



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 228

**Senate Substitute Amendment 1
and Senate Amendments 3 and
5 to Senate Substitute
Amendment 1**

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In general, *2007 Senate Bill 228* (the bill) requires contractors and subcontractors to register with the Department of Commerce (Commerce). The bill defines “contractor” as “any 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” and defines “subcontractor” as “a person who enters into a contract with a contractor or subcontractor to perform part or all of a contract to construct or supervise the construction of an improvement to real property.” The bill defines “construction” as “the construction, renovation, repair, remodeling, or demolition of an improvement to real property or of a manufactured home.”

The bill creates the following prohibitions:

- Prohibits a person from holding himself or herself out as or acting as a contractor or subcontractor unless the person registers with Commerce.
- Prohibits a contractor or subcontractor from entering into a contract for construction services with a person who is not a registered contractor or subcontractor.
- Prohibits a contractor or subcontractor from knowingly, and with the intent to evade any state or federal law, coercing a person to falsely state that he or she is an independent contractor.

The bill assigns certain duties to Commerce related to implementation of the registration program, including the promulgation of rules and the creation of an Internet site where the public may obtain information regarding registered contractors. It also requires a contractor to display his or her registration number at his or her principal place of business and on all construction bids, contracts, and advertising.

The bill does not apply to a person who performs construction work on property the person owns or leases.

The bill includes the following provisions relating to the enforcement of the requirements and prohibitions that it applies to contractors:

- Authorizes Commerce to directly assess forfeitures against violators.
- Authorizes the Attorney General to bring an action to collect any forfeiture that is not paid.
- Prohibits a contractor or subcontractor from filing a “construction lien” if the contractor or subcontractor is not registered with Commerce.

Senate Substitute Amendment 1

Senate Substitute Amendment 1 (the substitute amendment) is identical to the bill in all respects except the following:

- The substitute amendment limits applicability of the bill to construction performed on public buildings, places of employment, and dwellings.
- The substitute amendment applies to “construction activities” (as opposed to “construction”), defined as “activities associated with building, repairing, or remodeling” a structure, **including** erection of scaffolding, painting, and installation of wall finishes, and **excluding** the practice of architecture or engineering, the design of a structure or its components, or the delivery of supplies or materials.
- In addition to prohibiting a contractor or subcontractor who fails to register with Commerce from filing a construction lien, the substitute amendment prohibits a contractor or subcontractor from filing a construction lien for work done by another person under subcontract if that person was not registered as a subcontractor at the time he or she performed the work.
- The substitute amendment deletes the prohibition on a contractor or subcontractor entering into a contract for construction services with a person who is not a registered contractor or subcontractor.

The substitute amendment makes minor changes to the definitions of “contractor” and “subcontractor.”

Senate Amendment 3 to Senate Substitute Amendment 1

Senate Amendment 3 to Senate Substitute Amendment 1 consists of two provisions:

- Provides that, if a person applies for another approval from Commerce (e.g., a plumber’s license), Commerce must issue a combined approval that confers the privileges and

responsibilities of the registration required under the bill and the privileges and responsibilities of the other approval.

- Modifies the provision of the substitute amendment that prohibits a contractor from filing a construction lien for work done by another person if the other person was not registered as a subcontractor at the time that he or she performed the work, to apply instead to work done if the other person was not registered as a subcontractor at the time that the contractor contracted with him or her.

Senate Amendment 5 to Senate Substitute Amendment 1

Senate Amendment 5 to Senate Substitute Amendment 1 directs Commerce to inform the Departments of Revenue and Workforce Development when it has reason to believe that a person has violated the prohibition on coercing or inducing a person to falsely declare that he or she is an independent contractor.

Legislative History

On October 25, 2007, the Senate Committee on Commerce, Utilities and Rail recommended adoption of Senate Substitute Amendment 1 and passage of 2007 Senate Bill 228, as amended, by votes of Ayes, 7; and Noes, 0.

On November 8, 2007, the Senate adopted Senate Amendments 3 and 5 to Senate Substitute Amendment 1 and Senate Substitute Amendment 1, as amended, on voice votes and passed 2007 Senate Bill 228, as amended, on a vote of Ayes, 28; Noes, 4.

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