

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget 266-8219** Drafter: **mmcgreev**
 By: **Kirschbaum** Secondary Drafters:
 Date: **11/28/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**
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Pre Topic:

DOA:.....Kirschbaum, BB0119 -

Topic:

Prevailing wage

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mmcgreev 1/3/2019	kfollett 1/11/2019			
/P1	zwyatt 2/21/2019	kfollett 2/21/2019	dwalker 1/11/2019		State S&L
/P2			mbarman 2/21/2019		State S&L

FE Sent For: **<END>**

McGreevy, Mary Alice

From: Cathlene Hanaman <cathleneh@gmail.com>
Sent: Tuesday, November 27, 2018 3:33 PM
To: Duchek, Michael; McGreevy, Mary Alice
Subject: Fwd: Statutory Language Drafting Request - 2019-21

Sent from my iPhone

Begin forwarded message:

From: "Bryan.Kirschbaum@wisconsin.gov" <Bryan.Kirschbaum@wisconsin.gov>
Date: November 27, 2018 at 3:16:40 PM CST
To: <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: <Sara.Hynek@wisconsin.gov>, <Bryan.Kirschbaum@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21
Reply-To: <Bryan.Kirschbaum@wisconsin.gov>

Biennial Budget: 2019-21

Topic: Prevailing Wage

Tracking Code: BB0119

SBO Team: EWD

SBO Analyst: Kirschbaum, Bryan
Phone: 608-266-8219
E-mail: Bryan.Kirschbaum@wisconsin.gov

Agency Acronym: 445

Agency Number: 445

Priority: Medium

Intent:

Resurrect prevailing wage statutes that were repealed through 2015 Wisconsin Act 55. This draft should mirror provisions that were in law prior to enactment of this bill.

Attachments: False

Please send completed drafts to SBOSatlanguage@spmail.enterprise.wistate.us



2/20/19

P/c FROM SARAH HYNEK -

AMEND LRB-0950 TO
REPEAL §§ 18 & 17 OF 2017 ACT
368 -



IN 2/21/2019

LRB-0950/P1 1P2
MIM:kjf

INSERT

DOA:.....Kirschbaum, BB0119 - Prevailing wage

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

CURRENT LAW

Current law provides that laborers, workers, mechanics, and truck drivers employed on the site of certain state projects of public works 1) must be paid the prevailing wage rate; and 2) may not be required or allowed to work a greater number of hours per day and per week than the prevailing hours of labor, which is no more than 10 hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (commonly referred to as overtime pay) for all hours worked in excess of the prevailing hours of labor. Current law defines "prevailing wage rate" as the applicable prevailing wage rate determined by the U.S. Department of Labor under the federal Davis-Bacon Act. Current law provides for the enforcement and administration of the prevailing wage law by DOT for street or highway projects and by DOA for other projects.

THE BILL

Determination of prevailing wage rate; enforcement and administration of prevailing wage law

The bill creates a new definition for "prevailing wage rate" to replace the current definition. Under the bill, "prevailing wage rate" is defined as the hourly basic rate of pay, plus the hourly contribution for bona fide economic benefits, paid

for a majority of the hours worked in a trade or occupation in the area in which the project is located, except that, if there is no rate at which a majority of those hours is paid, "prevailing wage rate" means the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for the highest-paid 51 percent of hours worked in a trade or occupation in the area. The bill requires DWD to conduct investigations and hold public hearings as necessary to define the trades or occupations that are commonly employed on projects that are subject to the prevailing wage law and to inform itself of the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. The bill contains certain other provisions regarding the calculation of prevailing wage rates by DWD, including provisions allowing persons to request recalculations or reviews of the prevailing wage rates determined by DWD. The bill also establishes a requirement that state agencies post prevailing wage rates and hours of labor on the sites of state projects other than street or highway projects.

2. ***Applicability of the prevailing wage law to local projects***

This bill requires that laborers, workers, mechanics, and truck drivers employed on the site of certain local projects of public works be paid the prevailing wage and not be required or allowed to work a greater number of hours per day and per week than the prevailing hours of labor unless they are paid overtime for all hours worked in excess of the prevailing hours of labor.

3. ***Remedies for a violation of the prevailing wage law***

The bill makes a contractor that fails to pay the prevailing wage rate or overtime pay to an employee as required under the prevailing wage law liable to the affected employee for not only the amount of unpaid wages and overtime pay, but also for liquidated damages in an amount equal to 100 percent of the unpaid wages and overtime pay.

4. ***Other changes***

Current law allows an investigation to be conducted to determine compliance with the prevailing wage law upon request, but only if the requester is an individual who is an employee performing work on a prevailing wage project. The bill requires such an inspection on the request of any individual or entity.

Under current law, individuals who are employed to transport mineral aggregate to the site of a project or to transport excavated material or spoil away from the site of a project are not covered under the prevailing wage law. Subject to certain exceptions, the bill eliminates this exemption.

Finally, the bill includes, for both state and local projects of public works, provisions regarding coverage, compliance, enforcement, and penalties, including 1) requirements for affidavits to be filed by contractors affirming compliance with the prevailing wage law; 2) record retention requirements for contractors regarding wages paid to workers and provisions allowing for the inspection of those records by DWD; 3) liability and penalty provisions for certain violations; and 4) provisions prohibiting contracts from being awarded to persons who have failed to comply with the prevailing wage law.

