



1995 ASSEMBLY BILL 632

October 26, 1995 - Introduced by COMMITTEE ON LABOR AND EMPLOYMENT, by request of Department of Industry, Labor and Human Relations. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 66.293 (2), 66.293 (3) (b) and 103.49 (4); **to renumber and**
2 **amend** 66.293 (3) (intro.), 66.293 (3) (a), 66.293 (3) (c), 66.293 (3) (d), 66.293 (3)
3 (e), 66.293 (3) (f), 66.293 (3) (g), 66.293 (3) (h), 66.293 (3) (i), 66.293 (3) (j), 66.293
4 (3) (k), 66.293 (3) (m), 66.293 (3) (n), 103.49 (1) (c), 103.49 (3), 103.49 (5) and
5 103.49 (6); **to amend** 103.49 (1) (a), 103.49 (1) (b), 103.49 (1) (d), 103.49 (2),
6 103.49 (7) (a), 103.49 (7) (b), 103.49 (7) (d), 103.50 (1) (a), 103.50 (1) (b), 103.50
7 (1) (c), 103.50 (1) (d), 103.50 (2), 103.50 (3) (a), 103.50 (4), 103.50 (5), 103.50 (6),
8 103.50 (7) (a), 103.50 (7) (b), 103.50 (7) (c), 103.50 (8), 227.01 (13) (t), 946.15 (1)
9 and 946.15 (2); **to repeal and recreate** 66.293 (1), 66.293 (5), 103.49 (3g) and
10 103.50 (3) (b); and **to create** 66.293 (3) (title), 66.293 (3) (br), 66.293 (3) (cm),
11 66.293 (4), 66.293 (7), 66.293 (9) (title), 66.293 (10) (title), 66.293 (11) (title),
12 66.293 (11) (b), 103.49 (1) (title), 103.49 (1) (c) 1. to 8., 103.49 (1) (e), 103.49 (1)
13 (f), 103.49 (2m), 103.49 (3) (title), 103.49 (3) (b), 103.49 (3) (c), 103.49 (3) (d),
14 103.49 (3r), 103.49 (4r), 103.49 (5) (title), 103.49 (5) (a), 103.49 (5) (c), 103.49
15 (6m), 103.49 (7) (title), 103.50 (1) (e), 103.50 (2m), 103.50 (3) (c), 103.50 (3g),
16 103.50 (7) (d) and (e), 946.15 (3) and 946.15 (4) of the statutes; **relating to:**

- 1 prevailing wage rates and hours of labor for workers employed on state or local
2 public works projects and providing penalties.
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Analysis by the Legislative Reference Bureau

Under current law, contracts to perform construction work on state or local public works projects, that is, state or local building projects, local street projects or state highway projects, are governed by provisions regarding prevailing wage rates and hours of labor. In general, those provisions require contractors and subcontractors performing work on a project to pay their employees working on the project the prevailing wage rate in the area from which labor for the project would normally be secured for the employee's trade or occupation and to pay those employees overtime pay, that is, 1.5 times the employee's usual hourly basic rate of pay, for all hours worked in excess of the prevailing hours of labor. This bill makes various changes to the prevailing wage and hours law as follows:

Determination of prevailing wages and hours

Under current law, a state agency or local governmental unit, before entering into a contract for a project of public works, other than a local street project, and the department of transportation (DOT), before entering into a contract for a state highway project, must request the department of industry, labor and human relations (DILHR) to determine the prevailing wage rate and prevailing hours of labor for each trade or occupation in the area from which labor for the project would normally be secured, except that DILHR may exempt a local governmental unit from requesting a determination if the local governmental unit adopts standards that are at least as high as those under the prevailing wage and hours law. Currently, a local governmental unit determines the prevailing wage rates for a local street project. This bill eliminates the responsibility of a local governmental unit to determine the prevailing wage rates for a local street project and instead requires a local government unit to request DILHR to determine the prevailing wage rates and hours of labor in the area of the proposed project for those trades or occupations that are commonly employed in the highway construction industry.

Under current law, the prevailing wage rate for a trade or occupation that is employed on a state or local building project is the wage, plus fringe benefits, paid to the majority of the persons working in that trade or occupation in the area from which labor for the project is normally secured or, if there is no rate at which a majority of the persons working in that trade or occupation in the area are paid, the prevailing wage rate is the rate paid to the largest number of individuals working in that trade or occupation in the area. Currently, the prevailing wage rate for a trade or occupation that is employed on a state highway project is the wage, plus fringe benefits, paid to the largest number of persons engaged in the same class of labor in the area from which labor for the project is secured. Currently, DILHR also determines truck rental rates for persons who own and operate their own trucks when working on a state highway project.

This bill eliminates truck rental rates and provides instead that a truck driver, including the owner-operator of a truck, must be paid at a prevailing wage rate that is determined by DILHR in the same manner as prevailing wage rates are determined for workers in other trades or occupations. The bill also provides one uniform method of determining prevailing wage rates for persons employed on all state and local public works projects. Under the bill, the prevailing wage rate for a trade or occupation that is employed on a state or local building project is the wage, plus fringe benefits, paid for a majority of the hours worked in that trade or occupation on building projects in the county in which the proposed project is located and in the counties contiguous to that county that are not subject to the prevailing wage law (private sector projects) or, if there is no rate at which a majority of the hours worked in the trade or occupation on private sector projects in those counties is paid, the prevailing wage rate is the average hourly wage, weighted by the number of hours worked, plus the average hourly fringe benefits, weighted by the number of hours worked, paid to all persons employed in the trade or occupation on private sector projects in those counties. For local street projects and state highway projects, the bill provides that wages, plus fringe benefits, paid for hours worked on public sector projects, as well as private sector projects, are also considered in determining the prevailing wage rate.

Under current law, the prevailing hours of labor for a trade or occupation in an area are the hours per day and per week worked within the area from which labor for a project would normally be secured by a larger number of persons than are employed in the trade or occupation for any other number of hours per day and per week, except that the prevailing hours of labor for any trade or occupation may not exceed 8 hours per day and 40 hours per week. This bill eliminates the prevailing hours of labor per day, but retains the prevailing hours of labor per week and specifies that the prevailing hours of labor may not include any hours worked on a Sunday or holiday so that, for example, if a person's normal work week consists of 4 10-hour days, the person need not be paid overtime pay for the 9th and 10th hours worked each day. Instead the person must be paid overtime pay only for the hours worked in excess of 40 in a week and any hours worked on a Sunday or holiday.

