



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa2387/1
MED:amn

SENATE AMENDMENT,
TO ASSEMBLY BILL 748

LRBa 2528
drafting
file

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 9: after "state;" insert "a requirement that laborers, workers,
3 mechanics, and truck drivers employed on the site of a project of public works be paid
4 the prevailing wage;".

5 2. At the appropriate places, insert all of the following:

6 "SECTION 1. 19.36 (12) of the statutes is created to read:

7 19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is
8 specifically authorized or required by statute, an authority may not provide access
9 to a record prepared or provided by an employer performing work on a project to
10 which s. 66.0903, 103.49, or 103.50 applies, or on which the employer is otherwise
11 required to pay prevailing wages, if that record contains the name or other personally
12 identifiable information relating to an employee of that employer, unless the
13 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.** 66.0129 (5) of the statutes is amended to read:

5 66.0129 (5) BIDS FOR CONSTRUCTION. The nonprofit corporation shall let all
6 contracts exceeding \$1,000 for the construction, maintenance or repair of hospital
7 facilities to the lowest responsible bidder after advertising for bids by the publication
8 of a class 2 notice under ch. 985. ~~Section~~ Sections 66.0901 applies and 66.0903 apply
9 to bids and contracts under this subsection.

10 **SECTION 3.** 66.0903 (1) (a), (am), (b), (cm), (dr), (em), (hm) and (im) of the
11 statutes are created to read:

12 66.0903 (1) (a) “Area” means the county in which a proposed project of public
13 works that is subject to this section is located or, if the department determines that
14 there is insufficient wage data in that county, “area” means those counties that are
15 contiguous to that county or, if the department determines that there is insufficient
16 wage data in those counties, “area” means those counties that are contiguous to those
17 counties or, if the department determines that there is insufficient wage data in those
18 counties, “area” means the entire state or, if the department is requested to review
19 a determination under sub. (3) (br), “area” means the city, village, or town in which
20 a proposed project of public works that is subject to this section is located.

21 (am) “Bona fide economic benefit” has the meaning given in s. 103.49 (1) (am).

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

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

24 (dr) “Minor service or maintenance work” means a project of public works that
25 is limited to minor crack filling, chip or slurry sealing, or other minor pavement

1 patching, not including overlays, that has a projected life span of no longer than 5
2 years or that is performed for a town and is not funded under s. 86.31, regardless of
3 projected life span; the depositing of gravel on an existing gravel road applied solely
4 to maintain the road; road shoulder maintenance; cleaning of drainage or sewer
5 ditches or structures; or any other limited, minor work on public facilities or
6 equipment that is routinely performed to prevent breakdown or deterioration.

7 (em) "Multiple-trade project of public works" has the meaning given in s.
8 103.49 (1) (br).

9 (hm) "Single-trade project of public works" has the meaning given in s. 103.49
10 (1) (em).

11 (im) "Supply and installation contract" means a contract under which the
12 material is installed by the supplier, the material is installed by means of simple
13 fasteners or connectors such as screws or nuts and bolts, and no other work is
14 performed on the site of the project of public works, and the total labor cost to install
15 the material does not exceed 20 percent of the total cost of the contract.

16 **SECTION 4.** 66.0903 (1) (c) of the statutes, as affected by 2017 Wisconsin Act 59,
17 is amended to read:

18 66.0903 (1) (c) "Hourly basic rate of pay" has the meaning given in s. ~~16.856~~
19 103.49 (1) (b), ~~2015 stats.~~

20 **SECTION 5.** 66.0903 (1) (f) of the statutes, as affected by 2017 Wisconsin Act 59,
21 is amended to read:

22 66.0903 (1) (f) "Prevailing hours of labor" has the meaning given in s. ~~16.856~~
23 103.49 (1) (e), ~~2015 stats. (c).~~

24 **SECTION 6.** 66.0903 (1) (g) of the statutes, as affected by 2017 Wisconsin Act 59,
25 is repealed and recreated to read:

1 66.0903 (1) (g) 1. Except as provided in subd. 2., “prevailing wage rate” for any
2 trade or occupation engaged in the erection, construction, remodeling, repairing, or
3 demolition of any project of public works in any area means the hourly basic rate of
4 pay, plus the hourly contribution for health insurance benefits, vacation benefits,
5 pension benefits, and any other bona fide economic benefit, paid directly or
6 indirectly, for a majority of the hours worked in the trade or occupation on projects
7 in the area.

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

18 **SECTION 7.** 66.0903 (1) (j) of the statutes, as affected by 2017 Wisconsin Act 59,
19 is amended to read:

20 66.0903 (1) (j) “Truck driver” ~~includes an owner-operator of a truck~~ has the
21 meaning given in s. 103.49 (1) (g).

22 **SECTION 8.** 66.0903 (1m) (b) of the statutes is amended to read:

23 66.0903 (1m) (b) The legislature finds that the enactment of ordinances or
24 other enactments by local governmental units requiring laborers, workers,
25 mechanics, and truck drivers employed on projects of public works or on publicly

1 funded private construction projects to be paid the prevailing wage rate and to be
2 paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the
3 prevailing hours of labor would be logically inconsistent with, would defeat the
4 purpose of, and would go against the ~~repeals~~ spirit of this section and the repeal of
5 s. 66.0904, 2009 stats., ~~and s. 66.0903 (2) to (12), 2013 stats.~~ Therefore, this section
6 shall be construed as an enactment of statewide concern for the ~~purposes of~~
7 ~~facilitating broader participation with respect to bidding on projects of public works,~~
8 ~~ensuring that wages accurately reflect market conditions, providing local~~
9 ~~governments with the flexibility to reduce costs on capital projects, and reducing~~
10 ~~spending at all levels of government in this state~~ purpose of providing uniform
11 prevailing wage rate and prevailing hours of labor requirements throughout the
12 state.

13 **SECTION 9.** 66.0903 (2) to (12) of the statutes are created to read:

14 66.0903 (2) APPLICABILITY. Subject to sub. (5), this section applies to any project
15 of public works erected, constructed, repaired, remodeled, or demolished for a local
16 governmental unit, including all of the following:

17 (a) A highway, street, bridge, building, or other infrastructure project.

18 (b) A project erected, constructed, repaired, remodeled, or demolished by one
19 local governmental unit for another local governmental unit under a contract under
20 s. 66.0301 (2), 83.03, 83.035, or 86.31 (2) (b) or under any other statute specifically
21 authorizing cooperation between local governmental units.

22 (c) A project in which the completed facility is leased, purchased, lease
23 purchased, or otherwise acquired by, or dedicated to, a local governmental unit in lieu
24 of the local governmental unit contracting for the erection, construction, repair,
25 remodeling, or demolition of the facility.

1 (d) A road, street, bridge, sanitary sewer, or water main project in which the
2 completed road, street, bridge, sanitary sewer, or water main is acquired by, or
3 dedicated to, a local governmental unit, including under s. 236.13 (2), for ownership
4 or maintenance by the local governmental unit.

5 (3) PREVAILING WAGE RATES AND HOURS OF LABOR. (am) A local governmental unit,
6 before making a contract by direct negotiation or soliciting bids on a contract for the
7 erection, construction, remodeling, repairing, or demolition of any project of public
8 works, shall apply to the department to determine the prevailing wage rate for each
9 trade or occupation required in the work contemplated. The department shall
10 conduct investigations and hold public hearings as necessary to define the trades or
11 occupations that are commonly employed on projects of public works that are subject
12 to this section and to inform itself as to the prevailing wage rates in all areas of the
13 state for those trades or occupations, in order to determine the prevailing wage rate
14 for each trade or occupation. The department shall issue its determination within
15 30 days after receiving the request and shall file the determination with the
16 requesting local governmental unit.

17 (ar) The department shall, by January 1 of each year, compile the prevailing
18 wage rates for each trade or occupation in each area. The compilation shall, in
19 addition to the current prevailing wage rates, include future prevailing wage rates
20 when those prevailing wage rates can be determined for any trade or occupation in
21 any area and shall specify the effective date of those future prevailing wage rates.
22 If a project of public works extends into more than one area, there shall be only one
23 standard of prevailing wage rates for the entire project.

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

1 or 103.50, or 40 USC 3142 unless the department determines that there is
2 insufficient wage data in the area to determine those prevailing wage rates, in which
3 case the department may use data from projects that are subject to this section, s.
4 103.49 or 103.50, or 40 USC 3142. In determining prevailing wage rates under par.
5 (am) or (ar), the department may not use data from any construction work that is
6 performed by a local governmental unit or a state agency.

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

16 (br) In addition to the recalculation under par. (bm), the local governmental
17 unit that requested the determination under this subsection may request a review
18 of any portion of a determination within 30 days after the date of issuance of the
19 determination if the local governmental unit submits evidence with the request
20 showing that the prevailing wage rate for any given trade or occupation included in
21 the determination does not represent the prevailing wage rate for that trade or
22 occupation in the city, village, or town in which the proposed project of public works
23 is located. That evidence shall include wage rate information for the contested trade
24 or occupation on at least 3 similar projects located in the city, village, or town where
25 the proposed project of public works is located and on which some work has been

1 performed during the current survey period and which were considered by the
2 department in issuing its most recent compilation under par. (ar). The department
3 shall affirm or modify the determination within 15 days after the date on which the
4 department receives the request for review.

5 (dm) A reference to the prevailing wage rates determined by the department
6 and to the prevailing hours of labor shall be published in the notice issued for the
7 purpose of securing bids for the project of public works. If any contract or subcontract
8 for a project of public works is entered into, the prevailing wage rates determined by
9 the department and the prevailing hours of labor shall be physically incorporated
10 into and made a part of the contract or subcontract, except that for a minor
11 subcontract, as determined by the department, the department shall prescribe by
12 rule the method of notifying the minor subcontractor of the prevailing wage rates and
13 prevailing hours of labor applicable to the minor subcontract. The prevailing wage
14 rates and prevailing hours of labor applicable to a contract or subcontract may not
15 be changed during the time that the contract or subcontract is in force. No person
16 performing the work described in sub. (4) may be paid less than the prevailing wage
17 rate in the same or most similar trade or occupation determined under this
18 subsection; nor may he or she be permitted to work a greater number of hours per
19 day or per week than the prevailing hours of labor, unless he or she is paid for all
20 hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times
21 his or her hourly basic rate of pay.

22 (4) COVERED EMPLOYEES. (a) Subject to par. (b), all of the following employees
23 shall be paid the prevailing wage rate determined under sub. (3) and may not be
24 permitted to work a greater number of hours per day or per week than the prevailing

1 hours of labor, unless they are paid for all hours worked in excess of the prevailing
2 hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

3 1. All laborers, workers, mechanics, and truck drivers employed on the site of
4 a project of public works that is subject to this section.

5 2. All laborers, workers, mechanics, and truck drivers employed in the
6 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
7 of a project of public works that is subject to this section or from a facility dedicated
8 exclusively, or nearly so, to a project of public works that is subject to this section by
9 a contractor, subcontractor, agent, or other person performing any work on the site
10 of the project.

11 (b) A laborer, worker, mechanic, or truck driver who is employed to process,
12 manufacture, pick up, or deliver materials or products from a commercial
13 establishment that has a fixed place of business from which the establishment
14 supplies processed or manufactured materials or products or from a facility that is
15 not dedicated exclusively, or nearly so, to a project of public works that is subject to
16 this section is not entitled to receive the prevailing wage rate determined under sub.
17 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
18 worked in excess of the prevailing hours of labor unless any of the following applies:

19 1. The laborer, worker, mechanic, or truck driver is employed to go to the source
20 of mineral aggregate such as sand, gravel, or stone and deliver that mineral
21 aggregate to the site of a project of public works that is subject to this section by
22 depositing the material directly in final place, from the transporting vehicle or
23 through spreaders from the transporting vehicle.

24 2. The laborer, worker, mechanic, or truck driver is employed to go to the site
25 of a project of public works that is subject to this section, pick up excavated material

1 or spoil from the site of the project, and transport that excavated material or spoil
2 away from the site of the project.

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

5 (5) NONAPPLICABILITY. This section does not apply to any of the following:

6 (a) A single-trade project of public works for which the estimated project cost
7 of completion is less than \$48,000, a multiple-trade project of public works for which
8 the estimated project cost of completion is less than \$100,000, or, in the case of a
9 multiple-trade project of public works erected, constructed, repaired, remodeled, or
10 demolished by a private contractor for a city or village having a population of less
11 than 2,500 or for a town, a multiple-trade project of public works for which the
12 estimated project cost of completion is less than \$234,000.

13 (b) Work performed on a project of public works for which the local
14 governmental unit contracting for the project is not required to compensate any
15 contractor, subcontractor, contractor's or subcontractor's agent, or individual for
16 performing the work.

17 (c) Minor service or maintenance work, warranty work, or work under a supply
18 and installation contract.

19 (f) A project of public works involving the erection, construction, repair,
20 remodeling, or demolition of a residential property containing 2 dwelling units or
21 less.

22 (g) A road, street, bridge, sanitary sewer, or water main project that is a part
23 of a development in which not less than 90 percent of the lots contain or will contain
24 2 dwelling units or less, as determined by the local governmental unit at the time of
25 approval of the development, and that, on completion, is acquired by, or dedicated to,

1 a local governmental unit, including under s. 236.13 (2), for ownership or
2 maintenance by the local governmental unit.

3 (8) POSTING. For the information of the employees working on the project of
4 public works, the prevailing wage rates determined by the department, the
5 prevailing hours of labor, and the provisions of subs. (10) (a) and (11) (a) shall be kept
6 posted by the local governmental unit in at least one conspicuous and easily
7 accessible place on the site of the project or, if there is no common site on the project,
8 at the place normally used by the local governmental unit to post public notices.

9 (9) COMPLIANCE. (a) When the department finds that a local governmental unit
10 has not requested a determination under sub. (3) (am) or that a local governmental
11 unit, contractor, or subcontractor has not physically incorporated a determination
12 into a contract or subcontract as required under this section or has not notified a
13 minor subcontractor of a determination in the manner prescribed by the department
14 by rule promulgated under sub. (3) (dm), the department shall notify the local
15 governmental unit, contractor, or subcontractor of the noncompliance and shall file
16 the determination with the local governmental unit, contractor, or subcontractor
17 within 30 days after the notice.

18 (b) Upon completion of a project of public works and before receiving final
19 payment for his or her work on the project, each agent or subcontractor shall furnish
20 the contractor with an affidavit stating that the agent or subcontractor has complied
21 fully with the requirements of this section. A contractor may not authorize final
22 payment until the affidavit is filed in proper form and order.

