

**2001 Jr2 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-AB1)**

Received: **06/27/2002**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-3847**

By/Representing: **Shanovich (RR)**

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

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - prevailing wage**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

LFB:.....Shanovich (RR) -

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**Topic:**

Prevailing wage enforcement

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**Instructions:**

Redraft b2903/2, but include only provisions relating to records.

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**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>
/?	malaigm 06/27/2002	kfollet 06/28/2002					
/1			jfrantze 06/28/2002		lrb_docadmin 06/28/2002		

FE Sent For:

<END>

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Redraft b2903/2, but include only provisions relating to records.

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1/?	malaigm	11 6/27 KJF	9/6/28	Jo/Rs 6/28			

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Malaise, Gordon  
**Sent:** Thursday, June 27, 2002 12:56 PM  
**To:** Shanovich, Ron  
**Subject:** Wage Claims and Prevailing Wage Enforcement

Ron:

I got your message this morning. To recap, b2486/1, which restores current law relating to wage claim liens, is in and b2903/2, relating to prevailing wage enforcement, needs to be redrafted to keep the provisions relating to records and take out the provisions relating to enforcement by the attorney general. The provisions relating to records are SECTIONS 153d., 274c., and 274cj. The rest will come out.

If this plan of action is inaccurate, please advise. Otherwise that is how the new draft will read.

Gordon M. Malaise  
Senior Legislative Attorney  
Legislative Reference Bureau  
266-9738



State of Wisconsin  
2001 - 2002 LEGISLATURE

January 2002 Special Session

63087/1  
LRBb2903/2  
GMM:cs&kjf:ch

SCC: ~~Engel - CN7901, Prevailing wage enforcement~~

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

~~CAUCUS~~ SENATE AMENDMENT,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 1

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

2 1. Page 53, line 4: after that line insert:

3 "SECTION 153d. 66.0903 (10) (a) of the statutes is amended to read:

4 66.0903 (10) (a) Each contractor, subcontractor, or contractor's or  
5 subcontractor's agent performing work on a project that is subject to this section  
6 shall keep full and accurate records clearly indicating the name and trade or  
7 occupation of every person performing the work described in sub. (4) and an accurate  
8 record of the number of hours worked by each of those persons and the actual wages  
9 paid for the hours worked. If requested by any person, a contractor, subcontractor,  
10 or contractor's or subcontractor's agent performing work on a project that is subject

1 to this section shall permit that person to inspect and copy any of those records to the  
2 same extent as if the record were maintained by the department, except that s. 19.36  
3 (3) does not limit the duty of a subcontractor or a contractor's or subcontractor's agent  
4 to permit inspection and copying of a record under this paragraph. Before permitting  
5 the inspection and copying of a record under this paragraph, a contractor,  
6 subcontractor, or contractor's or subcontractor's agent shall delete from the record  
7 any personally identifiable information, as defined in s. 19.62 (5), contained in the  
8 record about any person performing the work described in sub. (4) other than the  
9 trade or occupation of the person, the number of hours worked by the person, and the  
10 actual wages paid for those hours worked. "

11 ~~SECTION 153f. 66.0903 (11) (a) of the statutes is amended to read:~~

12 ~~66.0903 (11) (a) Any contractor, subcontractor, or contractor's or~~  
13 ~~subcontractor's agent who fails to pay the prevailing wage rate determined by the~~  
14 ~~department under sub. (3) or who pays less than 1.5 times the hourly basic rate of~~  
15 ~~pay for all hours worked in excess of the prevailing hours of labor is liable to any~~  
16 ~~affected employee in the amount of his or her the employee's unpaid wages or his or~~  
17 ~~her unpaid overtime compensation and in an additional equal amount as liquidated~~  
18 ~~damages. An action to recover the liability may be maintained employee may recover~~  
19 ~~that liability by filing a wage claim with the department under s. 109.09 (1) or by~~  
20 ~~commencing an action under s. 109.03 (5) in any court of competent jurisdiction by~~  
21 ~~any employee, for and in behalf of that employee and other employees similarly~~  
22 ~~situated. No employee may be a party plaintiff to the an action commenced under~~  
23 ~~s. 109.03 (5) unless the employee consents in writing to become a party and the~~  
24 ~~consent is filed in the court in which the action is brought. Notwithstanding s. 814.04~~

