



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3798/1

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1 AN ACT *to amend* 19.36 (12), 66.0903 (3) (av), 66.0903 (10) (a), 66.0903 (10) (c),
2 103.49 (3) (ar), 103.49 (5) (a), 103.49 (5) (c), 103.50 (4m), 103.503 (title), 103.503
3 (1) (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (g), 103.503 (2), 103.503 (3)
4 (a) 2., 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t) and 946.15; and *to create*
5 66.0904 and 104.001 (3) (am) of the statutes; **relating to:** payment of the
6 prevailing wage rate to laborers, workers, mechanics, and truck drivers
7 employed on a publicly funded private construction project, submission of
8 certain payroll information on a weekly basis by a contractor, subcontractor, or
9 agent performing work on a project that is subject to the prevailing wage law
10 to the local governmental unit, state agency, or owner or developer authorizing
11 the work, inspection of the payroll records of contractors, subcontractors, and

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1 agents performing work on projects that are subject to the prevailing wage law,
2 granting rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located, as determined by the Department of Workforce Development (DWD), and may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, that is, no more than ten hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (overtime pay) for all hours worked in excess of the prevailing hours of labor (prevailing wage law).

This bill requires all laborers, workers, mechanics, and truck drivers working on the site of a publicly funded private construction project to be paid not less than the prevailing wage rate and to be paid overtime pay for all hours worked in excess of the prevailing hours of labor. The bill defines a "publicly funded private construction project" as a construction project, other than a project of public works, that receives financial assistance from a local governmental unit and "financial assistance" as any grant, cooperative agreement, loan, contract, or any other arrangement by which a local governmental unit provides or otherwise makes available assistance in any of the following forms:

- 1. Funding.
- 2. ~~The services of employees of the local governmental unit.~~
- 3. ~~Real or personal property of the local governmental unit or of any interest in or permission to use that property, including a transfer or lease of that property for less than fair market value or for reduced consideration.~~
- 4. Proceeds from a subsequent transfer or lease of real or personal property transferred or leased from the local governmental unit, if the local governmental unit's share of the fair market value of the property is not returned to the local governmental unit.
- 5. ~~Services furnished without consideration, at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by the furnishing of those services to the recipient.~~
- 6. A redevelopment contract, economic development agreement, industrial development revenue agreement, contract for the development or redevelopment of a tax incremental district or a blighted area, or assistance provided to develop, redevelopment, maintain, operate, or promote a business improvement district.
- 7. ~~Any other agreement, arrangement, or contract that has as one of its purposes the provision of financial assistance.~~

Current law requires each contractor, subcontractor, and contractor's or subcontractor's agent performing work on a project that is subject to the prevailing

Handwritten notes: A transfer or lease of real or real property. Includes circled numbers 30 and 40.

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wage law to keep records indicating the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked.

This bill requires a contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law to submit, on a weekly basis, to the contracting local governmental unit, state agency, or private owner or developer authorizing the work a certified record indicating for the preceding week the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked.

Current law requires DWD, if requested by any person, to inspect the payroll records of any contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law to ensure compliance with that law. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is a person performing work that is subject to that law, DWD must charge the person the actual cost of the inspection. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is not a person performing work that is subject to that law, DWD must charge the person \$250 or the actual cost of the inspection, whichever is greater.

This bill requires DWD to charge a person making a request for the inspection of the payroll records of a contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law, as affected by the bill, only if DWD finds that the contractor, subcontractor, or agent is in compliance with that law and that the request is frivolous. In order to find that a request is frivolous, DWD must find that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, subcontractor, or agent, or that the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of the prevailing wage law had been committed.

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

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

- 1 **SECTION 1.** 19.36 (12) of the statutes is amended to read:
- 2 19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is
- 3 specifically authorized or required by statute, an authority shall not provide access
- 4 to a record prepared or provided by an employer performing work on a project to
- 5 which s. 66.0903, 66.0904, 103.49, or 103.50 applies, or on which the employer is

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1 otherwise required to pay prevailing wages, if that record contains the name or other
2 personally identifiable information relating to an employee of that employer, unless
3 the employee authorizes the authority to provide access to that information. In this
4 subsection, "personally identifiable information" does not include an employee's
5 work classification, hours of work, or wage or benefit payments received for work on
6 such a project.

7 **SECTION 2.** 66.0903 (3) (av) of the statutes is amended to read:

8 66.0903 (3) (av) In determining prevailing wage rates under par. (am) or (ar),
9 the department may not use data from projects that are subject to this section, s.
10 66.0904, 103.49, or 103.50 or 40 USC 276a unless the department determines that
11 there is insufficient wage data in the area to determine those prevailing wage rates,
12 in which case the department may use data from projects that are subject to this
13 section, s. 66.0904, 103.49, or 103.50 or 40 USC 276a.