Under current law, when a local governmental unit or state agency requests DILHR to determine the prevailing wage rates and prevailing hours of labor for a proposed public works project, DILHR must make that determination within 30 days after the request. Current law also provides a procedure for local building projects under which any person may request a review of DILHR's determination if the person submits evidence showing that DILHR's determination does not represent the actual prevailing wage rate or prevailing hours of labor for a trade or occupation in the area of the proposed project. Current law, however, does not provide a similar review procedure for state building projects. This bill permits any person to request a review of a determination by DILHR of the prevailing wage rates or hours of labor for a state building project along the same lines that a person may request such a review under current law for a local building project. The bill also permits a local governmental unit or state agency to request a review of a determination by DILHR of the prevailing wage rates or hours of labor for a proposed public works project if

the local governmental unit or state agency submits evidence, including wage rate or hours of labor information on at least 3 similar projects located in the city, village or town in which the proposed project is located, showing that DILHR's determination does not represent the prevailing wage rate or hours of labor in that city, village or town. If DILHR modifies its determination, then the prevailing wage rate or prevailing hours of labor is the prevailing wage rate or prevailing hours of labor in the city, village or town, rather than in the county and contiguous counties.

Under current law, DOT may appeal to the governor if it considers any portion of DILHR's determination of the prevailing wage rates or hours of labor for a state highway project to be incorrect. This bill permits a local governmental unit or a state agency other than DOT that believes that payment of any prevailing wage rate determined by DILHR for a project would pose a dire financial hardship to the local governmental unit or state agency to petition the secretary of industry, labor and human relations to reduce that prevailing wage rate for the project. If the secretary finds that payment of that prevailing wage rate would pose a dire financial hardship, the secretary may reduce that rate by not more than 20%.

Finally, with respect to the determination of prevailing wage rates and hours of labor, under current law, information relating to wages and hours submitted to DILHR by contractors, subcontractors and agents for the purpose of assisting DILHR in determining prevailing wage rates and hours of labor for a project are subject to inspection and copying by the public under the open records law. This bill requires DILHR to withhold from inspection and copying under the open records law all personally identifiable information submitted to DILHR by contractors, subcontractors and agents for the purpose of assisting DILHR in determining prevailing wage rates and hours of labor.

Employes and projects covered

Under current law, contractors, subcontractors and agents performing work on a state or local public works project must pay to employes working on the site of the project the prevailing wage rate plus overtime pay for all hours worked in excess of the prevailing hours of labor. Currently, employes engaged in the processing, manufacture or delivery of materials or products by or for commercial establishments that have a fixed place of business from which they regularly supply those materials or products are not covered under the prevailing wage and hours law, except that employes who deliver mineral aggregate, such as sand, gravel and stone, to the site of the project and deposit the mineral aggregate substantially in place are covered under the prevailing wage and hours law.

This bill further clarifies which employes are covered under the prevailing wage and hours law. Under the bill, in addition to the employes specifically covered under current law, employes are also covered for all time spent in transporting material or spoil from the site of a project and returning to the project and employes who are engaged in manufacturing or furnishing materials, articles, supplies or equipment on the site of a project or from a facility dedicated exclusively, or nearly so, to a project are covered under the prevailing wage and hours of labor law.

The bill also specifies that a volunteer working on a state or local building project or on a local highway project is not covered under the prevailing wage and hours of labor law.

Current law provides a threshold below which the prevailing wage and hours law does not apply to a state or local building project. Currently, the prevailing wage and hours law does not apply to a project involving a single trade if the estimated cost of completion of the project is below \$11,000 or to a project involving multiple trades if the estimated cost of completion of the project is below \$110,000. Those figures are adjusted by DILHR every 2 years in proportion to changes in the cost of construction. This bill eliminates the single-trade threshold and raises the multiple-trade threshold to \$150,000 effective on the publication of the bill and to \$200,000 effective on January 1, 1999, with DILHR to begin adjusting that amount every 2 years, but no sooner than January 1, 2001.

Under current law, state and local public works projects that receive \$2,000 or more in federal funding are subject to a federal prevailing wage and hours law known as the Davis-Bacon act. This bill exempts from coverage under the state prevailing wage and hours law projects that are covered under the Davis-Bacon act.

Finally, with respect to coverage of employes and projects, contracts currently made by a state agency for the erection, construction, remodeling or repairing of a public building are subject to the prevailing wage and hours law. This bill specifies that contracts made by state agencies for the demolition of a public building are also covered by that law.

Administration and enforcement

Under current law, the prevailing wage rates and prevailing hours of labor determined by a local governmental unit or DILHR for a local public works project must be incorporated into and made a part of any contract for that project. Currently, the prevailing wage rates and prevailing hours of labor determined by DILHR for a state public works project must be specifically set forth in the proposal and contract for that project. This bill requires the prevailing wage rates and hours of labor for all state and local public works projects to be physically incorporated into and made a part of any proposal, contract and subcontract for that project.

Under current law, DILHR, on the request of any person, must inspect the payroll records of a contractor, subcontractor or agent performing work on a local building project to ensure compliance with the prevailing wage and hours law. If the contractor, subcontractor or agent who is subject to the inspection is found to be in compliance, the person requesting the inspection must pay for the cost of the inspection. Current law, however, does not require DILHR to make a similar inspection of the payroll records of a contractor, subcontractor or agent performing work on a state building project. This bill requires DILHR, on the request of any person, to inspect the payroll records of a contractor, subcontractor or agent performing work on a state building project to ensure compliance with the prevailing wage and hours law. Under the bill, if the contractor, subcontractor or agent who is subject to the inspection is found to be in compliance and if the person making the request is a covered employe, DILHR must charge that person the actual cost of the inspection. If the contractor, subcontractor or agent who is subject to the inspection

is found to be in compliance and if the person making the request is not a covered employe, DILHR must charge that person \$250 or the actual cost of the inspection, whichever is greater.

Under current law, before a local governmental unit may authorize final payment for a public works project, each contractor performing work on the project must file with the local governmental unit an affidavit stating that the contractor has complied with the prevailing wage and hour law and that the contractor has received evidence of compliance from each of the contractor's agents and subcontractors. Current law, however, does not require a contractor performing work on a state building project to file a similar affidavit before the state agency contracting for the work may authorize final payment. This bill requires agents and subcontractors who have performed work on a state or local public works project to file with the contractor an affidavit stating that the agent or subcontractor has complied with the prevailing wage and hours law before the contractor may authorize final payment to the agent or subcontractor. The bill also requires a contractor who has performed work on a state or local public works project to file with the local governmental unit or state agency contracting for the work an affidavit stating that the contractor has complied with the prevailing wage and hours law and has received affidavits of compliance from each of his or her agents and subcontractors. The local governmental unit or state agency may not authorize final payment until the contractor's affidavit has been filed in proper form and order. If a local governmental unit or state agency authorizes final payment before the contractor's affidavit has been filed in proper form and order or if DILHR determines that any employe covered by the prevailing wage and hours law has not or may not have been paid the prevailing wage rate or overtime pay for all hours worked in excess of the prevailing hours of labor, the local governmental unit or state agency is liable for all back wages owed to the employe up to the amount of the final payment.