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

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

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

2 **19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES.** Unless access is
3 specifically authorized or required by statute, an authority may not provide access
4 to a record prepared or provided by an employer performing work on a project to
5 which s. 66.0903, 103.49, or 103.50 applies, or on which the employer is otherwise
6 required to pay prevailing wages, if that record contains the name or other personally
7 identifiable information relating to an employee of that employer, unless the
8 employee authorizes the authority to provide access to that information. In this
9 subsection, “personally identifiable information” does not include an employee’s
10 work classification, hours of work, or wage or benefit payments received for work on
11 such a project.

12 **SECTION 2.** 66.0129 (5) of the statutes is amended to read:

13 **66.0129 (5) BIDS FOR CONSTRUCTION.** The nonprofit corporation shall let all
14 contracts exceeding \$1,000 for the construction, maintenance or repair of hospital
15 facilities to the lowest responsible bidder after advertising for bids by the publication
16 of a class 2 notice under ch. 985. ~~Section~~ Sections 66.0901 applies and 66.0903 apply
17 to bids and contracts under this subsection.

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

20 **66.0903 (1) (a)** “Area” means the county in which a proposed project of public
21 works that is subject to this section is located or, if the department determines that

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

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

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

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

11 (dr) “Minor service or maintenance work” means a project of public works that
12 is limited to minor crack filling, chip or slurry sealing, or other minor pavement
13 patching, not including overlays, that has a projected life span of no longer than 5
14 years or that is performed for a town and is not funded under s. 86.31, regardless of
15 projected life span; the depositing of gravel on an existing gravel road applied solely
16 to maintain the road; road shoulder maintenance; cleaning of drainage or sewer
17 ditches or structures; or any other limited, minor work on public facilities or
18 equipment that is routinely performed to prevent breakdown or deterioration.

19 (em) “Multiple-trade project of public works” has the meaning given in s.
20 103.49 (1) (br).

21 (hm) “Single-trade project of public works” has the meaning given in s. 103.49
22 (1) (em).

23 (im) “Supply and installation contract” has the meaning given in s. 103.49 (1)
24 (fm).

25 **SECTION 4.** 66.0903 (1) (c) of the statutes is amended to read:

1 66.0903 (1) (c) “Hourly basic rate of pay” has the meaning given in s. ~~16.856~~
2 103.49 (1) (b), 2015 stats.

3 **SECTION 5.** 66.0903 (1) (f) of the statutes is amended to read:

4 66.0903 (1) (f) “Prevailing hours of labor” has the meaning given in s. ~~16.856~~
5 103.49 (1) (e), 2015 stats. (c).

6 **SECTION 6.** 66.0903 (1) (g) of the statutes is repealed and recreated to read:

7 66.0903 (1) (g) 1. “Prevailing wage rate” has the meaning given in s. 103.49 (1)
8 (d).

9 **SECTION 7.** 66.0903 (1) (j) of the statutes is amended to read:

10 66.0903 (1) (j) “Truck driver” ~~includes an owner-operator of a truck~~ has the
11 meaning given in s. 103.49 (1) (g).

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

13 66.0903 (1m) (b) The legislature finds that the enactment of ordinances or
14 other enactments by local governmental units requiring laborers, workers,
15 mechanics, and truck drivers employed on projects of public works or on publicly
16 funded private construction projects to be paid the prevailing wage rate and to be
17 paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the
18 prevailing hours of labor would be logically inconsistent with, would defeat the
19 purpose of, and would go against the ~~repeals~~ spirit of this section and the repeal of
20 s. 66.0904, 2009 stats., and s. ~~66.0903 (2) to (12), 2013 stats.~~ Therefore, this section
21 shall be construed as an enactment of statewide concern for the ~~purposes of~~
22 ~~facilitating broader participation with respect to bidding on projects of public works,~~
23 ~~ensuring that wages accurately reflect market conditions, providing local~~
24 ~~governments with the flexibility to reduce costs on capital projects, and reducing~~
25 ~~spending at all levels of government in this state~~ purpose of providing uniform

INSERT
5-2

1 prevailing wage rate and prevailing hours of labor requirements throughout the
2 state.

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

4 66.0903 (2) APPLICABILITY. Subject to sub. (5), this section applies to any project
5 of public works erected, constructed, repaired, remodeled, or demolished for a local
6 governmental unit, including all of the following:

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

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

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

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

20 (3) PREVAILING WAGE RATES AND HOURS OF LABOR. (am) A local governmental unit,
21 before making a contract by direct negotiation or soliciting bids on a contract for the
22 erection, construction, remodeling, repairing, or demolition of any project of public
23 works, shall apply to the department to determine the prevailing wage rate for each
24 trade or occupation required in the work contemplated. The department shall
25 conduct investigations and hold public hearings as necessary to define the trades or

1 occupations that are commonly employed on projects of public works that are subject
2 to this section and to inform itself of the prevailing wage rates in all areas of the state
3 for those trades or occupations, in order to determine the prevailing wage rate for
4 each trade or occupation. The department shall issue its determination within 30
5 days after receiving the request and shall file the determination with the requesting
6 local governmental unit.

7 (ar) The department shall, by January 1 of each year, compile the prevailing
8 wage rates for each trade or occupation in each area. The compilation shall, in
9 addition to the current prevailing wage rates, include future prevailing wage rates
10 when those prevailing wage rates can be determined for any trade or occupation in
11 any area and shall specify the effective date of those future prevailing wage rates.
12 If a project of public works extends into more than one area, the department shall
13 determine only one standard of prevailing wage rates for the entire project.

14 (av) In determining prevailing wage rates under par. (am) or (ar), the
15 department may not use data from projects that are subject to this section, s. 103.49
16 or 103.50, or 40 USC 3142 unless the department determines that there is
17 insufficient wage data in the area to determine those prevailing wage rates, in which
18 case the department may use data from projects that are subject to this section, s.
19 103.49 or 103.50, or 40 USC 3142. In determining prevailing wage rates under par.
20 (am) or (ar), the department may not use data from any construction work that is
21 performed by a local governmental unit or a state agency.

22 (bm) Any person may request a recalculation of any portion of an initial
23 determination within 30 days after the initial determination date if the person
24 submits evidence with the request showing that the prevailing wage rate for any
25 given trade or occupation included in the initial determination does not represent the

1 prevailing wage rate for that trade or occupation in the area. The evidence shall
2 include wage rate information reflecting work performed by individuals working in
3 the contested trade or occupation in the area during the current survey period. The
4 department shall affirm or modify the initial determination within 15 days after the
5 date on which the department receives the request for recalculation.

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

20 (dm) A local governmental unit that is subject to this section shall include a
21 reference to the prevailing wage rates determined by the department and to the
22 prevailing hours of labor in the notice published for the purpose of securing bids for
23 the project of public works. Except as otherwise provided in this paragraph, if any
24 contract or subcontract for a project of public works is entered into, the prevailing
25 wage rates determined by the department and the prevailing hours of labor shall be

1 physically incorporated into and made a part of the contract or subcontract. For a
2 minor subcontract, as determined by the department, the department shall
3 prescribe by rule the method of notifying the minor subcontractor of the prevailing
4 wage rates and prevailing hours of labor applicable to the minor subcontract. The
5 prevailing wage rates and prevailing hours of labor applicable to a contract or
6 subcontract may not be changed during the time that the contract or subcontract is
7 in force.

8 (e) No contractor, subcontractor, or contractor or subcontractor's agent that is
9 subject to this section may do any of the following:

10 1. Pay an individual performing the work described in sub. (4) less than the
11 prevailing wage rate in the same or most similar trade or occupation determined
12 under this subsection.

13 2. Allow an individual performing the work described in sub. (4) to work a
14 greater number of hours per day or per week than the prevailing hours of labor,
15 unless the contractor, subcontractor, or contractor or subcontractor's agent pays the
16 individual for all hours worked in excess of the prevailing hours of labor at a rate of
17 at least 1.5 times the individual's hourly basic rate of pay.

18 (4) COVERED EMPLOYEES. (a) Subject to par. (b), any person subject to this
19 section shall pay all of the following employees the prevailing wage rate determined
20 under sub. (3) and may not allow such employees to work a greater number of hours
21 per day or per week than the prevailing hours of labor, unless the person pays the
22 employee for all hours worked in excess of the prevailing hours of labor at a rate of
23 at least 1.5 times the employee's hourly basic rate of pay:

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

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

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

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

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

1 (c) A person subject to this section shall pay a truck driver who is an
2 owner-operator of a truck separately for his or her work and for the use of his or her
3 truck.

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

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

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

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

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

21 (g) A road, street, bridge, sanitary sewer, or water main project that is a part
22 of a development in which not less than 90 percent of the lots contain or will contain
23 2 dwelling units or less, as determined by the local governmental unit at the time of
24 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. A local governmental unit that has contracted for a project of
4 public works shall post the prevailing wage rates determined by the department, the
5 prevailing hours of labor, and the provisions of subs. (10) (a) and (11) (a) in at least
6 one conspicuous place on the site of the project that is easily accessible by employees
7 working on the project, or, if there is no common site on the project, at the place
8 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 that performs 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 individual performing the work described
17 in sub. (4) and an accurate record of the number of hours worked by each of those
18 individuals 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 individuals performing the work described in sub. (4)
24 for 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 that the contractor, subcontractor, or agent 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 that a
11 contractor, subcontractor, or agent submit those records no more than once per
12 calendar quarter for each project of public works on which the contractor,
13 subcontractor, or agent is performing work. The department may not charge a
14 requester a fee for obtaining that information. Certified records submitted to the
15 department under this paragraph are open for public inspection and copying under
16 s. 19.35 (1).

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

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

1 pay for all hours worked in excess of the prevailing hours of labor is liable to any
2 affected employee in the amount of his or her unpaid wages or his or her unpaid
3 overtime compensation and in an additional amount as liquidated damages as
4 provided under subd. 2. or 3., whichever is applicable.

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) The department may not include in a notification under par. (a) the name
8 of any person on the basis of having subcontracted a contract for a project of public
9 works to a person that the department has found to have failed to pay the prevailing
10 wage rate determined under sub. (3) or has found to have paid less than 1.5 times
11 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
12 labor.

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

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

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

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

5 84.41 (3) EMPLOYMENT REGULATIONS. Employment regulations set forth in s.
6 103.50 pertaining to wages and hours shall apply to all projects constructed under
7 s. 84.40 in the same manner as such laws apply to projects on other state highways.
8 Where applicable, the federal wages and hours law known as the Davis-Bacon act
9 shall apply.

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

11 103.005 (12) (a) If any employer, employee, owner, or other person violates chs.
12 103 to 106, or fails or refuses to perform any duty required under chs. 103 to 106,
13 within the time prescribed by the department, for which no penalty has been
14 specifically provided, or fails, neglects or refuses to obey any lawful order given or
15 made by the department or any judgment or decree made by any court in connection
16 with chs. 103 to 106, for each such violation, failure or refusal, the employer,
17 employee, owner or other person shall forfeit not less than \$10 nor more than \$100
18 for each offense. This paragraph does not apply to any person that fails to provide
19 any information to the department to assist the department in determining
20 prevailing wage rates or prevailing hours of labor under s. 103.49 (3) (a) or (am) or
21 103.50 (3) or (4).

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

23 **103.49 Wage rate on state work.** (1) DEFINITIONS. In this section:

24 (a) "Area" means the county in which a proposed project of public works that
25 is subject to this section is located or, if the department determines that there is

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

8 (am) “Bona fide economic benefit” means an economic benefit for which an
9 employer makes irrevocable contributions to a trust or fund created under 29 USC
10 186 (c) or to any other bona fide plan, trust, program, or fund no less often than
11 quarterly or, if an employer makes annual contributions to such a bona fide plan,
12 trust, program, or fund, for which the employer irrevocably escrows moneys at least
13 quarterly based on the employer’s expected annual contribution.

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

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

21 (bj) “Minor service or maintenance work” means a project of public works that
22 is limited to minor crack filling, chip or slurry sealing, or other minor pavement
23 patching, not including overlays, that has a projected life span of no longer than 5
24 years; cleaning of drainage or sewer ditches or structures; or any other limited, minor

1 work on public facilities or equipment that is routinely performed to prevent
2 breakdown or deterioration.

3 (br) "Multiple-trade project of public works" means a project of public works
4 in which no single trade accounts for 85 percent or more of the total labor cost of the
5 project.

6 (c) "Prevailing hours of labor" for any trade or occupation in any area means
7 10 hours per day and 40 hours per week and may not include any hours worked on
8 a Saturday or Sunday or on any of the following holidays:

9 1. January 1.

10 2. The last Monday in May.

11 3. July 4.

12 4. The first Monday in September.

13 5. The 4th Thursday in November.

14 6. December 25.

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

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

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

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

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

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

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

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

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

23 (1m) APPLICABILITY. Subject to sub. (3g), this section applies to any project of
24 public works erected, constructed, repaired, remodeled, or demolished for the state
25 or a state agency, including all of the following:

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

4 (b) A project in which the completed facility is leased, purchased, lease
5 purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or
6 a state agency contracting for the erection, construction, repair, remodeling, or
7 demolition of the facility.

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

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

1 under sub. (3) and the prevailing hours of labor shall be physically incorporated into
2 and made a part of the contract or subcontract. For a minor subcontract, as
3 determined by the department, the department shall prescribe by rule the method
4 of notifying the minor subcontractor of the prevailing wage rates and prevailing
5 hours of labor applicable to the minor subcontract. The prevailing wage rates and
6 prevailing hours of labor applicable to a contract or subcontract may not be changed
7 during the time that the contract or subcontract is in force.

8 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), any person subject to this
9 section shall pay all of the following employees the prevailing wage rate determined
10 under sub. (3) and may not allow such employees to work a greater number of hours
11 per day or per week than the prevailing hours of labor, unless the person pays for all
12 hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times
13 the employees' hourly basic rate of pay:

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

16 2. All laborers, workers, mechanics, and truck drivers employed in the
17 manufacturing or furnishing of materials, articles, supplies, or equipment on the site
18 of a project of public works that is subject to this section or from a facility dedicated
19 exclusively, or nearly so, to a project of public works that is subject to this section by
20 a contractor, subcontractor, agent, or other person performing any work on the site
21 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 of public works that is subject to
2 this section is not entitled to receive the prevailing wage rate determined under sub.
3 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
4 worked in excess 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 of public works that is subject to this section by
8 depositing the material directly in final place, from the transporting vehicle or
9 through spreaders 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 of public works, and transport that excavated material or spoil
13 away from the site of the project.

14 (c) A person that is subject to this section shall pay a truck driver who is an
15 owner-operator of a truck separately for his or her work and for the use of his or her
16 truck.

17 **(3) INVESTIGATION; DETERMINATION.** (a) Before a state agency issues a request
18 for bids for any work to which this section applies, the state agency having the
19 authority to prescribe the specifications shall apply to the department to determine
20 the prevailing wage rate for each trade or occupation required in the work under
21 contemplation in the area in which the work is to be done. The department shall
22 conduct investigations and hold public hearings as necessary to define the trades or
23 occupations that are commonly employed on projects that are subject to this section
24 and to inform itself of the prevailing wage rates in all areas of the state for those
25 trades or occupations, in order to determine the prevailing wage rate for each trade

1 or occupation. The department shall issue its determination within 30 days after
2 receiving the request and shall file the determination with the requesting state
3 agency. A state agency that has contracted for a project of public works subject to this
4 section shall post the prevailing wage rates determined by the department, the
5 prevailing hours of labor, and the provisions of subs. (2) and (6m) in at least one
6 conspicuous place on the site of the project that is easily accessible by employees
7 working on the project.

8 (am) The department shall, by January 1 of each year, compile the prevailing
9 wage rates for each trade or occupation in each area. The compilation shall, in
10 addition to the current prevailing wage rates, include future prevailing wage rates
11 when those prevailing wage rates can be determined for any trade or occupation in
12 any area and shall specify the effective date of those future prevailing wage rates.
13 If a project of public works extends into more than one area, the department shall
14 determine only one standard of prevailing wage rates for the entire project.

15 (ar) In determining prevailing wage rates under par. (a) or (am), the
16 department may not use data from projects that are subject to this section, s. 66.0903,
17 103.50, or 229.8275, or 40 USC 3142 unless the department determines that there
18 is insufficient wage data in the area to determine those prevailing wage rates, in
19 which case the department may use data from projects that are subject to this
20 section, s. 66.0903, 103.50, or 229.8275, or 40 USC 3142. In determining prevailing
21 wage rates under par. (a) or (am), the department may not use data from any
22 construction work performed by a state agency or a local governmental unit, as
23 defined in s. 66.0903 (1) (d).

24 (b) Any person may request a recalculation of any portion of an initial
25 determination within 30 days after the initial determination date if the person

1 submits evidence with the request showing that the prevailing wage rate for any
2 given trade or occupation included in the initial determination does not represent the
3 prevailing wage rate for that trade or occupation in the area. The evidence shall
4 include wage rate information reflecting work performed by individuals working in
5 the contested trade or occupation in the area during the current survey period. The
6 department shall affirm or modify the initial determination within 15 days after the
7 date on which the department receives the request for recalculation.

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

22 **(3g) NONAPPLICABILITY.** This section does not apply to any of the following:

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

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

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

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

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

11 (h) A road, street, bridge, sanitary sewer, or water main project that is a part
12 of a development in which not less than 90 percent of the lots contain or will contain
13 2 dwelling units or less, as determined by the local governmental unit at the time of
14 approval of the development, and that, on completion, is acquired by, or dedicated to,
15 the state for ownership or maintenance by the state.

16 **(4r) COMPLIANCE.** (a) When the department finds that a state agency has not
17 requested a determination under sub. (3) (a) or that a state agency, contractor, or
18 subcontractor has not physically incorporated a determination into a contract or
19 subcontract as required under sub. (2) or has not notified a minor subcontractor of
20 a determination in the manner prescribed by the department by rule promulgated
21 under sub. (2), the department shall notify the state agency, contractor or
22 subcontractor of the noncompliance and shall file the determination with the state
23 agency, contractor, or subcontractor within 30 days after the notice.

24 (b) Upon completion of a project of public works and before receiving final
25 payment for his or her work on the project, each agent or subcontractor shall furnish

1 the contractor with an affidavit stating that the agent or subcontractor has complied
2 fully with the requirements of this section. A contractor may not authorize final
3 payment until the affidavit is filed in proper form and order.

4 (c) Upon completion of a project of public works and before receiving final
5 payment for his or her work on the project, each contractor shall file with the state
6 agency authorizing the work an affidavit stating that the contractor has complied
7 fully with the requirements of this section and that the contractor has received an
8 affidavit under par. (b) from each of the contractor's agents and subcontractors. A
9 state agency may not authorize a final payment until the affidavit is filed in proper
10 form and order. If a state agency authorizes a final payment before an affidavit is
11 filed in proper form and order or if the department determines, based on the greater
12 weight of the credible evidence, that any person performing the work specified in sub.
13 (2m) has been or may have been paid less than the prevailing wage rate or less than
14 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing
15 hours of labor and requests that the state agency withhold all or part of the final
16 payment, but the state agency fails to do so, the state agency is liable for all back
17 wages payable up to the amount of the final payment.

18 (5) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor, or
19 contractor's or subcontractor's agent that performs work on a project of public works
20 that is subject to this section shall keep full and accurate records clearly indicating
21 the name and trade or occupation of every individual performing the work described
22 in sub. (2m) and an accurate record of the number of hours worked by each of those
23 individuals and the actual wages paid for the hours worked.

24 (b) The department shall enforce this section. The department may demand
25 and examine, and every contractor, subcontractor, and contractor's and

1 subcontractor's agent shall keep, and furnish upon request by the department,
2 copies of payrolls and other records and information relating to the wages paid to
3 individuals performing the work described in sub. (2m) for work to which this section
4 applies. The department may inspect records in the manner provided in this chapter.
5 Every contractor, subcontractor, or agent performing work on a project of public
6 works that is subject to this section is subject to the requirements of this chapter
7 relating to the examination of records. Section 111.322 (2m) applies to discharge and
8 other discriminatory acts arising in connection with any proceeding under this
9 section.

10 (c) If requested by any person, the department shall inspect the payroll records
11 of any contractor, subcontractor, or agent performing work on a project of public
12 works that is subject to this section as provided in this paragraph to ensure
13 compliance with this section. On receipt of such a request, the department shall
14 request that the contractor, subcontractor, or agent submit to the department a
15 certified record of the information specified in par. (a), other than personally
16 identifiable information relating to an employee of the contractor, subcontractor, or
17 agent, for no longer than a 4-week period. The department may request a contractor,
18 subcontractor, or agent to submit those records no more than once per calendar
19 quarter for each project of public works on which the contractor, subcontractor, or
20 agent is performing work. The department may not charge a requester a fee for
21 obtaining that information. Certified records submitted to the department under
22 this paragraph are open for public inspection and copying under s. 19.35 (1).

23 **(6m)** LIABILITY AND PENALTIES. (ag) 1. A contractor, subcontractor, or
24 contractor's or subcontractor's agent who fails to pay the prevailing wage rate
25 determined by the department under sub. (3) or who pays less than 1.5 times the

1 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor
2 is liable to any affected employee in the amount of his or her unpaid wages or his or
3 her unpaid overtime compensation and in an additional amount as liquidated
4 damages as provided in subd. 2. or 3., whichever is applicable.

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

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

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

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

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

19 (c) Any individual who is employed on a project of public works that is subject
20 to this section who knowingly allows a contractor, subcontractor, or contractor's or
21 subcontractor's agent to pay him or her less than the prevailing wage rate set forth
22 in the contract governing the project, who gives up, waives, or returns any part of the
23 compensation to which he or she is entitled under the contract, or who gives up,
24 waives, or returns any part of the compensation to which he or she is normally
25 entitled for work on a project that is not subject to this section during a week in which

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

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

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

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

19 **(7) DEPARTMENT.** (a) Except as provided under pars. (b) and (c), the department
20 shall distribute to all state agencies a list of all persons that the department has
21 found to have failed to pay the prevailing wage rate determined under sub. (3) or has
22 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
23 in excess of the prevailing hours of labor at any time in the preceding 3 years. The
24 department shall include with any name the address of the person and shall specify
25 when the person failed to pay the prevailing wage rate and when the person paid less

1 than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
2 prevailing hours of labor. A state agency may not award any contract to the person
3 unless otherwise recommended by the department or unless 3 years have elapsed
4 from the date the department issued its findings or date of final determination by a
5 court of competent jurisdiction, whichever is later.

6 (b) The department may not include in a notification under par. (a) the name
7 of any person on the basis of having subcontracted a contract for a project of public
8 works to a person that the department has found to have failed to pay the prevailing
9 wage rate determined under sub. (3) or has found to have paid less than 1.5 times
10 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of
11 labor.

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

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

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

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

2 **103.50 Highway contracts. (1) DEFINITIONS.** In this section:

3 (a) "Area" means the county in which a proposed project that is subject to this
4 section is located or, if the department determines that there is insufficient wage
5 data in that county, "area" means those counties that are contiguous to that county
6 or, if the department determines that there is insufficient wage data in those
7 counties, "area" means those counties that are contiguous to those counties or, if the
8 department determines that there is insufficient wage data in those counties, "area"
9 means the entire state.

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

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

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

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

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

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

1 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** No contractor, subcontractor,
2 agent, or other person performing any work on a project under a contract based on
3 bids as provided in s. 84.06 (2) to which the state is a party for the construction or
4 improvement of any highway may do any of the following:

5 (a) Pay an individual performing the work described in sub. (2m) less than the
6 prevailing wage rate in the area in which the work is to be done determined under
7 sub. (3).

8 (b) Allow an individual performing the work described in sub. (2m) to work a
9 greater number of hours per day or per week than the prevailing hours of labor,
10 unless the contractor, subcontractor, or contractor or subcontractor's agent pays the
11 individual for all hours worked in excess of the prevailing hours of labor at a rate of
12 at least 1.5 times the individual's hourly basic rate of pay.

13 **(2g) NONAPPLICABILITY.** This section does not apply to a single-trade project of
14 public works, as defined in s. 103.49 (1) (em), for which the estimated project cost of
15 completion is less than \$48,000 or a multiple-trade project of public works, as
16 defined in s. 103.49 (1) (br), for which the estimated project cost of completion is less
17 than \$100,000.

18 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), any person subject to this
19 section shall pay all of the following employees the prevailing wage rate determined
20 under sub. (3) and may not allow such employees to work a greater number of hours
21 per day or per week than the prevailing hours of labor, unless the person pays for all
22 hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times
23 the employees' hourly basic rate of pay:

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

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

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

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

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

23 (c) A contractor, subcontractor, agent, or other person performing work on a
24 project subject to this section shall pay a truck driver who is an owner-operator of
25 a truck separately for his or her work and for the use of his or her truck.

1 **(3)** INVESTIGATIONS; DETERMINATIONS. The department shall conduct
2 investigations and hold public hearings necessary to define the trades or occupations
3 that are commonly employed in the highway construction industry and to inform the
4 department of the prevailing wage rates in all areas of the state for those trades or
5 occupations, in order to ascertain and determine the prevailing wage rates
6 accordingly.

7 **(4)** CERTIFICATION OF PREVAILING WAGE RATES. The department of workforce
8 development shall, by May 1 of each year, certify to the department of transportation
9 the prevailing wage rates in each area for all trades or occupations commonly
10 employed in the highway construction industry. The certification shall, in addition
11 to the current prevailing wage rates, include future prevailing wage rates when such
12 prevailing wage rates can be determined for any such trade or occupation in any area
13 and shall specify the effective date of those future prevailing wage rates. The
14 certification shall also include wage rates for work performed on Sundays or the
15 holidays specified in s. 103.49 (1) (c) and shift differentials based on the time of day
16 or night when work is performed. If a construction project extends into more than
17 one area, the department shall determine only one standard of prevailing wage rates
18 for the entire project.

19 **(4m)** WAGE RATE DATA. In determining prevailing wage rates for projects that
20 are subject to this section, the department shall use data from projects that are
21 subject to this section, s. 66.0903 or 103.49, or 40 USC 3142. In determining
22 prevailing wage rates for those projects, the department may not use data from any
23 construction work that is performed by a state agency or a local governmental unit,
24 as defined in s. 66.0903 (1) (d).

1 (5) APPEALS TO GOVERNOR. If the department of transportation considers any
2 determination of the department of workforce development of the prevailing wage
3 rates in an area to be incorrect, it may appeal to the governor, whose determination
4 is final.

5 (6) CONTENTS OF CONTRACTS. The department of transportation shall include
6 a reference to the prevailing wage rates determined under sub. (3) and the prevailing
7 hours of labor in the notice published for the purpose of securing bids for a project.
8 Except as otherwise provided in this subsection, if any contract or subcontract for a
9 project that is subject to this section is entered into, the prevailing wage rates
10 determined under sub. (3) and the prevailing hours of labor shall be physically
11 incorporated into and made a part of the contract or subcontract. For a minor
12 subcontract, as determined by the department of workforce development, that
13 department shall prescribe by rule the method of notifying the minor subcontractor
14 of the prevailing wage rates and prevailing hours of labor applicable to the minor
15 subcontract. The prevailing wage rates and prevailing hours of labor applicable to
16 a contract or subcontract may not be changed during the time that the contract or
17 subcontract is in force. The department of transportation shall post the prevailing
18 wage rates determined by the department, the prevailing hours of labor, and the
19 provisions of subs. (2) and (7) in at least one conspicuous place that is easily
20 accessible to the employees on the site of the project.

