

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **06/4/99**

Received By: **mdsida**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Bauer (DS)**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **mdsida**
kuesejt

Subject: **Correctional System - prisons**
State Government - state bldg pr
Eminent Domain - miscellaneous

Extra Copies:

Pre Topic:

LFB:.....Bauer (DS) -

Topic:

Privately constructed correctional facilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	olsenje 06/4/99 mdsida 06/12/99	gilfokm 06/12/99	jfrantze 06/12/99	_____	lrb_docadmin 06/12/99		
/2	mdsida 06/14/99	gilfokm 06/14/99	mclark 06/15/99	_____	lrb_docadmin 06/15/99		
/3	malaigm 06/15/99	ygeller 06/15/99	martykr 06/15/99	_____	lrb_docadmin 06/15/99		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	malaigm 06/21/99	ygeller 06/21/99	mclark 06/22/99	_____	gretski 06/22/99		

FE Sent For:

<END>

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14 6/2 JLG

MRC
6/21

MRC/JF
6/22

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/2	mdsida 06/14/99	gilfokm 06/14/99	mclark 06/15/99	_____	lrb_docadmin 06/15/99		

FE Sent For:

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/1	olsenje	1-6-12-99 Kmg	Jo6/12	Jo Km 6/12			

FE Sent For:

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Senator Jauch
Representative Kaufert

BUILDING PROGRAM/CORRECTIONS -- ADULT INSTITUTIONS

**Stanley Correctional Facility and Regulation of Private Prison Construction
[Paper #247 Substitute Alternative]**

Motion:

Move to amend the bill as follows:

a. Enumerate a project in the 1999-01 state building program under the Department of Corrections titled "Corrections Facilities Expansion" at the cost of \$63,000,000. Provide \$58,000,000 in general fund supported borrowing and \$5,000,000 in Department of Corrections grant funds to fund the project to allow for the lease or purchase of the Stanley facility and the construction of up to four regional probation and parole hold facilities.

b. Specify that no private person may commence construction of a correctional facility or commence conversion of an existing building, structure or facility into a correctional facility unless all of the following requirements are met: (1) the Building Commission has authorized the lease or acquisition of the building, structure or facility by the state upon the completion of the construction or conversion; and (2) the building, structure or facility is enumerated in the authorized state building program. Specify that buildings, structures or facilities that are constructed or converted under a contract with and for the use by a county, a group of counties, the United States or a federally recognized American Indian tribe or band are not subject to the provision.

c. Define "correctional facility" as a prison, jail, house of correction or lockup facility. Exclude from the definition an institution or facility or a portion of an institution or facility that is used solely to confine juveniles alleged or found to be delinquent.

d. Specify that the Building Commission may not lease or acquire a building, structure or facility for the purpose of confining persons serving a sentence of imprisonment to the Wisconsin state prisons unless the person who undertakes construction or conversion of the building, facility or structure has met the requirements identified in item b. above.

e. Specify that the Building Commission may not authorize the acquisition or leasing of any building, structure or facility, or portion thereof, for initial occupancy by Corrections for the purpose of confining persons serving a sentence of imprisonment unless the Department of Workforce Development determines that each employe working on the building, structure or facility who would have been entitled to receive the prevailing wage rate that was in effect for the employe's trade or occupation at the time the building, structure or facility was constructed and

who would not have been required or permitted to work more than the prevailing hours of labor then in effect, if the building, structure or facility had been a project of public works was paid not less than that prevailing wage rate and was not required or permitted to work more than those prevailing hours of labor. Provide that the provision would first apply to buildings, structures or facilities for which construction or conversion for confinement purposes is commenced on the effective date of the bill.

f. Create a nonstatutory provision specifying:

(1) The Department of Administration shall, no later than 30 days after the effective date of the bill, commence efforts to negotiate with the owner of each private correctional facility located in this state to purchase the facility or to lease the facility with an option to purchase the facility;

(2) If DOA reaches an agreement to purchase or lease the facility, the purchase or lease is subject to approval of the Building Commission and the Joint Committee on Finance;

(3) If DOA is unable to reach an agreement with the owner, the Building Commission may acquire the private correctional facility by condemnation and a determination of the necessity of taking is created;

(4) Define "private correctional facility" as, along with the land on which it is situated, a building, structure or facility meeting all of the following requirements: (a) the building, structure or facility has been or is being constructed on the effective date of the bill; (b) the building, structure or facility has been or is being constructed for the confinement of one or more individuals who, as a result of a court order from any jurisdiction, are in custody for the commission or alleged commission of a crime and who would be classified as medium or maximum security under the Department of Corrections' security classification system; and (c) the building, structure or facility has not been and is not being constructed under a contract with DOA, a county, a group of counties, Corrections and any county or group of counties, the United States or a federally recognized American Indian tribe or band in this state.

(5) Specify that the nonstatutory provision does not apply to a building, structure or facility that has been or is being constructed solely to confine juveniles alleged or found to be delinquent.

g. Create a statutory provision requiring DOA to acquire or lease correctional facilities identified in the nonstatutory provision. This provision constitutes an enumeration for purposes of the state building program.

h. Create a nonstatutory provision requiring Corrections to utilize any "private correctional facility" located in Wisconsin that is leased or purchased to return inmates from contracted prisons out of state and to reduce the utilization of out-of-state contract beds.

i. Provide \$6,788,400 GPR in 1999-00 and \$17,427,200 GPR in 2000-01 to staff the Stanley Correctional Facility. Place funding in the Joint Committee on Finance's appropriation for release to Corrections after approval of the lease or purchase of the facility.

j. Reduce funding for prison contract beds by \$1,326,800 GPR in 1999-00 and \$18,589,500 GPR in 2000-01 to account for the estimated number of inmates to be placed at the Stanley Correctional Facility.

Note:

This motion approves the Building Commission's recommendation to enumerate a \$63.0 million "Correctional Facilities Expansion" project in the Department of Corrections and creates statutory requirements specifying that privately constructed correctional facilities must be enumerated in the state building program, approved by the Building Commission and constructed under the procedures of the state building program. The motion also requires that any privately constructed facility purchased or leased by the state comply with prevailing wage laws. Nonstatutory provisions are created to: (a) allow the state to lease or purchase privately constructed correctional facilities currently under construction either through negotiation or condemnation; and (b) direct Corrections to utilize any "private correctional facility" located in Wisconsin that is leased or purchased to return inmates from contracted prisons out of state and to reduce the utilization of out-of-state contract beds. The motion requires DOA to acquire or lease correctional facilities identified in the nonstatutory provision and enumerates those correctional facilities. Finally, the motion: (a) provides \$6,788,400 GPR in 1999-00 and \$17,427,200 GPR in 2000-01 in the Joint Committee on Finance's appropriation to staff the Stanley Correctional Facility; (b) reduces funding for prison contract beds by \$1,326,800 GPR in 1999-00 and \$18,589,500 GPR in 2000-01 to account for the estimated number of inmates to be placed at the Stanley Correctional Facility (81 in 1999-00 and 1,132 in 2000-01); and (c) provides \$58.0 million in general fund supported borrowing and \$5 million in Corrections' grant funds for the lease or purchase of the Stanley Facility and the construction of up to four regional probation and parole hold facilities.

[Change to Bill: \$4,299,300 GPR, \$58,000,000 BR and \$5,000,000 FED]

[Change to Base: \$4,299,300 GPR, \$58,000,000 BR and \$5,000,000 FED]

1999

Date (time) needed

Very soon Today

LRB b 0523, 1

LFB BUDGET AMENDMENT [ONLY FOR LFB]

JEO/JTK/... King/jg... PG GMM

See form AMENDMENTS — COMPONENTS & ITEMS.

LFB AMENDMENT TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

WPO: Find; NOTAG

At the locations indicated, amend the bill as follows:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :



State of Wisconsin
1999 - 2000 LEGISLATURE

60523/1

LRB-3040/P6

JEO/JTK/PG:kmg&jlg: [unclear]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber and amend** 13.48 (19); **to amend** 13.48 (27), 109.09 (1),
2 111.322 (2m) (c), 227.01 (13) (t), 301.235 (2) (e), 946.15 (1), 946.15 (2), 946.15 (3)
3 and 946.15 (4); and **to create** 13.48 (19) (b), 20.924 (1) (i), 103.495, 301.18 (1g)
4 and 301.19 of the statutes; **relating to:** construction of correctional facilities
5 by private persons, the acquisition or lease of certain correctional facilities,
6 making an appropriation and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

Insert 1-7

7

✓ **SECTION 1.** 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and amended
8 to read: **3e**

9

10

13.48 (19) (a) Whenever the building commission determines that the use of
innovative types of design and construction processes will make better use of the

1 resources and technology available in the building industry, the building commission
 2 may waive any or all of s. 16.855 if such action is in the best interest of the state and
 3 if the waiver is accomplished through formal action of the building commission. The
 4 Subject to the requirements of par. (b) and s. 20.924 (1) (i), the building commission
 5 may authorize the lease, lease purchase or acquisition of such facilities constructed
 6 in the manner authorized by the building commission. The Subject to the
 7 requirements of par. (b) and s. 20.924 (1) (i), the building commission may also
 8 authorize the lease, lease purchase or acquisition of existing facilities in lieu of state
 9 construction of any project enumerated in the authorized state building program.

10 ~~SECTION 3.~~ ^{3f} 13.48 (19) (b) of the statutes is created to read:

11 13.48 (19) (b) The building commission may not lease or acquire a building,
 12 structure or facility for the purpose of confining persons serving a sentence of
 13 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
 14 undertakes construction or conversion of the building, facility or structure has met
 15 the requirements of s. 301.19 (2). ^{3h}

16 ~~SECTION 3.~~ ^{3f} SECTION 4. 13.48 (27) of the statutes is amended to read:

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

23

24

SECTION 4. 20.924 (1) (i) of the statutes is created to read:

~~SECTION 4.~~ ^{649m} ✓

Insert
2-24

1 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
2 structure or facility, or portion thereof, for initial occupancy by the department of
3 corrections for the purpose of confining persons serving a sentence of imprisonment
4 to the Wisconsin state prisons under ch. 973 unless the seller or lessor agrees to
5 comply with s. 103.495. "o" ✓

INSUR
3-6 ✓

6 " SECTION 6. 103.495 of the statutes is created to read:

7 103.495 Wage rate on correctional facilities constructed by private
8 persons. (1) DEFINITIONS. In this section:

9 (a) "Area" means the county in which a proposed project that is subject to this
10 section is located or, if the department determines that there is insufficient wage
11 data in that county, "area" means those counties that are contiguous to that county
12 or, if the department determines that there is insufficient wage data in those
13 counties, "area" means those counties that are contiguous to those counties or, if the
14 department determines that there is insufficient wage data in those counties, "area"
15 means the entire state or, if the department is requested to review a determination
16 under sub. (4) (e), "area" means the city, village or town in which a proposed project
17 that is subject to this section is located.

18 (b) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

19 (bg) "Insufficient wage data" means less than 500 hours of work performed in
20 a particular trade or occupation on projects that are similar to a proposed project that
21 is subject to this section.

22 (bm) "Multiple-trade project" means a project that is subject to this section and
23 in which no single trade accounts for 85% or more of the total labor cost of the project.