Penalties

Current law provides for a variety of penalties that may be imposed for a violation of the prevailing wage and hours law. Currently, a contractor who does not pay the wage scale set by a local governmental unit for a local street project may be fined not more than \$500 per offense. Currently, a contractor who does not pay the prevailing wage rate or overtime pay for all hours worked in excess of the prevailing hours of labor on a local building project is liable for the amount of back wages owed plus an equal amount as liquidated damages. Currently, a state officer or employe who executes a contract for a state building project without complying with the prevailing wage and hours law, and a contractor, subcontractor or agent who does not pay the prevailing wage rate or overtime pay for all hours worked in excess of the prevailing hours of labor on a state building project, may be fined not more than \$200 or imprisoned for not more than 6 months, or both, with each day counting as a separate offense. Currently, a contractor, subcontractor or agent performing work on a state highway project who violates the prevailing wage and hours law may be fined not less than \$50 nor more than \$200 or imprisoned for not more than 18 months, or both, with each day counting as a separate offense. This bill eliminates the liability of a state employe or officer who executes a contract for a state building

project without complying with the prevailing wage and hours law. The bill also standardizes the penalties for a contractor, subcontractor or agent performing work on a state or local public works project who violates the prevailing wage and hours law at a fine of not more than \$200 or imprisonment for not more than 6 months, or both, with each day counting as a separate offense.

Finally, in addition to penalties for failure to pay the prevailing wage or to pay overtime pay for all hours worked in excess of the prevailing hours of labor, current law also prohibits an employer from inducing an employe employed on a local public works project to give up, waive or return any part of the compensation to which the employe is entitled under DILHR's prevailing wage determine (commonly known as a "kickback"). Current law, however, does not prohibit employers performing work on state public works from inducing employes on those projects to pay kickbacks. This bill extends the coverage of the kickback prohibition to employers performing work on state public works projects. The bill also specifically prohibits 2 other types of kickbacks as follows: 1) reducing the hourly basic rate of pay normally paid to an employe for work done on a nonpublic works project during a week in which the employe works both on a public works project and a nonpublic works project; and 2) inducing an employe to permit any part of the wages to which the employe is entitled for work done on a project that is subject to the prevailing wage law to be deducted from his or her pay and deposited with a labor organization for the purpose of subsidizing bids on other projects (commonly referred to as "targeting").

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.** 66.293 (1) of the statutes is repealed and recreated to read:

2 66.293 (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 and those counties that are contiguous to that county or, if the
5 department modifies a wage determination under sub. (3) (br), "area" means the city,
6 village or town in which a proposed project that is subject to this section is located.

7 (b) "Department" means the department of industry, labor and human
8 relations.

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

1 (d) "Local governmental unit" means a political subdivision of this state, a
2 special purpose district in this state, an instrumentality or corporation of such a
3 political subdivision or special purpose district, a combination or subunit of any of
4 the foregoing or an instrumentality of the state and any of the foregoing.

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

6 (f) 1. "Prevailing wage rate" for any trade or occupation engaged on any project
7 of public works, except highway, street or bridge construction, in any area means the
8 hourly basic rate of pay, plus the hourly contribution for health insurance benefits,
9 vacation benefits, pension benefits and any other bona fide economic benefit, paid
10 directly or indirectly, for a majority of the hours worked in the trade or occupation
11 on projects, except highway, street or bridge construction, in the area that are not
12 subject to this section, or if there is no rate at which a majority of the hours worked
13 in the trade or occupation on projects, except highway, street or bridge construction,
14 in the area that are not subject to this section is paid, then the prevailing wage rate
15 for any trade or occupation engaged on any project of public works, except highway,
16 street or bridge construction, in any area shall be the average hourly basic rate of pay,
17 weighted by the number of hours worked, plus the average hourly contribution,
18 weighted by the number of hours worked, for health insurance benefits, vacation
19 benefits, pension benefits and any other bona fide economic benefit, paid directly or
20 indirectly to all persons employed in that trade or occupation on projects, except
21 highway, street or bridge construction, in that area that are not subject to this
22 section.

23 2. "Prevailing wage rate" for any trade or occupation in any area engaged on
24 any project of highway, street or bridge construction means the hourly basic rate of
25 pay, plus the hourly contribution for health insurance benefits, vacation benefits,

1 pension benefits and any other bona fide economic benefit, paid directly or indirectly,
2 for a majority of the hours worked in the trade or occupation in the area, or if there
3 is no rate at which a majority of the hours worked in the trade or occupation in the
4 area is paid, then the prevailing wage rate for any trade or occupation engaged on
5 any project of highway, street or bridge construction in any area shall be the average
6 hourly basic rate of pay, weighted by the number of hours worked, plus the average
7 hourly contribution, weighted by the number of hours worked, for health insurance
8 benefits, vacation benefits, pension benefits and any other bona fide economic
9 benefit, paid directly or indirectly to all persons employed in that trade or occupation
10 in that area.

11 (g) "Secretary" means the secretary of industry, labor and human relations.

12 (h) "Truck driver" has the meaning given in s. 103.49 (1) (f).

13 **SECTION 2.** 66.293 (2) of the statutes is repealed.

14 **SECTION 3.** 66.293 (3) (title) of the statutes is created to read:

15 66.293 (3) (title) PREVAILING WAGE RATES AND HOURS OF LABOR.

16 **SECTION 4.** 66.293 (3) (intro.) of the statutes is renumbered 66.293 (3) (am) and
17 amended to read:

18 66.293 (3) (am) Every municipality local governmental unit, before making a
19 contract by direct negotiation or soliciting bids on a contract, for any project of public
20 works ~~except, including~~ highway, street or bridge construction, shall apply to the
21 department of industry, labor and human relations ~~to ascertain~~ to determine the
22 prevailing wage rate, and prevailing hours of labor ~~and hourly basic pay rates in all~~
23 ~~trades and occupations~~ for each trade or occupation required in the work
24 contemplated. The department shall determine the prevailing wage rate, and
25 prevailing hours of labor ~~and hourly basic pay rates~~ for each trade or occupation

1 ~~under s. 103.49~~, make its determination within 30 days after receiving the request
2 and file the same with the ~~municipality~~ local governmental unit applying therefor.

3 ~~(bm) A Any person may request for the a~~ review of any portion of a wage
4 determination ~~may be made~~ within 30 days ~~from~~ after the determination date if the
5 person submits evidence is submitted with the request showing that the prevailing
6 wage rate or prevailing hours of labor for any given trade or occupation included in
7 the determination does not represent the prevailing wage rate or prevailing hours
8 of labor for that trade or occupation in the area where the proposed project is located.

