

State of Wisconsin



1999 Assembly Bill 409

Date of enactment: April 12, 2000
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1999 WISCONSIN ACT 70

AN ACT *to repeal* 66.293 (1) (h); *to renumber and amend* 66.293 (4) (b), 103.49 (2m) (b) and 103.50 (2m) (b); *to amend* 66.293 (3) (am), 66.293 (3) (ar), 66.293 (3) (bm), 66.293 (3) (br), 66.293 (3) (dm), 66.293 (4) (a) (intro.), 66.293 (4) (a) 1., 66.293 (8), 66.293 (9) (c), 66.293 (10) (a), 66.293 (10) (b), 66.293 (10) (c), 66.293 (10) (d), 66.293 (11) (a), 66.293 (11) (b) 2., 66.293 (11) (b) 4., 66.293 (11) (b) 6., 66.293 (12) (a), 66.293 (12) (b), 66.293 (12) (d), 103.49 (1) (c) (intro.), 103.49 (1) (d), 103.49 (2), 103.49 (2m) (a) (intro.), 103.49 (2m) (a) 1., 103.49 (3) (a), 103.49 (3) (am), 103.49 (3) (ar), 103.49 (3) (b), 103.49 (3) (c), 103.49 (3g), 103.49 (4r) (c), 103.49 (5) (a), 103.49 (5) (b), 103.49 (5) (c), 103.49 (6m) (b), 103.49 (6m) (d), 103.49 (6m) (f), 103.49 (7) (a), 103.49 (7) (b), 103.49 (7) (d), 103.50 (2), 103.50 (2m) (a) (intro.), 103.50 (2m) (a) 1., 103.50 (3), 103.50 (4), 103.50 (5), 103.50 (6), 103.50 (7) (b), 103.50 (7) (d), 103.50 (7) (e), 103.50 (7) (f), 103.50 (8) and 227.01 (13) (t); and *to create* 66.293 (4) (b) 1. and 2., 103.49 (2m) (b) 1. and 2. and 103.50 (2m) (b) 1. and 2. of the statutes; **relating to:** the coverage of the prevailing wage and hours of labor law, the definition of prevailing hours of labor, the determination of prevailing wage rates and granting rule-making authority.

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

SECTION 1. 66.293 (1) (h) of the statutes is repealed.

SECTION 2. 66.293 (3) (am) of the statutes is amended to read:

66.293 (3) (am) Every local governmental unit, before making a contract by direct negotiation or soliciting bids on a contract, for the erection, construction, remodeling, repairing or demolition of any project of public works, including a highway, street or bridge construction project, shall apply to the department to determine the prevailing wage rate and prevailing hours of labor for each trade or occupation required in the work contemplated. The department shall ~~make~~ conduct such investigations and hold such public hearings as may be necessary to define the trades or occupations that are commonly employed on projects that are subject to this

section and to inform itself as to the prevailing wage rates and ~~prevailing hours of labor~~ in all areas of the state for those trades or occupations ~~with a view to ascertaining in order to determine~~ the prevailing wage rate and ~~prevailing hours of labor~~ for each such trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the same with the local governmental unit applying therefor.

SECTION 3. 66.293 (3) (ar) of the statutes is amended to read:

66.293 (3) (ar) The department shall, by January 1 of each year, compile the prevailing wage rates ~~and the prevailing hours of labor~~ for each trade or occupation in each area. The compilation shall, in addition to the current prevailing wage rates ~~and prevailing hours of labor~~, include future prevailing wage rates ~~and prevailing hours of labor~~ when those prevailing wage rates ~~and prevailing hours of labor~~ can be determined for any trade or occupa-

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion in any area and shall specify the effective date of those future prevailing wage rates and prevailing hours of labor. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates and prevailing hours of labor for the entire project.

SECTION 4. 66.293 (3) (bm) of the statutes is amended to read:

66.293 (3) (bm) Any person may request a recalculation of any portion of a an initial determination within 30 days after the initial determination date if the person submits evidence with the request showing that the prevailing wage rate ~~or prevailing hours of labor~~ for any given trade or occupation included in the initial determination does not represent the prevailing wage rate ~~or prevailing hours of labor~~ for that trade or occupation in the area. Such evidence shall include wage rate and hours of labor information ~~for reflecting work performed by persons working~~ in the contested trade or occupation in the area within the previous 12 months during the current survey period. The department shall affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation.