24 (c) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

1 (d) “Prevailing wage rate” for any trade or occupation engaged in the
2 construction of any correctional facility, or in the conversion of any existing building,
3 structure or facility into a correctional facility, under s. 301.19 (2) in any area means
4 the hourly basic rate of pay, plus the hourly contribution for health insurance
5 benefits, vacation benefits, pension benefits and any other bona fide economic
6 benefit, paid directly or indirectly for a majority of the hours worked in the trade or
7 occupation on projects in the area, or if there is no rate at which a majority of the
8 hours worked in the trade or occupation on projects in the area is paid, then the
9 prevailing wage rate for any trade or occupation engaged in the construction of any
10 correctional facility, or in the conversion of any existing building, structure or facility
11 into a correctional facility, under s. 301.19 (2) in any area shall be the average hourly
12 basic rate of pay, weighted by the number of hours worked, plus the average hourly
13 contribution, weighted by the number of hours worked, for health insurance benefits,
14 vacation benefits, pension benefits and any other bona fide economic benefit, paid
15 directly or indirectly for all hours worked at the hourly basic rate of pay of the
16 highest-paid 51% of hours worked in that trade or occupation.

17 (e) “Single-trade public works project” means a project that is subject to this
18 section in which a single trade accounts for 85% or more of the total labor cost of the
19 project.

20 (f) “Truck driver” includes an owner-operator of a truck.

21 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any private person who enters
22 into a contract for the construction of any correctional facility, or for the conversion
23 of any existing building, structure or facility into a correctional facility, under s.
24 301.19 (2) shall include in the contract a stipulation that no person described in sub.
25 (3) may be permitted to work a greater number of hours per day or per week than the

1 prevailing hours of labor, except that any such person may be permitted or required
2 to work more than such prevailing hours of labor per day and per week if he or she
3 is paid for all hours worked in excess of the prevailing hours of labor at a rate of at
4 least 1.5 times his or her hourly basic rate of pay; nor may he or she be paid less than
5 the prevailing wage rate determined under sub. (4) in the same or most similar trade
6 or occupation in the area in which the project is situated. A reference to the
7 prevailing wage rates determined under sub. (4) and the prevailing hours of labor
8 shall be published in any notice issued for the purpose of securing bids for the project.
9 If any contract or subcontract for a project that is subject to this section is entered
10 into, the prevailing wage rates determined under sub. (4) and the prevailing hours
11 of labor shall be physically incorporated into and made a part of the contract or
12 subcontract, except that for a minor subcontract, as determined by the department,
13 the department shall prescribe by rule the method of notifying the minor
14 subcontractor of the prevailing wage rates and prevailing hours of labor applicable
15 to the minor subcontract. The prevailing wage rates and prevailing hours of labor
16 applicable to a contract or subcontract may not be changed during the time that the
17 contract or subcontract is in force.

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

23 1. All laborers, workers, mechanics and truck drivers employed on the site of
24 a project that is subject to this section.

1 2. All laborers, workers, mechanics and truck drivers employed in the
2 manufacturing or furnishing of materials, articles, supplies or equipment on the site
3 of a project that is subject to this section or from a facility dedicated exclusively, or
4 nearly so, to a project that is subject to this section by a contractor, subcontractor,
5 agent or other person performing any work on the site of the project.

6 (b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who
7 is regularly employed to process, manufacture, pick up or deliver materials or
8 products from a commercial establishment that has a fixed place of business from
9 which the establishment regularly supplies processed or manufactured materials or
10 products is not entitled to receive the prevailing wage rate determined under sub.
11 (4) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
12 worked in excess of the prevailing hours of labor unless any of the following applies:

13 1. The laborer, worker, mechanic or truck driver is employed to deliver mineral
14 aggregate such as sand, gravel or stone that is immediately incorporated into the
15 work, and not stockpiled or further transported by truck, to or from the site of a
16 project that is subject to this section by depositing the material substantially in
17 place, directly or through spreaders from the transporting vehicle.

18 2. The laborer, worker, mechanic or truck driver is employed to transport
19 excavated material or spoil from or return to the site of a project that is subject to this
20 section.

21 (c) A truck driver who is an owner-operator of a truck shall be paid separately
22 for his or her work and for the use of his or her truck.

23 (4) INVESTIGATION; DETERMINATION. (a) Before a private person enters into a
24 contract or solicits bids on a contract for the performance of any work to which this
25 section applies, the private person shall apply to the department to determine the

1 prevailing wage rate for each trade or occupation required in the work under
2 contemplation in the area in which the work is to be done. The department shall
3 make such investigations and hold such public hearings as may be necessary to
4 define the trades or occupations that are commonly employed on projects that are
5 subject to this section and to inform itself as to the prevailing wage rates in all areas
6 of the state for those trades or occupations in order to determine the prevailing wage
7 rate for each such trade or occupation. The department shall issue its determination
8 within 30 days after receiving the request and shall file the same with the private
9 person applying for the determination. For the information of the employees working
10 on the project, the prevailing wage rates determined by the department, the
11 prevailing hours of labor and the provisions of subs. (2) and (8) shall be kept posted
12 by the private person in at least one conspicuous and easily accessible place on the
13 site of the project.

14 (b) The department shall, by January 1 of each year, compile the prevailing
15 wage rates for each trade or occupation in each area. The compilation shall, in
16 addition to the current prevailing wage rates, include future prevailing wage rates
17 when those prevailing wage rates can be determined for any trade or occupation in
18 any area and shall specify the effective date of those future prevailing wage rates.
19 If a construction project that is subject to this section extends into more than one
20 area, there shall be but one standard of prevailing wage rates for the entire project.

21 (c) In determining prevailing wage rates under par. (a) or (b) for building
22 projects, the department may not use data from projects that are subject to this
23 section, s. 66.293, 103.49 or 103.50 or 40 USC 276a. In determining prevailing wage
24 rates for heavy projects, the department may use data from projects that are subject
25 to this section, s. 66.293, 103.49 or 103.50 or 40 USC 276a.

1 (d) Any person may request a recalculation of any portion of an initial
2 determination within 30 days after the initial determination date if the person
3 submits evidence with the request showing that the prevailing wage rate for any
4 given trade or occupation included in the initial determination does not represent the
5 prevailing wage rate for that trade or occupation in the area. Such evidence shall
6 include wage rate information for work performed in the contested trade or
7 occupation in the area within the previous 12 months. The department shall affirm
8 or modify the initial determination within 15 days after the date on which the
9 department receives the request for recalculation.

10 (e) In addition to the recalculation under par. (d), the private person that
11 requested the determination under this subsection may request a review of any
12 portion of the determination within 30 days after the date of issuance of the
13 determination if the private person submits evidence with the request showing that
14 the prevailing wage rate for any given trade or occupation included in the
15 determination does not represent the prevailing wage rate for that trade or
16 occupation in the city, village or town in which the proposed project is located. That
17 evidence shall include wage rate information for the contested trade or occupation
18 on at least 3 similar projects located in the city, village or town where the proposed
19 project is located on which some work has been performed during the current survey
20 period and which were considered by the department in issuing its most recent
21 compilation under par. (b). The department shall affirm or modify the determination
22 within 15 days after the date on which the department receives the request for
23 review.

24 **(5) NONAPPLICABILITY.** This section does not apply to any single-trade project
25 for which the estimated cost of completion is less than \$30,000 or an amount

1 determined by the department under s. 66.293 (5) or to any multiple-trade project
2 for which the estimated cost of completion is less than \$150,000 or an amount
3 determined by the department under s. 66.293 (5).

4 (6) COMPLIANCE. (a) When the department finds that a private person has not
5 requested a determination under sub. (4) (a) or that a private person, contractor or
6 subcontractor has not physically incorporated a determination into a contract or
7 subcontract as required under sub. (2) or has not notified a minor subcontractor of
8 a determination in the manner prescribed by the department by rule promulgated
9 under sub. (2), the department shall notify the private person, contractor or
10 subcontractor of such noncompliance and shall file the determination with the
11 private person, contractor or subcontractor within 30 days after such notice.

12 (b) Upon completion of a project that is subject to this section and before
13 receiving final payment for his or her work on the project, each agent or
14 subcontractor shall furnish the contractor with an affidavit stating that the agent
15 or subcontractor has complied fully with the requirements of this section. A
16 contractor may not authorize final payment until such an affidavit is filed in proper
17 form and order.

18 (c) Upon completion of a project that is subject to this section and before
19 receiving final payment for his or her work on the project, each contractor shall file
20 with the private person contracting for the work an affidavit stating that the
21 contractor has complied fully with the requirements of this section and that the
22 contractor has received an affidavit under par. (b) from each of the contractor's
23 agents and subcontractors. A private person may not authorize a final payment until
24 such an affidavit is filed in proper form and order. If a private person authorizes a
25 final payment before such an affidavit is filed in proper form and order or if the

1 department determines, based on the greater weight of the credible evidence, that
2 any person performing the work specified in sub. (3) has been or may have been paid
3 less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay
4 for all hours worked in excess of the prevailing hours of labor and requests that the
5 private person withhold all or part of the final payment, but the private person fails
6 to do so, the private person is liable for all back wages payable up to the amount of
7 the final payment.

8 (7) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor or
9 agent thereof performing work on a project that is subject to this section shall keep
10 full and accurate records clearly indicating the name and trade or occupation of every
11 person performing the work described in sub. (3) and an accurate record of the
12 number of hours worked by each of those persons and the actual wages paid for those
13 hours worked. If requested by any person, a contractor, subcontractor or agent
14 thereof performing work on a project that is subject to this section shall permit the
15 person to inspect and copy any of those records to the same extent as the department
16 would be required to permit inspection and copying of those records under ss. 19.31
17 to 19.39 if those records were in the custody of the department.

18 (b) It shall be the duty of the department to enforce this section. To this end
19 the department may demand and examine, and it shall be the duty of every
20 contractor, subcontractor and agent thereof to keep and furnish to the department,
21 copies of payrolls and other records and information relating to the wages paid to
22 persons performing the work described in sub. (3) for work to which this section
23 applies. The department may inspect records in the manner provided in this chapter.
24 Every contractor, subcontractor or agent performing work on a project that is subject
25 to this section is subject to the requirements of this chapter relating to the

1 examination of records. Section 111.322 (2m) applies to discharge and other
2 discriminatory acts arising in connection with any proceeding under this section.

3 (c) If requested by any person, the department shall inspect the payroll records
4 of any contractor, subcontractor or agent performing work on a project that is subject
5 to this section to ensure compliance with this section. If the contractor, subcontractor
6 or agent subject to the inspection is found to be in compliance and if the person
7 making the request is a person performing the work specified in sub. (3), the
8 department shall charge the person making the request the actual cost of the
9 inspection. If the contractor, subcontractor or agent subject to the inspection is found
10 to be in compliance and if the person making the request is not a person performing
11 the work specified in sub. (3), the department shall charge the person making the
12 request \$250 or the actual cost of the inspection, whichever is greater.

13 **(8) LIABILITY AND PENALTIES.** (a) Except as provided in pars. (b), (d) and (f), any
14 contractor, subcontractor or agent thereof who violates this section may be fined not
15 more than \$200 or imprisoned for not more than 6 months or both. Each day that
16 any such violation continues shall be considered a separate offense.

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

1 (c) Any person employed on a project that is subject to this section who
2 knowingly permits a contractor, subcontractor or agent thereof to pay him or her less
3 than the prevailing wage rate set forth in the contract governing such project, who
4 gives up, waives or returns any part of the compensation to which he or she is entitled
5 under the contract, or who gives up, waives or returns any part of the compensation
6 to which he or she is normally entitled for work on a project that is not subject to this
7 section during a week in which the person works both on a project that is subject to
8 this section and on a project that is not subject to this section, is guilty of an offense
9 under s. 946.15 (2).