9 Such evidence shall include wage rate and hours of labor information for the
10 contested trade or occupation on at least one similar project located in the
11 municipality area where the proposed project is located and on which some work has
12 been performed ~~during the current or any of~~ within the previous 12 months. The
13 department shall affirm or modify the original determination within 15 days ~~from~~
14 after the date on which the department receives the request for review. Reference
15 to such

16 ~~(dm) The~~ prevailing wage rates and prevailing hours of labor determined by
17 the department or a ~~municipality~~ local governmental unit exempted under ~~par. (d)~~
18 sub. (6) shall be published in the notice issued for the purpose of securing bids for the
19 project. If any contract or subcontract for a project of public works ~~except, including~~
20 highway, street or bridge construction, is entered into, the prevailing wage rates and
21 prevailing hours of labor determined by the department or exempted ~~municipality~~
22 local governmental unit shall be physically incorporated into and made a part of the
23 contract or subcontract and may not be changed during the time that the contract
24 or subcontract is in force. No laborer, worker or mechanic employed ~~directly upon~~
25 the site of the project ~~by the contractor or by a subcontractor, agent or other person,~~

1 ~~doing or contracting to do any part of the work, person described in sub. (4)~~ may be
2 paid less than the prevailing wage rate in the same or most similar trade or
3 occupation; nor may he or she be permitted to work a greater number of hours per
4 day ~~or per calendar week~~ than the prevailing hours of labor determined under this
5 subsection, unless he or she is paid for all hours worked in excess of the prevailing
6 hours of labor at a rate of at least ~~1-1/2~~ 1.5 times his or her hourly basic rate of pay.

7 **SECTION 5.** 66.293 (3) (a) of the statutes is renumbered 66.293 (11) (a) and
8 amended to read:

9 66.293 (11) (a) Any contractor, subcontractor or agent thereof, who fails to pay
10 the prevailing wage rate ~~of wages~~ determined by the department under this
11 ~~subsection or sub. (3) or who pays less than 1-1/2~~ 1.5 times the hourly basic rate of
12 pay for all hours worked ~~on the project~~ in excess of the prevailing hours of labor
13 determined under ~~this subsection sub. (3)~~, shall be liable to ~~the employes~~ any affected
14 employe in the amount of ~~their~~ his or her unpaid ~~minimum~~ wages or ~~their~~ his or her
15 unpaid overtime compensation and in an additional equal amount as liquidated
16 damages. ~~Action~~ An action to recover the liability may be maintained in any court
17 of competent jurisdiction by any ~~one or more employes~~ employe for and in behalf of
18 that employe ~~or those employes~~ and other employes similarly situated. No employe
19 ~~shall~~ may be a party plaintiff to any such action unless the employe consents in
20 writing to become such a party and the consent is filed in the court in which the action
21 is brought. ~~The~~ Notwithstanding s. 814.04 (1), the court shall, in addition to any
22 judgment awarded to the plaintiff, allow a reasonable ~~attorney's fee~~ attorney fees
23 and costs to be paid by the defendant.

24 **SECTION 6.** 66.293 (3) (b) of the statutes is repealed.

25 **SECTION 7.** 66.293 (3) (br) of the statutes is created to read:

1 66.293 (3) (br) In addition to the review under par. (bm), the local governmental
2 unit that requested the wage determination under this subsection may request a
3 review of any portion of a wage determination within 30 days after the determination
4 date if the state agency submits evidence with the request showing that the
5 prevailing wage rate or prevailing hours of labor for any given trade or occupation
6 included in the determination does not represent the prevailing wage rate or
7 prevailing hours of labor for that trade or occupation in the city, village or town in
8 which the proposed project is located. That evidence shall include wage rate and
9 hours of labor information for the contested trade or occupation on at least 3 similar
10 projects located in the city, village or town in which the proposed project is located
11 and on which some work has been performed within the previous 12 months. The
12 department shall affirm or modify the original determination within 15 days after
13 the date on which the department receives the request for review.

14 **SECTION 8.** 66.293 (3) (c) of the statutes is renumbered 66.293 (5) and amended
15 to read:

16 66.293 (5) (title) NONAPPLICABILITY. This subsection ~~section~~ does not apply to
17 any ~~highway, street or bridge construction or to any public works project, including~~
18 highway, street or bridge construction, to which 40 USC 276a applies or to any public
19 works project involving more than one trade for which the estimated project cost of
20 completion is below ~~\$3,500 where a single trade is involved and \$35,000 where more~~
21 ~~than one trade is involved on such project (after hearing these dollar amounts shall~~
22 ~~be adjusted by the department~~ \$150,000 or an amount determined by the
23 department under this subsection. The department shall adjust that dollar amount
24 every 2 years, the first adjustment to be made not sooner than January 1, ~~1976~~ 2001.
25 The adjustments shall be in proportion to any changes in construction costs since the

1 effective date of the dollar amounts established under this subsection immediately
2 prior to each adjustment); nor does this subsection apply to wage rates and hours of
3 employment of laborers, workmen or mechanics engaged in the processing or
4 manufacture of materials or products or to the delivery thereof by or for commercial
5 establishments which have a fixed place of business from which they regularly
6 supply such processed or manufactured materials or products, except that this
7 subsection does apply to laborers, workmen or mechanics delivering mineral
8 aggregate such as sand, gravel or stone which is incorporated into the work under
9 the contract by depositing the material substantially in place, directly or through
10 spreaders, from the transporting vehicle.

11 **SECTION 9.** 66.293 (3) (cm) of the statutes is created to read:

12 66.293 (3) (cm) The department shall withhold from inspection and copying
13 under s. 19.35 (1) all personally identifiable information submitted to the
14 department by contractors, subcontractors and agents thereof for the purpose of
15 assisting the department in determining prevailing wage rates and prevailing hours
16 of labor under this subsection.

17 **SECTION 10.** 66.293 (3) (d) of the statutes is renumbered 66.293 (6) and
18 amended to read:

19 66.293 (6) (title) EXEMPTIONS. The department of industry, labor and human
20 relations, upon petition of any municipality local governmental unit, shall issue an
21 order exempting the municipality local governmental unit from applying to the
22 department for a determination under this subsection sub. (3) when it is shown that
23 an ordinance or other enactment of the municipality local governmental unit sets
24 forth the standards, policy, procedure and practice resulting in standards as high or
25 higher than those under s. 103.49 this section.

1 **SECTION 11.** 66.293 (3) (e) of the statutes is renumbered 66.293 (10) (a) and
2 amended to read:

3 66.293 (10) (a) Each contractor, subcontractor or agent thereof ~~participating~~
4 ~~in performing work on a project covered by this subsection that is subject to this~~
5 ~~section~~ shall keep full and accurate records clearly indicating the name and trade or
6 occupation of every laborer, ~~workman or mechanic employed by the contractor,~~
7 ~~subcontractor or agent in connection with the project~~ person described in sub. (4) and
8 an accurate record of the number of hours worked by each employe of those persons
9 and the actual wages paid therefor.

10 **SECTION 12.** 66.293 (3) (f) of the statutes is renumbered 66.293 (8) and amended
11 to read:

12 66.293 (8) (title) POSTING. For the information of the employes working on the
13 project, the prevailing wage rates and prevailing hours of labor determined by the
14 department or ~~exempted municipality~~ local governmental unit and the provisions of
15 ~~pars. (a) and (e) subs. (10) (a) and (11) (a)~~ shall be kept posted by the employer local
16 governmental unit in at least one conspicuous and easily accessible place at the site
17 of the project.