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

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

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

18 (d) Whoever induces any individual who seeks to be or is employed on any
19 project that is subject to this section to allow any part of the wages to which the
20 individual is entitled under the contract governing the project to be deducted from
21 the individual's pay is guilty of an offense under s. 946.15 (3), unless the deduction
22 would be allowed under 29 CFR 3.5 or 3.6 from an individual who is working on a
23 project that is subject to 40 USC 3142.

24 (e) Any individual employed on a project that is subject to this section who
25 knowingly allows any part of the wages to which he or she is entitled under the

1 contract governing the project to be deducted from his or her pay is guilty of an
2 offense under s. 946.15 (4), unless the deduction would be allowed under 29 CFR 3.5
3 or 3.6 from an individual who is working on a project that is subject to 40 USC 3142.

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

7 **(8) ENFORCEMENT AND PROSECUTION.** The department of transportation shall
8 require adherence to subs. (2), (2m), and (6). The department of transportation may
9 demand and examine, and every contractor, subcontractor, and contractor's or
10 subcontractor's agent shall keep and furnish upon request by the department of
11 transportation, copies of payrolls and other records and information relating to
12 compliance with this section. Upon request of the department of transportation or
13 upon complaint of alleged violation, the district attorney of the county in which the
14 work is located shall investigate as necessary and prosecute violations in a court of
15 competent jurisdiction. Section 111.322 (2m) applies to discharge and other
16 discriminatory acts arising in connection with any proceeding under this section.

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

18 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
19 otherwise involving an employee that resulted or could have resulted in death,
20 personal injury, or property damage and that occurred while the employee was
21 performing the work described in s. 66.0903 (4), ~~2013 stats.,~~ or s. ~~16.856~~ 103.49 (2m),
22 ~~2015 stats.,~~ on a project of public works or while the employee was performing work
23 on a public utility project.

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

1 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
2 who performs the work described in s. 66.0903 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49
3 (2m), ~~2015 stats.~~, on a project of public works or on a public utility project.

4 **SECTION 16.** 103.503 (1) (g) of the statutes is repealed and recreated to read:

5 103.503 (1) (g) "Project of public works" means a project of public works that
6 is subject to s. 66.0903 or 103.49.

7 **SECTION 17.** 103.503 (2) of the statutes is amended to read:

8 103.503 (2) **SUBSTANCE ABUSE PROHIBITED.** No employee may use, possess,
9 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
10 be under the influence of alcohol, while performing the work described in s. 66.0903
11 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49 (2m), ~~2015 stats.~~, on a project of public works or
12 while performing work on a public utility project. An employee is considered to be
13 under the influence of alcohol for purposes of this subsection if he or she has an
14 alcohol concentration that is equal to or greater than the amount specified in s.
15 885.235 (1g) (d).

16 **SECTION 18.** 103.503 (3) (a) 2. of the statutes is amended to read:

17 103.503 (3) (a) 2. A requirement that employees performing the work described
18 in s. 66.0903 (4), ~~2013 stats.~~, or s. ~~16.856~~ 103.49 (2m), ~~2015 stats.~~, on a project of
19 public works or performing work on a public utility project submit to random,
20 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
21 alcohol testing before commencing work on the project, except that testing of an
22 employee before commencing work on a project is not required if the employee has
23 been participating in a random testing program during the 90 days preceding the
24 date on which the employee commenced work on the project.

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

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

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

6 **106.04 Employment of apprentices on state public works projects. (1)**

7 DEFINITION. In this section, “project” means a project of public works that is subject
8 to s. 103.49 or 103.50 in which work is performed by employees employed in trades
9 that are apprenticeable under this subchapter.

10 (2) WAIVER. If the department grants an exception or modification to any
11 requirement in any contract for the performance of work on a project relating to the
12 employment and training of apprentices, the department shall post that information
13 on its Internet site, together with a detailed explanation for granting the exception
14 or modification.

15 **SECTION 21.** 109.09 (1) of the statutes is amended to read:

16 109.09 (1) The department shall investigate and attempt equitably to adjust
17 controversies between employers and employees as to regarding alleged wage
18 claims. The department may receive and investigate any wage claim that is filed
19 with the department, or received by the department under s. 109.10 (4), no later than
20 2 years after the date the wages are due. The department may, after receiving a wage
21 claim, investigate any wages due from the employer against whom the claim is filed
22 to any employee during the period commencing 2 years before the date the claim is
23 filed. The department shall enforce this chapter and ~~s. ss. 66.0903, 2013 stats., s.~~
24 ~~103.49, 2013 stats., s. 229.8275, 2013 stats., and s. 16.856, 2015 stats., and ss. 103.02,~~
25 ~~103.49, 103.82, and 104.12, and 229.8275.~~ In pursuance of this duty, the department

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

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

14 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
15 right under s. 103.02, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34, 103.455,
16 103.50, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
17 or 103.64 to 103.82.

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

19 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
20 held under or to enforce any right under s. 103.02, 103.10, 103.11, 103.13, 103.28,
21 103.32, 103.34, 103.50, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
22 or ss. 101.58 to 101.599 or 103.64 to 103.82.

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

1 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right
2 under s. 66.0903, 103.49, or 229.8275 or testifies or assists in any action or
3 proceeding under s. 66.0903, 103.49, or 229.8275.