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

16 (e) Any person employed on a project that is subject to this section who
17 knowingly permits any part of the wages to which he or she is entitled under the
18 contract governing such project to be deducted from his or her pay is guilty of an
19 offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR
20 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

21 (f) Paragraph (a) does not apply to any person who fails to provide any
22 information to the department to assist the department in determining prevailing
23 wage rates and prevailing hours of labor under sub. (4) (a) or (b).

24 (9) DEPARTMENT. (a) Except as provided under pars. (b) and (c), the department
25 shall notify any private person applying for a determination under sub. (4) a list of

1 the names of all persons whom the department has found to have failed to pay the
2 prevailing wage rate determined under sub. (4) or has found to have paid less than
3 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing
4 hours of labor at any time in the preceding 3 years. The department shall include
5 with any such name the address of such person and shall specify when such person
6 failed to pay the prevailing wage rate and when such person paid less than 1.5 times
7 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
8 labor. A private person may not award any contract to such person unless otherwise
9 recommended by the department or unless 3 years have elapsed from the date on
10 which the department issued its findings or date of final determination by a court of
11 competent jurisdiction, whichever is later.

12 (b) The department may not include in a notification under par. (a) the name
13 of any person on the basis of having let work to a person whom the department has
14 found to have failed to pay the prevailing wage rate determined under sub. (4) or has
15 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
16 in excess of the prevailing hours of labor.

17 (c) This subsection does not apply to any contractor, subcontractor or agent that
18 in good faith commits a minor violation of this section, as determined on a
19 case-by-case basis through administrative hearings with all rights to due process
20 afforded to all parties or that has not exhausted or waived all appeals.

21 (d) Any person submitting a bid on a project that is subject to this section shall
22 be required, on the date on which the person submits the bid, to identify any
23 construction business in which the person, or a shareholder, officer or partner of the
24 person, if the person is a business, owns, or has owned at least a 25% interest on the
25 date on which the person submits the bid or at any other time within 3 years

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1 preceding the date on which the person submits the bid, if the business has been
2 found to have failed to pay the prevailing wage rate determined under sub. (4) or to
3 have paid less than 1.5 times the hourly basic rate of pay for all hours worked in
4 excess of the prevailing hours of labor.

5 (e) The department shall promulgate rules to administer this subsection. "o ✓

6 ✓ " SECTION 2. 109.09 (1) of the statutes is amended to read:

2030m

7 109.09 (1) The department shall investigate and attempt equitably to adjust
8 controversies between employers and employes as to alleged wage claims. The
9 department may receive and investigate any wage claim which is filed with the
10 department, or received by the department under s. 109.10 (4), no later than 2 years
11 after the date the wages are due. The department may, after receiving a wage claim,
12 investigate any wages due from the employer against whom the claim is filed to any
13 employe during the period commencing 2 years before the date the claim is filed. The
14 department shall enforce this chapter and ss. 66.293, 103.02, 103.49, 103.495, 103.82
15 and 104.12. In pursuance of this duty, the department may sue the employer on
16 behalf of the employe to collect any wage claim or wage deficiency and ss. 109.03 (6)
17 and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10,
18 the department may refer such an action to the district attorney of the county in
19 which the violation occurs for prosecution and collection and the district attorney
20 shall commence an action in the circuit court having appropriate jurisdiction. Any
21 number of wage claims or wage deficiencies against the same employer may be joined
22 in a single proceeding, but the court may order separate trials or hearings. In actions
23 that are referred to a district attorney under this subsection, any taxable costs
24 recovered by the district attorney shall be paid into the general fund of the county
25 in which the violation occurs and used by that county to meet its financial

INSECT
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1

responsibility under s. 978.13 (2) for the operation of the office of the district attorney who prosecuted the action. " ✓

2

3

✓ " SECTION 6. 111.322 (2m) (c) of the statutes is amended to read:

4

111.322 (2m) (c) The individual files a complaint or attempts to enforce a right

5

under s. 66.293 or, 103.49 or 103.495 or testifies or assists in any action or proceeding

6

under s. 66.293 or, 103.49 or 103.495. " ✓

7

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

8

227.01 (13) (t) Ascertains and determines prevailing wage rates and prevailing

9

hours of labor under ss. s. 66.293, 103.49 and, 103.495 or 103.50, except that any

10

action or inaction which ascertains and determines prevailing wage rates and

11

prevailing hours of labor under ss. s. 66.293, 103.49 and, 103.495 or 103.50 is subject

12

to judicial review under s. 227.40. " ✓

13

✓ " SECTION 8. 301.18 (1g) of the statutes is created to read:

14

301.18 (1g) The department of administration may acquire or lease

15

correctional facilities under 1999 Wisconsin Act (this act), section 15(1)(b)

16

SECTION 9. 301.19 of the statutes is created to read:

17

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

18

In this section:

19

(a) "Authorized jurisdiction" means a county, a group of counties acting under

20

s. 302.44, the United States or a federally recognized American Indian tribe or band

21

in this state.

22

(b) "Correctional facility" means a prison, jail, house of correction or lockup

23

facility but does not include an institution or facility or a portion of an institution or

24

facility that is used solely to confine juveniles alleged or found to be delinquent under

25

ch. 48, 1993 stats., or ch. 938.

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9111(6)(b)
▲▲

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

4 (a) The building commission has authorized the lease or acquisition of the
5 building, structure or facility by the state upon the completion of the construction or
6 conversion.

7 (b) The building, structure or facility is enumerated in the authorized state
8 building program.

9 (c) The private person complies with s. 103.495.

10 (3) Subsection (2) does not apply to buildings, structures or facilities that are
11 constructed or converted under a contract with and for use by an authorized
12 jurisdiction. " . ✓ 2699m

✓
vsect
i-13

13 ✓ " SECTION 10. 301.235 (2) (e) of the statutes is amended to read:

14 301.235 (2) (e) All laws, except s. 20.924 (1) (i) and ch. 150, conflicting with this
15 section are, insofar as they conflict with this section and no further, superseded by
16 this section. " . ✓ 3191d.

✓
nsect
i-17

17 ✓ " SECTION 11. 946.15 (1) of the statutes is amended to read:

18 946.15 (1) Any employer, or any agent or employe of an employer, who induces
19 any person who seeks to be or is employed pursuant to a public contract as defined
20 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing
21 wage rate determination has been issued by the department of workforce
22 development under s. 66.293 (3), 103.49 (3), 103.495 (4) or 103.50 (3) or by a local
23 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive
24 or return any part of the compensation to which that person is entitled under his or
25 her contract of employment or under the prevailing wage rate determination issued

1 by the department or local governmental unit, or who reduces the hourly basic rate
2 of pay normally paid to an employe for work on a project on which a prevailing wage
3 rate determination has not been issued under s. 66.293 (3) or (6), 103.49 (3), 103.495
4 (4) or 103.50 (3) during a week in which the employe works both on a project on which
5 a prevailing wage rate determination has been issued and on a project on which a
6 prevailing wage rate determination has not been issued, is guilty of a Class E felony.

7 **SECTION 12.** ³¹⁹¹ 946.15 (2) of the statutes is amended to read:

8 946.15 (2) Any person employed pursuant to a public contract as defined in s.
9 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
10 has been issued by the department of workforce development under s. 66.293 (3),
11 103.49 (3), 103.495 (4) or 103.50 (3) or by a local governmental unit, as defined in s.
12 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer or
13 agent of the employer any part of the compensation to which the employe is entitled
14 under his or her contract of employment or under the prevailing wage determination
15 issued by the department or local governmental unit, or who gives up any part of the
16 compensation to which he or she is normally entitled for work on a project on which
17 a prevailing wage rate determination has not been issued under s. 66.293 (3) or (6),
18 103.49 (3), 103.495 (4) or 103.50 (3) during a week in which the person works
19 part-time on a project on which a prevailing wage rate determination has been
20 issued and part-time on a project on which a prevailing wage rate determination has
21 not been issued, is guilty of a Class C misdemeanor.

f 22 **SECTION 13.** 946.15 (3) of the statutes is amended to read:

23 ³¹⁹¹ 946.15 (3) Any employer or labor organization, or any agent or employe of an
24 employer or labor organization, who induces any person who seeks to be or is
25 employed on a project on which a prevailing wage rate determination has been issued

1 by the department of workforce development under s. 66.293 (3), 103.49 (3), 103.495
2 (4) or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d), under
3 s. 66.293 (6) to permit any part of the wages to which that person is entitled under
4 the prevailing wage rate determination issued by the department or local
5 governmental unit to be deducted from the person's pay is guilty of a Class E felony,
6 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
7 is working on a project that is subject to 40 USC 276c.

8 SECTION ~~14~~ ³¹⁹¹ 946.15 (4) of the statutes is amended to read:

9 946.15 (4) Any person employed on a project on which a prevailing wage rate
10 determination has been issued by the department of workforce development under
11 s. 66.293 (3), 103.49 (3), 103.495 (4) or 103.50 (3) or by a local governmental unit, as
12 defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages to
13 which that person is entitled under the prevailing wage rate determination issued
14 by the department or local governmental unit to be deducted from his or her pay is
15 guilty of a Class C misdemeanor, unless the deduction would be permitted under 29
16 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
17 276c. "

18 ~~SECTION 15. Nonstatutory provisions.~~

19 (1) PRIVATE CORRECTIONAL FACILITIES.

20 (a) *Definition.* In this subsection, "private correctional facility" means, along
21 with the land on which it is situated, a building, structure or facility meeting all of
22 the following requirements:

- 23 1. The building, structure or facility has been or is being constructed on the
24 effective date of this subdivision.

Handwritten notes: "18-19" with arrows pointing to lines 17 and 18.

Handwritten circled "946.15" with a scribble over it.

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Handwritten circled "(4)".

Handwritten signature "JOC" and "JDA" with a large "X" over it.

1 2. The building, structure or facility has been or is being constructed for the
2 confinement of one or more individuals who, as a result of a court order from any
3 jurisdiction, are in custody for the commission or alleged commission of a crime and
4 who would be classified as medium or maximum security under the department of
5 corrections' security classification system.

6 3. The building, structure or facility has not been and is not being constructed
7 under a contract with the department of administration, a county, a group of counties
8 acting under section 302.44 of the statutes, the department of corrections and any
9 county or group of counties acting under section 302.45 of the statutes, the United
10 States or a federally recognized American Indian tribe or band in this state.

11 (b) *Acquisition or lease of private correctional facilities.* The department of
12 administration shall, no later than the 30th day after the effective date of this
13 paragraph, commence efforts to negotiate with the owner of each private correctional
14 facility located in this state to purchase the facility or to lease the facility. If the
15 department reaches an agreement to purchase or lease the facility, the purchase or
16 lease is subject to approval of the building commission and the joint committee on
17 finance. If the department is unable to reach an agreement with the owner, the
18 building commission may, notwithstanding section 13.48 (16) of the statutes, acquire
19 the private correctional facility by condemnation under section 32.06 of the statutes,
20 except that this paragraph constitutes the determination of the necessity of taking
21 for the purposes of section 32.06 (1) of the statutes. Section 13.48 (19) (b) of the
22 statutes, as created by this act, does not apply to the lease or acquisition of a private
23 correctional facility under this paragraph.

24 (c) *Returning prisoners from out-of-state facilities.* The department of
25 corrections shall use the increase in beds resulting from any lease or acquisition of

freeze

1 private correctional facilities under paragraph (b) to reduce its reliance on contracts
2 for the transfer and confinement of Wisconsin prisoners in other states under section
3 301.21 of the statutes and to return to correctional facilities in Wisconsin prisoners
4 who are confined in other states under those contracts.