18 **SECTION 13.** 66.293 (3) (g) of the statutes is renumbered 66.293 (9) (b) and
19 amended to read:

20 66.293 (9) (b) ~~Each~~ Upon completion of a project and before final payment for
21 completing a project, each agent or subcontractor shall furnish the contractor with
22 evidence of compliance with an affidavit stating that the agent or subcontractor has
23 complied fully with the requirements of this subsection section. A contractor may
24 not authorize final payment until that affidavit is filed in proper form and order.

1 **SECTION 14.** 66.293 (3) (h) of the statutes is renumbered 66.293 (9) (c) and
2 amended to read:

3 66.293 (9) (c) Upon completion of ~~the a~~ project and ~~prior to~~ before final payment
4 ~~therefor~~ for completing a project, each contractor shall file with the ~~municipality~~
5 local governmental unit an affidavit stating that the contractor has complied fully
6 with the ~~provisions and~~ requirements of this ~~subsection~~ section and that the
7 contractor has received ~~evidene~~ an affidavit of compliance from each of the
8 contractor's agents and subcontractors. ~~No municipality may~~ A local governmental
9 unit may not authorize a final payment until such an affidavit is filed in proper form
10 and order. If a local governmental unit authorizes a final payment before such an
11 affidavit is filed in proper form and order or if the department determines that any
12 person specified in sub. (4) has been or may have been paid less than the prevailing
13 wage rate or less than 1.5 times the hourly basic rate of pay for all hours worked in
14 excess of the prevailing hours of labor and requests that the local governmental unit
15 withhold all or part of the final payment, but the local governmental unit fails to do
16 so, the local governmental unit is liable for all back wages payable up to the amount
17 of that final payment.

18 **SECTION 15.** 66.293 (3) (i) of the statutes is renumbered 66.293 (10) (b) and
19 amended to read:

20 66.293 (10) (b) The department of ~~industry, labor and human relations~~ or the
21 contracting ~~municipality~~ local governmental unit may demand and examine, and it
22 shall be the duty of every contractor, subcontractor and agent thereof to furnish to
23 the department and local governmental unit, copies of any payrolls and other records
24 and information relating to the wages paid ~~laborers, workmen or mechanics on to~~
25 persons described in sub. (4) for work to which this subsection section applies. The

1 department may inspect records in the manner provided in ch. 101. Every
2 contractor, subcontractor or agent performing work on a project that is subject to this
3 section is subject to the requirements of ch. 101 relating to the examination of
4 records.

5 **SECTION 16.** 66.293 (3) (j) of the statutes is renumbered 66.293 (9) (a) and
6 amended to read:

7 66.293 (9) (a) When the department of industry, labor and human relations
8 finds that a ~~municipality~~ local governmental unit has not requested a prevailing
9 wage rate determination or that a local governmental unit, contractor or
10 subcontractor has not physically incorporated a prevailing wage rate determination
11 into the ~~a~~-contract or subcontract as required under this ~~subsection~~ section, the
12 department shall notify the ~~municipality~~ local governmental unit, contractor or
13 subcontractor of such noncompliance and shall file the prevailing wage rate
14 determination with the ~~municipality~~ local governmental unit, contractor or
15 subcontractor within 30 days after such notice.

16 **SECTION 17.** 66.293 (3) (k) of the statutes is renumbered 66.293 (10) (d) and
17 amended to read:

18 66.293 (10) (d) ~~The provisions of s. Section~~ 101.02 (5) (f), (12), (13) and (14)
19 ~~apply~~ applies to this ~~subsection~~ section. Section 111.322 (2m) applies to discharge
20 or other discriminatory acts arising in connection with any proceeding under this
21 ~~subsection~~ section, including proceedings under ~~par. sub. (11)~~ (a).

22 **SECTION 18.** 66.293 (3) (m) of the statutes is renumbered 66.293 (10) (c) and
23 amended to read:

24 66.293 (10) (c) If requested by any person, the department shall inspect the
25 payroll records of the contractors, subcontractors or agents performing work on a

1 project that is subject to this section to ensure compliance with this section. The cost
2 of the inspection shall be paid by the person making the request, if ~~If~~ the contractor,
3 subcontractor, or agent subject to the inspection is found to be in compliance ~~and if~~
4 the person making the request is a person specified in sub. (4), the department shall
5 charge the person making the request the actual cost of the inspection. If the
6 contractor, subcontractor or agent subject to the inspection is found to be in
7 compliance and if the person making the request is not a person specified in sub. (4),
8 the department shall charge the person making the request \$250 or the actual cost
9 of the inspection, whichever is greater.

10 **SECTION 19.** 66.293 (3) (n) of the statutes is renumbered 66.293 (12) and
11 amended to read:

12 66.293 (12) (title) DEPARTMENT. (a) Except as provided under subds. ~~2. and 3.~~
13 pars. (b) and (c), the department of industry, labor and human relations shall notify
14 any ~~municipality~~ local governmental unit applying for a determination under sub.
15 (3) (intro.) and any ~~municipality~~ local governmental unit exempted under par. (d)
16 sub. (6) of the names of all persons whom the department has found to have failed
17 to pay the prevailing wage rate determined under ~~this subsection~~ sub. (3) or has
18 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
19 ~~on a project~~ in excess of the prevailing hours of labor determined under ~~this~~
20 ~~subsection~~ sub. (3) at any time in the preceding 3 years. The department shall
21 include with any such name the address of such person and shall specify when and
22 ~~how~~ such person has failed to pay the prevailing wage rate determined under ~~this~~
23 ~~subsection~~ and when and ~~how~~ such person has failed to pay less than 1.5 times the
24 hourly basic rate of pay for all hours worked ~~on a project~~ in excess of the prevailing
25 hours of labor determined under ~~this subsection~~. No ~~municipality~~ local

1 governmental unit may award any contract to such person unless otherwise
2 recommended by the department or unless at least 3 years have elapsed from the
3 date the department issued its findings or the date of final determination by a court
4 of competent jurisdiction, whichever is later.

5 (b) The department may not include in a notification under ~~subd. 1. par. (a)~~ the
6 name of any person on the basis of having let work to a person whom the department
7 has found to have failed to pay the prevailing wage rate determined under ~~this~~
8 ~~subsection sub. (3)~~ or has found to have paid less than 1.5 times the hourly basic rate
9 of pay for all hours worked ~~on a project~~ in excess of the prevailing hours of labor
10 determined under ~~this subsection sub. (3)~~.