23 (c) Upon completion of a project of public works and before receiving final
24 payment for his or her work on the project, each contractor shall file with the local
25 governmental unit authorizing the work an affidavit stating that the contractor has

1 complied fully with the requirements of this section and that the contractor has
2 received an affidavit under par. (b) from each of the contractor's agents and
3 subcontractors. A local governmental unit may not authorize a final payment until
4 the affidavit is filed in proper form and order. If a local governmental unit authorizes
5 a final payment before an affidavit is filed in proper form and order or if the
6 department determines, based on the greater weight of the credible evidence, that
7 any person performing the work specified in sub. (4) has been or may have been paid
8 less than the prevailing wage rate or less than 1.5 times the hourly basic rate of pay
9 for all hours worked in excess of the prevailing hours of labor and requests that the
10 local governmental unit withhold all or part of the final payment, but the local
11 governmental unit fails to do so, the local governmental unit is liable for all back
12 wages payable up to the amount of the final payment.

13 **(10) RECORDS; INSPECTION; ENFORCEMENT.** (a) Each contractor, subcontractor, or
14 contractor's or subcontractor's agent performing work on a project of public works
15 that is subject to this section shall keep full and accurate records clearly indicating
16 the name and trade or occupation of every person performing the work described in
17 sub. (4) and an accurate record of the number of hours worked by each of those
18 persons and the actual wages paid for the hours worked.

19 (b) The department or the contracting local governmental unit may demand
20 and examine, and every contractor, subcontractor, and contractor's or
21 subcontractor's agent shall keep, and furnish upon request by the department or
22 local governmental unit, copies of payrolls and other records and information
23 relating to the wages paid to persons performing the work described in sub. (4) for
24 work to which this section applies. The department may inspect records in the
25 manner provided in ch. 103. Every contractor, subcontractor, or agent performing

1 work on a project of public works that is subject to this section is subject to the
2 requirements of ch. 103 relating to the examination of records.

3 (c) If requested by any person, the department shall inspect the payroll records
4 of any contractor, subcontractor, or agent performing work on a project of public
5 works that is subject to this section as provided in this paragraph to ensure
6 compliance with this section. On receipt of such a request, the department shall
7 request the contractor, subcontractor, or agent to submit to the department a
8 certified record of the information specified in par. (a), other than personally
9 identifiable information relating to an employee of the contractor, subcontractor, or
10 agent, for no longer than a 4-week period. The department may request a contractor,
11 subcontractor, or agent to submit those records no more than once per calendar
12 quarter for each project of public works on which the contractor, subcontractor, or
13 agent is performing work. The department may not charge a requester a fee for
14 obtaining that information. The department shall make available for public
15 inspection certified records submitted to the department under this paragraph.

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

22 **(11) LIABILITY AND PENALTIES.** (a) 1. Any contractor, subcontractor, or
23 contractor's or subcontractor's agent who fails to pay the prevailing wage rate
24 determined by the department under sub. (3) or who pays less than 1.5 times the
25 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor

1 is liable to any affected employee in the amount of his or her unpaid wages or his or
2 her unpaid overtime compensation and in an additional amount as liquidated
3 damages as provided under subd. 2. or 3., whichever is applicable.

4 2. If the department determines upon inspection under sub. (10) (b) or (c) that
5 a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay
6 the prevailing wage rate determined by the department under sub. (3) or has paid
7 less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
8 prevailing hours of labor, the department shall order the contractor to pay to any
9 affected employee the amount of his or her unpaid wages or his or her unpaid
10 overtime compensation and an additional amount equal to 100 percent of the amount
11 of those unpaid wages or that unpaid overtime compensation as liquidated damages
12 within a period specified by the department in the order.

13 3. In addition to or in lieu of recovering the liability specified in subd. 1. as
14 provided in subd. 2., any employee for and in behalf of that employee and other
15 employees similarly situated may commence an action to recover that liability in any
16 court of competent jurisdiction. If the court finds that a contractor, subcontractor,
17 or contractor's or subcontractor's agent has failed to pay the prevailing wage rate
18 determined by the department under sub. (3) or has paid less than 1.5 times the
19 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor,
20 the court shall order the contractor, subcontractor, or agent to pay to any affected
21 employee the amount of his or her unpaid wages or his or her unpaid overtime
22 compensation and an additional amount equal to 100 percent of the amount of those
23 unpaid wages or that unpaid overtime compensation as liquidated damages.

24 5. No employee may be a party plaintiff to an action under subd. 3. unless the
25 employee consents in writing to become a party and the consent is filed in the court

1 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in
2 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees
3 and costs to be paid by the defendant.

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

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

16 3. Any person employed on a project of public works that is subject to this
17 section who knowingly permits a contractor, subcontractor, or contractor's or
18 subcontractor's agent to pay him or her less than the prevailing wage rate set forth
19 in the contract governing the project, who gives up, waives, or returns any part of the
20 compensation to which he or she is entitled under the contract, or who gives up,
21 waives, or returns any part of the compensation to which he or she is normally
22 entitled for work on a project that is not subject to this section during a week in which
23 the person works both on a project of public works that is subject to this section and
24 on a project that is not subject to this section, is guilty of an offense under s. 946.15
25 (2).

1 4. Whoever induces any person who seeks to be or is employed on any project
2 of public works that is subject to this section to permit any part of the wages to which
3 the person is entitled under the contract governing the project to be deducted from
4 the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would
5 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
6 is subject to 40 USC 3142.

7 5. Any person employed on a project of public works that is subject to this
8 section who knowingly permits any part of the wages to which he or she is entitled
9 under the contract governing the project to be deducted from his or her pay is guilty
10 of an offense under s. 946.15 (4), unless the deduction would be permitted under 29
11 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
12 3142.

13 6. Subdivision 1. does not apply to any person who fails to provide any
14 information to the department to assist the department in determining prevailing
15 wage rates under sub. (3) (am) or (ar).

16 **(12) DEBARMENT.** (a) Except as provided under pars. (b) and (c), the department
17 shall notify any local governmental unit applying for a determination under sub. (3)
18 of the names of all persons whom the department has found to have failed to pay the
19 prevailing wage rate determined under sub. (3) or has found to have paid less than
20 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing
21 hours of labor at any time in the preceding 3 years. The department shall include
22 with each name the address of the person and shall specify when the person failed
23 to pay the prevailing wage rate and when the person paid less than 1.5 times the
24 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.
25 A local governmental unit may not award any contract to the person unless otherwise

1 recommended by the department or unless 3 years have elapsed from the date the
2 department issued its findings or the date of final determination by a court of
3 competent jurisdiction, whichever is later.

4 (b) The department may not include in a notification under par. (a) the name
5 of any person on the basis of having let work to a person whom the department has
6 found to have failed to pay the prevailing wage rate determined under sub. (3) or has
7 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
8 in excess of the prevailing hours of labor.

9 (c) This subsection does not apply to any contractor, subcontractor, or agent
10 who in good faith commits a minor violation of this section, as determined on a
11 case-by-case basis through administrative hearings with all rights to due process
12 afforded to all parties or who has not exhausted or waived all appeals.

13 (d) Any person submitting a bid or negotiating a contract on a project of public
14 works that is subject to this section shall, on the date the person submits the bid or
15 negotiates the contract, identify any construction business in which the person, or
16 a shareholder, officer, or partner of the person, if the person is a business, owns, or
17 has owned at least a 25 percent interest on the date the person submits the bid or
18 negotiates the contract or at any other time within 3 years preceding the date the
19 person submits the bid or negotiates the contract, if the business has been found to
20 have failed to pay the prevailing wage rate determined under sub. (3) or to have paid
21 less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
22 prevailing hours of labor.

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

24 **SECTION 10.** 84.41 (3) of the statutes is created to read:

1 84.41 (3) EMPLOYMENT REGULATIONS. Employment regulations set forth in s.
2 103.50 pertaining to wages and hours shall apply to all projects constructed under
3 s. 84.40 in the same manner as such laws apply to projects on other state highways.
4 Where applicable, the federal wages and hours law known as the Davis-Bacon act
5 shall apply.

