

1999 ASSEMBLY BILL 947

March 30, 2000 – Introduced by Representatives WALKER, BOYLE and JENSEN.
Referred to Committee on Rules.

1 **AN ACT to amend** 13.48 (19), 13.48 (27), 109.09 (1), 111.322 (2m) (c), 227.01 (13)
2 (t), 301.18 (4), 301.18 (5), 302.01, 946.15 (1), 946.15 (2), 946.15 (3) and 946.15
3 (4); and **to create** 20.924 (1) (i) and 301.18 (1r) of the statutes; **relating to:**
4 lease or purchase of a privately constructed prison in Douglas County.

Analysis by the Legislative Reference Bureau

Under current law, the building commission is authorized to lease any facility for use by the department of corrections as a part of the authorized state building program. Moreover, current law imposes certain “prevailing wage” requirements on contractors and subcontractors working on state public works projects, including correctional facilities. Under these requirements: 1) a laborer, worker, mechanic or truck driver working on a public works project may not be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area; and 2) a laborer, worker, mechanic or truck driver may not be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor in the area, unless he or she is paid at least 1.5 times his or her hourly basic rate of pay for overtime hours. Current law also requires contractors and subcontractors to make records regarding hours and pay available to the department of workforce development.

Under this bill, if the building commission leases or purchases a correctional facility constructed in Douglas County by a private person, the correctional facility is treated as enumerated in the state building program. In addition, under the bill, the building commission may not lease or purchase any such building unless the

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person constructing it has complied with prevailing wage requirements applicable to public works projects.

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 amended to read:

2 13.48 (19) Whenever the building commission determines that the use of
3 innovative types of design and construction processes will make better use of the
4 resources and technology available in the building industry, the building commission
5 may waive any or all of s. 16.855 if such action is in the best interest of the state and
6 if the waiver is accomplished through formal action of the building commission. The
7 Subject to the requirements of s. 20.924 (1) (i), the building commission may
8 authorize the lease, lease purchase or acquisition of such facilities constructed in the
9 manner authorized by the building commission. ~~The Subject to the requirements of~~
10 s. 20.924 (1) (i), the building commission may also authorize the lease, lease purchase
11 or acquisition of existing facilities in lieu of state construction of any project
12 enumerated in the authorized state building program.

13 **SECTION 2.** 13.48 (27) of the statutes is amended to read:

14 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. ~~The Subject to s. 20.924 (1) (i),~~
15 the building commission may lease any facility for use of the department of
16 corrections as a part of the authorized state building program, with an option to
17 purchase the facility by the state. Any lease shall provide for the facility to be
18 constructed in accordance with requirements and specifications approved by the
19 department of administration and shall permit inspection of the site and facility by
20 agents of the department.

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1 **SECTION 3.** 20.924 (1) (i) of the statutes is created to read:

2 20.924 **(1)** (i) May not lease or purchase or authorize the lease or purchase of
3 any building, structure or facility, or portion thereof, under s. 301.18 (1r) unless the
4 lessor or seller has done all of the following:

5 1. Not permitted any employe working on the building, structure or facility, or
6 portion thereof, who would be entitled to receive the prevailing wage rate under s.
7 103.49 and who would not be required or permitted to work more than the prevailing
8 hours of labor, if the building, structure or facility, or portion thereof, were a project
9 of public works subject to s. 103.49, to be paid less than the prevailing wage rate or
10 to be required or permitted to work more than the prevailing hours of labor, except
11 as permitted under s. 103.49 (2).

12 2. Required any contractor, subcontractor or agent thereof performing work on
13 the building, structure or facility, or portion thereof, to keep and permit inspection
14 of records in the same manner as a contractor, subcontractor or agent thereof
15 performing work on a project of public works that is subject to s. 103.49 is required
16 to keep and permit inspection of records under s. 103.49 (5).

17 3. Otherwise complied with s. 103.49 in the same manner as a state agency
18 contracting for the erection, construction, remodeling, repairing or demolition of a
19 project of public works is required to comply with s. 103.49 and to require any
20 contractor, subcontractor or agent thereof performing work on the building,
21 structure or facility, or portion thereof, to comply with s. 103.49 in the same manner
22 as a contractor, subcontractor or agent thereof performing work on a project of public
23 works that is subject to s. 103.49 is required to comply with s. 103.49.

24 **SECTION 4.** 109.09 (1) of the statutes is amended to read:

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1 109.09 (1) The department shall investigate and attempt equitably to adjust
2 controversies between employers and employees as to alleged wage claims. The
3 department may receive and investigate any wage claim which is filed with the
4 department, or received by the department under s. 109.10 (4), no later than 2 years
5 after the date the wages are due. The department may, after receiving a wage claim,
6 investigate any wages due from the employer against whom the claim is filed to any
7 employe during the period commencing 2 years before the date the claim is filed. The
8 department shall enforce this chapter and ss. 20.924 (1) (i) 1., 2. and 3., 66.293,
9 103.02, 103.49, 103.82 and 104.12. In pursuance of this duty, the department may
10 sue the employer on behalf of the employe to collect any wage claim or wage
11 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
12 for actions under s. 109.10, the department may refer such an action to the district
13 attorney of the county in which the violation occurs for prosecution and collection and
14 the district attorney shall commence an action in the circuit court having appropriate
15 jurisdiction. Any number of wage claims or wage deficiencies against the same
16 employer may be joined in a single proceeding, but the court may order separate
17 trials or hearings. In actions that are referred to a district attorney under this
18 subsection, any taxable costs recovered by the district attorney shall be paid into the
19 general fund of the county in which the violation occurs and used by that county to
20 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
21 the district attorney who prosecuted the action.

22 **SECTION 5.** 111.322 (2m) (c) of the statutes is amended to read:

23 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
24 under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49 or testifies or assists in any action
25 or proceeding under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49.

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1 **SECTION 6.** 227.01 (13) (t) of the statutes, as affected by 1999 Wisconsin Act ...
2 (Assembly Bill 409), is amended to read:

3 227.01 **(13)** (t) Ascertain and determines prevailing wage rates under ~~ss. s.~~
4 20.924 (1) (i), 66.293, 103.49 ~~and or~~ 103.50, except that any action or inaction which
5 ascertains and determines prevailing wage rates under ~~ss. s.~~ 20.924 (1) (i), 66.293,
6 103.49 ~~and or~~ 103.50 is subject to judicial review under s. 227.40.

7 **SECTION 7.** 301.18 (1r) of the statutes is created to read:

8 301.18 **(1r)** The building commission may lease or purchase, for use by the
9 department of corrections, any correctional facility constructed in Douglas County
10 by a private person.

11 **SECTION 8.** 301.18 (4) of the statutes is amended to read:

12 301.18 **(4)** Any purchase, lease or construction of additional correctional
13 facilities taking place after the effective date of this subsection ... [revisor inserts
14 date], is subject to prior approval by the building commission and the joint committee
15 on finance.

16 **SECTION 9.** 301.18 (5) of the statutes is amended to read:

17 301.18 **(5)** ~~This~~ Any facility purchased, leased or constructed under this section
18 ~~constitutes enumeration shall be construed as enumerated~~ in the authorized state
19 building program for purposes of s. 20.924.

20 **SECTION 10.** 302.01 of the statutes, as affected by 1999 Wisconsin Act 9, is
21 amended to read:

22 **302.01 State prisons named and defined listed.** The penitentiary
23 institution at Waupun is named “Waupun Correctional Institution”. The
24 correctional treatment center at Waupun is named “Dodge Correctional Institution”.
25 The penitentiary institution at Green Bay is named “Green Bay Correctional

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1 Institution”. The medium/maximum ~~penitentiary~~ institution at Portage is named
2 “Columbia Correctional Institution”. The medium security institution at Oshkosh
3 is named “Oshkosh Correctional Institution”. The medium security ~~penitentiary~~
4 institution near Fox Lake is named “Fox Lake Correctional Institution”. The
5 ~~penitentiary~~ institution at Taycheedah is named “Taycheedah Correctional
6 Institution”. The medium security ~~penitentiary~~ institution at Plymouth is named
7 “Kettle Moraine Correctional Institution”. The ~~penitentiary~~ institution at the
8 village of Sturtevant in Racine county is named “Racine Correctional Institution”.
9 The medium security ~~penitentiary~~ institution at Racine is named “Racine Youthful
10 Offender Correctional Facility”. The resource facility at Oshkosh is named
11 “Wisconsin Resource Center”. The institutions named in this section, the
12 correctional institutions authorized under s. 301.16 (1n) and (1v), correctional
13 institution authorized under 1997 Wisconsin Act 4, section 4 (1) (a), correctional
14 institution authorized under s. 301.046 (1), correctional institution authorized under
15 s. 301.048 (4) (b), minimum security correctional institutions authorized under s.
16 301.13, the probation and parole holding facilities authorized under s. 301.16 (1q),
17 any correctional institution leased or purchased under s. 301.18 (1r) and state–local
18 shared correctional facilities when established under s. 301.14, are state prisons.

19 **SECTION 11.** 946.15 (1) of the statutes is amended to read:

20 946.15 (1) Any employer, or any agent or employe of an employer, who induces
21 any person who seeks to be or is employed pursuant to a public contract as defined
22 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing
23 wage rate determination has been issued by the department of workforce
24 development under s. 20.924 (1) (i), 66.293 (3), 103.49 (3) or 103.50 (3) or by a local
25 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive

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1 or return any part of the compensation to which that person is entitled under his or
2 her contract of employment or under the prevailing wage rate determination issued
3 by the department or local governmental unit, or who reduces the hourly basic rate
4 of pay normally paid to an employe for work on a project on which a prevailing wage
5 rate determination has not been issued under s. 20.924 (1) (i), 66.293 (3) or (6), 103.49
6 (3) or 103.50 (3) during a week in which the employe works both on a project on which
7 a prevailing wage rate determination has been issued and on a project on which a
8 prevailing wage rate determination has not been issued, is guilty of a Class E felony.

9 **SECTION 12.** 946.15 (2) of the statutes is amended to read:

10 946.15 (2) Any person employed pursuant to a public contract as defined in s.
11 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
12 has been issued by the department of workforce development under s. 20.924 (1) (i),
13 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in s.
14 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer or
15 agent of the employer any part of the compensation to which the employe is entitled
16 under his or her contract of employment or under the prevailing wage determination
17 issued by the department or local governmental unit, or who gives up any part of the
18 compensation to which he or she is normally entitled for work on a project on which
19 a prevailing wage rate determination has not been issued under s. 20.924 (1) (i),
20 66.293 (3) or (6), 103.49 (3) or 103.50 (3) during a week in which the person works
21 part-time on a project on which a prevailing wage rate determination has been
22 issued and part-time on a project on which a prevailing wage rate determination has
23 not been issued, is guilty of a Class C misdemeanor.

24 **SECTION 13.** 946.15 (3) of the statutes is amended to read:

