

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 20.143 (3) (j); and *to create* 15.157 (13) and subchapter VII  
2 of chapter 101 [precedes 101.98] of the statutes; **relating to:** the regulation of  
3 construction contractors and subcontractors and granting rule-making  
4 authority.

---

*Analysis by the Legislative Reference Bureau*

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

---

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

5 SECTION 1. 15.157 (13) of the statutes is created to read:

6 15.157 (13) CONTRACTOR ADVISORY COUNCIL. There is created in the department  
7 of commerce a contractor advisory council consisting of the following members  
8 appointed by the secretary of commerce for 3-year terms:

9 (a) Four members who are ~~registered~~ contractors or ~~registered~~ subcontractors  
10 under subch. VII of ch. 101.

note - change terms

1 (b) Two members who represent labor unions.

2 → Add - One member of general public  
SECTION 2. 20.143 (3) (j) of the statutes is amended to read:

3 20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for  
4 the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m),  
5 and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178,  
6 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.9205 (3), 101.9208 (1) (b),  
7 101.9213 (8), 101.935, 101.951 (2), 101.952 (2), 101.955 (2), 101.973 (7), 101.984, and  
8 236.12 (7), and 2001 Wisconsin Act 16, section 9110 (3z), shall be credited to this  
9 appropriation.

10 SECTION 3. 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 of real property to construct, or supervise the construction  
19 of, an improvement to that real property, ~~and who, either directly or by the use of~~  
20 ~~subcontractors, performs construction services.~~

21 ✓ → (2) "Construction" includes renovation, repair, remodeling, and demolition of improvements  
22 Add: new construction to real property

23 (3) "Construction services" means mechanical or structural activities relating or manufacturing  
24 to construction including carpentry, floor covering installation or repair, concrete  
25 covering installation or repair, plastering, insulation work, roofing, tile installation  
homes

*What about repair?*

1 or repair, erection of scaffolding, ~~or connection to utility service lines, metering~~  
2 ~~devices, or sewer lines.~~ *include cabinet installation, countertops, + 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 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, upon consultation with the contractor advisory council,  
14 establishing all of the following:

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

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

*(c) standards for suspension or revocation*

18 **101.982 Prohibitions.** (1) No person may hold himself or herself out or act  
19 as a contractor or subcontractor or perform construction services unless that person  
20 is registered as required under this subchapter.

21 (2) No contractor or subcontractor may enter into a contract for construction  
22 services with a subcontractor who is not registered as required under this  
23 subchapter.

24 (3) No contractor or subcontractor may claim or maintain an action to enforce  
25 a lien under s. 779.01 for construction services performed or materials procured if the

1 contractor or subcontractor was not registered as required under this subchapter at  
2 the time that the services were performed or the materials were procured.

3 (4) No contractor or subcontractor may knowingly and with intent to evade any  
4 state or federal law, rule, or regulation coerce or induce an <sup>person</sup>~~employee~~ to falsely declare  
5 that he or she is an independent contractor.

6 **101.983 Requirements.** Every person who is registered under this  
7 subchapter shall do all of the following:

8 (1) Display his or her registration number at his or her principal place of  
9 business.

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

12 ~~(3) Display his or her registration number on each vehicle used by that person~~  
13 ~~in performing construction services.~~

14 **101.984 Registration term; fee.** ~~(a) Except as provided under par. (b),~~  
15 registration under this subchapter shall be valid for a period of <sup>no more than 4 years</sup> 2 years and shall be  
16 renewable. The department shall charge a registration fee in an amount determined  
17 by the department by rule.