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

5 227.01 **(13)** (t) Ascertains and determines prevailing wage rates under ss.
6 66.0903, 103.49, 103.50, and 229.8275, except that any action or inaction which
7 ascertains and determines prevailing wage rates under ss. 66.0903, 103.49, 103.50,
8 and 229.8275 is subject to judicial review under s. 227.40.

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

10 229.682 **(2)** PREVAILING WAGE. The construction of a baseball park facility that
11 is financed in whole or in part by a district is subject to s. 66.0903.

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

13 **229.8275 Prevailing wage.** A district may not enter into a contract under s.
14 229.827 with a professional football team, as described in s. 229.823, or a related
15 party that requires the team or related party to acquire and construct or renovate
16 football stadium facilities that are part of any facilities that are leased by the district
17 to the team or to a related party unless the professional football team or related party
18 agrees to all of the following:

19 **(1)** Not to allow any employee working on the football stadium facilities who
20 would be entitled to receive the prevailing wage rate under s. 66.0903 and who would
21 not be required or allowed to work more than the prevailing hours of labor, if the
22 football stadium facilities were a project of public works subject to s. 66.0903, to be
23 paid less than the prevailing wage rate or to be required or allowed to work more than
24 the prevailing hours of labor, except as allowed under s. 66.0903 (4) (a).

1 (2) To require any contractor, subcontractor, or agent of a contractor or
2 subcontractor performing work on the football stadium facilities to keep and allow
3 inspection of records in the same manner as a contractor, subcontractor, or agent of
4 a contractor or subcontractor performing work on a project of public works that is
5 subject to s. 66.0903 is required to keep and allow inspection of records under s.
6 66.0903 (10).

7 (3) To comply with s. 66.0903 in the same manner as a local governmental unit
8 contracting for the erection, construction, remodeling, repairing, or demolition of a
9 project of public works is required to comply with s. 66.0903 and to require any
10 contractor, subcontractor, or agent of a contractor or subcontractor performing work
11 on the football stadium facilities to comply with s. 66.0903 in the same manner as
12 a contractor, subcontractor, or agent of a contractor or subcontractor performing
13 work on a project of public works that is subject to s. 66.0903 is required to comply
14 with s. 66.0903.

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

16 **946.15 Public construction contracts at less than full rate.** (1) Any
17 employer, or any agent or employee of an employer, who induces any individual who
18 seeks to be or is employed pursuant to a public contract, as defined in s. 66.0901 (1)
19 (c), or who seeks to be or is employed on a project on which a prevailing wage rate
20 determination has been issued by the department of workforce development under
21 s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) to give up, waive, or return any
22 part of the compensation to which that individual is entitled under his or her contract
23 of employment or under the prevailing wage rate determination issued by the
24 department, or who reduces the hourly basic rate of pay normally paid to an
25 employee for work on a project on which a prevailing wage rate determination has

1 not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) during a
2 week in which the employee works both on a project on which a prevailing wage rate
3 determination has been issued and on a project on which a prevailing wage rate
4 determination has not been issued, is guilty of a Class I felony.

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

18 (3) Any employer or labor organization, or any agent or employee of an
19 employer or labor organization, who induces any individual who seeks to be or is
20 employed on a project on which a prevailing wage rate determination has been issued
21 by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50
22 (3), or 229.8275 (3) to allow any part of the wages to which that individual is entitled
23 under the prevailing wage rate determination issued by the department or local
24 governmental unit to be deducted from the individual's pay is guilty of a Class I

1 felony, unless the deduction would be allowed under 29 CFR 3.5 or 3.6 from an
2 individual who is working on a project that is subject to 40 USC 3142.

3 (4) Any individual employed on a project on which a prevailing wage rate
4 determination has been issued by the department of workforce development under
5 s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) who allows any part of the wages
6 to which that individual is entitled under the prevailing wage rate determination
7 issued by the department or local governmental unit to be deducted from his or her
8 pay is guilty of a Class C misdemeanor, unless the deduction would be allowed under
9 29 CFR 3.5 or 3.6 from an individual who is working on a project that is subject to
10 40 USC 3142.

11 **SECTION 29.** 978.05 (6) (a) of the statutes is amended to read:

12 978.05 (6) (a) Institute, commence, or appear in all civil actions or special
13 proceedings under and perform the duties set forth for the district attorney under ch.
14 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 89.08, 103.50 (8),
15 103.92 (4), 109.09, 343.305 (9) (a), 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),
16 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in
17 connection with court proceedings in a court assigned to exercise jurisdiction under
18 chs. 48 and 938 as the judge may request and perform all appropriate duties and
19 appear if the district attorney is designated in specific statutes, including matters
20 within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits
21 the authority of the county board to designate, under s. 48.09 (5), that the corporation
22 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.
23 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
24 interests of the public under s. 48.14 or 938.14.

25 **SECTION 9350. Initial applicability; Workforce Development.**

1

INS A

*TRANSPORTATION
Highways*

5. ← **Transportation projects**

Under current law, for certain highway projects for which DOT spends federal money, federal money must make up at least 70 percent of the funding for those projects. DOT is required to notify political subdivisions receiving aid for local projects whether the aid includes federal moneys and how those moneys must be spent. For certain projects that receive no federal money, DOT may not require political subdivisions to comply with any portion of DOT's facilities development manual other than design standards. Any local project funded with state funds under the surface transportation program or the local bridge program must be let through competitive bidding and by contract to the lowest responsible bidder. The bill repeals all of these requirements.

2

INS 19-10

as created by 2017 WA 368

3

SECTION 1. 84.54 of the statutes is repealed.

4

SECTION 2. 86.51 of the statutes is repealed.

5