6 **SECTION 11.** 103.005 (12) (a) of the statutes is amended to read:

7 103.005 (12) (a) If any employer, employee, owner, or other person violates chs.
8 103 to 106, or fails or refuses to perform any duty required under chs. 103 to 106,
9 within the time prescribed by the department, for which no penalty has been
10 specifically provided, or fails, neglects or refuses to obey any lawful order given or
11 made by the department or any judgment or decree made by any court in connection
12 with chs. 103 to 106, for each such violation, failure or refusal, the employer,
13 employee, owner or other person shall forfeit not less than \$10 nor more than \$100
14 for each offense. This paragraph does not apply to any person who fails to provide
15 any information to the department to assist the department in determining
16 prevailing wage rates or prevailing hours of labor under s. 103.49 (3) (a) or (am) or
17 103.50 (3) or (4).

18 **SECTION 12.** 103.49 of the statutes is created to read:

19 **103.49 Wage rate on state work. (1) DEFINITIONS.** In this section:

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

1 counties, “area” means the entire state or, if the department is requested to review
2 a determination under sub. (3) (c), “area” means the city, village, or town in which
3 a proposed project of public works that is subject to this section is located.

4 (am) “Bona fide economic benefit” means an economic benefit for which an
5 employer makes irrevocable contributions to a trust or fund created under 29 USC
6 186 (c) or to any other bona fide plan, trust, program, or fund no less often than
7 quarterly or, if an employer makes annual contributions to such a bona fide plan,
8 trust, program, or fund, for which the employer irrevocably escrows moneys at least
9 quarterly based on the employer’s expected annual contribution.

10 (b) “Hourly basic rate of pay” means the hourly wage paid to any employee,
11 excluding any contributions or payments for health insurance benefits, vacation
12 benefits, pension benefits, and any other bona fide economic benefits, whether paid
13 directly or indirectly.

14 (bg) “Insufficient wage data” means less than 500 hours of work performed in
15 a particular trade or occupation on projects that are similar to a proposed project of
16 public works that is subject to this section.

17 (bj) “Minor service or maintenance work” means a project of public works that
18 is limited to minor crack filling, chip or slurry sealing, or other minor pavement
19 patching, not including overlays, that has a projected life span of no longer than 5
20 years; cleaning of drainage or sewer ditches or structures; or any other limited, minor
21 work on public facilities or equipment that is routinely performed to prevent
22 breakdown or deterioration.

23 (br) “Multiple-trade project of public works” means a project of public works
24 in which no single trade accounts for 85 percent or more of the total labor cost of the
25 project.

1 (c) "Prevailing hours of labor" for any trade or occupation in any area means
2 10 hours per day and 40 hours per week and may not include any hours worked on
3 a Saturday or Sunday or on any of the following holidays:

- 4 1. January 1.
- 5 2. The last Monday in May.
- 6 3. July 4.
- 7 4. The first Monday in September.
- 8 5. The 4th Thursday in November.
- 9 6. December 25.

10 7. The day before if January 1, July 4, or December 25 falls on a Saturday.

11 8. The day following if January 1, July 4, or December 25 falls on a Sunday.

12 (d) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or
13 occupation engaged in the erection, construction, remodeling, repairing, or
14 demolition of any project of public works in any area means the hourly basic rate of
15 pay, plus the hourly contribution for health insurance benefits, vacation benefits,
16 pension benefits, and any other bona fide economic benefit, paid directly or indirectly
17 for a majority of the hours worked in the trade or occupation on projects in the area.

18 2. If there is no rate at which a majority of the hours worked in the trade or
19 occupation on projects in the area is paid, "prevailing wage rate" for any trade or
20 occupation engaged in the erection, construction, remodeling, repairing, or
21 demolition of any project of public works in any area means the average hourly basic
22 rate of pay, weighted by the number of hours worked, plus the average hourly
23 contribution, weighted by the number of hours worked, for health insurance benefits,
24 vacation benefits, pension benefits, and any other bona fide economic benefit, paid
25 directly or indirectly for all hours worked at the hourly basic rate of pay of the

1 highest-paid 51 percent of hours worked in that trade or occupation on projects in
2 that area.

3 (em) "Single-trade project of public works" means a project of public works in
4 which a single trade accounts for 85 percent or more of the total labor cost of the
5 project.

6 (f) "State agency" means any office, department, independent agency,
7 institution of higher education, association, society, or other body in state
8 government created or authorized to be created by the constitution or any law,
9 including the legislature and the courts. "State agency" also includes the University
10 of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System
11 Authority, and the Wisconsin Aerospace Authority.

12 (fm) "Supply and installation contract" means a contract under which the
13 material is installed by the supplier, the material is installed by means of simple
14 fasteners or connectors such as screws or nuts and bolts, and no other work is
15 performed on the site of the project of public works, and the total labor cost to install
16 the material does not exceed 20 percent of the total cost of the contract.

17 (g) "Truck driver" includes an owner-operator of a truck.

18 **(1m) APPLICABILITY.** Subject to sub. (3g), this section applies to any project of
19 public works erected, constructed, repaired, remodeled, or demolished for the state
20 or a state agency, including all of the following:

21 (a) A project erected, constructed, repaired, remodeled, or demolished by one
22 state agency for another state agency under any contract or under any statute
23 specifically authorizing cooperation between state agencies.

24 (b) A project in which the completed facility is leased, purchased, lease
25 purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or

1 a state agency contracting for the erection, construction, repair, remodeling, or
2 demolition of the facility.

3 (c) A sanitary sewer or water main project in which the completed sanitary
4 sewer or water main is acquired by, or dedicated to, the state for ownership or
5 maintenance by the state.

6 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** Any contract made for the
7 erection, construction, remodeling, repairing, or demolition of any project of public
8 works to which the state or any state agency is a party shall contain a stipulation that
9 no person performing the work described in sub. (2m) may be permitted to work a
10 greater number of hours per day or per week than the prevailing hours of labor,
11 except that any such person may be permitted or required to work more than such
12 prevailing hours of labor per day and per week if he or she is paid for all hours worked
13 in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly
14 basic rate of pay; nor may he or she be paid less than the prevailing wage rate
15 determined under sub. (3) in the same or most similar trade or occupation in the area
16 in which the project of public works is situated. A reference to the prevailing wage
17 rates determined under sub. (3) and the prevailing hours of labor shall be published
18 in the notice issued for the purpose of securing bids for the project. If any contract
19 or subcontract for a project of public works that is subject to this section is entered
20 into, the prevailing wage rates determined under sub. (3) and the prevailing hours
21 of labor shall be physically incorporated into and made a part of the contract or
22 subcontract, except that for a minor subcontract, as determined by the department,
23 the department shall prescribe by rule the method of notifying the minor
24 subcontractor of the prevailing wage rates and prevailing hours of labor applicable
25 to the minor subcontract. The prevailing wage rates and prevailing hours of labor

1 applicable to a contract or subcontract may not be changed during the time that the
2 contract or subcontract is in force.

3 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), all of the following employees
4 shall be paid the prevailing wage rate determined under sub. (3) and may not be
5 permitted to work a greater number of hours per day or per week than the prevailing
6 hours of labor, unless they are paid for all hours worked in excess of the prevailing
7 hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

8 1. All laborers, workers, mechanics, and truck drivers employed on the site of
9 a project of public works that is subject to this section.

