

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 228**

October 24, 2007 – Offered by Senator WIRCH.

1 **AN ACT** *to amend* 101.02 (20) (a) and 101.02 (21) (a); and *to create* 101.19 (1)
2 (m) and subchapter VIII of chapter 101 [precedes 101.99] of the statutes;
3 **relating to:** the regulation of construction contractors and subcontractors,
4 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 substitute amendment 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 substitute amendment, a contractor is a person engaged in the business of construction who contracts with the owner or lessor of a place of employment, a public building, or a dwelling to perform construction activities. The substitute amendment specifies that a subcontractor is a person who enters into a contract with a contractor or a subcontractor to perform

construction activities. The substitute amendment provides generally that construction activities are activities associated with building, repairing, or remodeling a structure that serves as a public building, a place of employment, or a dwelling.

Under the substitute amendment, Commerce must establish an Internet site that consumers may use to determine whether a contractor or subcontractor is registered by Commerce. The substitute amendment 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 substitute amendment creates a contractor advisory committee that is required to make recommendations to Commerce regarding the promulgation of these rules.

The substitute amendment provides that, with certain exceptions, a person may not hold himself or herself out or act as a contractor or subcontractor unless the person is registered as a contractor or subcontractor by Commerce. The substitute amendment also prohibits a contractor or subcontractor from entering into contracts for construction activities with a person who is not registered as a contractor or subcontractor with Commerce. Further, the substitute amendment prohibits a contractor or subcontractor from claiming a lien for construction activities performed if the contractor or subcontractor is not registered with Commerce or if the contractor or subcontractor uses an unregistered subcontractor.

The substitute amendment 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 substitute amendment.

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, as affected by 2005 Wisconsin Act
2 456, is amended to read:

3 101.02 **(20)** (a) For purposes of this subsection, “license” means a license,
4 permit or certificate of certification or registration issued by the department under
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),
6 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,
7 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 101.991, 145.02 (4), 145.035,
8 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

1 **(2)** “Contractor” means a person who engages, or offers to engage, in the
2 business of construction and who contracts with the owner or lessor of a place of
3 employment, a public building, or a dwelling to perform construction activities.

4 **(3)** “Dwelling” has the meaning given in s. 101.61 (1).

5 **(4)** “Subcontractor” means a person who enters into a contract with a
6 contractor or subcontractor to perform construction activities.

7 **101.991 Departmental powers and duties.** The department shall do all of
8 the following:

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

12 **(2)** Establish an Internet site that consumers may use to determine all of the
13 following:

14 **(a)** The name and address of every contractor and subcontractor registered by
15 the department under this subchapter.

16 **(b)** The name of the contact person for every contractor and subcontractor
17 registered by the department under this subchapter.

18 **(c)** Whether a contractor or subcontractor registered by the department under
19 this subchapter carries a performance bond or other financial assurance to ensure
20 the work of the contractor or subcontractor.

21 **(3)** Promulgate rules establishing all of the following:

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

23 **(b)** Application procedures for persons applying for registration under this
24 subchapter.

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

3 **101.992 Prohibitions. (1)** No person may hold himself or herself out or act
4 as a contractor or subcontractor unless that person is registered as a contractor or
5 subcontractor by the department under this subchapter.

6 **(2)** No contractor or subcontractor may do any of the following:

7 (a) Knowingly and with intent to evade any state or federal law, rule, or
8 regulation coerce or induce a person to falsely declare that he or she is an
9 independent contractor.

10 (b) Claim or maintain an action to enforce a lien described under s. 779.01 (3)
11 if the contractor or subcontractor was not registered, as required under this
12 subchapter, at the time the construction activities were performed.

13 **(3)** No contractor may claim or maintain an action to enforce a lien described
14 under s. 779.01 (3) for construction activities performed by another person if that
15 person performed those construction activities under a contract with the contractor
16 and that person was not registered, as required under this subchapter, at the time
17 that the person performed the construction activities.

18 **(4)** No subcontractor may claim or maintain an action to enforce a lien
19 described under s. 779.01 (3) for construction activities performed by another person
20 if that person performed those construction activities under a contract with the
21 subcontractor and that person was not registered, as required under this subchapter,
22 at the time that the person performed the construction activities.

23 **101.993 Requirements.** Every person who is registered as a contractor or
24 subcontractor by the department under this subchapter shall do all of the following:

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

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

5 **101.994 Registration term.** Registration under this subchapter shall be
6 valid for a period of not more than 4 years and shall be renewable.

7 **101.995 Penalties. (1)** The department may directly assess a forfeiture by
8 issuing an order against any person who violates s. 101.992 or 101.993. The
9 department may not assess a forfeiture exceeding \$2,000 for each violation.

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

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

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

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

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

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

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

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

1 **SECTION 5. Nonstatutory provisions.**

2 (1) **RULES.** No later than the first day of the 12th month beginning after the
3 effective date of this subsection, the department of commerce shall submit in
4 proposed form the rules required under sections 101.991 (3) and 101.995 (2) of the
5 statutes, as created by this act, to the legislative council staff under section 227.15
6 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes the secretary
7 of administration may not require the department of commerce to prepare an
8 economic impact report for the proposed rules.

9 (2) **CONTRACTOR ADVISORY COMMITTEE.** There is created a contractor advisory
10 committee that shall consist of 7 members appointed by the secretary of commerce.
11 Of the members appointed to the committee, 4 members shall be contractors, as
12 defined in section 101.99 (2) of the statutes, as created by this act, or subcontractors,
13 as defined in section 101.99 (4) of the statutes, as created by this act, 2 members shall
14 be representatives of labor unions, and one member shall be a public member. The
15 committee shall make recommendations to the department of commerce regarding
16 the promulgation of rules under sections 101.991 (3) and 101.995 (2) of the statutes,
17 as created by this act. The committee shall cease to exist on the first day of the 12th
18 month beginning after the day on which the rules required under sections 101.991
19 (3) and 101.995 (2) of the statutes, as created by this act, are promulgated by the
20 department of commerce.

21 **SECTION 6. Effective dates.** This act takes effect on the first day of the 24th
22 month beginning after publication, except as follows:

23 (1) **SECTION 5 (1) and (2)** of this act take effect on the day after publication.

24

(END)