5 (d) *Inapplicability to juvenile facilities.* This subsection does not apply to a
6 building, structure or facility that has been or is being constructed solely to confine
7 juveniles alleged or found to be delinquent. ". ✓

8 **SECTION 16. Initial applicability.**

9 " (1) CONSTRUCTION OF CORRECTIONAL FACILITIES BY PRIVATE PERSONS. The
10 treatment of sections 20.924 (1) (i), 103.495 and 301.19 of the statutes first applies
11 to contracts for the construction of a correctional facility, or for the conversion of an
12 existing building, structure or facility into a correctional facility entered into, or
13 extended, modified or renewed, on the effective date of this subsection. ".
14

(END)

Insert
20-94

(4)
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1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0523/1
MGD:.....

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Insert 1-7 ✓

✓ 1. Page 122, line 10: after that line insert:

Insert 2-24 ✓

✓ 2. Page 481, line 8: after that line insert:

Insert 3-6

✓ 3. Page 972, line 3: after that line insert:

Insert 14-6

✓ 4. Page 979, line 6: after that line insert:

Insert 15-3

✓ 5. Page 980, line 7: after that line insert:

Insert 15-7

✓ 6. Page 1102, line 15: after that line insert:

Insert 15-13

✓ 7. Page 1208, line 4: after that line insert:

Insert 16-13

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✓ 8. Page 1208, line 10: after that line insert:

Insert 16-17

✓ 9. Page 1353, line 18: after that line insert:

Insert 18-19

✓ 10. Page 1404, line 21: after that line insert:

Insert 20-9

✓ 11. Page 1450, line 5: after that line insert:



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0523/1

JEO/JTK/PG/GMM:kmg&jlg:jf

Today

MGD

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says

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LFB:.....Bauer (DS) - Privately constructed correctional facilities

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 122, line 10: after that line insert:

3 "SECTION 3e. 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and
4 amended to read:

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

1 requirements of par. (b) and s. 20.924 (1) (i), the building commission may also
2 authorize the lease, lease purchase or acquisition of existing facilities in lieu of state
3 construction of any project enumerated in the authorized state building program.

4 **SECTION 3f.** 13.48 (19) (b) of the statutes is created to read:

5 13.48 (19) (b) The building commission may not lease or acquire a building,
6 structure or facility for the purpose of confining persons serving a sentence of
7 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
8 undertakes construction or conversion of the building, facility or structure has met
9 the requirements of s. 301.19 (2) ^{and the department of workforce development}
~~and the department of workforce development~~ ^{determines the person has complied with s.}

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

11 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. The ~~Subject to s. 20.924 (1) (i),~~ ^{(s. 20.924 (1) (i) 1, 2, and 3)}
12 the building commission may lease any facility meeting the requirements of s. 301.19
13 (2) for use of the department of corrections as a part of the authorized state building
14 program, with an option to purchase the facility by the state. Any lease shall provide
15 for the facility to be constructed in accordance with requirements and specifications
16 approved by the department of administration and shall permit inspection of the site
17 and facility by agents of the department.”.

18 **2.** Page 481, line 8: after that line insert:

19 **SECTION 649m.** 20.924 (1) (i) of the statutes is created to read:

20 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
21 structure or facility, or portion thereof, ^{under s. 301.19 (2) (a),} for initial occupancy by the department of
22 corrections for the purpose of confining persons serving a sentence of imprisonment
to the Wisconsin state prisons under ch. 973 unless the seller or lessor agrees to
~~comply with s. 103.495.”.~~

2-24
Insert
24
2-844

1 **3.** Page 972, line 3: after that line insert:

2 “SECTION 2005m. 103.495 of the statutes is created to read:

3 **103.495 Wage rate on correctional facilities constructed by private**
4 **persons. (1) DEFINITIONS.** In this section:

5 (a) “Area” means the county in which a proposed project that is subject to this
6 section is located or, if the department determines that there is insufficient wage
7 data in that county, “area” means those counties that are contiguous to that county
8 or, if the department determines that there is insufficient wage data in those
9 counties, “area” means those counties that are contiguous to those counties or, if the
10 department determines that there is insufficient wage data in those counties, “area”
11 means the entire state or, if the department is requested to review a determination
12 under sub. (4) (e), “area” means the city, village or town in which a proposed project
13 that is subject to this section is located.

14 (b) “Hourly basic rate of pay” has the meaning given in s. 103.49 (1) (b).

15 (bg) “Insufficient wage data” means less than 500 hours of work performed in
16 a particular trade or occupation on projects that are similar to a proposed project that
17 is subject to this section.

18 (bm) “Multiple-trade project” means a project that is subject to this section and
19 in which no single trade accounts for 85% or more of the total labor cost of the project.

20 (c) “Prevailing hours of labor” has the meaning given in s. 103.49 (1) (c).

21 (d) “Prevailing wage rate” for any trade or occupation engaged in the
22 construction of any correctional facility, or in the conversion of any existing building,
23 structure or facility into a correctional facility, under s. 301.19 (2) in any area means
24 the hourly basic rate of pay, plus the hourly contribution for health insurance

1 benefits, vacation benefits, pension benefits and any other bona fide economic
2 benefit, paid directly or indirectly for a majority of the hours worked in the trade or
3 occupation on projects in the area, or if there is no rate at which a majority of the
4 hours worked in the trade or occupation on projects in the area is paid, then the
5 prevailing wage rate for any trade or occupation engaged in the construction of any
6 correctional facility, or in the conversion of any existing building, structure or facility
7 into a correctional facility, under s. 301.19 (2) in any area shall be the average hourly
8 basic rate of pay, weighted by the number of hours worked, plus the average hourly
9 contribution, weighted by the number of hours worked, for health insurance benefits,
10 vacation benefits, pension benefits and any other bona fide economic benefit, paid
11 directly or indirectly for all hours worked at the hourly basic rate of pay of the
12 highest-paid 51% of hours worked in that trade or occupation.

13 (e) "Single-trade public works project" means a project that is subject to this
14 section in which a single trade accounts for 85% or more of the total labor cost of the
15 project.

16 (f) "Truck driver" includes an owner-operator of a truck.

17 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any private person who enters
18 into a contract for the construction of any correctional facility, or for the conversion
19 of any existing building, structure or facility into a correctional facility, under s.
20 301.19 (2) shall include in the contract a stipulation that no person described in sub.
21 (3) may be permitted to work a greater number of hours per day or per week than the
22 prevailing hours of labor, except that any such person may be permitted or required
23 to work more than such prevailing hours of labor per day and per week if he or she
24 is paid for all hours worked in excess of the prevailing hours of labor at a rate of at
25 least 1.5 times his or her hourly basic rate of pay; nor may he or she be paid less than

1 the prevailing wage rate determined under sub. (4) in the same or most similar trade
2 or occupation in the area in which the project is situated. A reference to the
3 prevailing wage rates determined under sub. (4) and the prevailing hours of labor
4 shall be published in any notice issued for the purpose of securing bids for the project.
5 If any contract or subcontract for a project that is subject to this section is entered
6 into, the prevailing wage rates determined under sub. (4) and the prevailing hours
7 of labor shall be physically incorporated into and made a part of the contract or
8 subcontract, except that for a minor subcontract, as determined by the department,
9 the department shall prescribe by rule the method of notifying the minor
10 subcontractor of the prevailing wage rates and prevailing hours of labor applicable
11 to the minor subcontract. The prevailing wage rates and prevailing hours of labor
12 applicable to a contract or subcontract may not be changed during the time that the
13 contract or subcontract is in force.

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

19 1. All laborers, workers, mechanics and truck drivers employed on the site of
20 a project that is subject to this section.

21 2. All laborers, workers, mechanics and truck drivers employed in the
22 manufacturing or furnishing of materials, articles, supplies or equipment on the site
23 of a project that is subject to this section or from a facility dedicated exclusively, or
24 nearly so, to a project that is subject to this section by a contractor, subcontractor,
25 agent or other person performing any work on the site of the project.

1 (b) Notwithstanding par. (a) 1., a laborer, worker, mechanic or truck driver who
2 is regularly employed to process, manufacture, pick up or deliver materials or
3 products from a commercial establishment that has a fixed place of business from
4 which the establishment regularly supplies processed or manufactured materials or
5 products is not entitled to receive the prevailing wage rate determined under sub.
6 (4) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
7 worked in excess of the prevailing hours of labor unless any of the following applies:

8 1. The laborer, worker, mechanic or truck driver is employed to deliver mineral
9 aggregate such as sand, gravel or stone that is immediately incorporated into the
10 work, and not stockpiled or further transported by truck, to or from the site of a
11 project that is subject to this section by depositing the material substantially in
12 place, directly or through spreaders from the transporting vehicle.

13 2. The laborer, worker, mechanic or truck driver is employed to transport
14 excavated material or spoil from or return to the site of a project that is subject to this
15 section.

16 (c) A truck driver who is an owner-operator of a truck shall be paid separately
17 for his or her work and for the use of his or her truck.

18 (4) INVESTIGATION; DETERMINATION. (a) Before a private person enters into a
19 contract or solicits bids on a contract for the performance of any work to which this
20 section applies, the private person shall apply to the department to determine the
21 prevailing wage rate for each trade or occupation required in the work under
22 contemplation in the area in which the work is to be done. The department shall
23 make such investigations and hold such public hearings as may be necessary to
24 define the trades or occupations that are commonly employed on projects that are
25 subject to this section and to inform itself as to the prevailing wage rates in all areas

1 of the state for those trades or occupations in order to determine the prevailing wage
2 rate for each such trade or occupation. The department shall issue its determination
3 within 30 days after receiving the request and shall file the same with the private
4 person applying for the determination. For the information of the employees working
5 on the project, the prevailing wage rates determined by the department, the
6 prevailing hours of labor and the provisions of subs. (2) and (8) shall be kept posted
7 by the private person in at least one conspicuous and easily accessible place on the
8 site of the project.

9 (b) The department shall, by January 1 of each year, compile the prevailing
10 wage rates for each trade or occupation in each area. The compilation shall, in
11 addition to the current prevailing wage rates, include future prevailing wage rates
12 when those prevailing wage rates can be determined for any trade or occupation in
13 any area and shall specify the effective date of those future prevailing wage rates.
14 If a construction project that is subject to this section extends into more than one
15 area, there shall be but one standard of prevailing wage rates for the entire project.

16 (c) In determining prevailing wage rates under par. (a) or (b) for building
17 projects, the department may not use data from projects that are subject to this
18 section, s. 66.293, 103.49 or 103.50 or 40 USC 276a. In determining prevailing wage
19 rates for heavy projects, the department may use data from projects that are subject
20 to this section, s. 66.293, 103.49 or 103.50 or 40 USC 276a.

21 (d) Any person may request a recalculation of any portion of an initial
22 determination within 30 days after the initial determination date if the person
23 submits evidence with the request showing that the prevailing wage rate for any
24 given trade or occupation included in the initial determination does not represent the
25 prevailing wage rate for that trade or occupation in the area. Such evidence shall

1 include wage rate information for work performed in the contested trade or
2 occupation in the area within the previous 12 months. The department shall affirm
3 or modify the initial determination within 15 days after the date on which the
4 department receives the request for recalculation.

5 (e) In addition to the recalculation under par. (d), the private person that
6 requested the determination under this subsection may request a review of any
7 portion of the determination within 30 days after the date of issuance of the
8 determination if the private person submits evidence with the request showing that
9 the prevailing wage rate for any given trade or occupation included in the
10 determination does not represent the prevailing wage rate for that trade or
11 occupation in the city, village or town in which the proposed project is located. That
12 evidence shall include wage rate information for the contested trade or occupation
13 on at least 3 similar projects located in the city, village or town where the proposed
14 project is located on which some work has been performed during the current survey
15 period and which were considered by the department in issuing its most recent
16 compilation under par. (b). The department shall affirm or modify the determination
17 within 15 days after the date on which the department receives the request for
18 review.