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

16 (b) A laborer, worker, mechanic, or truck driver who is employed to process,
17 manufacture, pick up, or deliver materials or products from a commercial
18 establishment that has a fixed place of business from which the establishment
19 supplies processed or manufactured materials or products or from a facility that is
20 not dedicated exclusively, or nearly so, to a project of public works that is subject to
21 this section is not entitled to receive the prevailing wage rate determined under sub.
22 (3) 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 applies:

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 and deliver that mineral

1 aggregate to the site of a project of public works that is subject to this section by
2 depositing the material directly in final place, from the transporting vehicle or
3 through spreaders from the transporting vehicle.

4 2. The laborer, worker, mechanic, or truck driver is employed to go to the site
5 of a project that is subject to this section, pick up excavated material or spoil from
6 the site of the project of public works, and transport that excavated material or spoil
7 away from the site of the project.

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

10 **(3) INVESTIGATION; DETERMINATION.** (a) Before bids are asked for any work to
11 which this section applies, the state agency having the authority to prescribe the
12 specifications shall apply to the department to determine the prevailing wage rate
13 for each trade or occupation required in the work under contemplation in the area
14 in which the work is to be done. The department shall conduct investigations and
15 hold public hearings as necessary to define the trades or occupations that are
16 commonly employed on projects that are subject to this section and to inform itself
17 as to the prevailing wage rates in all areas of the state for those trades or occupations,
18 in order to determine the prevailing wage rate for each trade or occupation. The
19 department shall issue its determination within 30 days after receiving the request
20 and shall file the determination with the requesting state agency. For the
21 information of the employees working on the project, the prevailing wage rates
22 determined by the department, the prevailing hours of labor, and the provisions of
23 subs. (2) and (6m) shall be kept posted by the state agency in at least one conspicuous
24 and easily accessible place on the site of the project.

1 (am) The department shall, by January 1 of each year, compile the prevailing
2 wage rates for each trade or occupation in each area. The compilation shall, in
3 addition to the current prevailing wage rates, include future prevailing wage rates
4 when those prevailing wage rates can be determined for any trade or occupation in
5 any area and shall specify the effective date of those future prevailing wage rates.
6 If a project of public works extends into more than one area there shall be only one
7 standard of prevailing wage rates for the entire project.

8 (ar) In determining prevailing wage rates under par. (a) or (am), the
9 department may not use data from projects that are subject to this section, s. 66.0903,
10 103.50, or 229.8275, or 40 USC 3142 unless the department determines that there
11 is insufficient wage data in the area to determine those prevailing wage rates, in
12 which case the department may use data from projects that are subject to this
13 section, s. 66.0903, 103.50, or 229.8275, or 40 USC 3142. In determining prevailing
14 wage rates under par. (a) or (am), the department may not use data from any
15 construction work performed by a state agency or a local governmental unit, as
16 defined in s. 66.0903 (1) (d).

17 (b) Any person may request a recalculation of any portion of an initial
18 determination within 30 days after the initial determination date if the person
19 submits evidence with the request showing that the prevailing wage rate for any
20 given trade or occupation included in the initial determination does not represent the
21 prevailing wage rate for that trade or occupation in the area. The evidence shall
22 include wage rate information reflecting work performed by persons working in the
23 contested trade or occupation in the area during the current survey period. The
24 department shall affirm or modify the initial determination within 15 days after the
25 date on which the department receives the request for recalculation.

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

15 **(3g) NONAPPLICABILITY.** This section does not apply to any of the following:

16 (a) A single-trade project of public works for which the estimated project cost
17 of completion is less than \$48,000 or a multiple-trade project of public works for
18 which the estimated project cost of completion is less than \$100,000.

19 (b) Work performed on a project of public works for which the state or the state
20 agency contracting for the project is not required to compensate any contractor,
21 subcontractor, contractor's or subcontractor's agent, or individual for performing the
22 work.

23 (c) Minor service or maintenance work, warranty work, or work under a supply
24 and installation contract.

25 (f) A public highway, street, or bridge project.

1 (g) A project of public works involving the erection, construction, repair,
2 remodeling, or demolition of a residential property containing 2 dwelling units or
3 less.

4 (h) A road, street, bridge, sanitary sewer, or water main project that is a part
5 of a development in which not less than 90 percent of the lots contain or will contain
6 2 dwelling units or less, as determined by the local governmental unit at the time of
7 approval of the development, and that, on completion, is acquired by, or dedicated to,
8 the state for ownership or maintenance by the state.

9 **(4r)** COMPLIANCE. (a) When the department finds that a state agency has not
10 requested a determination under sub. (3) (a) or that a state agency, contractor, or
11 subcontractor has not physically incorporated a determination into a contract or
12 subcontract as required under sub. (2) or has not notified a minor subcontractor of
13 a determination in the manner prescribed by the department by rule promulgated
14 under sub. (2), the department shall notify the state agency, contractor or
15 subcontractor of the noncompliance and shall file the determination with the state
16 agency, contractor, or subcontractor within 30 days after such notice.

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

22 (c) Upon completion of a project of public works and before receiving final
23 payment for his or her work on the project, each contractor shall file with the state
24 agency authorizing the work an affidavit stating that the contractor has complied
25 fully with the requirements of this section and that the contractor has received an

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

11 (5) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor, or
12 contractor's or subcontractor's agent performing work on a project of public works
13 that is subject to this section shall keep full and accurate records clearly indicating
14 the name and trade or occupation of every person performing the work described in
15 sub. (2m) and an accurate record of the number of hours worked by each of those
16 persons and the actual wages paid for the hours worked.

17 (b) It shall be the duty of the department to enforce this section. To this end
18 it may demand and examine, and every contractor, subcontractor, and contractor's
19 and subcontractor's agent shall keep, and furnish upon request by the department,
20 copies of payrolls and other records and information relating to the wages paid to
21 persons performing the work described in sub. (2m) for work to which this section
22 applies. The department may inspect records in the manner provided in this chapter.
23 Every contractor, subcontractor, or agent performing work on a project of public
24 works that is subject to this section is subject to the requirements of this chapter
25 relating to the examination of records. Section 111.322 (2m) applies to discharge and

1 other discriminatory acts arising in connection with any proceeding under this
2 section.

3 (c) If requested by any person, the department shall inspect the payroll records
4 of any contractor, subcontractor, or agent performing work on a project of public
5 works that is subject to this section as provided in this paragraph to ensure
6 compliance with this section. On receipt of such a request, the department shall
7 request the contractor, subcontractor, or agent to submit to the department a
8 certified record of the information specified in par. (a), other than personally
9 identifiable information relating to an employee of the contractor, subcontractor, or
10 agent, for no longer than a 4-week period. The department may request a contractor,
11 subcontractor, or agent to submit those records no more than once per calendar
12 quarter for each project of public works on which the contractor, subcontractor, or
13 agent is performing work. The department may not charge a requester a fee for
14 obtaining that information. The department shall make available for public
15 inspection certified records submitted to the department under this paragraph.

16 **(6m) LIABILITY AND PENALTIES.** (ag) 1. Any contractor, subcontractor, or
17 contractor's or subcontractor's agent who fails to pay the prevailing wage rate
18 determined by the department under sub. (3) or who pays less than 1.5 times the
19 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor
20 is liable to any affected employee in the amount of his or her unpaid wages or his or
21 her unpaid overtime compensation and in an additional amount as liquidated
22 damages as provided in subd. 2. or 3., whichever is applicable.

23 2. If the department determines upon inspection under sub. (5) (b) or (c) that
24 a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay
25 the prevailing wage rate determined by the department under sub. (3) or has paid

1 less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
2 prevailing hours of labor, the department shall order the contractor to pay to any
3 affected employee the amount of his or her unpaid wages or his or her unpaid
4 overtime compensation and an additional amount equal to 100 percent of the amount
5 of those unpaid wages or that unpaid overtime compensation as liquidated damages
6 within a period specified by the department in the order.

