

## 2001 ASSEMBLY BILL 42

January 25, 2001 – Introduced by Representative WALKER, cosponsored by Senator JAUCH. Referred to Committee on Corrections and the Courts.

1     **AN ACT** *to repeal* 20.410 (1) (ed); *to amend* 13.48 (19), 13.48 (27), 20.410 (1) (ab),  
2           109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), 302.01, 946.15 (1), 946.15 (2), 946.15  
3           (3) and 946.15 (4); and *to create* 20.924 (1) (i) and 301.235 (2) (dm) of the  
4           statutes; **relating to:** the lease and operation of correctional facilities, making  
5           an appropriation, and providing penalties.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, as a part of the authorized state building program, the building commission may lease any facility, with an option to purchase the facility by the state, for use by the department of corrections (DOC). Current law also appropriates money to DOC for making payments under certain contracts. This bill amends the appropriation provision relating to contract payments to authorize DOC to use the money appropriated under that provision, subject to the approval of the joint committee on finance, to lease correctional facilities in this state and to operate the correctional facilities that it leases.

Current law imposes certain “prevailing wage” requirements on employers working on state or local public works projects and establishes enforcement mechanisms for those requirements, including criminal penalties. The bill regulates the construction of additional correctional facilities by private persons. Under the bill, a private person may not commence construction of a correctional facility or conversion of an existing building into a correctional facility unless: 1) the building commission has authorized the lease or acquisition of the correctional facility or has

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approved the construction or conversion; and 2) the person agrees to comply with current prevailing wage law. The bill prohibits the building commission from leasing or acquiring a correctional facility if these requirements are not met.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 13.48 (19) of the statutes is amended to read:

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

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

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

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1 department of administration and shall permit inspection of the site and facility by  
2 agents of the department.

3 **SECTION 3.** 20.410 (1) (ab) of the statutes is amended to read:

4 20.410 (1) (ab) *Corrections contracts ~~and~~, agreements and leases.* The amounts  
5 in the schedule for payments made in accordance with contracts entered into under  
6 ss. 301.21, 302.25 and 302.27, contracts entered into with the federal government  
7 under 18 USC 5003 and intra-agency agreements relating to the placement of  
8 prisoners and, subject to the approval of the joint committee on finance, for payments  
9 made to lease correctional facilities in this state under s. 13.48 (27) and for the  
10 operation of those facilities.

11 **SECTION 4.** 20.410 (1) (ed) of the statutes is repealed.

12 **SECTION 5.** 20.924 (1) (i) of the statutes is created to read:

13 20.924 (1) (i) May not lease or authorize the leasing of any building, structure,  
14 or facility, or portion thereof for initial occupancy by the department of corrections  
15 for the purpose of confining persons serving a sentence of imprisonment to the  
16 Wisconsin state prisons under ch. 973 unless the construction of the building,  
17 structure or facility or its conversion into a correctional facility began before October  
18 1, 1999, or unless the lessor has done all of the following:

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

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

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

13           **SECTION 6.** 109.09 (1) of the statutes is amended to read:

14           109.09 (1) The department shall investigate and attempt equitably to adjust  
15 controversies between employers and employees as to alleged wage claims. The  
16 department may receive and investigate any wage claim which is filed with the  
17 department, or received by the department under s. 109.10 (4), no later than 2 years  
18 after the date the wages are due. The department may, after receiving a wage claim,  
19 investigate any wages due from the employer against whom the claim is filed to any  
20 employee during the period commencing 2 years before the date the claim is filed.  
21 The department shall enforce this chapter and ss. 20.924 (1) (i) 1., 2., and 3., 66.0903,  
22 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the  
23 department may sue the employer on behalf of the employee to collect any wage claim  
24 or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions.  
25 Except for actions under s. 109.10, the department may refer such an action to the

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1 district attorney of the county in which the violation occurs for prosecution and  
2 collection and the district attorney shall commence an action in the circuit court  
3 having appropriate jurisdiction. Any number of wage claims or wage deficiencies  
4 against the same employer may be joined in a single proceeding, but the court may  
5 order separate trials or hearings. In actions that are referred to a district attorney  
6 under this subsection, any taxable costs recovered by the district attorney shall be  
7 paid into the general fund of the county in which the violation occurs and used by that  
8 county to meet its financial responsibility under s. 978.13 (2) for the operation of the  
9 office of the district attorney who prosecuted the action.

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

11 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right  
12 under s. 20.924 (1) (i) 1., 2., or 3., 66.0903, 103.49 or 229.8275 or testifies or assists  
13 in any action or proceeding under s. 20.924 (1) (i) 1., 2., or 3., 66.0903, 103.49 or  
14 229.8275.

15 **SECTION 8.** 227.01 (13) (t) of the statutes is amended to read:

16 227.01 **(13)** (t) Ascertains and determines prevailing wage rates under ~~ss. s.~~  
17 20.924 (1) (i). 66.0903, 103.49, 103.50 ~~and, or~~ 229.8275, except that any action or  
18 inaction which ascertains and determines prevailing wage rates under ~~ss. s.~~ 20.924  
19 (1) (i). 66.0903, 103.49, 103.50 ~~and, or~~ 229.8275 is subject to judicial review under s.  
20 227.40.