19 (5) NONAPPLICABILITY. This section does not apply to any single-trade project
20 for which the estimated cost of completion is less than \$30,000 or an amount
21 determined by the department under s. 66.293 (5) or to any multiple-trade project
22 for which the estimated cost of completion is less than \$150,000 or an amount
23 determined by the department under s. 66.293 (5).

24 (6) COMPLIANCE. (a) When the department finds that a private person has not
25 requested a determination under sub. (4) (a) or that a private person, contractor or

1 subcontractor has not physically incorporated a determination into a contract or
2 subcontract as required under sub. (2) or has not notified a minor subcontractor of
3 a determination in the manner prescribed by the department by rule promulgated
4 under sub. (2), the department shall notify the private person, contractor or
5 subcontractor of such noncompliance and shall file the determination with the
6 private person, contractor or subcontractor within 30 days after such notice.

7 (b) Upon completion of a project that is subject to this section and before
8 receiving final payment for his or her work on the project, each agent or
9 subcontractor shall furnish the contractor with an affidavit stating that the agent
10 or subcontractor has complied fully with the requirements of this section. A
11 contractor may not authorize final payment until such an affidavit is filed in proper
12 form and order.

13 (c) Upon completion of a project that is subject to this section and before
14 receiving final payment for his or her work on the project, each contractor shall file
15 with the private person contracting for the work an affidavit stating that the
16 contractor has complied fully with the requirements of this section and that the
17 contractor has received an affidavit under par. (b) from each of the contractor's
18 agents and subcontractors. A private person may not authorize a final payment until
19 such an affidavit is filed in proper form and order. If a private person authorizes a
20 final payment before such an affidavit is filed in proper form and order or if the
21 department determines, based on the greater weight of the credible evidence, that
22 any person performing the work specified in sub. (3) has been or may have been paid
23 less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay
24 for all hours worked in excess of the prevailing hours of labor and requests that the
25 private person withhold all or part of the final payment, but the private person fails

1 to do so, the private person is liable for all back wages payable up to the amount of
2 the final payment.

3 (7) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor or
4 agent thereof performing work on a project that is subject to this section shall keep
5 full and accurate records clearly indicating the name and trade or occupation of every
6 person performing the work described in sub. (3) and an accurate record of the
7 number of hours worked by each of those persons and the actual wages paid for those
8 hours worked. If requested by any person, a contractor, subcontractor or agent
9 thereof performing work on a project that is subject to this section shall permit the
10 person to inspect and copy any of those records to the same extent as the department
11 would be required to permit inspection and copying of those records under ss. 19.31
12 to 19.39 if those records were in the custody of the department.

13 (b) It shall be the duty of the department to enforce this section. To this end
14 the department may demand and examine, and it shall be the duty of every
15 contractor, subcontractor and agent thereof to keep and furnish to the department,
16 copies of payrolls and other records and information relating to the wages paid to
17 persons performing the work described in sub. (3) for work to which this section
18 applies. The department may inspect records in the manner provided in this chapter.
19 Every contractor, subcontractor or agent performing work on a project that is subject
20 to this section is subject to the requirements of this chapter relating to the
21 examination of records. Section 111.322 (2m) applies to discharge and other
22 discriminatory acts arising in connection with any proceeding under this section.

23 (c) If requested by any person, the department shall inspect the payroll records
24 of any contractor, subcontractor or agent performing work on a project that is subject
25 to this section to ensure compliance with this section. If the contractor, subcontractor

1 or agent subject to the inspection is found to be in compliance and if the person
2 making the request is a person performing the work specified in sub. (3), the
3 department shall charge the person making the request the actual cost of the
4 inspection. If the contractor, subcontractor or agent subject to the inspection is found
5 to be in compliance and if the person making the request is not a person performing
6 the work specified in sub. (3), the department shall charge the person making the
7 request \$250 or the actual cost of the inspection, whichever is greater.

8 (8) LIABILITY AND PENALTIES. (a) Except as provided in pars. (b), (d) and (f), any
9 contractor, subcontractor or agent thereof who violates this section may be fined not
10 more than \$200 or imprisoned for not more than 6 months or both. Each day that
11 any such violation continues shall be considered a separate offense.

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

20 (c) Any person employed on a project that is subject to this section who
21 knowingly permits a contractor, subcontractor or agent thereof to pay him or her less
22 than the prevailing wage rate set forth in the contract governing such project, who
23 gives up, waives or returns any part of the compensation to which he or she is entitled
24 under the contract, or who gives up, waives or returns any part of the compensation
25 to which he or she is normally entitled for work on a project that is not subject to this

1 section during a week in which the person works both on a project that is subject to
2 this section and on a project that is not subject to this section, is guilty of an offense
3 under s. 946.15 (2).

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

10 (e) Any person employed on a project that is subject to this section who
11 knowingly permits any part of the wages to which he or she is entitled under the
12 contract governing such project to be deducted from his or her pay is guilty of an
13 offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR
14 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

15 (f) Paragraph (a) does not apply to any person who fails to provide any
16 information to the department to assist the department in determining prevailing
17 wage rates and prevailing hours of labor under sub. (4) (a) or (b).

18 (9) DEPARTMENT. (a) Except as provided under pars. (b) and (c), the department
19 shall notify any private person applying for a determination under sub. (4) a list of
20 the names of all persons whom the department has found to have failed to pay the
21 prevailing wage rate determined under sub. (4) or has found to have paid less than
22 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing
23 hours of labor at any time in the preceding 3 years. The department shall include
24 with any such name the address of such person and shall specify when such person
25 failed to pay the prevailing wage rate and when such person paid less than 1.5 times

1 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
2 labor. A private person may not award any contract to such person unless otherwise
3 recommended by the department or unless 3 years have elapsed from the date on
4 which the department issued its findings or date of final determination by a court of
5 competent jurisdiction, whichever is later.

6 (b) The department may not include in a notification under par. (a) the name
7 of any person on the basis of having let work to a person whom the department has
8 found to have failed to pay the prevailing wage rate determined under sub. (4) or has
9 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
10 in excess of the prevailing hours of labor.

11 (c) This subsection does not apply to any contractor, subcontractor or agent that
12 in good faith commits a minor violation of this section, as determined on a
13 case-by-case basis through administrative hearings with all rights to due process
14 afforded to all parties or that has not exhausted or waived all appeals.

15 (d) Any person submitting a bid on a project that is subject to this section shall
16 be required, on the date on which the person submits the bid, to identify any
17 construction business in which the person, or a shareholder, officer or partner of the
18 person, if the person is a business, owns, or has owned at least a 25% interest on the
19 date on which the person submits the bid or at any other time within 3 years
20 preceding the date on which the person submits the bid, if the business has been
21 found to have failed to pay the prevailing wage rate determined under sub. (4) or to
22 have paid less than 1.5 times the hourly basic rate of pay for all hours worked in
23 excess of the prevailing hours of labor.

24 (e) The department shall promulgate rules to administer this subsection.”

20,924 (1)(i) 1, 2, and 3,

1 **4.** Page 979, line 6: after that line insert:

2 **“SECTION 2030m.** 109.09 (1) of the statutes is amended to read:

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

24 **5.** Page 980, line 7: after that line insert:

20.924 (1)(i) 1, 2. or 3.,

1 "SECTION 2033m. 111.322 (2m) (c) of the statutes is amended to read:

2 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right

3 under s. 66.293 ^{plan} or 103.49 ^{or 103.495} or testifies or assists in any action or proceeding

4 under s. 66.293 ^{plan} or 103.49 ^{or 103.495}". 20.924 (1)(i) 3.

5 6. Page 1102, line 15: after that line insert:

6 "SECTION 2353m. 227.01 (13) (t) of the statutes is amended to read:

7 227.01 (13) (t) Ascertains and determines prevailing wage rates and prevailing

8 hours of labor under ss. s. 66.293, 103.49 and ~~103.495~~ or 103.50, except that any

9 action or inaction which ascertains and determines prevailing wage rates and

10 prevailing hours of labor under ss. s. 66.293, 103.49 and ~~103.495~~ or 103.50 is subject

11 to judicial review under s. 227.40."

12 7. Page 1208, line 4: after that line insert:

13 "SECTION 2698g. 301.18 (1g) of the statutes is created to read:

14 301.18 (1g) The department of administration may acquire or lease
15 correctional facilities under 1999 Wisconsin Act ... (this act), section 9111(4xt) (b).

16 SECTION 2698L. 301.19 of the statutes is created to read:

17 301.19 Construction of correctional facilities by private persons. (1)

18 In this section:

19 (a) "Authorized jurisdiction" means a county, a group of counties acting under
20 s. 302.44, the United States or a federally recognized American Indian tribe or band
21 in this state.

22 (b) "Correctional facility" means a prison, jail, house of correction or lockup
23 facility but does not include an institution or facility or a portion of an institution or

1 facility that is used solely to confine juveniles alleged or found to be delinquent under
2 ch. 48, 1993 stats., or ch. 938.

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

6 (a) The building commission has authorized the lease or acquisition of the
7 building, structure or facility by the state upon the completion of the construction or
8 conversion.

9 (b) The building, structure or facility is enumerated in the authorized state
10 building program.

11 (c) The private person ~~complies with s. 108.49~~ *agrees to comply with s. 20.924 (1)(i) 1, 2, and 3*

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

15 **8.** Page 1208, line 10: after that line insert:

16 “**SECTION 2699m.** 301.235 (2) (e) of the statutes is amended to read:

17 301.235 (2) (e) All laws, except s. 20.924 (1) (i) and ch. 150, conflicting with this
18 section are, insofar as they conflict with this section and no further, superseded by
19 this section.”.

20 **9.** Page 1353, line 18: after that line insert:

21 “**SECTION 3191d.** 946.15 (1) of the statutes is amended to read:

22 946.15 (1) Any employer, or any agent or employe of an employer, who induces
23 any person who seeks to be or is employed pursuant to a public contract as defined
24 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing

20,924 (1)(i) 3.

1 wage rate determination has been issued by the department of workforce
 2 development under s. 66.293 (3), 103.49 (3), ~~103.495 (4)~~ or 103.50 (3) or by a local
 3 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive
 4 or return any part of the compensation to which that person is entitled under his or
 5 her contract of employment or under the prevailing wage rate determination issued
 6 by the department or local governmental unit, or who reduces the hourly basic rate
 7 of pay normally paid to an employe for work on a project on which a prevailing wage
 8 rate determination has not been issued under s. 66.293 (3) or (6), 103.49 (3), ~~103.495~~
 9 ~~4~~ or 103.50 (3) during a week in which the employe works both on a project on which
 10 a prevailing wage rate determination has been issued and on a project on which a
 11 prevailing wage rate determination has not been issued, is guilty of a Class E felony.

12 **SECTION 3191e.** 946.15 (2) of the statutes is amended to read:

13 946.15 (2) Any person employed pursuant to a public contract as defined in s.
 14 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
 15 has been issued by the department of workforce development under s. 66.293 (3),
 16 103.49 (3), ~~103.495 (4)~~ or 103.50 (3) or by a local governmental unit, as defined in s.
 17 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer or
 18 agent of the employer any part of the compensation to which the employe is entitled
 19 under his or her contract of employment or under the prevailing wage determination
 20 issued by the department or local governmental unit, or who gives up any part of the
 21 compensation to which he or she is normally entitled for work on a project on which
 22 a prevailing wage rate determination has not been issued under s. 66.293 (3) or (6),
 23 103.49 (3), ~~103.495 (4)~~ or 103.50 (3) during a week in which the person works
 24 part-time on a project on which a prevailing wage rate determination has been

20.924(1)(i)3.)