7 3. In addition to or in lieu of recovering the liability specified in subd. 1. as
8 provided in subd. 2., any employee for and in behalf of that employee and other
9 employees similarly situated may commence an action to recover that liability in any
10 court of competent jurisdiction. If the court finds that a contractor, subcontractor,
11 or contractor's or subcontractor's agent has failed to pay the prevailing wage rate
12 determined by the department under sub. (3) or has paid less than 1.5 times the
13 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor,
14 the court shall order the contractor, subcontractor, or agent to pay to any affected
15 employee the amount of his or her unpaid wages or his or her unpaid overtime
16 compensation and an additional amount equal to 100 percent of the amount of those
17 unpaid wages or that unpaid overtime compensation as liquidated damages.

18 5. No employee may be a party plaintiff to an action under subd. 3. unless the
19 employee consents in writing to become a party and the consent is filed in the court
20 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in
21 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees
22 and costs to be paid by the defendant.

23 (am) Except as provided in pars. (b), (d), and (f), any contractor, subcontractor,
24 or contractor's or subcontractor's agent who violates this section may be fined not

1 more than \$200 or imprisoned for not more than 6 months or both. Each day that
2 a violation continues is a separate offense.

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

11 (c) Any person employed on a project of public works that is subject to this
12 section who knowingly permits a contractor, subcontractor, or contractor's or
13 subcontractor's agent to pay him or her less than the prevailing wage rate set forth
14 in the contract governing the project, who gives up, waives, or returns any part of the
15 compensation to which he or she is entitled under the contract, or who gives up,
16 waives, or returns any part of the compensation to which he or she is normally
17 entitled for work on a project that is not subject to this section during a week in which
18 the person works both on a project of public works that is subject to this section and
19 on a project that is not subject to this section, is guilty of an offense under s. 946.15
20 (2).

21 (d) Whoever induces any person who seeks to be or is employed on any project
22 of public works that is subject to this section to permit any part of the wages to which
23 the person is entitled under the contract governing the project to be deducted from
24 the person's pay is guilty of an offense under s. 946.15 (3), unless the deduction would

1 be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that
2 is subject to 40 USC 3142.

3 (e) Any person employed on a project of public works that is subject to this
4 section who knowingly permits any part of the wages to which he or she is entitled
5 under the contract governing the project to be deducted from his or her pay is guilty
6 of an offense under s. 946.15 (4), unless the deduction would be permitted under 29
7 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC
8 3142.

9 (f) Paragraph (am) does not apply to any person who fails to provide any
10 information to the department to assist the department in determining prevailing
11 wage rates under sub. (3) (a) or (am).

12 (7) DEBARMENT. (a) Except as provided under pars. (b) and (c), the department
13 shall distribute to all state agencies a list of all persons whom the department has
14 found to have failed to pay the prevailing wage rate determined under sub. (3) or has
15 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
16 in excess of the prevailing hours of labor at any time in the preceding 3 years. The
17 department shall include with any name the address of the person and shall specify
18 when the person failed to pay the prevailing wage rate and when the person paid less
19 than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
20 prevailing hours of labor. A state agency may not award any contract to the person
21 unless otherwise recommended by the department or unless 3 years have elapsed
22 from the date the department issued its findings or date of final determination by a
23 court of competent jurisdiction, whichever is later.

24 (b) The department may not include in a notification under par. (a) the name
25 of any person on the basis of having let work to a person whom the department has

1 found to have failed to pay the prevailing wage rate determined under sub. (3) or has
2 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
3 in excess of the prevailing hours of labor.

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

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

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

18 **SECTION 13.** 103.50 of the statutes is created to read:

19 **103.50 Highway contracts. (1) DEFINITIONS.** In this section:

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

1 department determines that there is insufficient wage data in those counties, "area"
2 means the entire state.

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

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

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

6 (d) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or
7 occupation in any area means the hourly basic rate of pay, plus the hourly
8 contribution for health insurance benefits, vacation benefits, pension benefits, and
9 any other bona fide economic benefit, paid directly or indirectly, for a majority of the
10 hours worked in the trade or occupation in the area.

11 2. If there is no rate at which a majority of the hours worked in the trade or
12 occupation in the area is paid, "prevailing wage rate" means the average hourly basic
13 rate of pay, weighted by the number of hours worked, plus the average hourly
14 contribution, weighted by the number of hours worked, for health insurance benefits,
15 vacation benefits, pension benefits, and any other bona fide economic benefit, paid
16 directly or indirectly for all hours worked at the hourly basic rate of pay of the
17 highest-paid 51 percent of hours worked in that trade or occupation in that area.

18 (e) "Truck driver" has the meaning given in s. 103.49 (1) (g).

19 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** No person performing the work
20 described in sub. (2m) in the employ of a contractor, subcontractor, agent, or other
21 person performing any work on a project under a contract based on bids as provided
22 in s. 84.06 (2) to which the state is a party for the construction or improvement of any
23 highway may be permitted to work a greater number of hours per day or per week
24 than the prevailing hours of labor; nor may he or she be paid a lesser rate of wages
25 than the prevailing wage rate in the area in which the work is to be done determined

1 under sub. (3); except that any such person may be permitted or required to work
2 more than such prevailing hours of labor per day and per week if he or she is paid
3 for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5
4 times his or her hourly basic rate of pay.

5 **(2g) NONAPPLICABILITY.** This section does not apply to a single-trade project of
6 public works, as defined in s. 103.49 (1) (em), for which the estimated project cost of
7 completion is less than \$48,000 or a multiple-trade project of public works, as
8 defined in s. 103.49 (1) (br), for which the estimated project cost of completion is less
9 than \$100,000.

10 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), all of the following employees
11 shall be paid the prevailing wage rate determined under sub. (3) and may not be
12 permitted to work a greater number of hours per day or per week than the prevailing
13 hours of labor, unless they are paid for all hours worked in excess of the prevailing
14 hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

15 1. All laborers, workers, mechanics, and truck drivers employed on the site of
16 a project that is subject to this section.

17 2. All laborers, workers, mechanics, and truck drivers employed in the
18 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
19 of a project that is subject to this section or from a facility dedicated exclusively, or
20 nearly so, to a project that is subject to this section by a contractor, subcontractor,
21 agent, or other person performing any work on the site of the project.

22 (b) A laborer, worker, mechanic, or truck driver who is employed to process,
23 manufacture, pick up, or deliver materials or products from a commercial
24 establishment that has a fixed place of business from which the establishment
25 supplies processed or manufactured materials or products or from a facility that is

1 not dedicated exclusively, or nearly so, to a project that is subject to this section is not
2 entitled to receive the prevailing wage rate determined under sub. (3) or to receive
3 at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess
4 of the prevailing hours of labor unless any of the following applies:

5 1. The laborer, worker, mechanic, or truck driver is employed to go to the source
6 of mineral aggregate such as sand, gravel, or stone and deliver that mineral
7 aggregate to the site of a project that is subject to this section by depositing the
8 material directly in final place, from the transporting vehicle or through spreaders
9 from the transporting vehicle.

10 2. The laborer, worker, mechanic, or truck driver is employed to go to the site
11 of a project that is subject to this section, pick up excavated material or spoil from
12 the site of the project, and transport that excavated material or spoil away from the
13 site of the project and return to the site of the project.