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

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

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

1 **SECTION 20.** 66.293 (4) of the statutes is created to read:

2 **66.293 (4) COVERED EMPLOYEES.** (a) All of the following employes shall be paid
3 the prevailing wage rate determined under sub. (3) and may not be permitted to work
4 a greater number of hours per calendar week than the prevailing hours of labor
5 determined under sub. (3), unless they are paid for all hours worked in excess of the
6 prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

7 1. All laborers, workers, mechanics and truck drivers employed on the site of
8 a project that is subject to this section, or employed in delivering mineral aggregate
9 such as sand, gravel or stone that is immediately incorporated into the work, and not
10 stockpiled or further transported by truck, on the site of a project that is subject to
11 this section by depositing the material substantially in place, directly or through
12 spreaders, from the transporting vehicle, or employed in transporting excavated
13 material or spoil from and returning to the site of a project that is subject to this
14 section.

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

20 (b) Notwithstanding par. (a), a laborer, worker, mechanic or truck driver who
21 is regularly employed in the processing, manufacturing or delivery of materials or
22 products by or for a commercial establishment that has a fixed place of business from
23 which the establishment regularly supplies processed or manufactured materials or
24 products is not entitled to receive the prevailing wage rate determined under sub.

1 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
2 worked in excess of the prevailing hours of labor determined under sub. (3).

3 (c) Notwithstanding par. (a), a person who volunteers to perform work on a
4 project that is subject to this section is not entitled to receive the prevailing wage rate
5 determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate
6 of pay for all hours worked in excess of the prevailing hours of labor determined
7 under sub. (3).

8 **SECTION 21.** 66.293 (5) of the statutes, as affected by 1995 Wisconsin Act
9 (this act), is repealed and recreated to read:

10 66.293 (5) NONAPPLICABILITY. This section does not apply to any public works
11 project, including highway, street or bridge construction, to which 40 USC 276a
12 applies or to any public works project involving more than one trade for which the
13 estimated project cost of completion is below \$200,000 or an amount determined by
14 the department under this subsection. The department shall adjust that dollar
15 amount every 2 years, the first adjustment to be made not sooner than January 1,
16 2001. The adjustments shall be in proportion to any changes in construction costs
17 since the effective date of the dollar amounts established under this subsection.

18 **SECTION 22.** 66.293 (7) of the statutes is created to read:

19 66.293 (7) HARDSHIP EXCEPTION. If a local governmental unit believes that the
20 payment of any prevailing wage rate determined under sub. (3) for a project that is
21 subject to this section would pose a dire financial hardship for the local governmental
22 unit, the local governmental unit may request the secretary to reduce that prevailing
23 wage rate for that project. If the secretary determines that payment of that
24 prevailing wage rate for the project would pose a dire financial hardship for the local
25 governmental unit, the secretary may reduce that prevailing wage rate for the

1 project by not more than 20%. A party aggrieved by a determination of the secretary
2 under this subsection may request judicial review of that determination under s.
3 227.52.

4 **SECTION 23.** 66.293 (9) (title) of the statutes is created to read:

5 66.293 (9) (title) COMPLIANCE.

6 **SECTION 24.** 66.293 (10) (title) of the statutes is created to read:

7 66.293 (10) (title) RECORDS; INSPECTION; ENFORCEMENT.

8 **SECTION 25.** 66.293 (11) (title) of the statutes is created to read:

9 66.293 (11) (title) LIABILITY AND PENALTIES.

10 **SECTION 26.** 66.293 (11) (b) of the statutes is created to read:

11 66.293 (11) (b) 1. Except as provided in subds. 2. and 4., any contractor,
12 subcontractor or agent thereof who violates this section may be fined not more than
13 \$200 or imprisoned for not more than 6 months or both. Each day that any such
14 violation continues shall be considered a separate offense.

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

23 3. Any person employed on a project that is subject to this section who
24 knowingly permits a contractor, subcontractor or agent thereof to pay him or her less
25 than the prevailing wage rate set forth in the contract governing such project, who

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

7 4. Whoever induces any individual who seeks to be or is employed on any
8 project that is subject to this section to permit any part of the wages to which the
9 individual is entitled under the contract governing such project to be deducted from
10 the individual's pay and deposited with a labor organization for the purpose of
11 subsidizing bids on other projects by threat not to employ or admit to labor
12 organization membership, by threat of dismissal from such employment or labor
13 organization membership or by any other means is guilty of an offense under s.
14 946.15 (3).

15 5. Any person employed on a project that is subject to this section who
16 knowingly permits any part of the wages to which he or she is entitled under the
17 contract governing such project to be deducted from his or her pay and deposited with
18 a labor organization for the purpose of subsidizing bids on other projects is guilty of
19 an offense under s. 946.15 (4).

20 **SECTION 27.** 103.49 (1) (title) of the statutes is created to read:

21 103.49 (1) (title) DEFINITIONS.

22 **SECTION 28.** 103.49 (1) (a) of the statutes is amended to read:

23 103.49 (1) (a) "Area" means the county ~~or other locality from which labor for~~
24 ~~any project would normally be secured~~ in which a proposed project that is subject to
25 this section is located and those counties that are contiguous to that county or, if the

1 department modifies a wage determination under sub. (3) (c), “area” means the city,
2 village or town in which a proposed project that is subject to this section is located.

3 **SECTION 29.** 103.49 (1) (b) of the statutes is amended to read:

4 103.49 (1) (b) “Hourly basic rate of pay” means the hourly wage paid to any
5 employe, excluding any contributions or payments for health and welfare insurance
6 benefits, vacation benefits, pension benefits and any other bona fide economic
7 benefits, whether paid directly or indirectly.

8 **SECTION 30.** 103.49 (1) (c) of the statutes is renumbered 103.49 (1) (c) (intro.)
9 and amended to read:

10 103.49 (1) (c) (intro.) “Prevailing hours of labor” ~~in for~~ in for any trade or occupation
11 in any area means the hours of labor ~~per day and per week~~ worked within the area
12 by a larger number of workers than are employed in the trade or occupation for any
13 other number of hours ~~per day or week~~. In no event shall the prevailing hours of labor
14 be ~~deemed~~ considered to be more than 8 hours ~~per day nor more than~~ 40 hours per
15 week. or to include any hours worked on a Sunday or on any of the following holidays:

16 **SECTION 31.** 103.49 (1) (c) 1. to 8. of the statutes are created to read:

17 103.49 (1) (c) 1. January 1.

18 2. The last Monday in May.

19 3. July 4.

20 4. The first Monday in September.

21 5. The 4th Thursday in November.

22 6. December 25.

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

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

25 **SECTION 32.** 103.49 (1) (d) of the statutes is amended to read:

1 103.49 (1) (d) “Prevailing wage rate” ~~in~~ for any trade or occupation in any area
2 means the hourly basic rate ~~paid of pay~~, plus the hourly contribution for health and
3 ~~welfare~~ insurance benefits, vacation benefits, pension benefits and any other bona
4 fide economic benefit, ~~whether~~ paid directly or indirectly, ~~to~~ for a majority of all
5 ~~persons employed the hours worked~~ in the trade or occupation ~~in the area on the~~
6 erection, construction, remodeling, repairing or demolition of any building in the
7 area that is not subject to this section or on any other project, other than public
8 highway or bridge construction or maintenance, in the area that is not subject to this
9 section, or if there is no rate at which a majority are employed of the hours worked
10 in the trade or occupation on the erection, construction, remodeling, repairing or
11 demolition of any building in the area that is not subject to this section or on any other
12 project, other than public highway or bridge construction or maintenance, in the area
13 that is not subject to this section is paid, then the prevailing wage rate shall be the
14 rate which is paid to a larger number of employes than any other rate paid in the area
15 for work in the trade or occupation average hourly basic rate of pay, weighted by the
16 number of hours worked, plus the average hourly contribution, weighted by the
17 number of hours worked, for health insurance benefits, vacation benefits, pension
18 benefits and any other bona fide economic benefit, paid directly or indirectly to all
19 persons employed in that trade or occupation on the erection, construction,
20 remodeling, repairing or demolition of any building in that area that is not subject
21 to this section or on any other project, other than public highway or bridge
22 construction or maintenance, in that area that is not subject to this section.

23 **SECTION 33.** 103.49 (1) (e) of the statutes is created to read:

24 103.49 (1) (e) “State agency” means any office, department, independent
25 agency, institution of higher education, association, society or other body in state

1 government created or authorized to be created by the constitution or any law,
2 including the legislature and the courts.

3 **SECTION 34.** 103.49 (1) (f) of the statutes is created to read:

4 103.49 (1) (f) "Truck driver" includes an owner-operator of a truck.

5 **SECTION 35.** 103.49 (2) of the statutes, as affected by 1995 Wisconsin Act 27,
6 is amended to read:

7 103.49 (2) (title) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract
8 hereafter made for the erection, construction, remodeling ~~or~~, repairing or demolition
9 of any public building or for any other project of public works, except contracts for
10 the construction or maintenance of public highways and bridges, to which the state,
11 ~~any department thereof or any public building corporation~~ state agency or the
12 University of Wisconsin Hospitals and Clinics Authority is a party shall contain a
13 stipulation that no ~~laborer, workman or mechanic employed directly upon the site of~~
14 ~~the work by the contractor or by any subcontractor, agent or other person, doing or~~
15 ~~contracting to do all or a part of the work,~~ shall person described in sub. (2m) may
16 be permitted to work a greater number of hours ~~per day or per calendar week than~~
17 the prevailing hours of labor determined ~~pursuant to this section~~ under sub. (3),
18 except that any such ~~laborer, workman or mechanic~~ person may be permitted or
19 required to work more than such prevailing ~~number of hours per day and of labor~~ per
20 calendar week if he or she is paid for all hours worked in excess of the prevailing
21 hours of labor at a rate of at least ~~1-1/2~~ 1.5 times his or her hourly basic rate of pay;
22 ~~nor shall he~~ may he or she be paid less than the prevailing wage rate in the same or
23 most similar trade or occupation in the area wherein such public building or project
24 of public works is situated; ~~nor shall this section apply to wage rates and hours of~~
25 ~~employment of laborers, workmen or mechanics engaged in the processing or~~

1 ~~manufacture of materials or products or to the delivery thereof by or for commercial~~
2 ~~establishments which have a fixed place of business from which they regularly~~
3 ~~supply such processed or manufactured materials or products; except that this~~
4 ~~section shall apply to laborers, workmen or mechanics who deliver mineral~~
5 ~~aggregate such as sand, gravel or stone which is incorporated into the work under~~
6 ~~the contract by depositing the material substantially in place, directly or through~~
7 ~~spreaders, from the transporting vehicle. The. The prevailing wage rates and~~
8 ~~prevailing hours of labor determined under sub. (3) shall be published in the notice~~
9 ~~issued for the purpose of securing bids for the project. If any contract or subcontract~~
10 ~~for a project that is subject to this section is entered into, the prevailing wage rates,~~
11 ~~and prevailing hours of labor, and hourly basic rates of pay determined pursuant to~~
12 ~~this section under sub. (3) shall be set forth specifically in physically incorporated~~
13 ~~into and made a part of the contract and any subcontract and may not be changed~~
14 ~~during the time that the contract or subcontract is in force.~~

15 **SECTION 36.** 103.49 (2m) of the statutes is created to read:

16 103.49 (2m) COVERED EMPLOYES. (a) All of the following employes shall be paid
17 the prevailing wage rate determined under sub. (3) and may not be permitted to work
18 a greater number of hours per calendar week than the prevailing hours of labor
19 determined under sub. (3), unless they are paid for all hours worked in excess of the
20 prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

21 1. All laborers, workers, mechanics and truck drivers employed on the site of
22 a project that is subject to this section, or employed in delivering mineral aggregate
23 such as sand, gravel or stone that is immediately incorporated into the work, and not
24 stockpiled or further transported by truck, on the site of a project that is subject to
25 this section by depositing the material substantially in place, directly or through

1 spreaders, from the transporting vehicle, or employed in transporting excavated
2 material or spoil from and returning to the site of a project that is subject to this
3 section.

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

9 (b) Notwithstanding par. (a), a laborer, worker, mechanic or truck driver who
10 is regularly employed in the processing, manufacturing or delivery of materials or
11 products by or for a commercial establishment that has a fixed place of business from
12 which the establishment regularly supplies processed or manufactured materials or
13 products is not entitled to receive the prevailing wage rate determined under sub.
14 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
15 worked in excess of the prevailing hours of labor determined under sub. (3).

16 (c) Notwithstanding par. (a), a person who volunteers to perform on a project
17 that is subject to this section is not entitled to receive the prevailing wage rate
18 determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate
19 of pay for all hours worked in excess of the prevailing hours of labor determined
20 under sub. (3).

21 **SECTION 37.** 103.49 (3) (title) of the statutes is created to read:

22 103.49 (3) (title) INVESTIGATION; DETERMINATION.

23 **SECTION 38.** 103.49 (3) of the statutes is renumbered 103.49 (3) (a) and
24 amended to read:

1 103.49 (3) (a) Before bids are asked for any work to which this section applies,
2 the ~~department or officer~~ state agency having the authority to prescribe the
3 specifications shall request the department to ascertain the prevailing wage rates,
4 and prevailing hours of labor ~~and hourly basic rates of pay for all trades and~~
5 ~~occupations~~ for each trade or occupation required in the work under contemplation
6 in the area in which the work is to be done. The department shall make such
7 investigations and hold such public hearings as may be necessary to enable it to
8 ascertain define the trades or occupations that are commonly employed on projects
9 of public works and to inform itself as to the hours of labor and wage rates prevailing
10 in all areas of the state for those trades or occupations with a view to ascertaining
11 the prevailing wage rate, and prevailing hours of labor ~~and hourly basic rate of pay~~
12 for each such trade or occupation. ~~It~~ The department shall make its determination
13 within 30 days after receipt of the request and shall file the same with the
14 ~~department or officer~~ state agency applying therefor. The prevailing hours of labor,
15 and the prevailing wage rates, ~~the hourly basic rates of pay and trades or occupations~~
16 ~~for all labor involved in each project to which this section is applicable~~ shall, together
17 with the provisions of subs. (2) and (4) (6m), be kept posted on the project by the
18 employer state agency in at least one conspicuous place for the information of the
19 employes working on the project.