1 issued and part-time on a project on which a prevailing wage rate determination has
2 not been issued, is guilty of a Class C misdemeanor.

3 **SECTION 3191f.** 946.15 (3) of the statutes is amended to read:

4 946.15 (3) Any employer or labor organization, or any agent or employe of an
5 employer or labor organization, who induces any person who seeks to be or is
6 employed on a project on which a prevailing wage rate determination has been issued
7 by the department of workforce development under s. 66.293 (3), 103.49 (3), ~~103.495~~
8 ~~(4)~~ or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d), under
9 s. 66.293 (6) to permit any part of the wages to which that person is entitled under
10 the prevailing wage rate determination issued by the department or local
11 governmental unit to be deducted from the person's pay is guilty of a Class E felony,
12 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
13 is working on a project that is subject to 40 USC 276c.

14 **SECTION 3191g.** 946.15 (4) of the statutes is amended to read:

15 946.15 (4) Any person employed on a project on which a prevailing wage rate
16 determination has been issued by the department of workforce development under
17 s. 66.293 (3), 103.49 (3), ~~103.495 (4)~~ or 103.50 (3) or by a local governmental unit, as
18 defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages to
19 which that person is entitled under the prevailing wage rate determination issued
20 by the department or local governmental unit to be deducted from his or her pay is
21 guilty of a Class C misdemeanor, unless the deduction would be permitted under 29
22 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
23 276c.”.

24 **10.** Page 1404, line 21: after that line insert:

1 “(4xt) PRIVATE CORRECTIONAL FACILITIES.

2 (a) *Definition.* In this subsection, “private correctional facility” means, along
3 with the land on which it is situated, a building, structure or facility meeting all of
4 the following requirements:

5 1. The building, structure or facility has been or is being constructed on the
6 effective date of this subdivision.

7 2. The building, structure or facility has been or is being constructed for the
8 confinement of one or more individuals who, as a result of a court order from any
9 jurisdiction, are in custody for the commission or alleged commission of a crime and
10 who would be classified as medium or maximum security under the department of
11 corrections’ security classification system.

12 3. The building, structure or facility has not been and is not being constructed
13 under a contract with the department of administration, a county, a group of counties
14 acting under section 302.44 of the statutes, the department of corrections and any
15 county or group of counties acting under section 302.45 of the statutes, the United
16 States or a federally recognized American Indian tribe or band in this state.

17 (b) *Acquisition or lease of private correctional facilities.* The department of
18 administration shall, no later than the 30th day after the effective date of this
19 paragraph, commence efforts to negotiate with the owner of each private correctional
20 facility located in this state to purchase the facility or to lease the facility. If the
21 department reaches an agreement to purchase or lease the facility, the purchase or
22 lease is subject to approval of the building commission and the joint committee on
23 finance. If the department is unable to reach an agreement with the owner, the
24 building commission may, notwithstanding section 13.48 (16) of the statutes, acquire
25 the private correctional facility by condemnation under section 32.06 of the statutes,

1 except that this paragraph constitutes the determination of the necessity of taking
2 for the purposes of section 32.06 (1) of the statutes. Section 13.48 (19) (b) of the
3 statutes, as created by this act, does not apply to the lease or acquisition of a private
4 correctional facility under this paragraph.

5 (c) *Returning prisoners from out-of-state facilities.* The department of
6 corrections shall use the increase in beds resulting from any lease or acquisition of
7 private correctional facilities under paragraph (b) to reduce its reliance on contracts
8 for the transfer and confinement of Wisconsin prisoners in other states under section
9 301.21 of the statutes and to return to correctional facilities in Wisconsin prisoners
10 who are confined in other states under those contracts.

11 (d) *Inapplicability to juvenile facilities.* This subsection does not apply to a
12 building, structure or facility that has been or is being constructed solely to confine
13 juveniles alleged or found to be delinquent.”.

14 **11.** Page 1450, line 5: after that line insert:

15 “(4xt) CONSTRUCTION OF CORRECTIONAL FACILITIES BY PRIVATE PERSONS. The
16 treatment of sections 20.924 (1) (i), ~~109.195~~ and 301.19 of the statutes first applies
17 to contracts for the construction of a correctional facility, or for the conversion of an
18 existing building, structure or facility into a correctional facility entered into, or
19 extended, modified or renewed, on the effective date of this subsection.”.

20 (END)

or, if ^{such} ~~that~~ construction or conversion is commenced without a
contract, the treatment of these sections first applies to
such construction or conversion ^{co} ~~commenced~~ ^{ced} ~~on~~ ^{on} the effective
date of this subsection

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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as follows:

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

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

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

(END OF INSERT)

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Someone who wants

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0523/2 (3)
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LFB:.....Bauer (DS) – Privately constructed correctional facilities

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 122, line 10: after that line insert:

3 “SECTION 3e. 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and
4 amended to read:

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

1 requirements of par. (b) and s. 20.924 (1) (i), the building commission may also
 2 authorize the lease, lease purchase or acquisition of existing facilities in lieu of state
 3 construction of any project enumerated in the authorized state building program.

4 **SECTION 3f.** 13.48 (19) (b) of the statutes is created to read:

5 13.48 (19) (b) The building commission may not lease or acquire a building,
 6 structure or facility for the purpose of confining persons serving a sentence of
 7 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
 8 undertakes construction or conversion of the building, facility or structure has met
 9 the requirements of s. 301.19 (2) *and has complied with the agreement under s. 20.924 (1)(i)*

10 **SECTION 3h.** 13.48 (27) of the statutes is amended to read: *sub. (19)(b) and*

11 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. The Subject to s. 20.924 (1) (i),
 12 the building commission may lease any facility meeting the requirements of s. 301.19
 13 (2) for use of the department of corrections as a part of the authorized state building
 14 program, with an option to purchase the facility by the state. Any lease shall provide
 15 for the facility to be constructed in accordance with requirements and specifications
 16 approved by the department of administration and shall permit inspection of the site
 17 and facility by agents of the department.”.

18 **2.** Page 481, line 8: after that line insert:

19 **“SECTION 649m.** 20.924 (1) (i) of the statutes is created to read:

20 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
 21 structure or facility, or portion thereof, under s. 301.19 (2) (a), for initial occupancy
 22 by the department of corrections for the purpose of confining persons serving a
 23 sentence of imprisonment to the Wisconsin state prisons under ch. 973 unless the
 24 seller or lessor agrees as follows:

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

7 2. To require any contractor, subcontractor or agent thereof performing work
8 on the building, structure or facility to keep and permit inspection of records in the
9 same manner as a contractor, subcontractor or agent thereof performing work on a
10 project of public works that is subject to s. 103.49 is required to keep and permit
11 inspection of records under s. 103.49 (5).

12 3. Otherwise to comply with s. 103.49 in the same manner as a state agency
13 contracting for the erection, construction, remodeling, repairing or demolition of a
14 project of public works is required to comply with s. 103.49 and to require any
15 contractor, subcontractor or agent thereof performing work on the building,
16 structure or facility to comply with s. 103.49 in the same manner as a contractor,
17 subcontractor or agent thereof performing work on a project of public works that is
18 subject to s. 103.49 is required to comply with s. 103.49.”.

19 **3.** Page 979, line 6: after that line insert:

20 “**SECTION 2030m.** 109.09 (1) of the statutes is amended to read:

21 109.09 (1) The department shall investigate and attempt equitably to adjust
22 controversies between employers and employes as to alleged wage claims. The
23 department may receive and investigate any wage claim which is filed with the
24 department, or received by the department under s. 109.10 (4), no later than 2 years

1 after the date the wages are due. The department may, after receiving a wage claim,
2 investigate any wages due from the employer against whom the claim is filed to any
3 employe during the period commencing 2 years before the date the claim is filed. The
4 department shall enforce this chapter and ss. 20.924 (1) (i) 1., 2. and 3., 66.293,
5 103.02, 103.49, 103.82 and 104.12. In pursuance of this duty, the department may
6 sue the employer on behalf of the employe to collect any wage claim or wage
7 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
8 for actions under s. 109.10, the department may refer such an action to the district
9 attorney of the county in which the violation occurs for prosecution and collection and
10 the district attorney shall commence an action in the circuit court having appropriate
11 jurisdiction. Any number of wage claims or wage deficiencies against the same
12 employer may be joined in a single proceeding, but the court may order separate
13 trials or hearings. In actions that are referred to a district attorney under this
14 subsection, any taxable costs recovered by the district attorney shall be paid into the
15 general fund of the county in which the violation occurs and used by that county to
16 meet its financial responsibility under s. 978.13 (2) for the operation of the office of
17 the district attorney who prosecuted the action.”.

18 **4.** Page 980, line 7: after that line insert:

19 “**SECTION 2033m.** 111.322 (2m) (c) of the statutes is amended to read:

20 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
21 under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49 or testifies or assists in any action
22 or proceeding under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49.”.

23 **5.** Page 1102, line 15: after that line insert:

24 “**SECTION 2353m.** 227.01 (13) (t) of the statutes is amended to read:

① ^{plan} 227.01 (13) (t) Ascertains and determines prevailing wage rates ^{plan} and prevailing
 ② ^{plan} hours of labor under ss. s. 20.924 (1) (i) 3., 66.293, 103.49 and or 103.50, except that
 ③ any action or inaction which ascertains and determines prevailing wage rates and ^{plan}
 ④ ^{plan} prevailing hours of labor under ss. s. 20.924 (1) (i) 3., 66.293, 103.49 and or 103.50
 5 is subject to judicial review under s. 227.40.”

6 **6.** Page 1208, line 4: after that line insert:

7 “SECTION 2698g. 301.18 (1g) of the statutes is created to read:

8 301.18 (1g) The department of administration may acquire or lease
 9 correctional facilities under 1999 Wisconsin Act (this act), section 9111(4xt) (b).

10 SECTION 2698L. 301.19 of the statutes is created to read:

11 **301.19 Construction of correctional facilities by private persons. (1)**

12 In this section:

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

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

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

1 (a) The building commission has authorized the lease or acquisition of the
2 building, structure or facility by the state upon the completion of the construction or
3 conversion.

4 (b) The building, structure or facility is enumerated in the authorized state
5 building program.

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

7 **(3)** Subsection (2) does not apply to buildings, structures or facilities that are
8 constructed or converted under a contract with and for use by an authorized
9 jurisdiction.”.

10 **7.** Page 1208, line 10: after that line insert:

11 “**SECTION 2699m.** 301.235 (2) (e) of the statutes is amended to read:

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

15 **8.** Page 1353, line 18: after that line insert:

16 “**SECTION 3191d.** 946.15 (1) of the statutes is amended to read:

17 946.15 (1) Any employer, or any agent or employe of an employer, who induces
18 any person who seeks to be or is employed pursuant to a public contract as defined
19 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing
20 wage rate determination has been issued by the department of workforce
21 development under s. 20.924 (1) (i) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local
22 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive
23 or return any part of the compensation to which that person is entitled under his or
24 her contract of employment or under the prevailing wage rate determination issued

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

8 **SECTION 3191e.** 946.15 (2) of the statutes is amended to read:

9 946.15 (2) Any person employed pursuant to a public contract as defined in s.
10 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
11 has been issued by the department of workforce development under s. 20.924 (1) (i)
12 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in
13 s. 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer
14 or agent of the employer any part of the compensation to which the employe is
15 entitled under his or her contract of employment or under the prevailing wage
16 determination issued by the department or local governmental unit, or who gives up
17 any part of the compensation to which he or she is normally entitled for work on a
18 project on which a prevailing wage rate determination has not been issued under s.
19 20.924 (1) (i) 3., 66.293 (3) or (6), 103.49 (3) or 103.50 (3) during a week in which the
20 person works part-time on a project on which a prevailing wage rate determination
21 has been issued and part-time on a project on which a prevailing wage rate
22 determination has not been issued, is guilty of a Class C misdemeanor.