SECTION 5. 66.293 (3) (br) of the statutes is amended to read:

66.293 (3) (br) In addition to the recalculation under par. (bm), the local governmental unit that requested the determination under this subsection may request a review of any portion of a determination within 30 days after the date of issuance of the determination if the local governmental unit submits evidence with the request showing that the prevailing wage rate ~~or prevailing hours of labor~~ for any given trade or occupation included in the determination does not represent the prevailing wage rate ~~or prevailing hours of labor~~ for that trade or occupation in the city, village or town in which the proposed project is located. That evidence shall include wage rate and hours of labor information for the contested trade or occupation on at least 3 similar projects located in the city, village or town where the proposed project is located and on which some work has been performed within the previous 12 months during the current survey period and which were considered by the department in issuing its most recent compilation under par. (ar). The department shall affirm or modify the determination within 15 days after the date on which the department receives the request for review.

SECTION 6. 66.293 (3) (dm) of the statutes is amended to read:

66.293 (3) (dm) A reference to the prevailing wage rates and prevailing hours of labor determined by the department or a local governmental unit exempted under sub. (6) and to the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for the project. If any contract or subcontract for a project of public works, including a highway, street or bridge construction project, is entered into, the prevailing wage

rates ~~and prevailing hours of labor~~ determined by the department or exempted local governmental unit and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force. No person performing the work described in sub. (4) may be paid less than the prevailing wage rate in the same or most similar trade or occupation determined under this subsection; nor may he or she be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor ~~determined under this subsection~~, unless he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

SECTION 7. 66.293 (4) (a) (intro.) of the statutes is amended to read:

66.293 (4) (a) (intro.) All Subject to par. (b), all of the following employes shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor ~~determined under sub. (3)~~, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

SECTION 8. 66.293 (4) (a) 1. of the statutes is amended to read:

66.293 (4) (a) 1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section, ~~or employed to deliver mineral aggregate such as sand, gravel or stone that is immediately incorporated into the work, and not stockpiled or further transported by truck, to or from the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle, or employed to transport excavated material or spoil from and return to the site of a project that is subject to this section.~~

SECTION 9. 66.293 (4) (b) of the statutes is renumbered 66.293 (4) (b) (intro.) and amended to read:

66.293 (4) (b) (intro.) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed in the ~~processing, manufacturing or delivery of materials or products by or for 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 regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or

her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~; unless any of the following applies:

SECTION 10. 66.293 (4) (b) 1. and 2. of the statutes are created to read:

66.293 (4) (b) 1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

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

SECTION 11. 66.293 (8) of the statutes is amended to read:

66.293 (8) POSTING. For the information of the employes working on the project, the prevailing wage rates ~~and prevailing hours of labor~~ determined by the department or exempted local governmental unit, the prevailing hours of labor and the provisions of subs. (10) (a) and (11) (a) shall be kept posted by the local governmental unit in at least one conspicuous and easily accessible place on the site of the project or, if there is no common site on the project, at the place normally used by the local governmental unit to post public notices.

SECTION 12. 66.293 (9) (c) of the statutes is amended to read:

66.293 (9) (c) Upon completion of a project and before receiving final payment for his or her work on the project, each contractor shall file with the local governmental unit authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section and that the contractor has received an affidavit under par. (b) from each of the contractor's agents and subcontractors. A local governmental unit may not authorize a final payment until such an affidavit is filed in proper form and order. If a local governmental unit authorizes a final payment before such an affidavit is filed in proper form and order or if the department determines, based on the greater weight of the credible evidence, that any person performing the work specified in sub. (4) has been or may have been paid less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor and requests that the local governmental unit withhold all or part of the final payment, but the local governmental unit fails to do so, the local governmental unit is liable for all back wages payable up to the amount of ~~that~~ the final payment.

SECTION 13. 66.293 (10) (a) of the statutes is amended to read:

66.293 (10) (a) Each contractor, subcontractor or agent thereof performing work on a project that is subject to this section shall keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work described in sub. (4) and an accurate record of the number of hours worked by each of those persons and the actual wages paid therefor.

