Senators MILLER, CARPENTER and HARRIS. Referred to Committee on Labor.

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.

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### *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

**ASSEMBLY BILL 888**

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

**ASSEMBLY BILL 888**

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:

**ASSEMBLY BILL 888****SECTION 3**

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

**ASSEMBLY BILL 888**

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.

**ASSEMBLY BILL 888****SECTION 5**

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

**ASSEMBLY BILL 888**

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

**ASSEMBLY BILL 888****SECTION 5**

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)