23 **SECTION 3191f.** 946.15 (3) of the statutes is amended to read:

24 946.15 (3) Any employer or labor organization, or any agent or employe of an
25 employer or labor organization, who induces any person who seeks to be or is

1 employed on a project on which a prevailing wage rate determination has been issued
2 by the department of workforce development under s. 20.924 (1) (i) 3., 66.293 (3),
3 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d),
4 under s. 66.293 (6) to permit any part of the wages to which that person is entitled
5 under the prevailing wage rate determination issued by the department or local
6 governmental unit to be deducted from the person's pay is guilty of a Class E felony,
7 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
8 is working on a project that is subject to 40 USC 276c.

9 **SECTION 3191g.** 946.15 (4) of the statutes is amended to read:

10 946.15 (4) Any person employed on a project on which a prevailing wage rate
11 determination has been issued by the department of workforce development under
12 s. 20.924 (1) (i) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit,
13 as defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages
14 to which that person is entitled under the prevailing wage rate determination issued
15 by the department or local governmental unit to be deducted from his or her pay is
16 guilty of a Class C misdemeanor, unless the deduction would be permitted under 29
17 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
18 276c.”.

19 **9.** Page 1404, line 21: after that line insert:

20 “(4xt) PRIVATE CORRECTIONAL FACILITIES.

21 (a) *Definition.* In this subsection, “private correctional facility” means, along
22 with the land on which it is situated, a building, structure or facility meeting all of
23 the following requirements:

1 1. The building, structure or facility has been or is being constructed on the
2 effective date of this subdivision.

3 2. The building, structure or facility has been or is being constructed for the
4 confinement of one or more individuals who, as a result of a court order from any
5 jurisdiction, are in custody for the commission or alleged commission of a crime and
6 who would be classified as medium or maximum security under the department of
7 corrections' security classification system.

8 3. The building, structure or facility has not been and is not being constructed
9 under a contract with the department of administration, a county, a group of counties
10 acting under section 302.44 of the statutes, the department of corrections and any
11 county or group of counties acting under section 302.45 of the statutes, the United
12 States or a federally recognized American Indian tribe or band in this state.

13 (b) *Acquisition or lease of private correctional facilities.* The department of
14 administration shall, no later than the 30th day after the effective date of this
15 paragraph, commence efforts to negotiate with the owner of each private correctional
16 facility located in this state to purchase the facility or to lease the facility. If the
17 department reaches an agreement to purchase or lease the facility, the purchase or
18 lease is subject to approval of the building commission and the joint committee on
19 finance. If the department is unable to reach an agreement with the owner, the
20 building commission may, notwithstanding section 13.48 (16) of the statutes, acquire
21 the private correctional facility by condemnation under section 32.06 of the statutes,
22 except that this paragraph constitutes the determination of the necessity of taking
23 for the purposes of section 32.06 (1) of the statutes. Section 13.48 (19) (b) of the
24 statutes, as created by this act, does not apply to the lease or acquisition of a private
25 correctional facility under this paragraph.

1 (c) *Returning prisoners from out-of-state facilities.* The department of
2 corrections shall use the increase in beds resulting from any lease or acquisition of
3 private correctional facilities under paragraph (b) to reduce its reliance on contracts
4 for the transfer and confinement of Wisconsin prisoners in other states under section
5 301.21 of the statutes and to return to correctional facilities in Wisconsin prisoners
6 who are confined in other states under those contracts.

7 (d) *Inapplicability to juvenile facilities.* This subsection does not apply to a
8 building, structure or facility that has been or is being constructed solely to confine
9 juveniles alleged or found to be delinquent.”

10 **10.** Page 1450, line 5: after that line insert:

11 “(4xt) CONSTRUCTION OF CORRECTIONAL FACILITIES BY PRIVATE PERSONS. The
12 treatment of sections 20.924 (1)(i) and 301.19 of the statutes first applies to contracts
13 for the construction of a correctional facility, or for the conversion of an existing
14 building, structure or facility into a correctional facility entered into, or extended,
15 modified or renewed, on the effective date of this subsection or, if such construction
16 or conversion is commenced without a contract, the treatment of those sections first
17 applies to such construction or conversion commenced on the effective date of this
18 subsection.”

19 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0523/4

MGD/JTK/PG/GMM:kmg&jlg:km RMR

LFB:.....Bauer (DS) – Privately constructed correctional facilities

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 122, line 10: after that line insert:

3 **“SECTION 3e.** 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and
4 amended to read:

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

1 requirements of par. (b) and s. 20.924 (1) (i), the building commission may also
2 authorize the lease, lease purchase or acquisition of existing facilities in lieu of state
3 construction of any project enumerated in the authorized state building program.

4 **SECTION 3f.** 13.48 (19) (b) of the statutes is created to read:

5 13.48 (19) (b) The building commission may not lease or acquire a building,
6 structure or facility for the purpose of confining persons serving a sentence of
7 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
8 undertakes construction or conversion of the building, facility or structure has met
9 the requirements of s. 301.19 (2) and has complied with the agreement under s.
10 20.924 (1) (i).

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

12 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. The Subject to sub. (19) (b) and
13 s. 20.924 (1) (i), the building commission may lease any facility meeting the
14 requirements of s. 301.19 (2) for use of the department of corrections as a part of the
15 authorized state building program, with an option to purchase the facility by the
16 state. Any lease shall provide for the facility to be constructed in accordance with
17 requirements and specifications approved by the department of administration and
18 shall permit inspection of the site and facility by agents of the department.”.

19 **2.** Page 481, line 8: after that line insert:

20 “**SECTION 649m.** 20.924 (1) (i) of the statutes is created to read:

21 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
22 structure or facility, or portion thereof, under s. 301.19 (2) (a), for initial occupancy
23 by the department of corrections for the purpose of confining persons serving a

for portion thereof,

1 sentence of imprisonment to the Wisconsin state prisons under ch. 973 unless the
2 seller or lessor agrees as follows:

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

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

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

21 **3.** Page 979, line 6: after that line insert:

22 “SECTION 2030m. 109.09 (1) of the statutes is amended to read:

23 109.09 (1) The department shall investigate and attempt equitably to adjust
24 controversies between employers and employees as to alleged wage claims. The

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

20 **4.** Page 980, line 7: after that line insert:

21 “**SECTION 2033m.** 111.322 (2m) (c) of the statutes is amended to read:

22 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
23 under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49 or testifies or assists in any action
24 or proceeding under s. 20.924 (1) (i) 1., 2. or 3., 66.293 or 103.49.”.

1 **5.** Page 1102, line 15: after that line insert:

2 “**SECTION 2353m.** 227.01 (13) (t) of the statutes is amended to read:

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

8 **6.** Page 1208, line 4: after that line insert:

9 “**SECTION 2698g.** 301.18 (1g) of the statutes is created to read:

10 301.18 (1g) The department of administration may acquire or lease
11 correctional facilities under 1999 Wisconsin Act (this act), section 9111(4xt) (b).

12 **SECTION 2698L.** 301.19 of the statutes is created to read:

13 **301.19 Construction of correctional facilities by private persons. (1)**

14 In this section:

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

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

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

1 (a) The building commission has authorized the lease or acquisition of the
2 building, structure or facility by the state upon the completion of the construction or
3 conversion.

4 (b) The building, structure or facility is enumerated in the authorized state
5 building program.

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

7 **(3)** Subsection (2) does not apply to buildings, structures or facilities that are
8 constructed or converted under a contract with and for use by an authorized
9 jurisdiction.”.

10 **7.** Page 1208, line 10: after that line insert:

11 “**SECTION 2699m.** 301.235 (2) (e) of the statutes is amended to read:

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

15 **8.** Page 1353, line 18: after that line insert:

16 “**SECTION 3191d.** 946.15 (1) of the statutes is amended to read:

17 946.15 (1) Any employer, or any agent or employe of an employer, who induces
18 any person who seeks to be or is employed pursuant to a public contract as defined
19 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing
20 wage rate determination has been issued by the department of workforce
21 development under s. 20.924 (1) (i) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local
22 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive
23 or return any part of the compensation to which that person is entitled under his or
24 her contract of employment or under the prevailing wage rate determination issued

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

8 **SECTION 3191e.** 946.15 (2) of the statutes is amended to read:

9 946.15 (2) Any person employed pursuant to a public contract as defined in s.
10 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
11 has been issued by the department of workforce development under s. 20.924 (1) (i)
12 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in
13 s. 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer
14 or agent of the employer any part of the compensation to which the employe is
15 entitled under his or her contract of employment or under the prevailing wage
16 determination issued by the department or local governmental unit, or who gives up
17 any part of the compensation to which he or she is normally entitled for work on a
18 project on which a prevailing wage rate determination has not been issued under s.
19 20.924 (1) (i) 3., 66.293 (3) or (6), 103.49 (3) or 103.50 (3) during a week in which the
20 person works part-time on a project on which a prevailing wage rate determination
21 has been issued and part-time on a project on which a prevailing wage rate
22 determination has not been issued, is guilty of a Class C misdemeanor.

23 **SECTION 3191f.** 946.15 (3) of the statutes is amended to read:

24 946.15 (3) Any employer or labor organization, or any agent or employe of an
25 employer or labor organization, who induces any person who seeks to be or is

1 employed on a project on which a prevailing wage rate determination has been issued
2 by the department of workforce development under s. 20.924 (1) (i) 3., 66.293 (3),
3 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d),
4 under s. 66.293 (6) to permit any part of the wages to which that person is entitled
5 under the prevailing wage rate determination issued by the department or local
6 governmental unit to be deducted from the person's pay is guilty of a Class E felony,
7 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
8 is working on a project that is subject to 40 USC 276c.

9 **SECTION 3191g.** 946.15 (4) of the statutes is amended to read:

10 946.15 (4) Any person employed on a project on which a prevailing wage rate
11 determination has been issued by the department of workforce development under
12 s. 20.924 (1) (i) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit,
13 as defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages
14 to which that person is entitled under the prevailing wage rate determination issued
15 by the department or local governmental unit to be deducted from his or her pay is
16 guilty of a Class C misdemeanor, unless the deduction would be permitted under 29
17 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
18 276c.”.

19 **9.** Page 1404, line 21: after that line insert:

20 “(4xt) PRIVATE CORRECTIONAL FACILITIES.

21 (a) *Definition.* In this subsection, “private correctional facility” means, along
22 with the land on which it is situated, a building, structure or facility meeting all of
23 the following requirements:

1 1. The building, structure or facility has been or is being constructed on the
2 effective date of this subdivision.

3 2. The building, structure or facility has been or is being constructed for the
4 confinement of one or more individuals who, as a result of a court order from any
5 jurisdiction, are in custody for the commission or alleged commission of a crime and
6 who would be classified as medium or maximum security under the department of
7 corrections' security classification system.

8 3. The building, structure or facility has not been and is not being constructed
9 under a contract with the department of administration, a county, a group of counties
10 acting under section 302.44 of the statutes, the department of corrections and any
11 county or group of counties acting under section 302.45 of the statutes, the United
12 States or a federally recognized American Indian tribe or band in this state.

13 (b) *Acquisition or lease of private correctional facilities.* The department of
14 administration shall, no later than the 30th day after the effective date of this
15 paragraph, commence efforts to negotiate with the owner of each private correctional
16 facility located in this state to purchase the facility or to lease the facility. If the
17 department reaches an agreement to purchase or lease the facility, the purchase or
18 lease is subject to approval of the building commission and the joint committee on
19 finance. If the department is unable to reach an agreement with the owner, the
20 building commission may, notwithstanding section 13.48 (16) of the statutes, acquire
21 the private correctional facility by condemnation under section 32.06 of the statutes,
22 except that this paragraph constitutes the determination of the necessity of taking
23 for the purposes of section 32.06 (1) of the statutes. Section 13.48 (19) (b) of the
24 statutes, as created by this act, does not apply to the lease or acquisition of a private
25 correctional facility under this paragraph.

1 (c) *Returning prisoners from out-of-state facilities.* The department of
 2 corrections shall use the increase in beds resulting from any lease or acquisition of
 3 private correctional facilities under paragraph (b) to reduce its reliance on contracts
 4 for the transfer and confinement of Wisconsin prisoners in other states under section
 5 301.21 of the statutes and to return to correctional facilities in Wisconsin prisoners
 6 who are confined in other states under those contracts.

7 (d) *Inapplicability to juvenile facilities.* This subsection does not apply to a
 8 building, structure or facility that has been or is being constructed solely to confine
 9 juveniles alleged or found to be delinquent.”.

10 **10.** Page 1450, line 5: after that line insert:

11 “(4xt) CONSTRUCTION OF CORRECTIONAL FACILITIES BY PRIVATE PERSONS. The
 12 treatment of sections 20.924 (1) (i) and 301.19 of the statutes first applies to contracts
 13 for the construction of a correctional facility, or for the conversion of an existing
 14 building, structure or facility into a correctional facility entered into, or extended,
 15 modified or renewed, on the effective date of this subsection or, if such construction
 16 or conversion is commenced without a contract, the treatment of those sections first
 17 applies to such construction or conversion commenced on the effective date of this
 18 subsection.”.

19 (END)

DNote

¶ This redraft inserts “, or portion thereof,” in s. 20.924 (1)(i) 1, 2

~~and 3. to conform this draft~~

and 3. after “building, structure or facility” to conform this

draft to a change made on the master substitute amendment. That

change is necessary to conform s. 20.924 (1)(i) 1, 2, and 3. to s.

20.924

20.924 (1)(i)(intro).

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0523/4dn
GMM:kmg&jlg:mrc

June 21, 1999

This redraft inserts “, or portion thereof,” in s. 20.924 (1) (i) 1., 2. and 3. after “building, structure or facility” to conform this draft to a change made on the master substitute amendment. That change is necessary to conform s. 20.924 (1) (i) 1., 2. and 3. to s. 20.924 (1) (i) (intro.).

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0523/4
MGD/JTK/PG/GMM:kmg&jlg:mrc

LFB:.....Bauer (DS) – Privately constructed correctional facilities

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 122, line 10: after that line insert:

3 "SECTION 3e. 13.48 (19) of the statutes is renumbered 13.48 (19) (a) and
4 amended to read:

5 13.48 (19) (a) Whenever the building commission determines that the use of
6 innovative types of design and construction processes will make better use of the
7 resources and technology available in the building industry, the building commission
8 may waive any or all of s. 16.855 if such action is in the best interest of the state and
9 if the waiver is accomplished through formal action of the building commission. ~~The~~
10 Subject to the requirements of par. (b) and s. 20.924 (1) (i), the building commission

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

6 **SECTION 3f.** 13.48 (19) (b) of the statutes is created to read:

7 13.48 (19) (b) The building commission may not lease or acquire a building,
8 structure or facility for the purpose of confining persons serving a sentence of
9 imprisonment to the Wisconsin state prisons under ch. 973 unless the person who
10 undertakes construction or conversion of the building, facility or structure has met
11 the requirements of s. 301.19 (2) and has complied with the agreement under s.
12 20.924 (1) (i).

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

14 13.48 (27) LEASE OF CORRECTIONAL FACILITIES. ~~The Subject to sub. (19) (b) and~~
15 ~~s. 20.924 (1) (i), the~~ building commission may lease any facility meeting the
16 requirements of s. 301.19 (2) for use of the department of corrections as a part of the
17 authorized state building program, with an option to purchase the facility by the
18 state. Any lease shall provide for the facility to be constructed in accordance with
19 requirements and specifications approved by the department of administration and
20 shall permit inspection of the site and facility by agents of the department.”.

21 **2.** Page 481, line 8: after that line insert:

22 “**SECTION 649m.** 20.924 (1) (i) of the statutes is created to read:

23 20.924 (1) (i) Shall not authorize the acquisition or leasing of any building,
24 structure or facility, or portion thereof, under s. 301.19 (2) (a), for initial occupancy

1 by the department of corrections for the purpose of confining persons serving a
2 sentence of imprisonment to the Wisconsin state prisons under ch. 973 unless the
3 seller or lessor agrees as follows:

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

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

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

23 **3.** Page 979, line 6: after that line insert:

24 “SECTION 2030m. 109.09 (1) of the statutes is amended to read:

1 109.09 (1) The department shall investigate and attempt equitably to adjust
2 controversies between employers and employes 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 **4.** Page 980, line 7: after that line insert:

23 “**SECTION 2033m.** 111.322 (2m) (c) of the statutes is amended to read:

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

4 **5.** Page 1102, line 15: after that line insert:

5 “**SECTION 2353m.** 227.01 (13) (t) of the statutes is amended to read:

6 227.01 (13) (t) Ascertains and determines prevailing wage rates and prevailing
7 hours of labor under ~~ss. s. 20.924 (1) (i) 3.,~~ 66.293, 103.49 ~~and or~~ 103.50, except that
8 any action or inaction which ascertains and determines prevailing wage rates and
9 prevailing hours of labor under ~~ss. s. 20.924 (1) (i) 3.,~~ 66.293, 103.49 ~~and or~~ 103.50
10 is subject to judicial review under s. 227.40.”.

11 **6.** Page 1208, line 4: after that line insert:

12 “**SECTION 2698g.** 301.18 (1g) of the statutes is created to read:

13 301.18 (1g) The department of administration may acquire or lease
14 correctional facilities under 1999 Wisconsin Act (this act), section 9111(4xt) (b).

15 **SECTION 2698L.** 301.19 of the statutes is created to read:

16 **301.19 Construction of correctional facilities by private persons. (1)**

17 In this section:

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

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

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

4 (a) The building commission has authorized the lease or acquisition of the
5 building, structure or facility by the state upon the completion of the construction or
6 conversion.

7 (b) The building, structure or facility is enumerated in the authorized state
8 building program.

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

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

13 **7.** Page 1208, line 10: after that line insert:

14 “**SECTION 2699m.** 301.235 (2) (e) of the statutes is amended to read:

15 301.235 (2) (e) All laws, except s. 20.924 (1) (i) and ch. 150, conflicting with this
16 section are, insofar as they conflict with this section and no further, superseded by
17 this section.”.

18 **8.** Page 1353, line 18: after that line insert:

19 “**SECTION 3191d.** 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) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local

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

11 **SECTION 3191e.** 946.15 (2) of the statutes is amended to read:

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

1 **SECTION 3191f.** 946.15 (3) of the statutes is amended to read:

2 946.15 (3) Any employer or labor organization, or any agent or employe of an
3 employer or labor organization, who induces any person who seeks to be or is
4 employed on a project on which a prevailing wage rate determination has been issued
5 by the department of workforce development under s. 20.924 (1) (i) 3., 66.293 (3),
6 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d),
7 under s. 66.293 (6) to permit any part of the wages to which that person is entitled
8 under the prevailing wage rate determination issued by the department or local
9 governmental unit to be deducted from the person's pay is guilty of a Class E felony,
10 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
11 is working on a project that is subject to 40 USC 276c.

12 **SECTION 3191g.** 946.15 (4) of the statutes is amended to read:

13 946.15 (4) Any person employed on a project on which a prevailing wage rate
14 determination has been issued by the department of workforce development under
15 s. 20.924 (1) (i) 3., 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit,
16 as defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages
17 to which that person is entitled under the prevailing wage rate determination issued
18 by the department or local governmental unit to be deducted from his or her pay is
19 guilty of a Class C misdemeanor, unless the deduction would be permitted under 29
20 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
21 276c.”.

22 **9.** Page 1404, line 21: after that line insert:

23 “(4xt) PRIVATE CORRECTIONAL FACILITIES.

1 (a) *Definition.* In this subsection, “private correctional facility” means, along
2 with the land on which it is situated, a building, structure or facility meeting all of
3 the following requirements:

4 1. The building, structure or facility has been or is being constructed on the
5 effective date of this subdivision.

6 2. The building, structure or facility has been or is being constructed for the
7 confinement of one or more individuals who, as a result of a court order from any
8 jurisdiction, are in custody for the commission or alleged commission of a crime and
9 who would be classified as medium or maximum security under the department of
10 corrections’ security classification system.

11 3. The building, structure or facility has not been and is not being constructed
12 under a contract with the department of administration, a county, a group of counties
13 acting under section 302.44 of the statutes, the department of corrections and any
14 county or group of counties acting under section 302.45 of the statutes, the United
15 States or a federally recognized American Indian tribe or band in this state.

16 (b) *Acquisition or lease of private correctional facilities.* The department of
17 administration shall, no later than the 30th day after the effective date of this
18 paragraph, commence efforts to negotiate with the owner of each private correctional
19 facility located in this state to purchase the facility or to lease the facility. If the
20 department reaches an agreement to purchase or lease the facility, the purchase or
21 lease is subject to approval of the building commission and the joint committee on
22 finance. If the department is unable to reach an agreement with the owner, the
23 building commission may, notwithstanding section 13.48 (16) of the statutes, acquire
24 the private correctional facility by condemnation under section 32.06 of the statutes,
25 except that this paragraph constitutes the determination of the necessity of taking

1 for the purposes of section 32.06 (1) of the statutes. Section 13.48 (19) (b) of the
2 statutes, as created by this act, does not apply to the lease or acquisition of a private
3 correctional facility under this paragraph.

4 (c) *Returning prisoners from out-of-state facilities.* The department of
5 corrections shall use the increase in beds resulting from any lease or acquisition of
6 private correctional facilities under paragraph (b) to reduce its reliance on contracts
7 for the transfer and confinement of Wisconsin prisoners in other states under section
8 301.21 of the statutes and to return to correctional facilities in Wisconsin prisoners
9 who are confined in other states under those contracts.

10 (d) *Inapplicability to juvenile facilities.* This subsection does not apply to a
11 building, structure or facility that has been or is being constructed solely to confine
12 juveniles alleged or found to be delinquent.”.

13 **10.** Page 1450, line 5: after that line insert:

14 “(4xt) CONSTRUCTION OF CORRECTIONAL FACILITIES BY PRIVATE PERSONS. The
15 treatment of sections 20.924 (1) (i) and 301.19 of the statutes first applies to contracts
16 for the construction of a correctional facility, or for the conversion of an existing
17 building, structure or facility into a correctional facility entered into, or extended,
18 modified or renewed, on the effective date of this subsection or, if such construction
19 or conversion is commenced without a contract, the treatment of those sections first
20 applies to such construction or conversion commenced on the effective date of this
21 subsection.”.

22 (END)