



2007 SENATE BILL 568

March 12, 2008 - Introduced by Senators WIRCH, HANSEN, DECKER and ERPENBACH, cosponsored by Representatives MASON, KESSLER, BOYLE, SOLETSKI, ZEPNICK, POCAN, BERCEAU, POPE-ROBERTS, BLACK, SHERIDAN, PARISI, TURNER, JORGENSEN, NELSON, HIXSON, FIELDS, KREUSER, HINTZ, GARTHWAITE, HILGENBERG and VAN AKKEREN. Referred to Committee on Labor, Elections and Urban Affairs.

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.
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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. A transfer or lease of real or personal property of the local governmental unit or of any interest in or permission to use that property for less than fair market value or for reduced consideration.
3. 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.
4. 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.

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

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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
6 otherwise required to pay prevailing wages, if that record contains the name or other
7 personally identifiable information relating to an employee of that employer, unless
8 the employee authorizes the authority to provide access to that information. In this

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1 subsection, “personally identifiable information” does not include an employee’s
2 work classification, hours of work, or wage or benefit payments received for work on
3 such a project.

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

5 66.0903 (3) (av) In determining prevailing wage rates under par. (am) or (ar),
6 the department may not use data from projects that are subject to this section, s.
7 66.0904, 103.49, or 103.50 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. 66.0904, 103.49, or 103.50 or 40 USC 276a.

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

12 66.0903 (10) (a) Each contractor, subcontractor, or contractor’s or
13 subcontractor’s agent performing work on a project that is subject to this section
14 shall keep full and accurate records clearly indicating the name and trade or
15 occupation of every person performing the work described in sub. (4) and an accurate
16 record of the number of hours worked by each of those persons and the actual wages
17 paid for the hours worked. By no later than the end of the week following a week in
18 which a contractor, subcontractor, or contractor’s or subcontractor’s agent performs
19 work on a project that is subject to this section, the contractor, subcontractor, or agent
20 shall submit to the contracting local governmental unit a certified record of the
21 information specified in the preceding sentence for that preceding week.

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

23 66.0903 (10) (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. (4), 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. (4)~~ 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. (4), 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. (4)~~ that the request
10 is frivolous, the department shall charge the person making the request \$250 or the
11 actual cost of the inspection, whichever is greater. In order to find that a request is
12 frivolous, the department must find that the person making the request made the
13 request in bad faith, solely for the purpose of harassing or maliciously injuring the
14 contractor, subcontractor, or agent subject to the inspection, or that the person
15 making the request knew, or should have known, that there was no reasonable basis
16 for believing that a violation of this section had been committed.

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

18 **66.0904 Wage rates; publicly funded private construction projects. (1)**

19 DEFINITIONS. In this section:

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

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

5 (b) “Department” means the department of workforce development.

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

11 1. Funding.

12 2. A transfer or lease of real or personal property of the local governmental unit
13 or of any interest in or permission to use, other than on a casual or transient basis,
14 that property for less than fair market value or for reduced consideration.

15 3. Proceeds from a subsequent transfer or lease of real or personal property
16 transferred or leased from the local governmental unit, if the local governmental
17 unit’s share of the fair market value of the property is not returned to the local
18 governmental unit.

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

22 (d) “Hourly basic rate of pay” has the meaning given in s. 103.49 (1) (b).

23 (e) “Insufficient wage data” has the meaning given in s. 103.49 (1) (bg).

24 (f) “Local governmental unit” has the meaning given in s. 66.0903 (1) (d).

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1 (g) “Multiple-trade publicly funded private construction project” means a
2 publicly funded private construction project in which no single trade accounts for
3 more than 85 percent or more of the total labor cost of the project.

4 (h) “Prevailing hours of labor” has the meaning given in s. 103.49 (1) (c).

5 (i) 1. Except as provided in subd. 2., “prevailing wage rate” for any trade or
6 occupation engaged in the erection, construction, remodeling, repairing, or
7 demolition of any publicly funded private construction project in any area means the
8 hourly basic rate of pay, plus the hourly contribution for health insurance benefits,
9 vacation benefits, pension benefits, and any other bona fide economic benefit, paid
10 directly or indirectly, for a majority of the hours worked in the trade or occupation
11 on projects in the area.