18 ~~(b) The department may, by rule, establish a term for registration under this~~  
19 ~~subchapter that is longer or shorter than 2 years in order to stagger the expiration~~  
20 ~~of the terms of all persons registered under this subchapter.~~

21 **101.985 Exception.** Sections 101.982 and 101.983 do not apply to any person  
22 who performs construction work on his or her personal residence, *property or leaseholder*

23 **101.986 Contractor advisory council powers and duties.** The contractor  
24 advisory council shall make recommendations to the department regarding the  
25 promulgation of rules under this subchapter. ~~The council may petition the~~

*D-Note*

1 ~~department to promulgate, amend, or repeal a rule concerning the registration of~~  
2 ~~contractors and subcontractors.~~

3 ~~**101.987 Penalties.** (1) A person who violates s. 101.982 or 101.983 shall~~  
4 ~~forfeit \$1,000 for a first violation, \$3,000 for a 2nd violation, and \$5,000 for a 3rd or~~  
5 ~~subsequent violation. Each day of violation constitutes a separate offense.~~

6 ~~(2) (a) In addition to the forfeitures specified under sub. (1), the department~~  
7 ~~shall revoke the registration of any person registered under this subchapter who~~  
8 ~~commits a 2nd violation of s. 101.982 or 101.983 and may register that person under~~  
9 ~~this subchapter for at least one year from the date of revocation.~~

10 ~~(b) In addition to the forfeitures specified under sub. (1), the department shall~~  
11 ~~revoke the registration of any person registered under this subchapter who commits~~  
12 ~~a 3rd or subsequent violation of s. 101.982 or 101.983 and may not register that~~  
13 ~~person under this subchapter for at least 2 years from the date of revocation.~~

14 **SECTION 4. Nonstatutory provisions.**

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

22 (2) CONTRACTOR ADVISORY COUNCIL. Notwithstanding the length of terms  
23 specified for the contractor advisory council under section 15.157 (13) of the statutes,  
24 as created by this act, 2 of the initial members appointed under section 15.157 (13)  
25 of the statutes, as created by this act, shall be appointed for terms that expire on July

*Add new  
penalty language  
that is attached  
D-Note*

1 1, 2007, 2 of the initial members appointed under section 15.157 (13) of the statutes,  
2 as created by this act, shall be appointed for terms that expire on July 1, 2008, and  
3 2 of the initial members appointed under section 15.157 (13) of the statutes, as  
4 created by this act, shall be appointed for terms that expire on July 1, 2009.

5 **SECTION 5. Effective dates.** This act takes effect on the first day of the 18th  
6 month beginning after publication, except as follows:

7 (1) PROPOSED RULES. SECTION 4 (1) of this act takes effect on the day after  
8 publication.

9 (2) CONTRACTOR ADVISORY COUNCIL. The treatment of sections 15.157 (13) and  
10 101.986 of the statutes and SECTION 4 (2) of this act take effect on the day after  
11 publication.

12 (END)

*Other language to add.*

- 1) Sunset Advisory Council 1 year after proposed rules are enacted*
- 2.) A governmental body can not issue a building permit unless contractor has valid registration except if the permit is being issued to a ~~homeowner~~ proper the property owner or lease holder.*

*New  
penalty language*

101.02(22) is created to read:

101.02(22) (a) The department may directly assess forfeitures by orders for violations of licensing, certification or registration statutory provisions of this chapter, ch. 145 and s. 167.10, and licensing, certification or registration rules promulgated under this chapter, ch. 145 and s. 167.10.

(b) The department shall establish by rule at least the following:

1. The amount of forfeitures.
2. A process by which forfeitures are to be assessed by orders.
3. A process by which forfeitures may be contested.

(c) The amount of forfeitures established under par. (b) may not exceed \$2,000 per violation.

(d) The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(e) In the case of any failure in the payment of a forfeiture, the department shall impose an interest penalty of 12% per year from the time when the forfeiture should have been paid.

(f) The attorney general may bring an action as provided in the name of the state to collect any forfeiture imposed under this subsection if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews.



State of Wisconsin  
2005 - 2006 LEGISLATURE

5002

10/8 or

11/9

RM run P3

LRB-2734/P2

RNK:kjf:ls

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

regen. cat.

