

2009 SENATE BILL 94

February 27, 2009 – Introduced by Senators COGGS, WIRCH, LEHMAN, HANSEN, CARPENTER, PLALE, LASSA, DARLING, OLSEN and ERPENBACH, cosponsored by Representatives SINICKI, BERCEAU, NEWCOMER, GRIGSBY, MASON, RICHARDS, TURNER, PASCH, FIELDS, PARISI, A. WILLIAMS, BENEDICT, A. OTT and VAN ROY. Referred to Committee on Labor, Elections and Urban Affairs.

1 **AN ACT** *to amend* 20.143 (3) (j), 101.02 (20) (a) and 101.02 (21) (a); and *to create*
2 15.157 (15) and 101.136 of the statutes; **relating to:** the licensing and
3 regulation of thermal system insulation mechanics; creating a thermal system
4 insulation council; requiring the employment of a state inspector; establishing
5 standards for installing and maintaining thermal system insulation; requiring
6 the exercise of rule-making authority; making an appropriation; and providing
7 a penalty.

Analysis by the Legislative Reference Bureau

The Department of Commerce (Commerce) administers various laws, including building codes, that promote safety in public and private buildings and in the subsystems of those buildings. To that end, Commerce issues various licenses, permits, registrations, and other credentials (licenses) to persons engaged in the construction trades, such as electricians and plumbers. Commerce also issues licenses in connection with the administration of other laws relating to public safety, such as those regulating fireworks and the storage of flammable liquids.

This bill requires Commerce to regulate the business of installing and maintaining thermal system insulation in commercial and industrial buildings and in residential buildings that contain four or more residential units. The bill defines thermal system insulation as a product used in a heating, ventilating, cooling,

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plumbing, or refrigeration system (heating or cooling system) to insulate any hot or cold surface on or in a building. The bill requires Commerce to license most persons who install and maintain thermal system insulation in heating or cooling systems (mechanics). The bill also requires Commerce to employ a state thermal system insulation inspector (state inspector). The bill establishes a thermal system insulation council (council), which recommends to Commerce the requirements for the licensure of mechanics. The council must also provide other advice to Commerce, including recommending training and continuing education requirements for mechanics.

Under the bill, the state inspector must have at least ten years of experience as a mechanic and must have successfully completed an apprenticeship program in installing and maintaining thermal system insulation. The state inspector must inspect buildings to determine whether the buildings comply with standards established by Commerce for the installation and maintenance of thermal system insulation (state standards). The state inspector must also keep complete and accurate records of all inspected buildings and give notice of noncompliance to the owner of every building who fails to comply with state standards. The bill authorizes the state inspector to enter and inspect buildings and to issue orders requiring the owner of a building to make repairs or alterations necessary for the building to conform to state standards. Under the bill, the state inspector must also provide assistance and information to building inspectors who inspect buildings for compliance with the standards established by Commerce under this bill.

The bill establishes minimum licensing requirements for thermal system insulation mechanics. Under the bill, a person may not obtain a mechanic's license unless he or she has acquired a specified amount of experience installing and maintaining thermal system insulation and passed a written examination approved by Commerce or has successfully completed an approved apprenticeship program. The licensing requirement under the bill does not apply to a person who makes only minor repairs to thermal system insulation.

The bill allows Commerce to waive any licensing requirement for mechanics for a person who is licensed in another state in which the standards for licensure are at least as strict as the bill's requirements. The bill also allows Commerce to waive any licensing requirement for experienced mechanics who submit evidence satisfactory to Commerce that the mechanic is qualified for licensure. The bill further provides that Commerce may not renew a license issued to a mechanic unless the mechanic completes an approved continuing education course during the previous license period.

The bill authorizes Commerce to assess directly a forfeiture by issuing an order against any person who installs, or contracts to install, insulation products without a license or who fails to comply with an order issued by the state inspector.

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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.** 15.157 (15) of the statutes is created to read:

2 15.157 **(15)** THERMAL SYSTEM INSULATION COUNCIL. There is created in the
3 department of commerce a thermal system insulation council consisting of the state
4 thermal system insulation inspector who shall serve as a nonvoting secretary of the
5 council, the secretary of commerce or his or her designee, and the following members
6 appointed for 3-year terms:

7 (a) Two members who represent major insulation companies that sponsor an
8 apprenticeship training program in installing and maintaining thermal system
9 insulation that is approved by the department and that meets the requirements of
10 the department of workforce development under ch. 106.

11 (b) One member who is an architect licensed to do business in this state with
12 work experience in the area of indoor air quality.

13 (c) Two members who are mechanics with at least 10 years of experience in the
14 area of heat and frost insulation and who have successfully completed training in
15 installing and maintaining thermal system insulation under an apprenticeship
16 program that is approved by the department and that meets the requirements of the
17 department of workforce development under ch. 106.

18 (d) One member who is a general contractor in this state.

19 **SECTION 2.** 20.143 (3) (j) of the statutes is amended to read:

20 20.143 **(3)** (j) *Safety and building operations.* The amounts in the schedule for
21 the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m),

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1 and 236.335, for the purpose of transferring the amounts in the schedule under par.
2 (kg) to the appropriation account under par. (kg), and for the purpose of transferring
3 the amounts in the schedule under par. (km) to the appropriation account under par.
4 (km). All moneys received under ch. 145, ss. 101.136 (6) (b), 101.177 (4) (a) 4.,
5 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 101.973
6 (7), and 236.12 (7), except moneys received under s. 101.9208 (2m), and all moneys
7 transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to this
8 appropriation.

9 **SECTION 3.** 101.02 (20) (a) of the statutes is amended to read:

10 101.02 **(20)** (a) For purposes of this subsection, “license” means a license,
11 permit or certificate of certification or registration issued by the department under
12 ss. 101.09 (3) (c), 101.122 (2) (c), 101.136, 101.143 (2) (g), 101.15 (2) (e), 101.17,
13 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6),
14 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4),
15 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

16 **SECTION 4.** 101.02 (21) (a) of the statutes is amended to read:

17 101.02 **(21)** (a) In this subsection, “license” means a license, permit or
18 certificate of certification or registration issued by the department under s. 101.09
19 (3) (c), 101.122 (2) (c), 101.136, 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),
20 101.178 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935,
21 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15,
22 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

23 **SECTION 5.** 101.136 of the statutes is created to read:

24 **101.136 Regulation of thermal system insulation installation. (1)**

25 DEFINITIONS. In this section:

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1 (a) “Building” means a commercial, industrial, or residential building,
2 structure, or facility, as defined by the department by rule, but does not include a
3 residential building, structure, or facility that contains 3 or fewer residential units.

4 (b) “Building inspector” means a person who is certified under rules
5 promulgated by the department to make inspections of public buildings and places
6 of employment.

7 (c) “Council” means the thermal system insulation council.

8 (d) “Mechanic” means a person who installs or maintains thermal system
9 insulation in heating, ventilating, cooling, plumbing, and refrigeration systems.

10 (e) “State inspector” means the state thermal system insulation inspector.

11 (f) “Thermal system insulation” means a product that is used in a heating,
12 ventilating, cooling, plumbing, or refrigeration system to insulate any hot or cold
13 surface, including a pipe, duct, valve, boiler, flue, or tank, or equipment on or in a
14 building.

15 **(2) STANDARDS.** The department shall promulgate rules establishing standards
16 for the installation and maintenance of thermal system insulation in buildings. The
17 department shall base the standards, to the extent possible, on national industry
18 standards for installing and maintaining thermal system insulation. Beginning on
19 the first day of the 19th month beginning after the effective date of this subsection
20 [LRB inserts date], thermal system insulation in buildings shall conform to these
21 standards.

22 **(3) DUTIES OF THE THERMAL SYSTEM INSULATION COUNCIL.** (a) The council shall
23 do all of the following:

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1 1. Recommend rules for promulgation by the department to establish
2 standards for the installation and maintenance of thermal system insulation in
3 buildings.

4 2. Recommend to the department requirements for the licensure of mechanics
5 and circumstances under which the department may take disciplinary action
6 against a mechanic, including suspension and revocation of a license.

7 3. Recommend to the department qualifications for the state inspector.

8 4. Recommend to the department training and continuing education
9 requirements for mechanics.

10 (b) The council may consult with engineering authorities and other
11 organizations concerned with safety and health issues related to thermal system
12 insulation and mold in performing its duties under this subsection.

13 **(4) INSPECTION.** (a) The department shall employ a person who has at least 10
14 years of experience as a mechanic, and who has successfully completed an
15 apprenticeship program in installing and maintaining thermal system insulation
16 that is approved by the department and that meets the requirements of the
17 department of workforce development under ch. 106, as the state inspector. The
18 state inspector shall work under the direct supervision of the secretary or his or her
19 designee.

20 (b) The state inspector shall do all of the following:

21 1. Inspect buildings constructed, or in which the mechanical systems have been
22 altered, to determine whether the installation or maintenance of thermal system
23 insulation in those buildings complies with the standards established by the
24 department under sub. (2). The state inspector shall conduct the inspections on a
25 random basis and whenever requested to do so by a building inspector. This

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1 subdivision applies to buildings constructed, and mechanical systems that have been
2 altered, on or after the first day of the 19th month beginning after the effective date
3 of this subdivision [LRB inserts date].

4 2. Provide assistance and information to building inspectors who inspect
5 buildings for compliance with the standards established by the department under
6 sub. (2).

7 3. Keep complete and accurate records of all inspected buildings, including a
8 list identifying all buildings that are in compliance with the standards established
9 by the department under sub. (2), a list of all buildings that are not in compliance
10 with the standards established by the department under sub. (2), and a list of all
11 orders that the state inspector issues under par. (c).

12 4. Give written notice of noncompliance to the owner of every building that the
13 state inspector determines does not comply with the standards established by the
14 department under sub. (2).

15 (c) The state inspector may issue an order requiring the owner of a building to
16 make repairs or alterations that the state inspector determines are necessary in
17 order for the building to comply with the standards established by the department
18 under sub. (2). The inspector shall issue such an order in writing.

19 **(5) RULES.** The department shall promulgate rules establishing all of the
20 following:

21 (a) Requirements for the licensing of mechanics. The rules shall provide that
22 a license issued to a mechanic under this section is valid for 2 years and is renewable.

23 (b) A definition of “minor repairs” for purposes of sub. (6) (a) 2.

24 (c) License fees for mechanics. The rules shall establish fees for the licensing
25 of mechanics that are not less than \$250 nor more than \$1,000 for each license period.

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1 (d) Training and continuing education requirements for mechanics.

2 (e) Procedures governing the assessment of forfeitures under sub. (11),
3 including the procedure for issuing an order for an alleged violation of this section,
4 the procedure for contesting an order issued for an alleged violation of this section,
5 and the procedure for contesting the assessment of a forfeiture for an alleged
6 violation of this section.

7 **(6) LICENSING OF MECHANICS.** (a) 1. Except as provided in subd. 2., beginning
8 on the first day of the 24th month beginning after the effective date of this
9 subdivision ... [LRB inserts date], no person may install or maintain thermal system
10 insulation in any building unless that person is a mechanic licensed by the
11 department under this section, is working under the direct supervision of a licensed
12 mechanic, or is serving an apprenticeship in the installation and maintenance of
13 thermal system insulation that meets the requirements specified under ch. 106.

14 2. Subdivision 1. does not apply to a person who makes only minor repairs to
15 thermal system insulation.

16 (b) A person wishing to obtain a mechanic's license shall apply for a license by
17 submitting an application on a form provided by the department together with the
18 applicable fee.

19 (c) Except as provided in par. (d), the department may not issue a license to a
20 mechanic unless the mechanic meets the requirements established by the
21 department by rule and either of the following requirements:

22 1. He or she has at least 1,000 hours of experience in each of 4 consecutive years
23 installing and maintaining thermal system insulation under the supervision of a
24 licensed mechanic and has passed an examination approved by the department.

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1 2. He or she has successfully completed training in installing and maintaining
2 thermal system insulation under an apprenticeship program that is approved by the
3 department and that meets the requirements of the department of workforce
4 development under ch. 106.

5 (d) The department may waive any requirement, or any portion of a
6 requirement under par. (c) for any person with experience in installing or
7 maintaining thermal system insulation upon submission of evidence satisfactory to
8 the department that the person is qualified for licensure.

9 (e) The department may not renew a license issued to a mechanic under this
10 section unless the mechanic submits a certificate to the department that
11 demonstrates that the mechanic has attended and successfully completed during the
12 previous license period a continuing education course approved by the department,
13 upon consultation with the council.

14 **(7) LICENSING EXCEPTIONS.** The department may waive a licensing requirement
15 under sub. (6) for any person who is licensed as a mechanic in another state in which
16 the standards for licensure are at least as strict as the requirements under sub. (6).

17 **(8) TEMPORARY AND EMERGENCY LICENSES.** The department may promulgate
18 rules establishing standards and procedures for the issuance of temporary and
19 emergency licenses for mechanics. The rule shall provide that a temporary or
20 emergency license issued under this subsection is valid for 30 days.

21 **(9) PROHIBITIONS.** No person may do any of the following:

22 (a) Make a false statement of material fact in an application for the issuance
23 or renewal of a license under this section.

24 (b) Engage in fraud, misrepresentation, or bribery to obtain a license under this
25 section.

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1 **(10) PENALTIES.** A person who violates this section or who fails to comply with
2 an order issued by the state inspector under this section is subject to a forfeiture of
3 not less than \$2,000 nor more than \$5,000 for each violation.

4 **(11) ASSESSMENT OF FORFEITURES BY THE DEPARTMENT.** (a) The department may
5 directly assess a forfeiture by issuing an order against any person who violates this
6 section or who fails to comply with an order issued by the state inspector under this
7 section.

8 (b) The department shall remit all forfeitures paid to the department under this
9 subsection to the secretary of administration for deposit into the school fund.

10 (c) All forfeitures that are not paid to the department as required under this
11 subsection shall accrue interest at the rate of 12 percent per year.

12 (d) The attorney general may bring an action in the name of the state to collect
13 any forfeiture imposed by the department, or interest accrued, if the forfeiture or
14 interest has not been paid after the exhaustion of all administrative and judicial
15 reviews. The only contestable issue in such an action is whether the forfeiture has
16 been paid.

SECTION 6. Nonstatutory provisions.

17 **(1) COUNCIL.** Notwithstanding the length of terms of the members of the
18 thermal system insulation council specified in section 15.157 (15) (a) to (d) of the
19 statutes, as created by this act, the initial members shall be appointed for the
20 following terms:
21

22 (a) Two members for a term that expires on July 1, 2012.

23 (b) Two members for a term that expires on July 1, 2013.

24 (c) Two members for a term that expires on July 1, 2014.

SECTION 7. Fiscal changes.
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1 (1) STATE THERMAL SYSTEM INSULATION INSPECTOR. In the schedule under section
2 20.005 (3) of the statutes for the appropriation to the department of commerce under
3 section 20.143 (3) (j) of the statutes, as affected by the acts of 2009, the dollar amount
4 is increased by \$78,100 for fiscal year 2008–09 and the dollar amount is increased
5 by \$78,100 for fiscal year 2009–10 to increase the authorized FTE positions for the
6 department of commerce by 1.0 PR position to perform the responsibilities of the
7 state thermal system insulation inspector.

8 **SECTION 8. Effective date.**

9 (1) This act takes effect on the day after publication, or on the 2nd day after
10 publication of the 2009–11 biennial budget act, whichever is later.

11

(END)