SECTION 14. 66.293 (10) (b) of the statutes is amended to read:

66.293 (10) (b) The department or the contracting local governmental unit may demand and examine, and it shall be the duty of every contractor, subcontractor and agent thereof to keep and furnish to the department or local governmental unit, copies of payrolls and other records and information relating to the wages paid to persons performing the work described in sub. (4) for work to which this section applies. The department may inspect records in the manner provided in ~~chs. 103 to 106 ch. 103~~. Every contractor, subcontractor or agent performing work on a project that is subject to this section is subject to the requirements of ~~chs. 103 to 106 ch. 103~~ relating to the examination of records.

SECTION 15. 66.293 (10) (c) of the statutes is amended to read:

66.293 (10) (c) If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor or agent performing work on a project that is subject to this section to ensure compliance with this section. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is a person performing the work specified in sub. (4), the department shall charge the person making the request the actual cost of the inspection. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is not a person performing the work specified in sub. (4), the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

SECTION 16. 66.293 (10) (d) of the statutes is amended to read:

66.293 (10) (d) Section 103.005 (5) (f), (11), (12) and (13) applies to this section, except that s. 103.005 (12) (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates ~~or prevailing hours of labor~~ under sub. (3) (am) or (ar). Section 111.322 (2m) applies to discharge ~~or and~~ other discriminatory acts arising in connection with any proceeding under this section, including proceedings under sub. (11) (a).

SECTION 17. 66.293 (11) (a) of the statutes is amended to read:

66.293 (11) (a) Any contractor, subcontractor or agent thereof, who fails to pay the prevailing wage rate determined by the department under sub. (3) or who pays less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~, shall be liable to any affected employe in the amount of his or her unpaid wages or his or her unpaid overtime compensation and in an additional equal amount as liquidated damages. An action to recover the liability may be maintained in any court of competent jurisdiction by any employe for and in behalf of that employe and other employes similarly situated. No employe may be a party plaintiff to any such action unless the employe consents in writing to become such a party and the consent is filed in the court in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

SECTION 18. 66.293 (11) (b) 2. of the statutes is amended to read:

66.293 (11) (b) 2. Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the individual person is entitled under the contract governing such project, or who reduces the hourly basic rate of pay normally paid to ~~an employe~~ a person for work on a project that is not subject to this section during a week in which the employe person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from such employment or by any other means is guilty of an offense under s. 946.15 (1).

SECTION 19. 66.293 (11) (b) 4. of the statutes is amended to read:

66.293 (11) (b) 4. Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to permit any part of the wages to which the individual person is entitled under the contract governing such project to be deducted from the individual's person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from ~~an individual a person~~ who is working on a project that is subject to 40 USC 276c.

SECTION 20. 66.293 (11) (b) 6. of the statutes is amended to read:

66.293 (11) (b) 6. Subdivision 1. does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates ~~or prevailing hours of labor~~ under sub. (3) (am) or (ar).

SECTION 21. 66.293 (12) (a) of the statutes is amended to read:

66.293 (12) (a) Except as provided under pars. (b) and (c), the department shall notify any local governmen-

tal unit applying for a determination under sub. (3) and any local governmental unit exempted under sub. (6) of the names of all persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~ at any time in the preceding 3 years. The department shall include with any such name the address of such person and shall specify when such person failed to pay the prevailing wage rate and when such person paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. A local governmental unit may not award any contract to such person unless otherwise recommended by the department or unless ~~at least~~ 3 years have elapsed from the date the department issued its findings or the date of final determination by a court of competent jurisdiction, whichever is later.

SECTION 22. 66.293 (12) (b) of the statutes is amended to read:

66.293 (12) (b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~.

SECTION 23. 66.293 (12) (d) of the statutes is amended to read:

66.293 (12) (d) Any person submitting a bid or negotiating a contract on a project that is subject to this section shall be required, on the date the person submits the bid or negotiates the contract, to identify any construction business in which the person, or a shareholder, officer or partner of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or negotiates the contract or at any other time within 3 years preceding the date the person submits the bid or negotiates the contract, if the business has been found to have failed to pay the prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~.