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

15 66.0903 (10) (a) Each contractor, subcontractor, or contractor's or
16 subcontractor's agent performing work on a project that is subject to this section
17 shall keep full and accurate records clearly indicating the name and trade or
18 occupation of every person performing the work described in sub. (4) and an accurate
19 record of the number of hours worked by each of those persons and the actual wages
20 paid for the hours worked. By no later than the end of the week following a week in
21 which a contractor, subcontractor, or contractor's or subcontractor's agent performs
22 work on a project that is subject to this section, the contractor, subcontractor, or agent
23 shall submit to the contracting local governmental unit a certified record of the
24 information specified in the preceding sentence for that preceding week.

25 **SECTION 4.** 66.0903 (10) (c) of the statutes is amended to read:

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1 66.0903 (10) (c) If requested by any person, the department shall inspect the
2 payroll records of any contractor, subcontractor, or agent performing work on a
3 project that is subject to this section to ensure compliance with this section. If In the
4 case of a request made by a person performing the work specified in sub. (4), if the
5 department finds that the contractor, subcontractor, or agent subject to the
6 inspection is ~~found to be~~ in compliance and ~~if the person making the request is a~~
7 ~~person performing the work specified in sub. (4)~~ that the request is frivolous, the
8 department shall charge the person making the request the actual cost of the
9 inspection. If In the case of a request made by a person not performing the work
10 specified in sub. (4), if the department finds that the contractor, subcontractor, or
11 agent subject to the inspection is ~~found to be~~ in compliance and ~~if the person making~~
12 ~~the request is not a person performing the work specified in sub. (4)~~ that the request
13 is frivolous, the department shall charge the person making the request \$250 or the
14 actual cost of the inspection, whichever is greater. In order to find that a request is
15 frivolous, the department must find that the person making the request made the
16 request in bad faith, solely for the purpose of harassing or maliciously injuring the
17 contractor, subcontractor, or agent subject to the inspection, or that the person
18 making the request knew, or should have known, that there was no reasonable basis
19 for believing that a violation of this section had been committed.

20 SECTION 5. 66.0904 of the statutes is created to read:

21 **66.0904 Wage rates; publicly funded private construction projects. (1)**

22 DEFINITIONS. In this section:

23 (a) "Area" means the county in which a proposed publicly funded private
24 construction project that is subject to this section is located or, if the department
25 determines that there is insufficient wage data in that county, "area" means those

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1 counties that are contiguous to that county or, if the department determines that
2 there is insufficient wage data in those counties, "area" means those counties that
3 are contiguous to those counties or, if the department determines that there is
4 insufficient wage data in those counties, "area" means the entire state or, if the
5 department is requested to review a determination under sub. (4) (e), "area" means
6 the city, village, or town in which a proposed publicly funded private construction
7 project that is subject to this section is located.

8 (b) "Department" means the department of workforce development.

9 (c) "Financial assistance" means any grant, cooperative agreement, loan,
10 contract, other than a public works contract, a supply procurement contract, a
11 contract of insurance or guaranty, or a collective bargaining agreement, or any other
12 arrangement by which a local governmental unit provides or otherwise makes
13 available assistance in any of the following forms:

14 1. Funding. *#20 = transfer or lease of real*

15 2. ~~The services of employees of the local governmental unit.~~

16 3. ~~Real~~ or personal property of the local governmental unit or of any interest
17 in or permission to use, other than on a casual or transient basis, that property
18 ~~including a transfer or lease of that property~~ for less than fair market value or for
19 reduced consideration.

20 4. Proceeds from a subsequent transfer or lease of real or personal property
21 transferred or leased from the local governmental unit, if the local governmental
22 unit's share of the fair market value of the property is not returned to the local
23 governmental unit.

24 5. Services furnished without consideration, at a nominal consideration, or at
25 a consideration that is reduced for the purpose of assisting the recipient or in

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1 recognition of the public interest to be served by the furnishing of those services to
2 the recipient.

3 ⁴ 6. A redevelopment contract, economic development agreement, revenue
4 agreement under s. 66.1103, contract under s. 66.1105 (3) or 66.1333 (5), or
5 assistance provided under s. 66.1109.

6 ~~7. Any other agreement, arrangement, or contract, including a purchase of~~
7 ~~services agreement, that has as one of its purposes the provision of financial~~
8 ~~assistance.~~

9 (d) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

10 (e) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

11 (f) "Local governmental unit" has the meaning given in s. 66.0903 (1) (d).

12 (g) "Multiple-trade publicly funded private construction project" means a
13 publicly funded private construction project in which no single trade accounts for
14 more than 85 percent or more of the total labor cost of the project.

15 (h) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

16 (i) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or
17 occupation engaged in the erection, construction, remodeling, repairing, or
18 demolition of any publicly funded private construction project in any area means the
19 hourly basic rate of pay, plus the hourly contribution for health insurance benefits,
20 vacation benefits, pension benefits, and any other bona fide economic benefit, paid
21 directly or indirectly, for a majority of the hours worked in the trade or occupation
22 on projects in the area.

23 2. If there is no rate at which a majority of the hours worked in the trade or
24 occupation on projects in the area is paid, "prevailing wage rate" for any trade or
25 occupation engaged in the erection, construction, remodeling, repairing, or

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1 demolition of any publicly funded private construction project in any area means the
2 average hourly basic rate of pay, weighted by the number of hours worked, plus the
3 average hourly contribution, weighted by the number of hours worked, for health
4 insurance benefits, vacation benefits, pension benefits, and any other bona fide
5 economic benefit, paid directly or indirectly for all hours worked at the hourly basic
6 rate of pay of the highest-paid 51 percent of hours worked in that trade or occupation
7 on projects in that area.

8 (j) "Publicly funded private construction project" means a construction project,
9 other than a project of public works, that receives financial assistance from a local
10 governmental unit.

11 (k) "Single-trade publicly funded private construction project" means a
12 publicly funded private construction project in which a single trade accounts for 85
13 percent or more of the total labor cost of the project.

14 (L) "Truck driver" has the meaning given in s. 103.49 (1) (g).

15 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** (a) Any owner or developer of
16 real property who enters into a contract for the erection, construction, remodeling,
17 repairing, or demolition of any publicly funded private construction project on that
18 real property shall include in the contract a stipulation that no person performing
19 the work described in sub. (3) may be permitted to work a greater number of hours
20 per day or per week than the prevailing hours of labor, except that any such person
21 may be permitted or required to work more than the prevailing hours of labor per day
22 and per week if he or she is paid for all hours worked in excess of the prevailing hours
23 of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he
24 or she be paid less than the prevailing wage rate determined under sub. (4) in the

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1 same or most similar trade or occupation in the area in which the publicly funded
2 private construction project is situated.

3 (b) A reference to the prevailing wage rates determined under sub. (4) and the
4 prevailing hours of labor shall be published in any notice issued for the purpose of
5 securing bids for the publicly funded private construction project. If any contract or
6 subcontract for a publicly funded private construction project that is subject to this
7 section is entered into, the prevailing wage rates determined under sub. (4) and the
8 prevailing hours of labor shall be physically incorporated into and made a part of the
9 contract or subcontract, except that for a minor subcontract, as determined by the
10 department, the department shall prescribe by rule the method of notifying the
11 minor subcontractor of the prevailing wage rates and prevailing hours of labor
12 applicable to the minor subcontract. The prevailing wage rates and prevailing hours
13 of labor applicable to a contract or subcontract may not be changed during the time
14 that the contract or subcontract is in force.

15 **(3) COVERED EMPLOYEES.** (a) Subject to par. (b), all of the following employes
16 shall be paid the prevailing wage rate determined under sub. (4) and may not be
17 permitted to work a greater number of hours per day or per week than the prevailing
18 hours of labor, unless they are paid for all hours worked in excess of the prevailing
19 hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

20 1. All laborers, workers, mechanics, and truck drivers employed on the site of
21 a publicly funded private construction project that is subject to this section.

22 2. All laborers, workers, mechanics, and truck drivers employed in the
23 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
24 of a publicly funded private construction project that is subject to this section or from
25 a facility dedicated exclusively, or nearly so, to a publicly funded private construction

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1 project that is subject to this section by a contractor, subcontractor, agent, or other
2 person performing any work on the site of the project.

3 (b) Notwithstanding par. (a) 1., a laborer, worker, mechanic, or truck driver who
4 is regularly employed to process, manufacture, pick up, or deliver materials or
5 products from a commercial establishment that has a fixed place of business from
6 which the establishment regularly supplies processed or manufactured materials or
7 products is not entitled to receive the prevailing wage rate determined under sub.
8 (4) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
9 worked in excess of the prevailing hours of labor unless any of the following apply:

10 1. The laborer, worker, mechanic, or truck driver is employed to go to the source
11 of mineral aggregate such as sand, gravel, or stone that is to be immediately
12 incorporated into the work, and not stockpiled or further transported by truck, pick
13 up that mineral aggregate, and deliver that mineral aggregate to the site of a publicly
14 funded private construction project that is subject to this section by depositing the
15 material substantially in place, directly or through spreaders from the transporting
16 vehicle.

17 2. The laborer, worker, mechanic, or truck driver is employed to go to the site
18 of a publicly funded private construction project that is subject to this section, pick
19 up excavated material or spoil from the site of the project, and transport that
20 excavated material or spoil away from the site of the project.

21 (c) A truck driver who is an owner-operator of a truck shall be paid separately
22 for his or her work and for the use of his or her truck.