12 2. If there is no rate at which a majority of the hours worked in the trade or
13 occupation on projects in the area is paid, “prevailing wage rate” for any trade or
14 occupation engaged in the erection, construction, remodeling, repairing, or
15 demolition of any publicly funded private construction project in any area means the
16 average hourly basic rate of pay, weighted by the number of hours worked, plus the
17 average hourly contribution, weighted by the number of hours worked, for health
18 insurance benefits, vacation benefits, pension benefits, and any other bona fide
19 economic benefit, paid directly or indirectly for all hours worked at the hourly basic
20 rate of pay of the highest-paid 51 percent of hours worked in that trade or occupation
21 on projects in that area.

22 (j) “Publicly funded private construction project” means a construction project,
23 other than a project of public works, that receives financial assistance from a local
24 governmental unit.

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1 (k) “Single-trade publicly funded private construction project” means a
2 publicly funded private construction project in which a single trade accounts for 85
3 percent or more of the total labor cost of the project.

4 (L) “Truck driver” has the meaning given in s. 103.49 (1) (g).

5 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** (a) Any owner or developer of
6 real property who enters into a contract for the erection, construction, remodeling,
7 repairing, or demolition of any publicly funded private construction project on that
8 real property shall include in the contract a stipulation that no person performing
9 the work described in sub. (3) may be permitted to work a greater number of hours
10 per day or per week than the prevailing hours of labor, except that any such person
11 may be permitted or required to work more than the prevailing hours of labor per day
12 and per week if he or she is paid for all hours worked in excess of the prevailing hours
13 of labor at a rate of at least 1.5 times his or her hourly basic rate of pay; nor may he
14 or she be paid less than the prevailing wage rate determined under sub. (4) in the
15 same or most similar trade or occupation in the area in which the publicly funded
16 private construction project is situated.

17 (b) A reference to the prevailing wage rates determined under sub. (4) and the
18 prevailing hours of labor shall be published in any notice issued for the purpose of
19 securing bids for the publicly funded private construction project. If any contract or
20 subcontract for a publicly funded private construction project that is subject to this
21 section is entered into, the prevailing wage rates determined under sub. (4) and the
22 prevailing hours of labor shall be physically incorporated into and made a part of the
23 contract or subcontract, except that for a minor subcontract, as determined by the
24 department, the department shall prescribe by rule the method of notifying the
25 minor subcontractor of the prevailing wage rates and prevailing hours of labor

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1 applicable to the minor subcontract. The prevailing wage rates and prevailing hours
2 of labor applicable to a contract or subcontract may not be changed during the time
3 that the contract or subcontract is in force.

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

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

11 2. All laborers, workers, mechanics, and truck drivers employed in the
12 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
13 of a publicly funded private construction project that is subject to this section or from
14 a facility dedicated exclusively, or nearly so, to a publicly funded private construction
15 project that is subject to this section by a contractor, subcontractor, agent, or other
16 person performing any work on the site of the project.

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

24 1. The laborer, worker, mechanic, or truck driver is employed to go to the source
25 of mineral aggregate such as sand, gravel, or stone that is to be immediately

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1 incorporated into the work, and not stockpiled or further transported by truck, pick
2 up that mineral aggregate, and deliver that mineral aggregate to the site of a publicly
3 funded private construction project that is subject to this section by depositing the
4 material substantially in place, directly or through spreaders from the transporting
5 vehicle.

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

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

12 **(4) INVESTIGATION; DETERMINATION.** (a) Before the owner or developer of any
13 publicly funded private construction project enters into a contract or solicits bids on
14 a contract for the performance of any work to which this section applies, the owner
15 or developer shall apply to the department to determine the prevailing wage rate for
16 each trade or occupation required in the work under contemplation in the area in
17 which the work is to be done. The department shall conduct investigations and hold
18 public hearings as necessary to define the trades or occupations that are commonly
19 employed on publicly funded private construction projects that are subject to this
20 section and to inform itself as to the prevailing wage rates in all areas of the state
21 for those trades or occupations in order to determine the prevailing wage rate for
22 each trade or occupation. The department shall issue its determination within 30
23 days after receiving the request and shall file the determination with the owner or
24 developer applying for the determination and with the local governmental unit
25 providing financial assistance for the project. For the information of the employees

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1 working on the project, the prevailing wage rates determined by the department, the
2 prevailing hours of labor, and the provisions of subs. (2) and (9) shall be kept posted
3 by the owner or developer in at least one conspicuous and easily accessible place on
4 the site of the project.

5 (b) The department shall, by January 1 of each year, compile the prevailing
6 wage rates for each trade or occupation in each area. The compilation shall, in
7 addition to the current prevailing wage rates, include future prevailing wage rates
8 when those prevailing wage rates can be determined for any trade or occupation in
9 any area and shall specify the effective date of those future prevailing wage rates.
10 If a publicly funded private construction project that is subject to this section extends
11 into more than one area there shall be but one standard of prevailing wage rates for
12 the entire private construction project.

13 (c) In determining prevailing wage rates under par. (a) or (b), the department
14 may not use data from projects that are subject to this section, s. 66.0903, 103.49, or
15 103.50 or 40 USC 276a unless the department determines that there is insufficient
16 wage data in the area to determine those prevailing wage rates, in which case the
17 department may use data from projects that are subject to this section, s. 66.0903,
18 103.49, or 103.50 or 40 USC 276a.

19 (d) Any person may request a recalculation of any portion of an initial
20 determination within 30 days after the initial determination date if the person
21 submits evidence with the request showing that the prevailing wage rate for any
22 given trade or occupation included in the initial determination does not represent the
23 prevailing wage rate for that trade or occupation in the area. The evidence shall
24 include wage rate information reflecting work performed by persons working in the
25 contested trade or occupation in the area during the current survey period. The

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1 department shall affirm or modify the initial determination within 15 days after the
2 date on which the department receives the request for recalculation.

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

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

23 (6) EXEMPTIONS. The department, upon petition of any owner or developer
24 contracting for a publicly funded private construction project that is subject to this
25 section, shall issue an order exempting the owner or developer from applying to the

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1 department for a determination under sub. (4) when it is shown that the project is
2 also subject to an ordinance or other enactment of a local governmental unit that sets
3 forth standards, policy, procedure, and practice resulting in standards as high or
4 higher than those under this section.

5 (7) COMPLIANCE. (a) When the department finds that an owner or developer
6 has not requested a determination under sub. (4) (a) or that an owner, developer,
7 contractor, or subcontractor has not physically incorporated a determination into a
8 contract or subcontract as required under sub. (2) (b) or has not notified a minor
9 subcontractor of a determination in the manner prescribed by the department by
10 rule promulgated under sub. (2) (b), the department shall notify the owner,
11 developer, contractor, or subcontractor of the noncompliance and shall file the
12 determination with the owner, developer, contractor, or subcontractor within 30 days
13 after the notice.

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

20 (c) Upon completion of a publicly funded private construction project that is
21 subject to this section and before receiving final payment for his or her work on the
22 project, each contractor shall file with the owner or developer contracting for the
23 work an affidavit stating that the contractor has complied fully with the
24 requirements of this section and that the contractor has received an affidavit under
25 par. (b) from each of the contractor's agents and subcontractors. An owner or

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1 developer may not authorize a final payment until the affidavit is filed in proper form
2 and order. If an owner or developer authorizes a final payment before the affidavit
3 is filed in proper form and order or if the department determines, based on the
4 greater weight of the credible evidence, that any person performing the work
5 specified in sub. (3) has been or may have been paid less than the prevailing wage
6 rate or less than 1.5 times the hourly basic rate of pay for all hours worked in excess
7 of the prevailing hours of labor and requests that the owner or developer withhold
8 all or part of the final payment, but the owner or developer fails to do so, the owner
9 or developer is liable for all back wages payable up to the amount of the final
10 payment.

11 **(8) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each contractor, subcontractor, or
12 agent performing work on a publicly funded private construction project that is
13 subject to this section shall keep full and accurate records clearly indicating the
14 name and trade or occupation of every person performing the work described in sub.
15 (3) and an accurate record of the number of hours worked by each of those persons
16 and the actual wages paid for the hours worked. By no later than the end of the week
17 following a week in which a contractor, subcontractor, or contractor's or
18 subcontractor's agent performs work on a project that is subject to this section, the
19 contractor, subcontractor, or agent shall submit to the contracting owner or
20 developer a certified record of the information specified in the preceding sentence for
21 that preceding week.

22 (b) The department or the local governmental unit providing financial
23 assistance for a publicly funded private construction project may demand and
24 examine, and every contractor, subcontractor, and contractor's or subcontractor's
25 agent shall keep, and furnish upon request by the department or local governmental

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1 unit, copies of payrolls and other records and information relating to the wages paid
2 to persons performing the work described in sub. (3) for work to which this section
3 applies. The department may inspect records in the manner provided in ch. 103.
4 Every contractor, subcontractor, or agent performing work on a publicly funded
5 private construction project that is subject to this section is subject to the
6 requirements of ch. 103 relating to the examination of records. Section 111.322 (2m)
7 applies to discharge and other discriminatory acts arising in connection with any
8 proceeding under this section.

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

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

7 **(9) LIABILITY AND PENALTIES.** (a) Any contractor, subcontractor, or contractor's
8 or subcontractor's agent who fails to pay the prevailing wage rate determined by the
9 department under sub. (4) or who pays less than 1.5 times the hourly basic rate of
10 pay for all hours worked in excess of the prevailing hours of labor is liable to any
11 affected employee in the amount of his or her unpaid wages or his or her unpaid
12 overtime compensation and in an additional equal amount as liquidated damages.
13 An action to recover the liability may be maintained in any court of competent
14 jurisdiction by any employee for and in behalf of that employee and other employees
15 similarly situated. No employee may be a party plaintiff to the action unless the
16 employee consents in writing to become a party and the consent is filed in the court
17 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in
18 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees
19 and costs to be paid by the defendant.

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

24 2. Whoever induces any person who seeks to be or is employed on any publicly
25 funded private construction project that is subject to this section to give up, waive,

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1 or return any part of the wages to which the person is entitled under the contract
2 governing the project, or who reduces the hourly basic rate of pay normally paid to
3 a person for work on a project that is not subject to this section during a week in which
4 the person works both on a project that is subject to this section and on a project that
5 is not subject to this section, by threat not to employ, by threat of dismissal from
6 employment, or by any other means is guilty of an offense under s. 946.15 (1).

7 3. Any person employed on a publicly funded private construction project that
8 is subject to this section who knowingly permits a contractor, subcontractor, or
9 contractor's or subcontractor's agent to pay him or her less than the prevailing wage
10 rate set forth in the contract governing the project, who gives up, waives, or returns
11 any part of the compensation to which he or she is entitled under the contract, or who
12 gives up, waives, or returns any part of the compensation to which he or she is
13 normally entitled for work on a project that is not subject to this section during a
14 week in which the person works both on a project that is subject to this section and
15 on a project that is not subject to this section, is guilty of an offense under s. 946.15
16 (2).

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

23 5. Any person employed on a publicly funded private construction project that
24 is subject to this section who knowingly permits any part of the wages to which he
25 or she is entitled under the contract governing the project to be deducted from his or

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1 her pay is guilty of an offense under s. 946.15 (4), unless the deduction would be
2 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
3 subject to 40 USC 276c.

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

7 **(10) DEPARTMENT.** (a) Except as provided under pars. (b) and (c), the department
8 shall notify any owner or developer applying for a determination under sub. (4) and
9 any owner or developer that is exempt under sub. (6) of the names of all persons
10 whom the department has found to have failed to pay the prevailing wage rate
11 determined under sub. (4) or has found to have paid less than 1.5 times the hourly
12 basic rate of pay for all hours worked in excess of the prevailing hours of labor at any
13 time in the preceding 3 years. The department shall include with each name the
14 address of the person and shall specify when the person failed to pay the prevailing
15 wage rate and when the person paid less than 1.5 times the hourly basic rate of pay
16 for all hours worked in excess of the prevailing hours of labor. An owner or developer
17 may not award any contract to the person unless otherwise recommended by the
18 department or unless 3 years have elapsed from the date on which the department
19 issued its findings or date of final determination by a court of competent jurisdiction,
20 whichever is later.

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

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

6 (d) Any person submitting a bid or negotiating a contract on a publicly funded
7 private construction project that is subject to this section shall, on the date on which
8 the person submits the bid, identify any construction business in which the person,
9 or a shareholder, officer, or partner of the person, if the person is a business, owns,
10 or has owned at least a 25 percent interest on the date the person submits the bid or
11 at any other time within 3 years preceding the date on which the person submits the
12 bid or negotiates the contract, if the business has been found to have failed to pay the
13 prevailing wage rate determined under sub. (4) or to have paid less than 1.5 times
14 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
15 labor.