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

16 **(3) INVESTIGATIONS; DETERMINATIONS.** The department shall conduct
17 investigations and hold public hearings necessary to define the trades or occupations
18 that are commonly employed in the highway construction industry and to inform
19 itself as to the prevailing wage rates in all areas of the state for those trades or
20 occupations, in order to ascertain and determine the prevailing wage rates
21 accordingly.

22 **(4) CERTIFICATION OF PREVAILING WAGE RATES.** The department of workforce
23 development shall, by May 1 of each year, certify to the department of transportation
24 the prevailing wage rates in each area for all trades or occupations commonly
25 employed in the highway construction industry. The certification shall, in addition

1 to the current prevailing wage rates, include future prevailing wage rates when such
2 prevailing wage rates can be determined for any such trade or occupation in any area
3 and shall specify the effective date of those future prevailing wage rates. The
4 certification shall also include wage rates for work performed on Sundays or the
5 holidays specified in s. 103.49 (1) (c) and shift differentials based on the time of day
6 or night when work is performed. If a construction project extends into more than
7 one area, there shall be but one standard of prevailing wage rates for the entire
8 project.

9 **(4m) WAGE RATE DATA.** In determining prevailing wage rates for projects that
10 are subject to this section, the department shall use data from projects that are
11 subject to this section, s. 66.0903 or 103.49, or 40 USC 3142. In determining
12 prevailing wage rates for those projects, the department may not use data from any
13 construction work that is performed by a state agency or a local governmental unit,
14 as defined in s. 66.0903 (1) (d).

15 **(5) APPEALS TO GOVERNOR.** If the department of transportation considers any
16 determination of the department of workforce development as to the prevailing wage
17 rates in an area to have been incorrect, it may appeal to the governor, whose
18 determination shall be final.

19 **(6) CONTENTS OF CONTRACTS.** A reference to the prevailing wage rates
20 determined under sub. (3) and the prevailing hours of labor shall be published in the
21 notice issued for the purpose of securing bids for a project. If any contract or
22 subcontract for a project that is subject to this section is entered into, the prevailing
23 wage rates determined under sub. (3) and the prevailing hours of labor shall be
24 physically incorporated into and made a part of the contract or subcontract, except
25 that for a minor subcontract, as determined by the department of workforce

1 development, that department shall prescribe by rule the method of notifying the
2 minor subcontractor of the prevailing wage rates and prevailing hours of labor
3 applicable to the minor subcontract. The prevailing wage rates and prevailing hours
4 of labor applicable to a contract or subcontract may not be changed during the time
5 that the contract or subcontract is in force. For the information of the employees
6 working on the project, the prevailing wage rates determined by the department, the
7 prevailing hours of labor, and the provisions of subs. (2) and (7) shall be kept posted
8 by the department of transportation in at least one conspicuous and easily accessible
9 place on the site of the project.

10 (7) PENALTIES. (a) Except as provided in pars. (b), (d), and (f), any contractor,
11 subcontractor, or contractor's or subcontractor's agent who violates this section may
12 be fined not more than \$200 or imprisoned for not more than 6 months or both. Each
13 day that a violation continues is a separate offense.

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

22 (c) Any person employed on a project that is subject to this section who
23 knowingly permits a contractor, subcontractor, or contractor's or subcontractor's
24 agent to pay him or her less than the prevailing wage rate set forth in the contract
25 governing the project, who gives up, waives, or returns any part of the compensation

1 to which he or she is entitled under the contract, or who gives up, waives, or returns
2 any part of the compensation to which he or she is normally entitled for work on a
3 project that is not subject to this section during a week in which the person works
4 both on a project that is subject to this section and on a project that is not subject to
5 this section, is guilty of an offense under s. 946.15 (2).

6 (d) Whoever induces any person who seeks to be or is employed on any project
7 that is subject to this section to permit any part of the wages to which the person is
8 entitled under the contract governing the project to be deducted from the person's
9 pay is guilty of an offense under s. 946.15 (3), unless the deduction would be
10 permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is
11 subject to 40 USC 3142.

12 (e) Any person employed on a project that is subject to this section who
13 knowingly permits any part of the wages to which he or she is entitled under the
14 contract governing the project to be deducted from his or her pay is guilty of an
15 offense under s. 946.15 (4), unless the deduction would be permitted under 29 CFR
16 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

17 (f) Paragraph (a) does not apply to any person who fails to provide any
18 information to the department to assist the department in determining prevailing
19 wage rates under sub. (3) or (4).

20 **(8) ENFORCEMENT AND PROSECUTION.** The department of transportation shall
21 require adherence to subs. (2), (2m), and (6). The department of transportation may
22 demand and examine, and every contractor, subcontractor, and contractor's or
23 subcontractor's agent shall keep and furnish upon request by the department of
24 transportation, copies of payrolls and other records and information relating to
25 compliance with this section. Upon request of the department of transportation or

1 upon complaint of alleged violation, the district attorney of the county in which the
2 work is located shall investigate as necessary and prosecute violations in a court of
3 competent jurisdiction. Section 111.322 (2m) applies to discharge and other
4 discriminatory acts arising in connection with any proceeding under this section.

5 **SECTION 14.** 103.503 (1) (a) of the statutes, as affected by 2017 Wisconsin Act
6 59, is amended to read:

7 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
8 otherwise involving an employee that resulted or could have resulted in death,
9 personal injury, or property damage and that occurred while the employee was
10 performing the work described in s. 66.0903 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49 (2m),
11 ~~2015 stats.~~, on a project of public works or while the employee was performing work
12 on a public utility project.

13 **SECTION 15.** 103.503 (1) (e) of the statutes, as affected by 2017 Wisconsin Act
14 59, is amended to read:

15 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
16 who performs the work described in s. 66.0903 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49
17 (2m), ~~2015 stats.~~, on a project of public works or on a public utility project.

18 **SECTION 16.** 103.503 (1) (g) of the statutes, as affected by 2017 Wisconsin Act
19 59, is repealed and recreated to read:

20 103.503 (1) (g) "Project of public works" means a project of public works that
21 is subject to s. 66.0903 or 103.49.

22 **SECTION 17.** 103.503 (2) of the statutes, as affected by 2017 Wisconsin Act 59,
23 is amended to read:

24 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
25 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or

1 be under the influence of alcohol, while performing the work described in s. 66.0903
2 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49 (2m), ~~2015 stats.~~, on a project of public works or
3 while performing work on a public utility project. An employee is considered to be
4 under the influence of alcohol for purposes of this subsection if he or she has an
5 alcohol concentration that is equal to or greater than the amount specified in s.
6 885.235 (1g) (d).

7 **SECTION 18.** 103.503 (3) (a) 2. of the statutes, as affected by 2017 Wisconsin Act
8 59, is amended to read:

9 103.503 (3) (a) 2. A requirement that employees performing the work described
10 in s. 66.0903 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49 (2m), ~~2015 stats.~~, on a project of
11 public works or performing work on a public utility project submit to random,
12 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
13 alcohol testing before commencing work on the project, except that testing of an
14 employee before commencing work on a project is not required if the employee has
15 been participating in a random testing program during the 90 days preceding the
16 date on which the employee commenced work on the project.

17 **SECTION 19.** 104.001 (4) of the statutes is created to read:

18 104.001 (4) This section does not affect the requirement that employees
19 employed on a public works project contracted for by a city, village, town, or county
20 be paid at the prevailing wage rate, as defined in s. 66.0903 (1) (g), as required under
21 s. 66.0903.

22 **SECTION 20.** 106.04 of the statutes is created to read:

23 **106.04 Employment of apprentices on state public works projects. (1)**

24 **DEFINITION.** In this section, "project" means a project of public works that is subject

1 to s. 103.49 or 103.50 in which work is performed by employees employed in trades
2 that are apprenticeable under this subchapter.