1 AN ACT to amend 20.143 (3) (j); and to create 15.157 (13) and subchapter VII  
2 of chapter 101 [precedes 101.98] of the statutes; relating to: the regulation of  
3 construction contractors and subcontractors, and granting rule-making  
4 authority, and providing a penalty

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5 SECTION 1. 15.157 (13) of the statutes is created to read:  
6 15.157 (13) CONTRACTOR ADVISORY COUNCIL. There is created in the department  
7 of commerce a contractor advisory council consisting of the following members  
8 appointed by the secretary of commerce for 3-year terms:  
9 (a) Four members who are registered contractors or registered subcontractors  
10 under subch. VII of ch. 101. as defined in s. 101.98 (4)



edge  
tbl

(b) Two members who represent labor unions.

~~at one public member~~  
SECTION 2. 20.143 (3) (j) of the statutes is amended to read:

20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.9205 (3), 101.9208 (1) (b), 101.9213 (8), 101.935, 101.951 (2), 101.952 (2), 101.955 (2), 101.973 (7), 101.984, and 236.12 (7), and 2001 Wisconsin Act 16, section 9110 (3z), shall be credited to this appropriation.

Insert  
2-9

SECTION 3. Subchapter VII of chapter 101 [precedes 101.98] of the statutes is created to read:

insert  
2-11

CHAPTER 101

SUBCHAPTER VII

REGULATION OF CONSTRUCTION

CONTRACTORS AND SUBCONTRACTORS

101.98 **Definitions.** In this subchapter:

(1) "Contractor" means any person engaged in the business of construction who contracts with the owner, <sup>or lessor</sup> of real property to construct, or supervise the construction of, an improvement to that real property, and who, either directly or by the use of subcontractors, performs construction services.

(2) "Construction" includes renovation, repair, remodeling, and <sup>or</sup> demolition.

(3) "Construction services" means mechanical or structural activities relating to construction including carpentry, floor covering installation or repair, concrete work, drywall installation or repair, landscaping, masonry work, painting, wall covering installation or repair, plastering, insulation work, roofing, tile installation

means the construction,

of an improvement to real property, or of a manufactured home

*or the installation or repair of floor coverings, drywall, wall coverings, tile, cabinets, countertops, or siding*

1 or repair, erection of scaffolding, or connection to utility service lines, metering  
2 devices, or sewer lines.

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, *upon consultation with the contractor advisory council,*  
14 establishing all of the following:

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

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

18 **101.982 Prohibitions.** (1) No person may hold himself or herself out or act  
19 as a contractor or subcontractor or perform construction services unless that person  
20 is registered *as required* under this subchapter.

21 (2) No contractor or subcontractor may enter into a contract for construction  
22 services with a subcontractor who is not registered *as required* under this  
23 subchapter.

24 (3) No contractor or subcontractor may claim or maintain an action to enforce  
25 a lien under s. 779.01 for construction services performed or materials procured if the

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

**SECTION 3**

*as a contractor or a subcontractor by the department*

1 contractor or subcontractor was not registered as required under this subchapter at  
2 the time that the services were performed or the materials were procured.

3 (4) No contractor or subcontractor may knowingly and with intent to evade any  
4 state or federal law, rule, or regulation coerce or induce ~~an employee~~ *a person*  
5 that he or she is an independent contractor.

6 **101.983 Requirements.** Every person who is registered under this  
7 subchapter shall do all of the following:

8 (1) Display his or her registration number at his or her principal place of  
9 business.

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

12 (3) ~~Display his or her registration number on each vehicle used by that person~~  
13 ~~in performing construction services.~~

14 **101.984 Registration term; fee.** (a) ~~Except as provided under par. (b),~~  
15 ~~registration under this subchapter shall be valid for a period of 2 years and shall be~~ *not more than 4*  
16 ~~renewable. The department shall charge a registration fee in an amount determined~~  
17 ~~by the department by rule.~~

18 (b) ~~The department may, by rule, establish a term for registration under this~~  
19 ~~subchapter that is longer or shorter than 2 years in order to stagger the expiration~~  
20 ~~of the terms of all persons registered under this subchapter.~~

21 **101.985 Exception.** Sections 101.982 and 101.983 do not apply to ~~any person~~ *a*  
22 ~~who performs construction work on his or her personal residence.~~

23 **101.986 Contractor advisory council powers and duties.** The contractor  
24 ~~advisory council shall make recommendations to the department regarding the~~  
25 ~~promulgation of rules under this subchapter. The council may petition the~~

*real property, an improvement to real property, or a manufactured home if the real property, improvement, or manufactured home are owned or leased by that person*

1 department to promulgate, amend, or repeal a rule concerning the registration of  
2 contractors and subcontractors.

3 **101.987 Penalties.** (1) A person who violates s. 101.982 or 101.983 shall  
4 forfeit \$1,000 for a first violation, \$3,000 for a 2nd violation, and \$5,000 for a 3rd or  
5 subsequent violation. Each day of violation constitutes a separate offense.

6 (2) (a) In addition to the forfeitures specified under sub. (1), the department  
7 shall revoke the registration of any person registered under this subchapter who  
8 commits a 2nd violation of s. 101.982 or 101.983 and may register that person under  
9 this subchapter for at least one year from the date of revocation.

10 (b) In addition to the forfeitures specified under sub. (1), the department shall  
11 revoke the registration of any person registered under this subchapter who commits  
12 a 3rd or subsequent violation of s. 101.982 or 101.983 and may not register that  
13 person under this subchapter for at least 2 years from the date of revocation.

14 **SECTION 4. Nonstatutory provisions.**

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

22 (2) CONTRACTOR ADVISORY COUNCIL. Notwithstanding the length of terms  
23 specified for the contractor advisory council under section 15.157 (13) of the statutes,  
24 as created by this act, <sup>3</sup>2 of the initial members appointed under section 15.157 (13)  
25 of the statutes, as created by this act, shall be appointed for terms that expire on July

Insert  
5-13

add to  
101.987

add add and 101.987 (2)

1 ~~1, 2007, 2 of the initial members appointed under section 15.157 (13) of the statutes,~~  
 2 ~~as created by this act, shall be appointed for terms that expire on July 1, 2008, and~~  
 3 ~~2 of the initial members appointed under section 15.157 (13) of the statutes, as~~  
 4 ~~created by this act, shall be appointed for terms that expire on July 1, 2009.~~

Insert  
6-4

5 **SECTION 5. Effective dates.** This act takes effect on the first day of the 18th  
 6 month beginning after publication, except as follows: ← A.R. (B)

7 (1) ~~PROPOSED RULES~~ SECTION 4 (1) <sup>and (2)</sup> of this act takes effect on the day after  
 8 publication.

9 (2) ~~CONTRACTOR ADVISORY COUNCIL~~ <sup>committee</sup> The treatment of sections 15.157 (13) and  
 10 ~~101.986 of the statutes~~ and SECTION 4 (2) of this act take effect on the day after  
 11 publication.

A.R. (A) ↑ ↑ A.R. (B)  
 (END)

D-Note

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2734/P3ins2  
RNK:.....

**INSERT 2-9**

✓

**SECTION 1.** 20.143 (3) (j) of the statutes, as affected by 2005 Wisconsin Act 45, is amended to read:

20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), ~~101.9205 (3), 101.9208 (1) (b), 101.9213 (8), 101.935, 101.951 (2), 101.952 (2),~~ 101.955 (2), 101.973 (7), 101.984, and 236.12 (7), except moneys received under s. 101.9208 (2m), and all moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to this appropriation.

INSERT 2-11

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

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

INSERT 5-13

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

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

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

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

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

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

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

(5) The attorney general may bring an action in the name of the state to collect any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or

interest has not been paid after the exhaustion of all administrative and judicial reviews.

create  
auto ref  
B

INSERT 6-4

text. NS: sub  
→

(2) CONTRACTOR ADVISORY COMMITTEE. There is created a contractor advisory committee which shall consist of 7 members appointed by the secretary of commerce. Of the members appointed to the committee, 4 members shall be contractors, as defined in section 101.98 (1) of the statutes, as created by this act, or subcontractors, as defined in section 101.98 (4) of the statutes, as created by this act, 2 members shall be representatives of labor unions, and one member shall be a public member. The committee shall make recommendations to the department of commerce regarding the promulgation of rules under sections 101.981 (3) and (4) and 101.987 (2) of the statutes, as created by this act. The committee shall cease to exist when the rules required under sections 101.981 (3) and (4) and 101.987 (2) of the statutes, as created by this act, are promulgated by the department of commerce.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2734/P3

RNK: *gjf*

*Date*

*leased by that person*

This redraft incorporates your redraft instructions and certain other changes which I will discuss below. As with the previous versions of this draft, this version is in preliminary form to give you an opportunity to review and revise this draft before redrafting it in final form.

X You requested that I revise the definition of the term "construction services" to include "cabinet installation, countertops, and siding." Consistent with other parts of that definition, the draft specifies that construction services includes the repair of these items. Is this O.K.?

In your instructions, you specified that the exception provision (proposed s. 101.985) should include an exception for a person who performs construction services *as a lease holder*. This exception implies that the definition of a contractor should include a person who provides construction services to a lessee. Consequently, I have revised that definition in the draft to include a person who contracts with the lessor of property. Is this consistent with your intent?

X Your instructions also specified that you want registration to be valid for a period of not more than *four* years. I have included this change but I think it is vague. Do you want to allow the department to promulgate rules specifying the registration period? If not, who will decide how long the registration period will be?

I have changed the contractor advisory council to a committee *to give* its minimal authority and the fact that it will expire upon rules promulgation.

I have made other nonsubstantive changes throughout the draft to make the language more concise and to improve readability. For this reason, please review the entire draft closely to ensure that it meets your intent.

Please feel free to contact me if you have any questions concerning this draft.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2734/P3  
RNK:kjf:ch

November 9, 2005

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In your instructions, you specified that the exception provision (proposed s. 101.985) should include an exception for a person who performs construction services leased by that person. This exception implies that the definition of a contractor should include a person who provides construction services to a lessee. Consequently, I have revised that definition in the draft to include a person who contracts with the lessor of property. Is this consistent with your intent?

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Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**Kite, Robin**

---

**From:** Battles, Cale  
**Sent:** Thursday, January 12, 2006 3:41 PM  
**To:** Kite, Robin  
**Subject:** FW: Draft review: LRB 05-2734/P3 Topic: Regulation of building contractors  
**Attachments:** LRB-2734\_P3; LRB-2734\_P3 Drafters\_Note

Robin,

These should be the last changes on this bill. After these changes go ahead and get it ready for introduction.

The two changes are as follows:

On page 4, line 16 include the following:

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

On page 6, line 7

The committee will cease to exist one year after the rules are promulgated by the department of commerce.

As always if you have any questions please feel free to give me a call. Thanks for all your help.

Sincerely,

Cale Battles  
Rep. Kaufert's Office  
6-5719

---

**From:** Basford, Sarah  
**Sent:** Wednesday, November 09, 2005 9:32 AM  
**To:** Rep.Kaufert  
**Subject:** Draft review: LRB 05-2734/P3 Topic: Regulation of building contractors

**Following is the PDF version of draft LRB 05-2734/P3 and drafter's note.**



(soon)  
State of Wisconsin  
2005 - 2006 LEGISLATURE

Rm run  
LRB-2734/P3

1  
RNK:kjf:gh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Regen

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7 20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for  
8 the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m),  
9 and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178,

1 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 101.973 (7),  
 2 101.984, and 236.12 (7), except moneys received under s. 101.9208 (2m), and all  
 3 moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to  
 4 this appropriation.

Insert  
2-4

5 SECTION 2. 101.65 (1p) of the statutes is created to read:

6 101.65 (1p) May not issue a building permit to a person who is required to be  
 7 registered under subch. VII unless that person, on applying for a building permit,  
 8 produces proof of registration.

9 SECTION 3. Subchapter VII of chapter 101 [precedes 101.98] of the statutes is  
 10 created to read:

11 CHAPTER 101

12 SUBCHAPTER VII

13 REGULATION OF CONSTRUCTION

14 CONTRACTORS AND SUBCONTRACTORS

15 101.98 Definitions. In this subchapter:

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

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

21 (3) "Construction services" means mechanical or structural activities relating  
 22 to construction including carpentry, concrete work, landscaping, masonry work,  
 23 painting, plastering, insulation work, roofing, erection of scaffolding, or the  
 24 installation or repair of floor coverings, drywall, wall coverings, tile, cabinets,  
 25 countertops, or siding.

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

4           **101.981 Departmental powers and duties.** The department shall do all of  
5 the following:

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

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

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

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

13           (b) Application procedures for persons applying for registration under this  
14 subchapter.

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

17           **101.982 Prohibitions.** (1) No person may hold himself or herself out or act  
18 as a contractor or subcontractor or perform construction services unless that person  
19 is registered as a contractor or subcontractor by the department under this  
20 subchapter.

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

24           (3) No contractor or subcontractor may claim or maintain an action to enforce  
25 a lien under s. 779.01 for construction services performed or materials procured if the

1 contractor or subcontractor was not registered as a contractor or a subcontractor by  
2 the department under this subchapter at the time that the services were performed  
3 or the materials were procured.

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

7 **101.983 Requirements.** Every person who is registered as a contractor or  
8 subcontractor by the department under this subchapter shall do all of the following:

9 (1) Display his or her registration number at his or her principal place of  
10 business.

11 (2) Include his or her registration number on all construction bids and  
12 contracts and on all advertising.

13 **101.984 Registration term; fee.** Registration under this subchapter shall be  
14 valid for a period of not more than 4 years and shall be renewable. ~~The department~~  
15 ~~shall charge a registration fee in an amount determined by the department by rule.~~

16 **101.985 Exception.** Sections 101.982 and 101.983 do not apply to a person  
17 who performs construction work on real property, an improvement to real property,  
18 or a manufactured home if the real property, improvement, or manufactured home  
19 are owned or leased by that person.

20 **101.987 Penalties.** (1) The department may directly assess a forfeiture by  
21 issuing an order against any person who violates s. 101.982 or 101.983. The  
22 department may not assess a forfeiture exceeding \$2,000 for each violation.

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

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

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

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

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

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

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

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

14 **SECTION 4. Nonstatutory provisions.**

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

22 (2) CONTRACTOR ADVISORY COMMITTEE. There is created a contractor advisory  
23 committee which shall consist of 7 members appointed by the secretary of commerce.  
24 Of the members appointed to the committee, 4 members shall be contractors, as  
25 defined in section 101.98 (1) of the statutes, as created by this act, or subcontractors,



1 as defined in section 101.98 (4) of the statutes, as created by this act, 2 members shall  
2 be representatives of labor unions, and one member shall be a public member. The  
3 committee shall make recommendations to the department of commerce regarding  
4 the promulgation of rules under sections 101.981 (3) and 101.987 (2) of the statutes,  
5 as created by this act. The committee shall cease to exist ~~when~~ the rules required  
6 under sections 101.981 (3) and 101.987 (2) of the statutes, as created by this act, are  
7 promulgated by the department of commerce.

8 **SECTION 5. Effective dates.** This act takes effect on the first day of the 18th  
9 month beginning after publication, except as follows:

10 (1) SECTION 4 (1) and (2) of this act take effect on the day after publication.

11 (END)

*on the first day of the  
12th month beginning  
after the day on which*

*D- Note*

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2734/lins.  
RNK:.....

INSERT ANALYSIS

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.

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 ~~or~~ ~~claiming a construction lien~~ who is not registered with Commerce.

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

INSERT 2-4

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

101.02 (20) (a) For purposes of this subsection, "license" means a license, permit or certificate of certification or registration issued by the department under ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),

Further, the bill prohibits a contractor or subcontractor ~~from~~ from claiming a lien for construction services performed or materials procured if the contractor or subcontractor is not registered with Commerce.

101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 101.981, 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

**History:** 1971 c. 185 ss. 1 to 5, 7; 1971 c. 228 ss. 16, 42; Stats. 1971 s. 101.02; 1975 c. 39, 94; 1977 c. 29; 1981 c. 360; 1983 a. 410; 1985 a. 182 s. 57; 1987 a. 343; 1989 a. 31, 56, 139; 1991 a. 39, 269; 1993 a. 27, 184, 252, 414, 492; 1995 a. 27, ~~ss. 3631 to 3649~~r. 9126 (19); 1995 a. 215; 1997 a. 191, 237; 1999 a. 9; 2001 a. 61.

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

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

**History:** 1971 c. 185 ss. 1 to 5, 7; 1971 c. 228 ss. 16, 42; Stats. 1971 s. 101.02; 1975 c. 39, 94; 1977 c. 29; 1981 c. 360; 1983 a. 410; 1985 a. 182 s. 57; 1987 a. 343; 1989 a. 31, 56, 139; 1991 a. 39, 269; 1993 a. 27, 184, 252, 414, 492; 1995 a. 27, ~~ss. 3631 to 3649~~r. 9126 (19); 1995 a. 215; 1997 a. 191, 237; 1999 a. 9; 2001 a. 61.

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

101.19 (1) (k) The registration of contractors and subcontractors under subch. ✓

VII.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2734/1dnRK

RNK: 16...  
Jf

Date

This version of the draft specifies, as requested, that the contractor advisory committee created in the draft, will cease to exist one year after the date on which rules are promulgated. You also requested that the draft specify that the exception to the registration requirement applies to a person who performs "his or her own" construction work. Because the draft already specifies that the exception applies to a person who performs construction work on real property owned by that person, I have not made that change. Please let me know if I have misunderstood your intent.

X Under current law, certain persons licensed by the department of commerce (department) or by other state agencies must provide a social security number and, under certain circumstances, a federal employer identification number to the department. The department then provides this information to the department of revenue and the department of workforce development. If the department of revenue determines from this information that the person is liable for delinquent taxes, or if the department of workforce development determines that the person is delinquent in the payment of child support or certain other court-ordered payments, the department of commerce may not issue the license. In this version of the draft, I have added contractor and subcontractor registrations to the list of licenses that are subject to this restriction. Is this O.K.?

Also, under current law, the department must fix and collect fees for certain programs that equal the cost of providing certain services. See s. 101.19 (1), stats. I have added contractor and subcontractor registration fees to this list. See s. 101.19 (1) (k), as created in the draft. Is this O.K.?

X As you know, the draft specifies that a contractor or subcontractor may not coerce or induce a person to falsely declare that he or she is an independent contractor. Upon further review of this provision, I would suggest that the draft define the term "independent contractor" especially given that the term "contractor" is already a defined term under the draft.

Also, the draft has a delayed effective date of approximately 18 months after the date of publication. You might want to consider extending this date in the event that the department of commerce is unable to complete the rule-making process by that date.

Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: [robin.kite@legis.state.wi.us](mailto:robin.kite@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2734/1dn  
RNK:kjf.pg

January 27, 2006

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Robin N. Kite  
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Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**Barman, Mike**

---

**From:** Battles, Cale  
**Sent:** Wednesday, February 15, 2006 11:37 AM  
**To:** LRB.Legal  
**Subject:** LRB-2734/1

Could you please the Assembly jacket LRB-2734/1. Thank you in advance for your help and call if you have questions.

Sincerely,

Cale Battles  
Rep. Dean Kaufert's Office  
266-5719