

1999 ASSEMBLY BILL 539

October 20, 1999 – Introduced by Representatives BALOW, SYKORA, SUDER, GOETSCH, F. LASEE, RILEY, COLON and SCHOOFF, cosponsored by Senators ZIEN, JAUCH and FARROW. Referred to Committee on Corrections and the Courts.

1 **AN ACT to repeal** 20.410 (1) (ks); **to renumber and amend** 13.48 (19); **to amend**
 2 13.48 (27), 20.410 (1) (ab), 20.410 (1) (ab), 20.410 (1) (ej), 109.09 (1), 111.322
 3 (2m) (c), 227.01 (13) (t), 301.21 (1m) (a) (intro.), 301.21 (2m) (a) (intro.), 301.235
 4 (2) (e) and 302.01; and **to create** 13.48 (19) (b), 20.410 (1) (ej), 20.410 (1) (ks),
 5 20.924 (1) (i), 301.18 (1g), 301.19 and 301.21 (7) of the statutes; **relating to:** the
 6 construction of correctional facilities by private persons, the lease of certain
 7 correctional facilities, contracts for the confinement of Wisconsin prisoners in
 8 other states, making an appropriation and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, the building commission is authorized to lease facilities for use by the department of corrections (DOC). Current law also subjects the purchase, lease or construction of correctional facilities by the state to prior approval by the building commission and the joint committee on finance (JCF). Moreover, current law imposes certain “prevailing wage” requirements on employers working on state or local public works projects and establishes enforcement mechanisms for those requirements, including criminal penalties.

In addition, under current law, DOC may enter into contracts to confine prisoners in its custody in other states. Under these provisions, DOC may contract

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with either another state, a political subdivision of another state or a private person. If a contract entails the transfer of more than ten prisoners to a single state or to any political subdivision of another state, it must be approved by the legislature or by JCF.

This bill prohibits DOC from transferring a prisoner for confinement outside of this state if it has a bed available in a state prison at the appropriate security classification for the prisoner. The bill also relates to correctional facilities constructed by or under construction by private persons, other than those built at the direction of federal, tribal, state or local government. Under the bill, the department of administration (DOA) must attempt to negotiate with the owner of each such correctional facility to lease the facility, with the lease term to begin July 1, 2000. If DOA successfully negotiates a lease, the lease is subject to approval by the building commission and JCF. DOC's lease payments and its costs for operating any such facility are funded first by the reduction in its costs for confining prisoners out of state resulting from its increased in-state capacity. Additional costs are funded by general purpose revenues. If DOA is unable to negotiate a lease, it is authorized under the bill to purchase the correctional facility.

The bill also regulates the construction of additional correctional facilities by private persons. Under the bill, a private person may not commence construction of a correctional facility or conversion of an existing building into a correctional facility unless: 1) the building commission has authorized the lease or acquisition of the correctional facility or has approved the construction or conversion; and 2) the person agrees to comply with current prevailing wage law. The bill prohibits the building commission from leasing or acquiring a correctional facility if these requirements are not met.

For further information see the *state* 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.** 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and amended
2 to read:

3 **13.48 (19) (a)** Whenever the building commission determines that the use of
4 innovative types of design and construction processes will make better use of the
5 resources and technology available in the building industry, the building commission
6 may waive any or all of s. 16.855 if such action is in the best interest of the state and
7 if the waiver is accomplished through formal action of the building commission. ~~The~~

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1 Subject to the requirements of par. (b) and s. 20.924 (1) (i), the building commission
2 may authorize the lease, lease purchase or acquisition of such facilities constructed
3 in the manner authorized by the building commission. The Subject to the
4 requirements of par. (b) and s. 20.924 (1) (i), the building commission may also
5 authorize the lease, lease purchase or acquisition of existing facilities in lieu of state
6 construction of any project enumerated in the authorized state building program.

7 **SECTION 2.** 13.48 (19) (b) of the statutes is created to read:

8 13.48 (19) (b) The building commission may not lease or acquire a building,
9 structure or facility for the purpose of confining persons serving a sentence of
10 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
11 undertakes construction or conversion of the building, facility or structure has met
12 the requirements of s. 301.19 (2) and has complied with the agreement under s.
13 20.924 (1) (i).

14 **SECTION 3.** 13.48 (27) of the statutes is amended to read:

15 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. The Subject to sub. (19) (b) and
16 s. 20.924 (1) (i), the building commission may lease any facility meeting the
17 requirements of s. 301.19 (2) for use of the department of corrections as a part of the
18 authorized state building program, with an option to purchase the facility by the
19 state. Any lease shall provide for the facility to be constructed in accordance with
20 requirements and specifications approved by the department of administration and
21 shall permit inspection of the site and facility by agents of the department.

22 **SECTION 4.** 20.410 (1) (ab) of the statutes is amended to read:

23 20.410 (1) (ab) *Corrections contracts and agreements.* The amounts in the
24 schedule for payments made in accordance with contracts entered into under ss.
25 301.21, 302.25 and 302.27, contracts entered into with the federal government under

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1 18 USC 5003 and intra-agency agreements relating to the placement of prisoners
2 and for transfer to the appropriation account under par. (ks) if the department of
3 administration leases a private correctional facility under 1999 Wisconsin Act ...
4 (this act), section 21 (2).

5 **SECTION 5.** 20.410 (1) (ab) of the statutes, as affected by 1999 Wisconsin Act ...
6 (this act), is amended to read:

7 20.410 (1) (ab) *Corrections contracts and agreements.* The amounts in the
8 schedule for payments made in accordance with contracts entered into under ss.
9 301.21, 302.25 and 302.27, contracts entered into with the federal government under
10 18 USC 5003 and intra-agency agreements relating to the placement of prisoners
11 ~~and for transfer to the appropriation account under par. (ks) if the department of~~
12 ~~administration leases a private correctional facility under 1999 Wisconsin Act ...~~
13 ~~(this act), section 21 (2).~~

14 **SECTION 6.** 20.410 (1) (ej) of the statutes is created to read:

15 20.410 (1) (ej) *Private correctional facility operations, services and rental.* A
16 sum sufficient to operate, to provide services at and to make rental payments on any
17 correctional facility leased under 1999 Wisconsin Act ... (this act), section 21 (2), to
18 the extent that the amount appropriated under par. (ks) is insufficient to pay these
19 costs.

20 **SECTION 7.** 20.410 (1) (ej) of the statutes, as created by 1999 Wisconsin Act 1999
21 Wisconsin Act ... (this act), is amended to read:

22 20.410 (1) (ej) *Private correctional facility operations, services and rental.* A
23 sum sufficient to operate, to provide services at and to make rental payments on any
24 correctional facility leased under 1999 Wisconsin Act ... (this act), section 21 (2), to

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1 ~~the extent that the amount appropriated under par. (ks) is insufficient to pay these~~
2 ~~costs.~~

3 **SECTION 8.** 20.410 (1) (ks) of the statutes is created to read:

4 20.410 (1) (ks) *Private correctional facility.* All moneys transferred from the
5 appropriation account under par. (ab) to operate, to provide services at and to make
6 rental payments on any correctional facility leased under 1999 Wisconsin Act (this
7 act), section 21 (2).

8 **SECTION 9.** 20.410 (1) (ks) of the statutes, as created by 1999 Wisconsin Act
9 (this act), is repealed.

10 **SECTION 10.** 20.924 (1) (i) of the statutes is created to read:

11 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
12 structure or facility, or portion thereof, under s. 301.19 (2) (a), for initial occupancy
13 by the department of corrections for the purpose of confining persons serving a
14 sentence of imprisonment to the Wisconsin state prisons under ch. 973 unless the
15 seller or lessor agrees as follows:

16 1. Not to permit any employe working on the building, structure or facility, or
17 portion thereof, who would be entitled to receive the prevailing wage rate under s.
18 103.49 and who would not be required or permitted to work more than the prevailing
19 hours of labor, if the building, structure or facility, or portion thereof, were a project
20 of public works subject to s. 103.49, to be paid less than the prevailing wage rate or
21 to be required or permitted to work more than the prevailing hours of labor, except
22 as permitted under s. 103.49 (2).

23 2. To require any contractor, subcontractor or agent thereof performing work
24 on the building, structure or facility, or portion thereof, to keep and permit inspection
25 of records in the same manner as a contractor, subcontractor or agent thereof

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1 performing work on a project of public works that is subject to s. 103.49 is required
2 to keep and permit inspection of records under s. 103.49 (5).

3 3. Otherwise to comply with s. 103.49 in the same manner as a state agency
4 contracting for the erection, construction, remodeling, repairing or demolition of a
5 project of public works is required to comply with s. 103.49 and to require any
6 contractor, subcontractor or agent thereof performing work on the building,
7 structure or facility, or portion thereof, to comply with s. 103.49 in the same manner
8 as a contractor, subcontractor or agent thereof performing work on a project of public
9 works that is subject to s. 103.49 is required to comply with s. 103.49.

10 **SECTION 11.** 109.09 (1) of the statutes is amended to read:

11 109.09 (1) The department shall investigate and attempt equitably to adjust
12 controversies between employers and employes as to alleged wage claims. The
13 department may receive and investigate any wage claim which is filed with the
14 department, or received by the department under s. 109.10 (4), no later than 2 years
15 after the date the wages are due. The department may, after receiving a wage claim,
16 investigate any wages due from the employer against whom the claim is filed to any
17 employe during the period commencing 2 years before the date the claim is filed. The
18 department shall enforce this chapter and ss. 20.924 (1) (i) 1., 2. and 3., 66.293,
19 103.02, 103.49, 103.82 and 104.12. In pursuance of this duty, the department may
20 sue the employer on behalf of the employe to collect any wage claim or wage
21 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
22 for actions under s. 109.10, the department may refer such an action to the district
23 attorney of the county in which the violation occurs for prosecution and collection and
24 the district attorney shall commence an action in the circuit court having appropriate
25 jurisdiction. Any number of wage claims or wage deficiencies against the same

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1 employer may be joined in a single proceeding, but the court may order separate
2 trials or hearings. In actions that are referred to a district attorney under this
3 subsection, any taxable costs recovered by the district attorney shall be paid into the
4 general fund of the county in which the violation occurs and used by that county to
5 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
6 the district attorney who prosecuted the action.

7 **SECTION 12.** 111.322 (2m) (c) of the statutes is amended to read:

8 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
9 under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49 or testifies or assists in any action
10 or proceeding under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49.

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

12 227.01 (13) (t) Ascertains and determines prevailing wage rates and prevailing
13 hours of labor under ~~ss.~~ s. 20.924 (1) (i) 3., 66.293, 103.49 ~~and or~~ 103.50, except that
14 any action or inaction which ascertains and determines prevailing wage rates and
15 prevailing hours of labor under ~~ss.~~ s. 20.924 (1) (i) 3., 66.293, 103.49 ~~and or~~ 103.50
16 is subject to judicial review under s. 227.40.

17 **SECTION 14.** 301.18 (1g) of the statutes is created to read:

18 301.18 (1g) The department of administration may acquire or lease
19 correctional facilities defined under 1999 Wisconsin Act (this act), section 21 (1)
20 (b).

21 **SECTION 15.** 301.19 of the statutes is created to read:

22 **301.19 Construction of correctional facilities by private persons. (1)**

23 In this section:

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1 (a) “Authorized jurisdiction” means a county, a group of counties acting under
2 s. 302.44, the United States or a federally recognized American Indian tribe or band
3 in this state.

4 (b) “Correctional facility” means a prison, jail, house of correction or lockup
5 facility but does not include an institution or facility or a portion of an institution or
6 facility that is used solely to confine juveniles alleged or found to be delinquent under
7 ch. 48, 1993 stats., or ch. 938.

8 (2) No private person may commence construction of a correctional facility or
9 commence conversion of an existing building, structure or facility into a correctional
10 facility unless all of the following requirements are met:

11 (a) The building commission has authorized the lease or acquisition of the
12 building, structure or facility by the state upon the completion of the construction or
13 conversion or has approved the construction or conversion of the building, structure
14 or facility.

15 (b) The private person agrees to comply with s. 20.924 (1) (i) 1., 2. and 3.

16 (3) Subsection (2) does not apply to buildings, structures or facilities that are
17 constructed or converted under a contract with and for use by an authorized
18 jurisdiction.

19 **SECTION 16.** 301.21 (1m) (a) (intro.) of the statutes is amended to read:

20 301.21 (1m) (a) (intro.) The Subject to sub. (7), the department may enter into
21 one or more contracts with another state or a political subdivision of another state
22 for the transfer and confinement in that state of prisoners who have been committed
23 to the custody of the department. Any such contract shall provide for all of the
24 following:

25 **SECTION 17.** 301.21 (2m) (a) (intro.) of the statutes is amended to read:

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1 301.21 **(2m)** (a) (intro.) ~~The Subject to sub. (7)~~, the department may enter into
2 one or more contracts with a private person for the transfer and confinement in
3 another state of prisoners who have been committed to the custody of the
4 department. Any such contract shall provide for all of the following:

5 **SECTION 18.** 301.21 (7) of the statutes is created to read:

6 301.21 **(7)** The department may transfer a prisoner under a contract under sub.
7 (1m) or (2m) only if it does not have a bed available in a state prison at the appropriate
8 security classification for the prisoner.

9 **SECTION 19.** 301.235 (2) (e) of the statutes is amended to read:

10 301.235 **(2)** (e) All laws, except s. 20.924 (1) (i) and ch. 150, conflicting with this
11 section are, insofar as they conflict with this section and no further, superseded by
12 this section.