SECTION 24. 103.49 (1) (c) (intro.) of the statutes is amended to read:

103.49 (1) (c) "Prevailing hours of labor" for any trade or occupation in any area means ~~no more than~~ 10 hours per day ~~nor more than~~ and 40 hours per week and may not include any hours worked on a Saturday or Sunday or on any of the following holidays:

SECTION 25. 103.49 (1) (d) of the statutes is amended to read:

103.49 (1) (d) "Prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in the trade or occupation on projects in the area, or if there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, then the prevailing wage rate for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area shall be the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

SECTION 26. 103.49 (2) of the statutes is amended to read:

103.49 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract hereafter made for the erection, construction, remodeling, repairing or demolition of any project of public works, except contracts for the construction or maintenance of public highways, streets and bridges, to which the state, any state agency or the University of Wisconsin Hospitals and Clinics Authority is a party shall contain a stipulation that no person performing the work described in sub. (2m) may be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor ~~determined under sub. (3)~~, except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per calendar week if he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he or she be paid less than the prevailing wage rate determined under sub. (3) in the same or most similar trade or occupation in the area wherein such project of public works is situated ~~determined under sub. (3)~~. A reference to the prevailing wage rates ~~and prevailing hours of labor~~ determined under sub. (3) and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for the project. If any contract or subcontract for a project that is subject to this section is entered into, the prevailing wage rates ~~and prevailing hours of labor~~ determined under sub. (3) and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department, the department shall

prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force.

SECTION 27. 103.49 (2m) (a) (intro.) of the statutes is amended to read:

103.49 (2m) (a) (intro.) ~~All~~ Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor ~~determined under sub. (3)~~, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

SECTION 28. 103.49 (2m) (a) 1. of the statutes is amended to read:

103.49 (2m) (a) 1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section, ~~or employed to deliver mineral aggregate such as sand, gravel or stone that is immediately incorporated into the work, and not stockpiled or further transported by truck, to or from the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle, or employed to transport excavated material or spoil from and return to the site of a project that is subject to this section.~~

SECTION 29. 103.49 (2m) (b) of the statutes is renumbered 103.49 (2m) (b) (intro.) and amended to read:

103.49 (2m) (b) (intro.) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed ~~in the processing, manufacturing or delivery of materials or products by or for 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 regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~. unless any of the following applies:

SECTION 30. 103.49 (2m) (b) 1. and 2. of the statutes are created to read:

103.49 (2m) (b) 1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

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

SECTION 31. 103.49 (3) (a) of the statutes is amended to read:

103.49 (3) (a) Before bids are asked for any work to which this section applies, the state agency having the authority to prescribe the specifications shall apply to the department to determine the prevailing wage rate and ~~prevailing hours of labor~~ for each trade or occupation required in the work under contemplation in the area in which the work is to be done. The department shall ~~make~~ conduct such investigations and hold such public hearings as may be necessary to define the trades or occupations that are commonly employed on projects that are subject to this section and to inform itself as to the prevailing wage rates and ~~prevailing hours of labor~~ in all areas of the state for those trades or occupations ~~with a view to ascertaining in order to determine~~ the prevailing wage rate and ~~prevailing hours of labor~~ for each such trade or occupation. The department shall issue its determination within 30 days after receiving the request and shall file the same with the state agency applying therefor. For the information of the employees working on the project, the prevailing wage rates and ~~prevailing hours of labor~~ determined by the department, the prevailing hours of labor and the provisions of subs. (2) and (6m) shall be kept posted by the state agency in at least one conspicuous and easily accessible place on the site of the project.

SECTION 32. 103.49 (3) (am) of the statutes is amended to read:

103.49 (3) (am) The department shall, by January 1 of each year, compile the prevailing wage rates and ~~the prevailing hours of labor~~ for each trade or occupation in each area. The compilation shall, in addition to the current prevailing wage rates and ~~prevailing hours of labor~~, include future prevailing wage rates and ~~prevailing hours of labor~~ when those prevailing wage rates and ~~prevailing hours of labor~~ can be determined for any trade or occupation in any area and shall specify the effective date of those future prevailing wage rates and ~~prevailing hours of labor~~. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates and ~~prevailing hours of labor~~ for the entire project.

SECTION 33. 103.49 (3) (ar) of the statutes is amended to read:

103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am) ~~for building, residential or agricultural projects~~, the department may not use data from projects that are subject to this section, s. 66.293 or 103.50 or 40 USC 276a. ~~In determining prevailing wage rates for projects involving the use of heavy equipment, unless the department determines that there is insufficient wage~~

data in the area to determine those prevailing wage rates, in which case the department may use data from projects that are subject to this section, s. 66.293 or 103.50 or 40 USC 276a.

SECTION 34. 103.49 (3) (b) of the statutes is amended to read:

103.49 (3) (b) Any person may request a recalculation of any portion of a an initial determination within 30 days after the initial determination date if the person submits evidence with the request showing that the prevailing wage rate ~~or prevailing hours of labor~~ for any given trade or occupation included in the initial determination does not represent the prevailing wage rate ~~or prevailing hours of labor~~ for that trade or occupation in the area. Such evidence shall include wage rate and ~~hours of labor~~ information ~~for~~ reflecting work performed by persons working in the contested trade or occupation in the area ~~within the previous 12 months during the current survey period~~. The department shall affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation.

SECTION 35. 103.49 (3) (c) of the statutes is amended to read:

103.49 (3) (c) In addition to the recalculation under par. (b), the state agency that requested the determination under this subsection may request a review of any portion of a determination within 30 days after the date of issuance of the determination if the state agency submits evidence with the request showing that the prevailing wage rate ~~or prevailing hours of labor~~ for any given trade or occupation included in the determination does not represent the prevailing wage rate ~~or prevailing hours of labor~~ for that trade or occupation in the city, village or town in which the proposed project is located. That evidence shall include wage rate and ~~hours of labor~~ information for the contested trade or occupation on at least 3 similar projects located in the city, village or town where the proposed project is located on which some work has been performed ~~within the previous 12 months during the current survey period~~ and which were considered by the department in issuing its most recent compilation under par. (am). The department shall affirm or modify the determination within 15 days after the date on which the department receives the request for review.

SECTION 36. 103.49 (3g) of the statutes is amended to read:

103.49 (3g) **NONAPPLICABILITY.** This section does not apply to any single-trade public works project for which the estimated project cost of completion is less than \$30,000 or an amount determined by the department under s. 66.293 (5) or to any multiple-trade public works project for which the estimated project cost of completion is less than \$150,000 or an amount determined by the department under s. 66.293 (5).

SECTION 37. 103.49 (4r) (c) of the statutes is amended to read:

103.49 (4r) (c) Upon completion of a project and before receiving final payment for his or her work on the project, each contractor shall file with the state agency authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section and that the contractor has received an affidavit under par. (b) from each of the contractor's agents and subcontractors. A state agency may not authorize a final payment until such an affidavit is filed in proper form and order. If a state agency authorizes a final payment before such an affidavit is filed in proper form and order or if the department determines, based on the greater weight of the credible evidence, that any person performing the work specified in sub. (2m) has been or may have been paid less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor and requests that the state agency withhold all or part of the final payment, but the state agency fails to do so, the state agency is liable for all back wages payable up to the amount of the final payment.

SECTION 38. 103.49 (5) (a) of the statutes is amended to read:

103.49 (5) (a) Each contractor, subcontractor or agent thereof performing work on a project that is subject to this section shall keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work described in sub. (2m) and an accurate record of the number of hours worked by each of those persons and the actual wages paid therefor.

SECTION 39. 103.49 (5) (b) of the statutes is amended to read:

103.49 (5) (b) It shall be the duty of the department to enforce this section. To this end it may demand and examine, and it shall be the duty of every contractor, subcontractor and agent thereof to keep and furnish to the department, copies of payrolls and other records and information relating to the wages paid to persons performing the work described in sub. (2m) for work to which this section applies. The department may inspect records in the manner provided in this chapter ~~and chs. 104 to 106~~. Every contractor, subcontractor or agent performing work on a project that is subject to this section is subject to the requirements of this chapter ~~and chs. 104 to 106~~ relating to the examination of records. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

SECTION 40. 103.49 (5) (c) of the statutes is amended to read:

103.49 (5) (c) If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor or agent performing work on a project that is subject to this section to ensure compliance with this section. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the

person making the request is a person performing the work specified in sub. (2m), the department shall charge the person making the request the actual cost of the inspection. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance and if the person making the request is not a person performing the work specified in sub. (2m), the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

SECTION 41. 103.49 (6m) (b) of the statutes is amended to read:

103.49 (6m) (b) Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the individual person is entitled under the contract governing such project, or who reduces the hourly basic rate of pay normally paid to ~~an employe~~ a person for work on a project that is not subject to this section during a week in which the employe person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from such employment or by any other means is guilty of an offense under s. 946.15 (1).

SECTION 42. 103.49 (6m) (d) of the statutes is amended to read:

103.49 (6m) (d) Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to permit any part of the wages to which the individual person is entitled under the contract governing such project to be deducted from the individual's person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from ~~an individual~~ a person who is working on a project that is subject to 40 USC 276c.

SECTION 43. 103.49 (6m) (f) of the statutes is amended to read:

103.49 (6m) (f) Paragraph (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates ~~and prevailing hours of labor~~ under sub. (3) (a) or (am).

SECTION 44. 103.49 (7) (a) of the statutes is amended to read:

103.49 (7) (a) Except as provided under pars. (b) and (c), the department shall distribute to all state agencies and to the University of Wisconsin Hospitals and Clinics Authority a list of all persons whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3)~~ at any time in the preceding 3 years. The department shall include with any such name the address of such person and shall specify when such person failed to pay the prevailing wage rate and when such person

paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. A state agency or the University of Wisconsin Hospitals and Clinics Authority may not award any contract to such person unless otherwise recommended by the department or unless 3 years have elapsed from the date the department issued its findings or date of final determination by a court of competent jurisdiction, whichever is later.

SECTION 45. 103.49 (7) (b) of the statutes is amended to read:

103.49 (7) (b) The department may not include in a notification under par. (a) the name of any person on the basis of having let work to a person whom the department has found to have failed to pay the prevailing wage rate determined under sub. (3) or has found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor determined under sub. (3).

SECTION 46. 103.49 (7) (d) of the statutes is amended to read:

103.49 (7) (d) Any person submitting a bid on a project that is subject to this section shall be required, on the date the person submits the bid, to identify any construction business in which the person, or a shareholder, officer or partner of the person, if the person is a business, owns, or has owned at least a 25% interest on the date the person submits the bid or at any other time within 3 years preceding the date the person submits the bid, if the business has been found to have failed to pay the prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor determined under sub. (3).

SECTION 47. 103.50 (2) of the statutes is amended to read:

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

SECTION 48. 103.50 (2m) (a) (intro.) of the statutes is amended to read:

103.50 (2m) (a) (intro.) ~~All Subject to par. (b), all of the following employees shall be paid the prevailing wage rate determined under sub. (3) and may not be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor determined under sub. (3), unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:~~

SECTION 49. 103.50 (2m) (a) 1. of the statutes is amended to read:

103.50 (2m) (a) 1. All laborers, workers, mechanics and truck drivers employed on the site of a project that is subject to this section, ~~or employed to deliver mineral aggregate such as sand, gravel or stone that is immediately incorporated into the work, and not stockpiled or further transported by truck, to or from the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle, or employed to transport excavated material or spoil from and return to the site of a project that is subject to this section.~~

SECTION 50. 103.50 (2m) (b) of the statutes is renumbered 103.50 (2m) (b) (intro.) and amended to read:

103.50 (2m) (b) (intro.) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who is regularly employed ~~in the processing, manufacturing or delivery of materials or products by or for 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 regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~determined under sub. (3); unless any of the following applies:~~

SECTION 51. 103.50 (2m) (b) 1. and 2. of the statutes are created to read:

103.50 (2m) (b) 1. The laborer, worker, mechanic or truck driver is employed to go to the source of mineral aggregate such as sand, gravel or stone that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate and deliver that mineral aggregate to the site of a project that is subject to this section by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

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

SECTION 52. 103.50 (3) of the statutes is amended to read:

103.50 (3) INVESTIGATIONS; DETERMINATIONS. The department shall conduct investigations and hold public hearings necessary to define the trades or occupations that are commonly employed in the highway construction industry and to inform itself as to the prevailing wage rates and prevailing hours of labor in all areas of the state for those trades or occupations, in order to ascertain and determine the prevailing wage rates and prevailing hours of labor accordingly.

SECTION 53. 103.50 (4) of the statutes is amended to read:

103.50 (4) CERTIFICATION OF PREVAILING WAGE RATES AND HOURS OF LABOR. The department of workforce development shall, by May 1 of each calendar year, certify to the department of transportation the prevailing wage rates and the prevailing hours of labor in each area for all trades or occupations commonly employed in the highway construction industry. The certification shall, in addition to the current prevailing wage rates and prevailing hours of labor, include future prevailing wage rates and prevailing hours of labor when such prevailing wage rates and prevailing hours of labor can be determined for any such trade or occupation in any area and shall specify the effective date of those future prevailing wage rates and prevailing hours of labor. If a construction project extends into more than one area there shall be but one standard of prevailing wage rates and prevailing hours of labor for the entire project.

SECTION 54. 103.50 (5) of the statutes is amended to read:

103.50 (5) APPEALS TO GOVERNOR. If the department of transportation considers any determination of the department of workforce development as to the prevailing wage rates and the prevailing hours of labor in an area to have been incorrect, it may appeal to the governor, whose determination shall be final.

SECTION 55. 103.50 (6) of the statutes is amended to read:

103.50 (6) CONTENTS OF CONTRACTS. A reference to the prevailing wage rates and the prevailing hours of labor determined under sub. (3) and the prevailing hours of labor shall be published in the notice issued for the purpose of securing bids for a project. If any contract or subcontract for a project that is subject to this section is entered into, the prevailing wage rates and prevailing hours of labor determined under sub. (3) and the prevailing hours of labor shall be physically incorporated into and made a part of the contract or subcontract, except that for a minor subcontract, as determined by the department of workforce development, that department shall prescribe by rule the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the minor subcontract. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract may not be changed during the time that the contract or subcontract is in force. For the

information of the employees working on the project, the prevailing wage rates and prevailing hours of labor determined by the department, the prevailing hours of labor and the provisions of subs. (2) and (7) shall be kept posted by the department of transportation in at least one conspicuous and easily accessible place on the site of the project.

SECTION 56. 103.50 (7) (b) of the statutes is amended to read:

103.50 (7) (b) Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to give up, waive or return any part of the wages to which the individual person is entitled under the contract governing such project, or who reduces the hourly basic rate of pay normally paid to an employe a person for work on a project that is not subject to this section during a week in which the employe person works both on a project that is subject to this section and on a project that is not subject to this section, by threat not to employ, by threat of dismissal from such employment or by any other means is guilty of an offense under s. 946.15 (1).

SECTION 57. 103.50 (7) (d) of the statutes is amended to read:

103.50 (7) (d) Whoever induces any individual person who seeks to be or is employed on any project that is subject to this section to permit any part of the wages to which the individual person is entitled under the contract governing such project to be deducted from the individual's person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from an individual a person who is working on a project that is subject to 40 USC 276c.

SECTION 58. 103.50 (7) (e) of the statutes is amended to read:

103.50 (7) (e) Any person employed on a project that is subject to this section who knowingly permits any part of the wages to which he or she is entitled under the contract governing such project to be deducted from his or her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from an individual a person who is working on a project that is subject to 40 USC 276c.

SECTION 59. 103.50 (7) (f) of the statutes is amended to read:

103.50 (7) (f) Paragraph (a) does not apply to any person who fails to provide any information to the department to assist the department in determining prevailing wage rates or prevailing hours of labor under sub. (3) or (4).

SECTION 60. 103.50 (8) of the statutes is amended to read:

103.50 (8) ENFORCEMENT AND PROSECUTION. The department of transportation shall require adherence to subs. (2), (2m) and (6). The department of transportation may demand and examine, and it shall be the duty of

every contractor, subcontractor and agent thereof to keep and furnish to the department of transportation, copies of payrolls and other records and information relating to the wages paid to persons described in sub. (2m) for work to which compliance with this section applies. Upon request of the department of transportation or upon complaint of alleged violation, the district attorney of the county in which the work is located shall make such investigation as necessary and prosecute violations in a court of competent jurisdiction. Section 111.322 (2m)

applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

SECTION 61. 227.01 (13) (t) of the statutes is amended to read:

227.01 (13) (t) Ascertains and determines prevailing wage rates ~~and prevailing hours of labor~~ under ss. 66.293, 103.49 and 103.50, except that any action or inaction which ascertains and determines prevailing wage rates ~~and prevailing hours of labor~~ under ss. 66.293, 103.49 and 103.50 is subject to judicial review under s. 227.40.