1 ~~(1), the court shall, in addition to any judgment awarded to the plaintiff, allow~~  
2 ~~reasonable attorney fees and costs to be paid by the defendant."~~

3 **2.** Page 157, line 22: after that line insert:

4 **"SECTION 274c.** 103.49 (5) (a) of the statutes is amended to read:

5 103.49 (5) (a) Each contractor, subcontractor, or contractor's or subcontractor's  
6 agent performing work on a project that is subject to this section shall keep full and  
7 accurate records clearly indicating the name and trade or occupation of every person  
8 performing the work described in sub. (2m) and an accurate record of the number of  
9 hours worked by each of those persons and the actual wages paid for the hours  
10 worked. If requested by any person, a contractor, subcontractor, or contractor's or  
11 subcontractor's agent performing work on a project that is subject to this section  
12 shall permit that person to inspect and copy any of those records to the same extent  
13 as if the record were maintained by the department, except that s. 19.36 (3) does not  
14 limit the duty of a subcontractor or a contractor's or subcontractor's agent to permit  
15 inspection and copying of a record under this paragraph. Before permitting the  
16 inspection and copying of a record under this paragraph, a contractor, subcontractor,  
17 or contractor's or subcontractor's agent shall delete from the record any personally  
18 identifiable information, as defined in s. 19.62 (5), contained in the record about any  
19 person performing the work described in sub. (2m) other than the trade or occupation  
20 of the person, the number of hours worked by the person, and the actual wages paid  
21 for those hours worked.

22 ~~SECTION 274cd. 103.49 (6m) (a) of the statutes is renumbered 103.49 (6m) (ar).~~

23 ~~SECTION 274cf. 103.49 (6m) (ag) of the statutes is created to read:~~

1 ~~103.49 (6m) (ag) Any contractor, subcontractor, or contractor's or~~  
2 ~~subcontractor's agent who fails to pay the prevailing wage rate determined by the~~  
3 ~~department under sub. (3) or who pays less than 1.5 times the hourly basic rate of~~  
4 ~~pay for all hours worked in excess of the prevailing hours of labor is liable to any~~  
5 ~~affected employee in the amount of the employee's unpaid wages or unpaid overtime~~  
6 ~~compensation. An employee may recover that liability by filing a wage claim with~~  
7 ~~the department under s. 109.09 (1) or by commencing an action under s. 109.03 (5)~~  
8 ~~in any court of competent jurisdiction, for and in behalf of that employee and other~~  
9 ~~employees similarly situated. No employee may be a party plaintiff to an action~~  
10 ~~commenced under s. 109.03 (5) unless the employee consents in writing to become~~  
11 ~~a party and the consent is filed in the court in which the action is brought.~~  
12 ~~Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded~~  
13 ~~to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.~~

14 **SECTION 274ch.** 103.49 (6m) (f) of the statutes is amended to read:

15 103.49 (6m) (f) Paragraph ~~(a)~~ (ar) does not apply to any person who fails to  
16 provide any information to the department to assist the department in determining  
17 prevailing wage rates under sub. ~~(3) (a) or (am)~~.

18 **SECTION 274cj.** 103.50 (6m) of the statutes is created to read:

19 103.50 (6m) RECORDS; INSPECTION. Each contractor, subcontractor, or  
20 contractor's or subcontractor's agent performing work on a project that is subject to  
21 this section shall keep full and accurate records clearly indicating the name and  
22 trade or occupation of every person performing the work described in sub. (2m) and  
23 an accurate record of the number of hours worked by each of those persons and the  
24 actual wages paid for the hours worked. If requested by any person, a contractor,  
25 subcontractor, or contractor's or subcontractor's agent performing work on a project

1 that is subject to this section shall permit that person to inspect and copy any of those  
2 records to the same extent as if the record were maintained by the department,  
3 except that s. 19.36 (3) does not limit the duty of a subcontractor or a contractor's or  
4 subcontractor's agent to permit inspection and copying of a record under this  
5 subsection. Before permitting the inspection and copying of a record under this  
6 subsection, a contractor, subcontractor, or contractor's or subcontractor's agent shall  
7 delete from the record any personally identifiable information, as defined in s. 19.62  
8 (5), contained in the record about any person performing the work described in sub.  
9 (2m) other than the trade or occupation of the person, the number of hours worked  
10 by the person, and the actual wages paid for those hours worked. "

11 ~~SECTION 274cm. 103.50 (7) (a) of the statutes is renumbered 103.50 (7) (ar).~~

12 **SECTION 274cn.** 103.50 (7) (ag) of the statutes is created to read:

13 103.50 (7) (ag) Any contractor, subcontractor, or contractor's or subcontractor's  
14 agent who fails to pay the prevailing wage rate determined under sub. (3) or (4) or  
15 who pays less than 1.5 times the hourly basic rate of pay for all hours worked in  
16 excess of the prevailing hours of labor is liable to any affected employee in the amount  
17 of the employee's unpaid wages or unpaid overtime compensation. An employee may  
18 recover that liability by filing a wage claim with the department of transportation  
19 under par. (am) or by commencing an action under s. 109.03 (5) in any court of  
20 competent jurisdiction, for and in behalf of that employee and other employees  
21 similarly situated. No employee may be a party plaintiff to an action commenced  
22 under s. 109.03 (5) unless the employee consents in writing to become a party and  
23 the consent is filed in the court in which the action is brought. Notwithstanding s.  
24 §14.04 (1), the court shall, in addition to any judgment awarded to the plaintiff, allow  
25 reasonable attorney fees and costs to be paid by the defendant.



1       **SECTION 274cp.** 103.50 (7) (am) of the statutes is created to read:

2       103.50 (7) (am) An employee may also recover the liability specified in par. (ag)  
3 by filing a wage claim with the department of transportation for and in behalf of that  
4 employee and other employees similarly situated. On receipt of a wage claim filed  
5 under this paragraph, the department of transportation shall investigate the wage  
6 claim and, on completion of the investigation, may sue the employer on behalf of the  
7 employee to collect the wage claim or refer the wage claim to the district attorney of  
8 the county in which the work is located for prosecution and collection. If the  
9 department of transportation decides not to sue the employer to collect the wage  
10 claim or refer the wage claim to the district attorney, the department of  
11 transportation shall refer the wage claim to the department of justice for prosecution  
12 and collection. On receipt of a wage claim, a district attorney or the department of  
13 justice shall investigate as necessary and, if the wage claim appears to be valid,  
14 commence an action in the circuit court having appropriate jurisdiction to collect the  
15 wage claim. The department of transportation may receive and investigate a wage  
16 claim under this paragraph that is filed no later than 2 years after the date on which  
17 the unpaid wages or unpaid overtime compensation was due. After receiving a wage  
18 claim under this paragraph, the department of transportation may investigate any  
19 unpaid wages or unpaid overtime compensation due from the contractor,  
20 subcontractor, or agent against whom the wage claim was filed to any employee  
21 during the period commencing 2 years before the date on which the wage claim was  
22 filed.

23       **SECTION 274cr.** 103.50 (7) (f) of the statutes is amended to read:

1 103.50 (7) (f) Paragraph (a) ~~(ar)~~ does not apply to any person who fails to  
2 provide any information to the department to assist the department in determining  
3 prevailing wage rates under sub. (3) or (4).