23 (4) INVESTIGATION; DETERMINATION. (a) Before the owner or developer of any
24 publicly funded private construction project enters into a contract or solicits bids on
25 a contract for the performance of any work to which this section applies, the owner

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1 or developer shall apply to the department to determine the prevailing wage rate for
2 each trade or occupation required in the work under contemplation in the area in
3 which the work is to be done. The department shall conduct investigations and hold
4 public hearings as necessary to define the trades or occupations that are commonly
5 employed on publicly funded private construction projects that are subject to this
6 section and to inform itself as to the prevailing wage rates in all areas of the state
7 for those trades or occupations in order to determine the prevailing wage rate for
8 each trade or occupation. The department shall issue its determination within 30
9 days after receiving the request and shall file the determination with the owner or
10 developer applying for the determination and with the local governmental unit
11 providing financial assistance for the project. For the information of the employees
12 working on the project, the prevailing wage rates determined by the department, the
13 prevailing hours of labor, and the provisions of subs. (2) and (9) shall be kept posted
14 by the owner or developer in at least one conspicuous and easily accessible place on
15 the site of the project.

16 (b) The department shall, by January 1 of each year, compile the prevailing
17 wage rates for each trade or occupation in each area. The compilation shall, in
18 addition to the current prevailing wage rates, include future prevailing wage rates
19 when those prevailing wage rates can be determined for any trade or occupation in
20 any area and shall specify the effective date of those future prevailing wage rates.
21 If a publicly funded private construction project that is subject to this section extends
22 into more than one area there shall be but one standard of prevailing wage rates for
23 the entire private construction project.

24 (c) In determining prevailing wage rates under par. (a) or (b), the department
25 may not use data from projects that are subject to this section, s. 66.0903, 103.49, or

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1 103.50 or 40 USC 276a unless the department determines that there is insufficient
2 wage data in the area to determine those prevailing wage rates, in which case the
3 department may use data from projects that are subject to this section, s. 66.0903,
4 103.49, or 103.50 or 40 USC 276a.

5 (d) Any person may request a recalculation of any portion of an initial
6 determination within 30 days after the initial determination date if the person
7 submits evidence with the request showing that the prevailing wage rate for any
8 given trade or occupation included in the initial determination does not represent the
9 prevailing wage rate for that trade or occupation in the area. The evidence shall
10 include wage rate information reflecting work performed by persons working in the
11 contested trade or occupation in the area during the current survey period. The
12 department shall affirm or modify the initial determination within 15 days after the
13 date on which the department receives the request for recalculation.

14 (e) In addition to the recalculation under par. (d), the owner or developer that
15 requested the determination under this subsection may request a review of any
16 portion of the determination within 30 days after the date of issuance of the
17 determination if the owner or developer submits evidence with the request showing
18 that the prevailing wage rate for any given trade or occupation included in the
19 determination does not represent the prevailing wage rate for that trade or
20 occupation in the city, village, or town in which the proposed publicly funded private
21 construction project is located. That evidence shall include wage rate information
22 for the contested trade or occupation on at least 3 similar projects located in the city,
23 village, or town where the proposed publicly funded private construction project is
24 located on which some work has been performed during the current survey period
25 and which were considered by the department in issuing its most recent compilation

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1 under par. (b). The department shall affirm or modify the determination within 15
2 days after the date on which the department receives the request for review.

3 (5) NONAPPLICABILITY. This section does not apply to any single-trade publicly
4 funded private construction project for which the estimated cost of completion is less
5 than \$30,000 or an amount determined by the department under s. 66.0903 (5) or to
6 any multiple-trade publicly funded private construction project for which the
7 estimated cost of completion is less than \$150,000 or an amount determined by the
8 department under s. 66.0903 (5).

9 (6) EXEMPTIONS. The department, upon petition of any owner or developer
10 contracting for a publicly funded private construction project that is subject to this
11 section, shall issue an order exempting the owner or developer from applying to the
12 department for a determination under sub. (4) when it is shown that the project is
13 also subject to an ordinance or other enactment of a local governmental unit that sets
14 forth standards, policy, procedure, and practice resulting in standards as high or
15 higher than those under this section.

16 (7) COMPLIANCE. (a) When the department finds that an owner or developer
17 has not requested a determination under sub. (4) (a) or that an owner, developer,
18 contractor, or subcontractor has not physically incorporated a determination into a
19 contract or subcontract as required under sub. (2) (b) or has not notified a minor
20 subcontractor of a determination in the manner prescribed by the department by
21 rule promulgated under sub. (2) (b), the department shall notify the owner,
22 developer, contractor, or subcontractor of the noncompliance and shall file the
23 determination with the owner, developer, contractor, or subcontractor within 30 days
24 after the notice.

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1 (b) Upon completion of a publicly funded private construction project that is
2 subject to this section and before receiving final payment for his or her work on the
3 private construction project, each agent or subcontractor shall furnish the contractor
4 with an affidavit stating that the agent or subcontractor has complied fully with the
5 requirements of this section. A contractor may not authorize final payment until the
6 affidavit is filed in proper form and order.

7 (c) Upon completion of a publicly funded private construction project that is
8 subject to this section and before receiving final payment for his or her work on the
9 project, each contractor shall file with the owner or developer contracting for the
10 work an affidavit stating that the contractor has complied fully with the
11 requirements of this section and that the contractor has received an affidavit under
12 par. (b) from each of the contractor's agents and subcontractors. An owner or
13 developer may not authorize a final payment until the affidavit is filed in proper form
14 and order. If an owner or developer authorizes a final payment before the affidavit
15 is filed in proper form and order or if the department determines, based on the
16 greater weight of the credible evidence, that any person performing the work
17 specified in sub. (3) has been or may have been paid less than the prevailing wage
18 rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess
19 of the prevailing hours of labor and requests that the owner or developer withhold
20 all or part of the final payment, but the owner or developer fails to do so, the owner
21 or developer is liable for all back wages payable up to the amount of the final
22 payment.

23 **(8) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each contractor, subcontractor, or
24 agent performing work on a publicly funded private construction project that is
25 subject to this section shall keep full and accurate records clearly indicating the

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1 name and trade or occupation of every person performing the work described in sub.
2 (3) and an accurate record of the number of hours worked by each of those persons
3 and the actual wages paid for the hours worked. By no later than the end of the week
4 following a week in which a contractor, subcontractor, or contractor's or
5 subcontractor's agent performs work on a project that is subject to this section, the
6 contractor, subcontractor, or agent shall submit to the contracting owner or
7 developer a certified record of the information specified in the preceding sentence for
8 that preceding week.

9 (b) The department or the local governmental unit providing financial
10 assistance for a publicly funded private construction project may demand and
11 examine, and every contractor, subcontractor, and contractor's or subcontractor's
12 agent shall keep, and furnish upon request by the department or local governmental
13 unit, copies of payrolls and other records and information relating to the wages paid
14 to persons performing the work described in sub. (3) for work to which this section
15 applies. The department may inspect records in the manner provided in ch. 103.
16 Every contractor, subcontractor, or agent performing work on a publicly funded
17 private construction project that is subject to this section is subject to the
18 requirements of ch. 103 relating to the examination of records. Section 111.322 (2m)
19 applies to discharge and other discriminatory acts arising in connection with any
20 proceeding under this section.

21 (c) If requested by any person, the department shall inspect the payroll records
22 of any contractor, subcontractor, or contractor's or subcontractor's agent performing
23 work on a publicly funded private construction project that is subject to this section
24 to ensure compliance with this section. In the case of a request made by a person
25 performing the work specified in sub. (3), if the department finds that the contractor,

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1 subcontractor, or agent subject to the inspection is in compliance and that the request
2 if frivolous, the department shall charge the person making the request the actual
3 cost of the inspection. In the case of a request made by a person not performing the
4 work specified in sub. (3), if the department finds that the contractor, subcontractor,
5 or agent subject to the inspection is in compliance and that the request is frivolous,
6 the department shall charge the person making the request \$250 or the actual cost
7 of the inspection, whichever is greater. In order to find that a request is frivolous,
8 the department must find that the person making the request made the request in
9 bad faith, solely for the purpose of harassing or maliciously injuring the contractor,
10 subcontractor, or agent subject to the inspection, or that the person making the
11 request knew, or should have known, that there was no reasonable basis for believing
12 that a violation of this section had been committed.

13 (d) Section 103.005 (5) (f), (11), (12), and (13) applies to this section, except that
14 s. 103.005 (12) (a) does not apply to any person who fails to provide any information
15 to the department to assist the department in determining prevailing wage rates
16 under sub. (4) (a) or (b). Section 111.322 (2m) applies to discharge and other
17 discriminatory acts arising in connection with any proceeding under this section,
18 including proceedings under sub. (9) (a).

19 **(9) LIABILITY AND PENALTIES.** (a) Any contractor, subcontractor, or contractor's
20 or subcontractor's agent who fails to pay the prevailing wage rate determined by the
21 department under sub. (4) or who pays less than 1.5 times the hourly basic rate of
22 pay for all hours worked in excess of the prevailing hours of labor is liable to any
23 affected employee in the amount of his or her unpaid wages or his or her unpaid
24 overtime compensation and in an additional equal amount as liquidated damages.
25 An action to recover the liability may be maintained in any court of competent

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1 jurisdiction by any employee for and in behalf of that employee and other employees
2 similarly situated. No employee may be a party plaintiff to the action unless the
3 employee consents in writing to become a party and the consent is filed in the court
4 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in
5 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees
6 and costs to be paid by the defendant.

7 (b) 1. Except as provided in subds. 2., 4., and 6., any contractor, subcontractor,
8 or contractor's or subcontractor's agent who violates this section may be fined not
9 more than \$200 or imprisoned for not more than 6 months or both. Each day that
10 any violation continues is considered a separate offense.

11 2. Whoever induces any person who seeks to be or is employed on any publicly
12 funded private construction project that is subject to this section to give up, waive,
13 or return any part of the wages to which the person is entitled under the contract
14 governing the project, or who reduces the hourly basic rate of pay normally paid to
15 a person for work on a project that is not subject to this section during a week in which
16 the person works both on a project that is subject to this section and on a project that
17 is not subject to this section, by threat not to employ, by threat of dismissal from
18 employment, or by any other means is guilty of an offense under s. 946.15 (1).

19 3. Any person employed on a publicly funded private construction project that
20 is subject to this section who knowingly permits a contractor, subcontractor, or
21 contractor's or subcontractor's agent to pay him or her less than the prevailing wage
22 rate set forth in the contract governing the project, who gives up, waives, or returns
23 any part of the compensation to which he or she is entitled under the contract, or who
24 gives up, waives, or returns any part of the compensation to which he or she is
25 normally entitled for work on a project that is not subject to this section during a

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1 week in which the person works both on a project that is subject to this section and
2 on a project that is not subject to this section, is guilty of an offense under s. 946.15
3 (2).

4 4. Whoever induces any person who seeks to be or is employed on any publicly
5 funded private construction project that is subject to this section to permit any part
6 of the wages to which the person is entitled under the contract governing the project
7 to be deducted from the person's pay is guilty of an offense under s. 946.15 (3), unless
8 the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is
9 working on a project that is subject to 40 USC 276c.

10 5. Any person employed on a publicly funded private construction project that
11 is subject to this section who knowingly permits any part of the wages to which he
12 or she is entitled under the contract governing the project to be deducted from his or
13 her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be
14 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
15 subject to 40 USC 276c.

16 6. Subdivision 1. does not apply to any person who fails to provide any
17 information to the department to assist the department in determining prevailing
18 wage rates under sub. (4) (a) or (b).

19 **(10) DEPARTMENT.** (a) Except as provided under pars. (b) and (c), the department
20 shall notify any owner or developer applying for a determination under sub. (4) and
21 any owner or developer that is exempt under sub. (6) of the names of all persons
22 whom the department has found to have failed to pay the prevailing wage rate
23 determined under sub. (4) or has found to have paid less than 1.5 times the hourly
24 basic rate of pay for all hours worked in excess of the prevailing hours of labor at any
25 time in the preceding 3 years. The department shall include with each name the

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1 address of the person and shall specify when the person failed to pay the prevailing
2 wage rate and when the person paid less than 1.5 times the hourly basic rate of pay
3 for all hours worked in excess of the prevailing hours of labor. An owner or developer
4 may not award any contract to the person unless otherwise recommended by the
5 department or unless 3 years have elapsed from the date on which the department
6 issued its findings or date of final determination by a court of competent jurisdiction,
7 whichever is later.

8 (b) The department may not include in a notification under par. (a) the name
9 of any person on the basis of having let work to a person whom the department has
10 found to have failed to pay the prevailing wage rate determined under sub. (4) or has
11 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
12 in excess of the prevailing hours of labor.

13 (c) This subsection does not apply to any contractor, subcontractor, or
14 contractor's or subcontractor's or agent that in good faith commits a minor violation
15 of this section, as determined on a case-by-case basis through administrative
16 hearings with all rights to due process afforded to all parties or that has not
17 exhausted or waived all appeals.

18 (d) Any person submitting a bid or negotiating a contract on a publicly funded
19 private construction project that is subject to this section shall, on the date on which
20 the person submits the bid, identify any construction business in which the person,
21 or a shareholder, officer, or partner of the person, if the person is a business, owns,
22 or has owned at least a 25 percent interest on the date the person submits the bid or
23 at any other time within 3 years preceding the date on which the person submits the
24 bid or negotiates the contract, if the business has been found to have failed to pay the
25 prevailing wage rate determined under sub. (4) or to have paid less than 1.5 times

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1 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
2 labor.

3 (e) The department shall promulgate rules to administer this subsection.

4 **SECTION 6.** 103.49 (3) (ar) of the statutes is amended to read:

5 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
6 department may not use data from projects that are subject to this section, s. 66.0903,
7 66.0904, 103.50, or 229.8275 or 40 USC 276a unless the department determines that
8 there is insufficient wage data in the area to determine those prevailing wage rates,
9 in which case the department may use data from projects that are subject to this
10 section, s. 66.0903, 66.0904, 103.50, or 229.8275 or 40 USC 276a.

11 **SECTION 7.** 103.49 (5) (a) of the statutes is amended to read:

12 103.49 (5) (a) Each contractor, subcontractor, or contractor's or subcontractor's
13 agent performing work on a project that is subject to this section shall keep full and
14 accurate records clearly indicating the name and trade or occupation of every person
15 performing the work described in sub. (2m) and an accurate record of the number of
16 hours worked by each of those persons and the actual wages paid for the hours
17 worked. By no later than the end of the week following a week in which a contractor,
18 subcontractor, or contractor's or subcontractor's agent performs work on a project
19 that is subject to this section, the contractor, subcontractor, or agent shall submit to
20 the state agency authorizing the work a certified record of the information specified
21 in the preceding sentence for that preceding week.

22 **SECTION 8.** 103.49 (5) (c) of the statutes is amended to read:

23 103.49 (5) (c) If requested by any person, the department shall inspect the
24 payroll records of any contractor, subcontractor, or agent performing work on a
25 project that is subject to this section to ensure compliance with this section. If In the

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1 case of a request made by a person performing the work specified in sub. (2m), if the
2 department finds that the contractor, subcontractor, or agent subject to the
3 inspection is found to be in compliance and if ~~the person making the request is a~~
4 ~~person performing the work specified in sub. (2m)~~ that the request is frivolous, the
5 department shall charge the person making the request the actual cost of the
6 inspection. If In the case of a request made by a person not performing the work
7 specified in sub. (2m), if the department finds that the contractor, subcontractor, or
8 agent subject to the inspection is ~~found to be in compliance and if the person making~~
9 ~~the request is not a person performing the work specified in sub. (2m)~~ that the
10 request is frivolous, the department shall charge the person making the request \$250
11 or the actual cost of the inspection, whichever is greater. In order to find that a
12 request is frivolous, the department must find that the person making the request
13 made the request in bad faith, solely for the purpose of harassing or maliciously
14 injuring the contractor, subcontractor, or agent subject to the inspection, or that the
15 person making the request knew, or should have known, that there was no
16 reasonable basis for believing that a violation of this section had been committed.

17 **SECTION 9.** 103.50 (4m) of the statutes is amended to read:

18 103.50 (4m) WAGE RATE DATA. In determining prevailing wage rates for projects
19 that are subject to this section, the department shall use data from projects that are
20 subject to this section, s. 66.0903, 66.0904, or 103.49 or 40 USC 276a.

21 **SECTION 10.** 103.503 (title) of the statutes is amended to read:

22 **103.503 (title) Substance abuse prevention on public works and**
23 **publicly funded projects.**

24 **SECTION 11.** 103.503 (1) (a) of the statutes is amended to read:

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1 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
2 otherwise involving an employee that resulted or could have resulted in death,
3 personal injury, or property damage and that occurred while the employee was
4 performing the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
5 project.

6 **SECTION 12.** 103.503 (1) (c) of the statutes is amended to read:

7 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
8 defined in s. 66.0903 (1) (d), ~~or~~ a state agency, as defined in s. 103.49 (1) (f), or an
9 owner or developer under s. 66.0904 that has contracted for the performance of work
10 on a project.

11 **SECTION 13.** 103.503 (1) (e) of the statutes is amended to read:

12 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
13 who performs the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
14 project.

15 **SECTION 14.** 103.503 (1) (g) of the statutes is amended to read:

16 103.503 (1) (g) "Project" mean a project of public works that is subject to s.
17 66.0903 or 103.49 or a publicly funded private construction project that is subject to
18 s. 66.0904.

19 **SECTION 15.** 103.503 (2) of the statutes is amended to read:

20 103.503 (2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess,
21 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
22 be under the influence of alcohol, while performing the work described in s. 66.0903
23 (4), 66.0904 (3), or 103.49 (2m) on a project. An employee is considered to be under
24 the influence of alcohol for purposes of this subsection if he or she has an alcohol

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1 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
2 (d).

3 **SECTION 16.** 103.503 (3) (a) 2. of the statutes is amended to read:

4 103.503 (3) (a) 2. A requirement that employees performing the work described
5 in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a project submit to random,
6 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
7 alcohol testing before commencing work on a project, except that testing of an
8 employee before commencing work on a project is not required if the employee has
9 been participating in a random testing program during the 90 days preceding the
10 date on which the employee commenced work on the project.

11 **SECTION 17.** 104.001 (3) (am) of the statutes is created to read:

12 104.001 (3) (am) The requirement that employees employed on a publicly
13 funded private construction project for which a city, village, town, or county provides
14 financial assistance, as defined in s. 66.0904 (1) (c), be paid at the prevailing wage
15 rate, as defined in s. 66.0904 (1) (i), as required under s. 66.0904.

16 **SECTION 18.** 109.09 (1) of the statutes is amended to read:

17 109.09 (1) The department shall investigate and attempt equitably to adjust
18 controversies between employers and employees as to alleged wage claims. The
19 department may receive and investigate any wage claim which is filed with the
20 department, or received by the department under s. 109.10 (4), no later than 2 years
21 after the date the wages are due. The department may, after receiving a wage claim,
22 investigate any wages due from the employer against whom the claim is filed to any
23 employee during the period commencing 2 years before the date the claim is filed.
24 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
25 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the

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1 employer on behalf of the employee to collect any wage claim or wage deficiency and
2 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
3 under s. 109.10, the department may refer such an action to the district attorney of
4 the county in which the violation occurs for prosecution and collection and the
5 district attorney shall commence an action in the circuit court having appropriate
6 jurisdiction. Any number of wage claims or wage deficiencies against the same
7 employer may be joined in a single proceeding, but the court may order separate
8 trials or hearings. In actions that are referred to a district attorney under this
9 subsection, any taxable costs recovered by the district attorney shall be paid into the
10 general fund of the county in which the violation occurs and used by that county to
11 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
12 of the district attorney who prosecuted the action.

13 **SECTION 19.** 111.322 (2m) (c) of the statutes is amended to read:

14 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
15 under s. 66.0903, 66.0904, 103.49, or 229.8275 or testifies or assists in any action or
16 proceeding under s. 66.0903, 66.0904, 103.49, or 229.8275.

17 **SECTION 20.** 227.01 (13) (t) of the statutes is amended to read:

18 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
19 66.0903, 66.0904, 103.49, 103.50, and 229.8275, except that any action or inaction
20 which ascertains and determines prevailing wage rates under ss. 66.0903, 66.0904,
21 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

22 **SECTION 21.** 946.15 of the statutes is amended to read:

23 **946.15 Public and publicly funded construction contracts at less than**
24 **full rate. (1)** Any employer, or any agent or employee of an employer, who induces
25 any person who seeks to be or is employed pursuant to a public contract as defined

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1 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
2 wage rate determination has been issued by the department of workforce
3 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3)
4 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
5 or 66.0904 (6) to give up, waive, or return any part of the compensation to which that
6 person is entitled under his or her contract of employment or under the prevailing
7 wage rate determination issued by the department or local governmental unit, or
8 who reduces the hourly basic rate of pay normally paid to an employee for work on
9 a project on which a prevailing wage rate determination has not been issued under
10 s. 66.0903 (3) or (6), 66.0904 (4) or (6), 103.49 (3), 103.50 (3), or 229.8275 (3) during
11 a week in which the employee works both on a project on which a prevailing wage
12 rate determination has been issued and on a project on which a prevailing wage rate
13 determination has not been issued, is guilty of a Class I felony.

14 (2) Any person employed pursuant to a public contract as defined in s. 66.0901
15 (1) (c) or employed on a project on which a prevailing wage rate determination has
16 been issued by the department of workforce development under s. 66.0903 (3),
17 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit,
18 as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) who gives up,
19 waives, or returns to the employer or agent of the employer any part of the
20 compensation to which the employee is entitled under his or her contract of
21 employment or under the prevailing wage determination issued by the department
22 or local governmental unit, or who gives up any part of the compensation to which
23 he or she is normally entitled for work on a project on which a prevailing wage rate
24 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4), 103.49 (3),
25 103.50 (3), or 229.8275 (3) during a week in which the person works part-time on a

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1 project on which a prevailing wage rate determination has been issued and
2 part-time on a project on which a prevailing wage rate determination has not been
3 issued, is guilty of a Class C misdemeanor.

4 (3) Any employer or labor organization, or any agent or employee of an
5 employer or labor organization, who induces any person who seeks to be or is
6 employed on a project on which a prevailing wage rate determination has been issued
7 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49
8 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903
9 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of the wages to which
10 that person is entitled under the prevailing wage rate determination issued by the
11 department or local governmental unit to be deducted from the person's pay is guilty
12 of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6
13 from a person who is working on a project that is subject to 40 USC 276c.

14 (4) Any person employed on a project on which a prevailing wage rate
15 determination has been issued by the department of workforce development under
16 s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local
17 governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904
18 (6) who permits any part of the wages to which that person is entitled under the
19 prevailing wage rate determination issued by the department or local governmental
20 unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the
21 deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working
22 on a project that is subject to 40 USC 276c.

SECTION 22. Initial applicability.

23
24 (1) PREVAILING WAGES AND HOURS ON PRIVATE PROJECTS IN TAX INCREMENTAL
25 DISTRICTS. The treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3)

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1 (ar), 103.50 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3)
2 (am), 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 of the statutes first
3 applies to contracts for the erection, construction, remodeling, repairing, or
4 demolition of publicly funded private construction projects, as defined in section
5 66.0904 (1) (j) of the statutes, as created by this act, entered into, or extended,
6 modified or renewed, on the effective date of this subsection.

7 (2) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c)
8 and 103.49 (5) (c) of the statutes first applies to requests for the inspection of payroll
9 records made on the effective date of this subsection.

10 (3) PREVAILING WAGE RECORDS. The treatment of sections 66.0903 (10) (a) and
11 103.49 (5) (a) of the statutes first applies to work performed on the effective date of
12 this subsection, except that, if that work is performed under a contract that
13 contains provisions that are inconsistent with those sections, the treatment of those
14 sections first applies to work performed on the day on which that contract expires or
15 is extended, modified, or renewed.

16 (END)

Barman, Mike

From: Malaise, Gordon
Sent: Sunday, March 02, 2008 5:31 PM
To: Barman, Mike
Subject: FW: Prevailing Wage

Mike;

Jennifer from Sen. Wirch's office would like -3798 jacketed.

Gordon

From: Bishop, Jennifer
Sent: Friday, February 29, 2008 4:52 PM
To: Malaise, Gordon
Subject: Prevailing Wage

Hi Gordon – the redraft looks great. Could I have the email to request stripes so that I can send out a co-sponsorship please?

Also, can you send the redraft to me in email form too?

thanks so much for all your help and work on this!

Sincerely,

Jennifer
Office of Sen. Wirch