21 **SECTION 9.** 301.235 (2) (dm) of the statutes is created to read:

22 301.235 **(2)** (dm) The department may not lease any building or any portion of  
23 a building under this section unless the construction of the building or its conversion  
24 into a correctional facility began before October 1, 1999, or unless the lessor has met

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1 the requirements of s. 20.924 (1) (i) that would apply if the building or the portion  
2 of the building were being leased by the building commission.

3 **SECTION 10.** 302.01 of the statutes is amended to read:

4 **302.01 State prisons named and defined.** The penitentiary at Waupun is  
5 named “Waupun Correctional Institution”. The correctional treatment center at  
6 Waupun is named “Dodge Correctional Institution”. The penitentiary at Green Bay  
7 is named “Green Bay Correctional Institution”. The medium/maximum penitentiary  
8 at Portage is named “Columbia Correctional Institution”. The medium security  
9 institution at Oshkosh is named “Oshkosh Correctional Institution”. The medium  
10 security penitentiary near Fox Lake is named “Fox Lake Correctional Institution”.  
11 The penitentiary at Taycheedah is named “Taycheedah Correctional Institution”.  
12 The medium security penitentiary at Plymouth is named “Kettle Moraine  
13 Correctional Institution”. The penitentiary at the village of Sturtevant in Racine  
14 County is named “Racine Correctional Institution”. The medium security  
15 penitentiary at Racine is named “Racine Youthful Offender Correctional Facility”.  
16 The resource facility at Oshkosh is named “Wisconsin Resource Center”. The  
17 institutions named in this section, the correctional institutions authorized under s.  
18 301.16 (1n) and (1v), correctional institution authorized under 1997 Wisconsin Act  
19 4, section 4 (1) (a), correctional institution authorized under s. 301.046 (1),  
20 correctional institution authorized under s. 301.048 (4) (b), minimum security  
21 correctional institutions authorized under s. 301.13, correctional facilities leased  
22 and operated by the department under s. 13.48 (27), the probation and parole holding  
23 facilities authorized under s. 301.16 (1q) and state–local shared correctional  
24 facilities when established under s. 301.14, are state prisons.

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

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1           946.15 (1) Any employer, or any agent or employee of an employer, who induces  
2 any person who seeks to be or is employed pursuant to a public contract as defined  
3 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing  
4 wage rate determination has been issued by the department of workforce  
5 development under s. 20.924 (1) (i), 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3)  
6 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)  
7 to give up, waive or return any part of the compensation to which that person is  
8 entitled under his or her contract of employment or under the prevailing wage rate  
9 determination issued by the department or local governmental unit, or who reduces  
10 the hourly basic rate of pay normally paid to an employee for work on a project on  
11 which a prevailing wage rate determination has not been issued under s. 20.924 (1)  
12 (i), 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which  
13 the employee works both on a project on which a prevailing wage rate determination  
14 has been issued and on a project on which a prevailing wage rate determination has  
15 not been issued, is guilty of a Class E felony.

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

17           946.15 (2) Any person employed pursuant to a public contract as defined in s.  
18 66.0901 (1) (c) or employed on a project on which a prevailing wage rate  
19 determination has been issued by the department of workforce development under  
20 s. 20.924 (1) (i), 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local  
21 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who gives up,  
22 waives or returns to the employer or agent of the employer any part of the  
23 compensation to which the employee is entitled under his or her contract of  
24 employment or under the prevailing wage determination issued by the department  
25 or local governmental unit, or who gives up any part of the compensation to which

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1 he or she is normally entitled for work on a project on which a prevailing wage rate  
2 determination has not been issued under s. 20.924 (1) (i), 66.0903 (3) or (6), 103.49  
3 (3), 103.50 (3) or 229.8275 (3) during a week in which the person works part-time on  
4 a project on which a prevailing wage rate determination has been issued and  
5 part-time on a project on which a prevailing wage rate determination has not been  
6 issued, is guilty of a Class C misdemeanor.

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

8 946.15 (3) Any employer or labor organization, or any agent or employee of an  
9 employer or labor organization, who induces any person who seeks to be or is  
10 employed on a project on which a prevailing wage rate determination has been issued  
11 by the department of workforce development under s. 20.924 (1) (i), 66.0903 (3),  
12 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in  
13 s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that  
14 person is entitled under the prevailing wage rate determination issued by the  
15 department or local governmental unit to be deducted from the person's pay is guilty  
16 of a Class E felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6  
17 from a person who is working on a project that is subject to 40 USC 276c.

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

19 946.15 (4) Any person employed on a project on which a prevailing wage rate  
20 determination has been issued by the department of workforce development under  
21 s. 20.924 (1) (i), 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local  
22 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits  
23 any part of the wages to which that person is entitled under the prevailing wage rate  
24 determination issued by the department or local governmental unit to be deducted  
25 from his or her pay is guilty of a Class C misdemeanor, unless the deduction would



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1 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that  
2 is subject to 40 USC 276c.

3 **SECTION 15. Nonstatutory provisions.**

4 (1) For the 2001–02 and 2002–03 fiscal years, the department of corrections  
5 may request the joint committee of finance to supplement the department’s budget  
6 under section 20.410 (1) (a) of the statutes for the purpose of staffing any leased  
7 correctional facility. Notwithstanding the fact that no emergency exists, the joint  
8 committee on finance may approve any such request under section 13.101 (3) (a) of  
9 the statutes.

10 **SECTION 16. Effective date.**

11 (1) This act takes effect on the day after publication of the 2001–03 biennial  
12 budget act.

13 (END)