13 **SECTION 20.** 302.01 of the statutes is amended to read:

14 **302.01 State prisons named and defined listed.** The penitentiary
15 institution at Waupun is named “Waupun Correctional Institution”. The
16 correctional treatment center at Waupun is named “Dodge Correctional Institution”.
17 The penitentiary institution at Green Bay is named “Green Bay Correctional
18 Institution”. The medium/maximum penitentiary institution at Portage is named
19 “Columbia Correctional Institution”. The medium security institution at Oshkosh
20 is named “Oshkosh Correctional Institution”. The medium security penitentiary
21 institution near Fox Lake is named “Fox Lake Correctional Institution”. The
22 penitentiary institution at Taycheedah is named “Taycheedah Correctional
23 Institution”. The medium security penitentiary institution at Plymouth is named
24 “Kettle Moraine Correctional Institution”. The penitentiary institution at the
25 village of Sturtevant in Racine county is named “Racine Correctional Institution”.

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1 The medium security ~~penitentiary~~ institution at Racine is named “Racine Youthful
2 Offender Correctional Facility”. The resource facility at Oshkosh is named
3 “Wisconsin Resource Center”. The institutions named in this section, the
4 correctional institution authorized under s. 301.16 (1n), correctional institution
5 authorized under 1997 Wisconsin Act 4, section 4 (1) (a), correctional institution
6 authorized under s. 301.046 (1), correctional institution authorized under s. 301.048
7 (4) (b), minimum security correctional institutions authorized under s. 301.13, any
8 correctional institution acquired or leased under s. 301.18 (1g) and state–local
9 shared correctional facilities when established under s. 301.14, are state prisons.

SECTION 21. Nonstatutory provisions.

10 (1) DEFINITION. In this SECTION, “private correctional facility” means, along
11 with the land on which it is situated, a building, structure or facility meeting all of
12 the following requirements:
13

14 (a) The building, structure or facility has been or is being constructed on the
15 effective date of this paragraph.

16 (b) The building, structure or facility has been or is being constructed for the
17 confinement of one or more individuals who, as a result of a court order from any
18 jurisdiction, are in custody for the commission or alleged commission of a crime and
19 who would be classified as medium or maximum security under the department of
20 corrections’ security classification system.

21 (c) The building, structure or facility has not been and is not being constructed
22 under a contract with the department of administration, a county, a group of counties
23 acting under section 302.44 of the statutes, the department of corrections and any
24 county or group of counties acting under section 302.45 of the statutes, the United
25 States or a federally recognized American Indian tribe or band in this state.

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1 (2) LEASE OF PRIVATE CORRECTIONAL FACILITIES. The department of
2 administration shall attempt to negotiate with the owner of each private correctional
3 facility located in this state to lease the facility, with the term of the lease to begin
4 July 1, 2000. If the department reaches an agreement to lease the facility, the lease
5 is subject to approval of the building commission and the joint committee on finance.

6 (3) INAPPLICABILITY TO JUVENILE FACILITIES. Subsection (1) does not apply to a
7 building, structure or facility that has been or is being constructed solely to confine
8 juveniles alleged or found to be delinquent.

9 (4) DETERMINATION OF REDUCTION OF COSTS FOR TRANSFERS OF PRISONERS. If the
10 department of administration leases a private correctional facility under subsection
11 (2), the department of corrections shall, within 30 days of the date of the lease,
12 determine the amount by which the costs for transferring and confining Wisconsin
13 prisoners in other states will be reduced during fiscal year 2000–01 if the beds
14 available for prisoners in the private correctional facility are filled and filled
15 exclusively by prisoners who are or would have otherwise been confined out of state.
16 The secretary of corrections shall transfer the amount determined by the department
17 of corrections under this subsection from the appropriation under section 20.410 (1)
18 (ab) of the statutes, as affected by this act, to the appropriation account under section
19 20.410 (1) (ks) of the statutes.

SECTION 22. Initial applicability.

20 (1) The treatment of sections 20.924 (1) (i) and 301.19 of the statutes first
21 applies to contracts for the construction of a correctional facility, or for the conversion
22 of an existing building, structure or facility into a correctional facility entered into,
23 or extended, modified or renewed, on the effective date of this subsection or, if such
24 construction or conversion is commenced without a contract, the treatment of those
25

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1 sections first applies to such construction or conversion commenced on the effective
2 date of this subsection.

3 **SECTION 23. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) The treatment of section 20.410 (1) (ab) (by SECTION 5) of the statutes, the
6 repeal of section 20.410 (1) (ks) of the statutes and the amendment of section 20.410
7 (1) (ej) of the statutes take effect on the effective date of the 2001–03 biennial budget
8 act.

9 (END)