3 (2) WAIVER. If the department grants an exception or modification to any
4 requirement in any contract for the performance of work on a project relating to the
5 employment and training of apprentices, the department shall post that information
6 on its Internet site, together with a detailed explanation of why the exception or
7 modification was granted.

8 SECTION 21. 109.09 (1) of the statutes, as affected by 2017 Wisconsin Act 59,
9 is amended to read:

10 109.09 (1) The department shall investigate and attempt equitably to adjust
11 controversies between employers and employees as to alleged wage claims. The
12 department may receive and investigate any wage claim that is filed with the
13 department, or received by the department under s. 109.10 (4), no later than 2 years
14 after the date the wages are due. The department may, after receiving a wage claim,
15 investigate any wages due from the employer against whom the claim is filed to any
16 employee during the period commencing 2 years before the date the claim is filed.
17 The department shall enforce this chapter and ~~s. ss. 66.0903, 2013 stats., s. 103.49,~~
18 ~~2013 stats., s. 229.8275, 2013 stats., and s. 16.856, 2015 stats., and ss. 103.02, 103.49,~~
19 ~~103.82, and 104.12, and 229.8275.~~ In pursuance of this duty, the department may
20 sue the employer on behalf of the employee to collect any wage claim or wage
21 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
22 for actions under s. 109.10, the department may refer such an action to the district
23 attorney of the county in which the violation occurs for prosecution and collection and
24 the district attorney shall commence an action in the circuit court having appropriate
25 jurisdiction. Any number of wage claims or wage deficiencies against the same

1 employer may be joined in a single proceeding, but the court may order separate
2 trials or hearings. In actions that are referred to a district attorney under this
3 subsection, any taxable costs recovered by the district attorney shall be paid into the
4 general fund of the county in which the violation occurs and used by that county to
5 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
6 of the district attorney who prosecuted the action.

7 **SECTION 22.** 111.322 (2m) (a) of the statutes is amended to read:

8 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
9 right under s. 103.02, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455,
10 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
11 or 103.64 to 103.82.

12 **SECTION 23.** 111.322 (2m) (b) of the statutes is amended to read:

13 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
14 held under or to enforce any right under s. 103.02, 103.10, 103.11, 103.13, 103.28,
15 103.32, 103.34, 103.50, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
16 or ss. 101.58 to 101.599 or 103.64 to 103.82.

17 **SECTION 24.** 111.322 (2m) (c) of the statutes is created to read:

18 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
19 under s. 66.0903, 103.49, or 229.8275 or testifies or assists in any action or
20 proceeding under s. 66.0903, 103.49, or 229.8275.

21 **SECTION 25.** 227.01 (13) (t) of the statutes is created to read:

22 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
23 66.0903, 103.49, 103.50, and 229.8275, except that any action or inaction which
24 ascertains and determines prevailing wage rates under ss. 66.0903, 103.49, 103.50,
25 and 229.8275 is subject to judicial review under s. 227.40.

1 **SECTION 26.** 229.682 (2) of the statutes is created to read:

2 229.682 (2) **PREVAILING WAGE.** The construction of a baseball park facility that
3 is financed in whole or in part by a district is subject to s. 66.0903.

4 **SECTION 27.** 229.8275 of the statutes is created to read:

5 **229.8275 Prevailing wage.** A district may not enter into a contract under s.
6 229.827 with a professional football team, as described in s. 229.823, or a related
7 party that requires the team or related party to acquire and construct or renovate
8 football stadium facilities that are part of any facilities that are leased by the district
9 to the team or to a related party unless the professional football team or related party
10 agrees as follows:

11 (1) Not to permit any employee working on the football stadium facilities who
12 would be entitled to receive the prevailing wage rate under s. 66.0903 and who would
13 not be required or permitted to work more than the prevailing hours of labor, if the
14 football stadium facilities were a project of public works subject to s. 66.0903, to be
15 paid less than the prevailing wage rate or to be required or permitted to work more
16 than the prevailing hours of labor, except as permitted under s. 66.0903 (4) (a).

17 (2) To require any contractor, subcontractor, or agent thereof performing work
18 on the football stadium facilities to keep and permit inspection of records in the same
19 manner as a contractor, subcontractor, or agent thereof performing work on a project
20 of public works that is subject to s. 66.0903 is required to keep and permit inspection
21 of records under s. 66.0903 (10).

22 (3) Otherwise to comply with s. 66.0903 in the same manner as a local
23 governmental unit contracting for the erection, construction, remodeling, repairing,
24 or demolition of a project of public works is required to comply with s. 66.0903 and
25 to require any contractor, subcontractor, or agent thereof performing work on the

1 football stadium facilities to comply with s. 66.0903 in the same manner as a
2 contractor, subcontractor, or agent thereof performing work on a project of public
3 works that is subject to s. 66.0903 is required to comply with s. 66.0903.

4 **SECTION 28.** 946.15 of the statutes is created to read:

5 **946.15 Public construction contracts at less than full rate.** (1) Any
6 employer, or any agent or employee of an employer, who induces any person who
7 seeks to be or is employed pursuant to a public contract, as defined in s. 66.0901 (1)
8 (c), or who seeks to be or is employed on a project on which a prevailing wage rate
9 determination has been issued by the department of workforce development under
10 s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) to give up, waive, or return any
11 part of the compensation to which that person is entitled under his or her contract
12 of employment or under the prevailing wage rate determination issued by the
13 department, or who reduces the hourly basic rate of pay normally paid to an
14 employee for work on a project on which a prevailing wage rate determination has
15 not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) during a
16 week in which the employee works both on a project on which a prevailing wage rate
17 determination has been issued and on a project on which a prevailing wage rate
18 determination has not been issued, is guilty of a Class I felony.

19 (2) Any person employed pursuant to a public contract, as defined in s. 66.0901
20 (1) (c), or employed on a project on which a prevailing wage rate determination has
21 been issued by the department of workforce development under s. 66.0903 (3), 103.49
22 (3), 103.50 (3), or 229.8275 (3) who gives up, waives, or returns to the employer or
23 agent of the employer any part of the compensation to which the employee is entitled
24 under his or her contract of employment or under the prevailing wage determination
25 issued by the department, or who gives up any part of the compensation to which he

1 or she is normally entitled for work on a project on which a prevailing wage rate
2 determination has not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3), or
3 229.8275 (3) during a week in which the person works part-time on a project on
4 which a prevailing wage rate determination has been issued and part-time on a
5 project on which a prevailing wage rate determination has not been issued, is guilty
6 of a Class C misdemeanor.

7 (3) Any employer or labor organization, or any agent or employee of an
8 employer or labor organization, who induces any person who seeks to be or is
9 employed on a project on which a prevailing wage rate determination has been issued
10 by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50
11 (3), or 229.8275 (3) to permit any part of the wages to which that person is entitled
12 under the prevailing wage rate determination issued by the department or local
13 governmental unit to be deducted from the person's pay is guilty of a Class I felony,
14 unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who
15 is working on a project that is subject to 40 USC 3142.

16 (4) Any person employed on a project on which a prevailing wage rate
17 determination has been issued by the department of workforce development under
18 s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) who permits any part of the
19 wages to which that person is entitled under the prevailing wage rate determination
20 issued by the department or local governmental unit to be deducted from his or her
21 pay is guilty of a Class C misdemeanor, unless the deduction would be permitted
22 under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to
23 40 USC 3142.

24 **SECTION 29.** 978.05 (6) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
25 is amended to read:

