

2005 ASSEMBLY BILL 1086

March 2, 2006 – Introduced by Representatives KAUFERT, ALBERS, TOWNSEND, TOWNS, PETROWSKI, MONTGOMERY, MUSSER, TRAVIS, OWENS, POPE-ROBERTS, KREIBICH, NEWCOMER, OTT, VRUWINK, BERCEAU, KRAWCZYK, LEHMAN and MOLEPSKE, cosponsored by Senators KAPANKE, ELLIS, DECKER, COWLES, ERPENBACH, GROTHMAN, LEIBHAM and ZIEN. Referred to Committee on Housing.

1 **AN ACT** *to amend* 101.02 (20) (a) and 101.02 (21) (a); and *to create* 101.19 (1)
2 (k), 101.65 (1p) and subchapter VII of chapter 101 [precedes 101.98] of the
3 statutes; **relating to:** the regulation of construction contractors and
4 subcontractors, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades such as electricians and plumbers. Commerce also administers and issues licenses in connection with the administration of other laws relating to public safety such as those regulating fireworks and the storage of flammable liquids.

This bill requires Commerce to register any person who desires to act as a contractor or subcontractor and who meets certain registration requirements established by Commerce. Under the bill, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of real property to construct, or supervise the construction of, an improvement to that real property. The bill specifies that a subcontractor is a person who enters into a contract with a contractor or a subcontractor to perform part or all of a contract to construct or supervise the construction of an improvement to real property.

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Under the bill, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The bill also requires Commerce to promulgate rules establishing standards for the registration of contractors and subcontractors, application procedures for persons who apply for such registration, and conditions under which Commerce may suspend or revoke such a registration. The bill creates a contractor advisory committee that is required to make recommendations to commerce regarding the promulgation of these rules.

The bill provides that a person may not hold himself or herself out or act as a contractor or subcontractor or perform construction services unless the person is registered as a contractor or subcontractor by Commerce. The bill also prohibits a contractor or subcontractor from entering into contracts with a subcontractor who is not registered with Commerce. Further, the bill prohibits a contractor or subcontractor from claiming a lien for construction services performed or materials procured if the contractor or subcontractor is not registered with Commerce.

The bill authorizes Commerce to directly assess a forfeiture by issuing an order against any person who violates the requirements imposed upon contractors and subcontractors under the bill.

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

1 **SECTION 1.** 101.02 (20) (a) of the statutes is amended to read:

2 101.02 **(20)** (a) For purposes of this subsection, “license” means a license,
3 permit or certificate of certification or registration issued by the department under
4 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),
5 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,
6 101.935, 101.95, 101.951, 101.952, 101.981, 145.02 (4), 145.035, 145.045, 145.15,
7 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

8 **SECTION 2.** 101.02 (21) (a) of the statutes is amended to read:

9 101.02 **(21)** (a) In this subsection, “license” means a license, permit or
10 certificate of certification or registration issued by the department under s. 101.09
11 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a), 101.178
12 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95,

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1 101.951, 101.952, 101.981, 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165,
2 145.17, 145.175, 145.18 or 167.10 (6m).

3 **SECTION 3.** 101.19 (1) (k) of the statutes is created to read:

4 101.19 (1) (k) The registration of contractors and subcontractors under subch.
5 VII.

6 **SECTION 4.** 101.65 (1p) of the statutes is created to read:

7 101.65 (1p) May not issue a building permit to a person who is required to be
8 registered under subch. VII unless that person, on applying for a building permit,
9 produces proof of registration.

10 **SECTION 5.** Subchapter VII of chapter 101 [precedes 101.98] of the statutes is
11 created to read:

12 **CHAPTER 101**

13 **SUBCHAPTER VII**

14 **REGULATION OF CONSTRUCTION**

15 **CONTRACTORS AND SUBCONTRACTORS**

16 **101.98 Definitions.** In this subchapter:

17 (1) “Contractor” means any person engaged in the business of construction who
18 contracts with the owner or lessor of real property to construct, or supervise the
19 construction of, an improvement to that real property.

20 (2) “Construction” means the construction, renovation, repair, remodeling, or
21 demolition of an improvement to real property or of a manufactured home.

22 (3) “Construction services” means mechanical or structural activities relating
23 to construction including carpentry, concrete work, landscaping, masonry work,
24 painting, plastering, insulation work, roofing, erection of scaffolding, or the

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1 installation or repair of floor coverings, drywall, wall coverings, tile, cabinets,
2 countertops, or siding.

3 (4) “Subcontractor” means a person who enters into a contract with a
4 contractor or subcontractor to perform part or all of a contract to construct or
5 supervise the construction of an improvement to real property.

6 **101.981 Departmental powers and duties.** The department shall do all of
7 the following:

8 (1) Register, and issue a unique registration number to, any person who desires
9 to act as a contractor or a subcontractor and who meets the requirements for
10 registration established by the department under this subchapter.

11 (2) Establish an Internet site that consumers may use to determine whether
12 a contractor or subcontractor is registered under this subchapter.

13 (3) Promulgate rules establishing all of the following:

14 (a) Standards for the registration of contractors and subcontractors.

15 (b) Application procedures for persons applying for registration under this
16 subchapter.

17 (c) Conditions under which the department may suspend or revoke the
18 registration of a contractor or subcontractor.

19 **101.982 Prohibitions.** (1) No person may hold himself or herself out or act
20 as a contractor or subcontractor or perform construction services unless that person
21 is registered as a contractor or subcontractor by the department under this
22 subchapter.

23 (2) No contractor or subcontractor may enter into a contract for construction
24 services with a subcontractor who is not registered as a contractor or subcontractor
25 by the department under this subchapter.

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1 **(3)** No contractor or subcontractor may claim or maintain an action to enforce
2 a lien under s. 779.01 for construction services performed or materials procured if the
3 contractor or subcontractor was not registered as a contractor or a subcontractor by
4 the department under this subchapter at the time that the services were performed
5 or the materials were procured.

6 **(4)** No contractor or subcontractor may knowingly and with intent to evade any
7 state or federal law, rule, or regulation coerce or induce a person to falsely declare
8 that he or she is an independent contractor.

9 **101.983 Requirements.** Every person who is registered as a contractor or
10 subcontractor by the department under this subchapter shall do all of the following:

11 **(1)** Display his or her registration number at his or her principal place of
12 business.

13 **(2)** Include his or her registration number on all construction bids and
14 contracts and on all advertising.

15 **101.984 Registration term.** Registration under this subchapter shall be
16 valid for a period of not more than 4 years and shall be renewable.

17 **101.985 Exception.** Sections 101.982 and 101.983 do not apply to a person
18 who performs construction work on real property, an improvement to real property,
19 or a manufactured home if the real property, improvement, or manufactured home
20 are owned or leased by that person.

21 **101.987 Penalties. (1)** The department may directly assess a forfeiture by
22 issuing an order against any person who violates s. 101.982 or 101.983. The
23 department may not assess a forfeiture exceeding \$2,000 for each violation.

24 **(2)** The department shall promulgate rules specifying the procedures
25 governing the assessment of forfeitures under this section including the following:

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1 (a) The procedure for issuing an order for an alleged violation.

2 (b) The amount of a forfeiture that the department may assess for an alleged
3 violation, subject to the limit under sub. (1).

4 (c) The procedure for contesting an order issued for an alleged violation.

5 (d) The procedure for contesting the assessment of a forfeiture for an alleged
6 violation.

7 **(3)** The department shall remit all forfeitures paid under this section to the
8 secretary of administration for deposit in the school fund.

9 **(4)** All forfeitures that are not paid as required under this section shall accrue
10 interest at the rate of 12 percent per year.

11 **(5)** The attorney general may bring an action in the name of the state to collect
12 any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or
13 interest has not been paid after the exhaustion of all administrative and judicial
14 reviews.

15 **SECTION 6. Nonstatutory provisions.**

16 (1) PROPOSED RULES. No later than the first day of the 12th month beginning
17 after the effective date of this subsection, the department of commerce shall submit
18 in proposed form the rules required under sections 101.981 (3) and 101.987 (2) of the
19 statutes, as created by this act, to the legislative council staff under section 227.15
20 (1) of the statutes, unless the secretary of administration requires the department
21 to prepare an economic impact report under section 227.137 of the statutes for the
22 proposed rules.

23 (2) CONTRACTOR ADVISORY COMMITTEE. There is created a contractor advisory
24 committee which shall consist of 7 members appointed by the secretary of commerce.
25 Of the members appointed to the committee, 4 members shall be contractors, as

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1 defined in section 101.98 (1) of the statutes, as created by this act, or subcontractors,
2 as defined in section 101.98 (4) of the statutes, as created by this act, 2 members shall
3 be representatives of labor unions, and one member shall be a public member. The
4 committee shall make recommendations to the department of commerce regarding
5 the promulgation of rules under sections 101.981 (3) and 101.987 (2) of the statutes,
6 as created by this act. The committee shall cease to exist on the first day of the 12th
7 month beginning after the day on which the rules required under sections 101.981
8 (3) and 101.987 (2) of the statutes, as created by this act, are promulgated by the
9 department of commerce.

10 **SECTION 7. Effective dates.** This act takes effect on the first day of the 18th
11 month beginning after publication, except as follows:

12 (1) SECTION 6 (1) and (2) of this act take effect on the day after publication.

13 (END)