4 ~~SECTION 274ct.~~ 103.50 (8) of the statutes is amended to read:

5 103.50 (8) ENFORCEMENT AND PROSECUTION. The department of transportation  
6 shall require adherence to subs. (2), (2m), and (6). The department of transportation  
7 may demand and examine, and every contractor, subcontractor, and contractor's or  
8 subcontractor's agent shall keep and furnish, upon request by the department of  
9 transportation, copies of payrolls and other records and information relating to  
10 compliance with this section. ~~Upon request of the department of transportation or~~  
11 ~~upon complaint of alleged violation, the district attorney of the county in which the~~  
12 ~~work is located shall investigate as necessary and prosecute violations in a court of~~  
13 ~~competent jurisdiction. Section 111.322 (2m) applies to discharge and other~~  
14 ~~discriminatory acts arising in connection with any proceeding under this section."~~

15 **3.** Page 158, line 11: after that line insert:

16 "SECTION 276h. 109.03 (5) of the statutes is amended to read:

17 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by  
18 special contract with employees or by any other means secure exemption from this  
19 section. Each employee shall have a right of action against any employer for the full  
20 amount of the employee's wages due on each regular pay day as provided in this  
21 section and for increased wages as provided in s. 109.11 (2), in any court of competent  
22 jurisdiction. An employee may bring an action against an employer under this  
23 subsection without first filing a wage claim with the department of workforce  
24 development under s. 109.09 (1) or with the department of transportation under s.

1 103.50 (7) (am). An employee who brings an action against an employer under this  
2 subsection shall have a lien upon all property of the employer, real or personal,  
3 located in this state as described in s. 109.09 (2).

4 **SECTION 276j.** 109.09 (1) of the statutes is amended to read:

5 109.09 (1) The department shall investigate and attempt equitably to adjust  
6 controversies between employers and employees as to alleged wage claims. The  
7 department may receive and investigate any wage claim ~~which that~~ is filed with the  
8 department, or received by the department under s. 109.10 (4), no later than 2 years  
9 after the date the wages are due. The department may, after receiving a wage claim,  
10 investigate any wages due from the employer against whom the claim is filed to any  
11 employee during the period commencing 2 years before the date the claim is filed.  
12 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.32, 103.49,  
13 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the  
14 employer on behalf of the employee to collect any wage claim or wage deficiency, and  
15 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions  
16 under s. 109.10, the department may refer such an action to the district attorney of  
17 the county in which the violation occurs for prosecution and collection, and the  
18 district attorney shall investigate as necessary and, if the wage claim or wage  
19 deficiency appears to be valid, commence an action in the circuit court having  
20 appropriate jurisdiction to collect the wage claim or wage deficiency. If the  
21 department decides not to sue the employer to collect a wage claim or wage deficiency  
22 arising under s. 66.0903 or 103.49 or refer such a wage claim or wage deficiency to  
23 the district attorney, the department shall refer the wage claim or wage deficiency  
24 to the department of justice, and the department of justice shall investigate as  
25 necessary and, if the wage claim or wage deficiency appears to be valid, commence

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

9 **4.** Page 158, line 22: after that line insert:

10 “SECTION 276p. 109.11 (1) (c) of the statutes is amended to read:

11 109.11 (1) (c) If an employer does not agree to compromise and settle a wage  
12 claim under this subsection, the department may refer the wage claim to a district  
13 attorney under s. 109.09 (1) or to the department of justice under s. 109.09 (1) or  
14 109.10 (3) for commencement of an action in circuit court to collect the amount of  
15 wages due and unpaid plus increased wages as specified in sub. (2) (b).”.