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

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

18 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
19 department may not use data from projects that are subject to this section, s. 66.0903,
20 66.0904, 103.50, or 229.8275 or 40 USC 276a unless the department determines that
21 there is insufficient wage data in the area to determine those prevailing wage rates,
22 in which case the department may use data from projects that are subject to this
23 section, s. 66.0903, 66.0904, 103.50, or 229.8275 or 40 USC 276a.

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

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1 103.49 (5) (a) Each contractor, subcontractor, or contractor's or subcontractor's
2 agent performing work on a project that is subject to this section shall keep full and
3 accurate records clearly indicating the name and trade or occupation of every person
4 performing the work described in sub. (2m) and an accurate record of the number of
5 hours worked by each of those persons and the actual wages paid for the hours
6 worked. By no later than the end of the week following a week in which a contractor,
7 subcontractor, or contractor's or subcontractor's agent performs work on a project
8 that is subject to this section, the contractor, subcontractor, or agent shall submit to
9 the state agency authorizing the work a certified record of the information specified
10 in the preceding sentence for that preceding week.

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

12 103.49 (5) (c) If requested by any person, the department shall inspect the
13 payroll records of any contractor, subcontractor, or agent performing work on a
14 project that is subject to this section to ensure compliance with this section. If In the
15 case of a request made by a person performing the work specified in sub. (2m), if the
16 department finds that the contractor, subcontractor, or agent subject to the
17 inspection is found to be in compliance and if the person making the request is a
18 person performing the work specified in sub. (2m) that the request is frivolous, the
19 department shall charge the person making the request the actual cost of the
20 inspection. If In the case of a request made by a person not performing the work
21 specified in sub. (2m), if the department finds that the contractor, subcontractor, or
22 agent subject to the inspection is found to be in compliance and if the person making
23 the request is not a person performing the work specified in sub. (2m) that the
24 request is frivolous, the department shall charge the person making the request \$250
25 or the actual cost of the inspection, whichever is greater. In order to find that a

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1 request is frivolous, the department must find that the person making the request
2 made the request in bad faith, solely for the purpose of harassing or maliciously
3 injuring the contractor, subcontractor, or agent subject to the inspection, or that the
4 person making the request knew, or should have known, that there was no
5 reasonable basis for believing that a violation of this section had been committed.

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

7 103.50 (4m) WAGE RATE DATA. In determining prevailing wage rates for projects
8 that are subject to this section, the department shall use data from projects that are
9 subject to this section, s. 66.0903, 66.0904, or 103.49 or 40 USC 276a.

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

11 **103.503 (title) Substance abuse prevention on public works and**
12 **publicly funded projects.**

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

14 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
15 otherwise involving an employee that resulted or could have resulted in death,
16 personal injury, or property damage and that occurred while the employee was
17 performing the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
18 project.

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

20 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
21 defined in s. 66.0903 (1) (d), ~~or~~ a state agency, as defined in s. 103.49 (1) (f), or an
22 owner or developer under s. 66.0904 that has contracted for the performance of work
23 on a project.

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

SENATE BILL 568**SECTION 13**

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

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

5 103.503 (1) (g) “Project” mean a project of public works that is subject to s.
6 66.0903 or 103.49 or a publicly funded private construction project that is subject to
7 s. 66.0904.

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

9 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
10 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
11 be under the influence of alcohol, while performing the work described in s. 66.0903
12 (4), 66.0904 (3), or 103.49 (2m) on a project. An employee is considered to be under
13 the influence of alcohol for purposes of this subsection if he or she has an alcohol
14 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
15 (d).

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

17 103.503 (3) (a) 2. A requirement that employees performing the work described
18 in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a project submit to random,
19 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
20 alcohol testing before commencing work on a project, except that testing of an
21 employee before commencing work on a project is not required if the employee has
22 been participating in a random testing program during the 90 days preceding the
23 date on which the employee commenced work on the project.

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

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

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

6 109.09 (1) The department shall investigate and attempt equitably to adjust
7 controversies between employers and employees as to alleged wage claims. The
8 department may receive and investigate any wage claim which is filed with the
9 department, or received by the department under s. 109.10 (4), no later than 2 years
10 after the date the wages are due. The department may, after receiving a wage claim,
11 investigate any wages due from the employer against whom the claim is filed to any
12 employee during the period commencing 2 years before the date the claim is filed.
13 The department shall enforce this chapter and ss. 66.0903, 66.0904, 103.02, 103.49,
14 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
15 employer on behalf of the employee to collect any wage claim or wage deficiency and
16 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
17 under s. 109.10, the department may refer such an action to the district attorney of
18 the county in which the violation occurs for prosecution and collection and the
19 district attorney shall commence an action in the circuit court having appropriate
20 jurisdiction. Any number of wage claims or wage deficiencies against the same
21 employer may be joined in a single proceeding, but the court may order separate
22 trials or hearings. In actions that are referred to a district attorney under this
23 subsection, any taxable costs recovered by the district attorney shall be paid into the
24 general fund of the county in which the violation occurs and used by that county to

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1 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
2 of the district attorney who prosecuted the action.

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

4 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
5 under s. 66.0903, 66.0904, 103.49, or 229.8275 or testifies or assists in any action or
6 proceeding under s. 66.0903, 66.0904, 103.49, or 229.8275.

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

8 227.01 (13) (t) Ascertain and determines prevailing wage rates under ss.
9 66.0903, 66.0904, 103.49, 103.50, and 229.8275, except that any action or inaction
10 which ascertain and determines prevailing wage rates under ss. 66.0903, 66.0904,
11 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

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

13 **946.15 Public and publicly funded construction contracts at less than**
14 **full rate. (1)** Any employer, or any agent or employee of an employer, who induces
15 any person who seeks to be or is employed pursuant to a public contract as defined
16 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
17 wage rate determination has been issued by the department of workforce
18 development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3)
19 or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6)
20 or 66.0904 (6) to give up, waive, or return any part of the compensation to which that
21 person is entitled under his or her contract of employment or under the prevailing
22 wage rate determination issued by the department or local governmental unit, or
23 who reduces the hourly basic rate of pay normally paid to an employee for work on
24 a project on which a prevailing wage rate determination has not been issued under
25 s. 66.0903 (3) or (6), 66.0904 (4) or (6), 103.49 (3), 103.50 (3), or 229.8275 (3) during

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1 a week in which the employee works both on a project on which a prevailing wage
2 rate determination has been issued and on a project on which a prevailing wage rate
3 determination has not been issued, is guilty of a Class I felony.

4 (2) Any person employed pursuant to a public contract as defined in s. 66.0901
5 (1) (c) or employed on a project on which a prevailing wage rate determination has
6 been issued by the department of workforce development under s. 66.0903 (3),
7 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit,
8 as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) who gives up,
9 waives, or returns to the employer or agent of the employer any part of the
10 compensation to which the employee is entitled under his or her contract of
11 employment or under the prevailing wage determination issued by the department
12 or local governmental unit, or who gives up any part of the compensation to which
13 he or she is normally entitled for work on a project on which a prevailing wage rate
14 determination has not been issued under s. 66.0903 (3) or (6), 66.0904 (4), 103.49 (3),
15 103.50 (3), or 229.8275 (3) during a week in which the person works part-time on a
16 project on which a prevailing wage rate determination has been issued and
17 part-time on a project on which a prevailing wage rate determination has not been
18 issued, is guilty of a Class C misdemeanor.

19 (3) Any employer or labor organization, or any agent or employee of an
20 employer or labor organization, who induces any person who seeks to be or is
21 employed on a project on which a prevailing wage rate determination has been issued
22 by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49
23 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903
24 (1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of the wages to which
25 that person is entitled under the prevailing wage rate determination issued by the

SENATE BILL 568**SECTION 21**

1 department or local governmental unit to be deducted from the person's pay is guilty
2 of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6
3 from a person who is working on a project that is subject to 40 USC 276c.

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

SECTION 22. Initial applicability.

13 (1) PREVAILING WAGES AND HOURS ON PRIVATE PROJECTS IN TAX INCREMENTAL
14 DISTRICTS. The treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3)
15 (ar), 103.50 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3)
16 (am), 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 of the statutes first
17 applies to contracts for the erection, construction, remodeling, repairing, or
18 demolition of publicly funded private construction projects, as defined in section
19 66.0904 (1) (j) of the statutes, as created by this act, entered into, or extended,
20 modified or renewed, on the effective date of this subsection.

21 (2) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c)
22 and 103.49 (5) (c) of the statutes first applies to requests for the inspection of payroll
23 records made on the effective date of this subsection.
24