16 (END)



State of Wisconsin  
2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb3087/1  
GMM:cs&kjf:jf

LFB:.....Shanovich (RR) – Prevailing wage enforcement

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 1**

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

2 **1.** Page 53, line 4: after that line insert:

3 **“SECTION 153d.** 66.0903 (10) (a) of the statutes is amended to read:

4 66.0903 **(10)** (a) Each contractor, subcontractor, or contractor’s or  
5 subcontractor’s agent performing work on a project that is subject to this section  
6 shall keep full and accurate records clearly indicating the name and trade or  
7 occupation of every person performing the work described in sub. (4) and an accurate  
8 record of the number of hours worked by each of those persons and the actual wages  
9 paid for the hours worked. If requested by any person, a contractor, subcontractor,  
10 or contractor’s or subcontractor’s agent performing work on a project that is subject

1 to this section shall permit that person to inspect and copy any of those records to the  
2 same extent as if the record were maintained by the department, except that s. 19.36  
3 (3) does not limit the duty of a subcontractor or a contractor's or subcontractor's agent  
4 to permit inspection and copying of a record under this paragraph. Before permitting  
5 the inspection and copying of a record under this paragraph, a contractor,  
6 subcontractor, or contractor's or subcontractor's agent shall delete from the record  
7 any personally identifiable information, as defined in s. 19.62 (5), contained in the  
8 record about any person performing the work described in sub. (4) other than the  
9 trade or occupation of the person, the number of hours worked by the person, and the  
10 actual wages paid for those hours worked."

11 **2.** Page 157, line 22: after that line insert:

12 "SECTION 274c. 103.49 (5) (a) of the statutes is amended to read:

13 103.49 (5) (a) Each contractor, subcontractor, or contractor's or subcontractor's  
14 agent performing work on a project that is subject to this section shall keep full and  
15 accurate records clearly indicating the name and trade or occupation of every person  
16 performing the work described in sub. (2m) and an accurate record of the number of  
17 hours worked by each of those persons and the actual wages paid for the hours  
18 worked. If requested by any person, a contractor, subcontractor, or contractor's or  
19 subcontractor's agent performing work on a project that is subject to this section  
20 shall permit that person to inspect and copy any of those records to the same extent  
21 as if the record were maintained by the department, except that s. 19.36 (3) does not  
22 limit the duty of a subcontractor or a contractor's or subcontractor's agent to permit  
23 inspection and copying of a record under this paragraph. Before permitting the  
24 inspection and copying of a record under this paragraph, a contractor, subcontractor,

1 or contractor's or subcontractor's agent shall delete from the record any personally  
2 identifiable information, as defined in s. 19.62 (5), contained in the record about any  
3 person performing the work described in sub. (2m) other than the trade or occupation  
4 of the person, the number of hours worked by the person, and the actual wages paid  
5 for those hours worked.

6 **SECTION 274cj.** 103.50 (6m) of the statutes is created to read:

7 103.50 (6m) RECORDS; INSPECTION. Each contractor, subcontractor, or  
8 contractor's or subcontractor's agent performing work on a project that is subject to  
9 this section shall keep full and accurate records clearly indicating the name and  
10 trade or occupation of every person performing the work described in sub. (2m) and  
11 an accurate record of the number of hours worked by each of those persons and the  
12 actual wages paid for the hours worked. If requested by any person, a contractor,  
13 subcontractor, or contractor's or subcontractor's agent performing work on a project  
14 that is subject to this section shall permit that person to inspect and copy any of those  
15 records to the same extent as if the record were maintained by the department,  
16 except that s. 19.36 (3) does not limit the duty of a subcontractor or a contractor's or  
17 subcontractor's agent to permit inspection and copying of a record under this  
18 subsection. Before permitting the inspection and copying of a record under this  
19 subsection, a contractor, subcontractor, or contractor's or subcontractor's agent shall  
20 delete from the record any personally identifiable information, as defined in s. 19.62  
21 (5), contained in the record about any person performing the work described in sub.  
22 (2m) other than the trade or occupation of the person, the number of hours worked  
23 by the person, and the actual wages paid for those hours worked.”

24 (END)