20 **SECTION 39.** 103.49 (3) (b) of the statutes is created to read:

21 103.49 (3) (b) Any person may request a review of any portion of a wage
22 determination within 30 days after the determination date if the person submits
23 evidence with the request showing that the prevailing wage rate or prevailing hours
24 of labor for any given trade or occupation included in the determination does not
25 represent the prevailing wage rate or prevailing hours of labor for that trade or

1 occupation in the area where the proposed project is located. That evidence shall
2 include wage rate and hours of labor information for the contested trade or
3 occupation on at least one similar project located in the area where the proposed
4 project is located and on which some work has been performed within the previous
5 12 months. The department shall affirm or modify the original determination within
6 15 days after the date on which the department receives the request for review.

7 **SECTION 40.** 103.49 (3) (c) of the statutes is created to read:

8 103.49 (3) (c) In addition to the review under par. (b), the state agency that
9 requested the wage determination under this subsection may request a review of any
10 portion of a wage determination within 30 days after the determination date if the
11 state agency submits evidence with the request showing that the prevailing wage
12 rate or prevailing hours of labor for any given trade or occupation included in the
13 determination does not represent the prevailing wage rate or prevailing hours of
14 labor for that trade or occupation in the city, village or town in which the proposed
15 project is located. That evidence shall include wage rate and hours of labor
16 information for the contested trade or occupation on at least 3 similar projects located
17 in the city, village or town in which the proposed project is located and on which some
18 work has been performed within the previous 12 months. The department shall
19 affirm or modify the original determination within 15 days after the date on which
20 the department receives the request for review.

21 **SECTION 41.** 103.49 (3) (d) of the statutes is created to read:

22 103.49 (3) (d) The department shall withhold from inspection and copying
23 under s. 19.35 (1) all personally identifiable information submitted to the
24 department by contractors, subcontractors and agents thereof for the purpose of

1 assisting the department in determining prevailing wage rates and prevailing hours
2 of labor under this subsection.

3 **SECTION 42.** 103.49 (3g) of the statutes, as affected by 1995 Wisconsin Act ...
4 (this act), is repealed and recreated to read:

5 103.49 (3g) NONAPPLICABILITY. This section does not apply to any project to
6 which 40 USC 276a applies or to any project involving more than one trade for which
7 the estimated cost of completion is less than \$200,000 or an amount determined by
8 the department under s. 66.293 (5).

9 **SECTION 43.** 103.49 (3r) of the statutes is created to read:

10 103.49 (3r) HARDSHIP EXCEPTION. If a state agency believes that the payment
11 of any prevailing wage rate determined under sub. (3) for a project that is subject to
12 this section would pose a dire financial hardship for the state agency, the state agency
13 may request the secretary to reduce that prevailing wage rate for that project. If the
14 secretary determines that payment of that prevailing wage rate for the project would
15 pose a dire financial hardship for the state agency, the secretary may reduce that
16 prevailing wage rate by not more than 20%. A party aggrieved by a determination
17 of the secretary under this subsection may request judicial review of that
18 determination under s. 227.52.

19 **SECTION 44.** 103.49 (4) of the statutes, as affected by 1995 Wisconsin Act 27,
20 is repealed.

21 **SECTION 45.** 103.49 (4r) of the statutes is created to read:

22 103.49 (4r) COMPLIANCE. (a) When the department finds that a state agency
23 has not requested a prevailing wage rate determination or that a state agency,
24 contractor or subcontractor has not physically incorporated a prevailing wage rate
25 determination into a contract or subcontract as required under sub. (2), the

1 department shall notify the state agency, contractor or subcontractor of such
2 noncompliance and shall file the prevailing wage rate determination with the state
3 agency, contractor or subcontractor within 30 days after such notice.

4 (b) Upon completion of a project and before final payment for completing a
5 project, each agent or subcontractor shall furnish the contractor with an affidavit
6 stating that the agent or subcontractor has complied fully with the requirements of
7 this section. A contractor may not authorize final payment until that affidavit is filed
8 in proper form and order.

9 (c) Upon completion of a project and before final payment for completing a
10 project, each contractor shall file with the state agency authorizing the work an
11 affidavit stating that the contractor has complied fully with the requirements of this
12 section and that the contractor has received an affidavit of compliance from each of
13 the contractor's agents and subcontractors. A state agency may not authorize a final
14 payment until such an affidavit is filed in proper form and order. If a state agency
15 authorizes a final payment before such an affidavit is filed in proper form and order
16 or if the department determines that any person specified in sub. (2m) has been or
17 may have been paid less than the prevailing wage rate or less than 1.5 times the
18 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor
19 and requests that the state agency withhold all or part of the final payment, but the
20 state agency fails to do so, the state agency is liable for all back wages payable up to
21 the amount of the final payment.

22 **SECTION 46.** 103.49 (5) (title) of the statutes is created to read:

23 103.49 (5) (title) RECORDS; INSPECTION; ENFORCEMENT.

24 **SECTION 47.** 103.49 (5) of the statutes is renumbered 103.49 (5) (b) and
25 amended to read:

1 103.49 (5) (b) It shall be the duty of the department to enforce this section. To
2 this end it may demand and examine, and it shall be the duty of every contractor and,
3 subcontractor and agent thereof to furnish to the department, copies of any or all
4 payrolls and ~~may examine all~~ other records and information relating to the wages
5 paid laborers, workers, or mechanics ~~on~~ to persons described in sub. (2m) for work
6 to which this section is applicable. The department may inspect records in the
7 manner provided in ch. 101. Every contractor, subcontractor or agent participating
8 in a project that is subject to this section is subject to the requirements of ch. 101
9 relating to the examination of records. Section 111.322 (2m) applies to discharge and
10 other discriminatory acts arising in connection with any proceeding under this
11 section.

12 **SECTION 48.** 103.49 (5) (a) of the statutes is created to read:

13 103.49 (5) (a) Each contractor, subcontractor or agent thereof performing work
14 on the site of a project that is subject to this section shall keep full and accurate
15 records clearly indicating the name and trade or occupation of every person described
16 in sub. (2m) and an accurate record of the number of hours worked by each of those
17 persons and the actual wages paid therefor.

18 **SECTION 49.** 103.49 (5) (c) of the statutes is created to read:

19 103.49 (5) (c) If requested by any person, the department shall inspect the
20 payroll records of the contractors, subcontractors or agents performing work on a
21 project that is subject to this section to ensure compliance with this section. If the
22 contractor, subcontractor or agent subject to the inspection is found to be in
23 compliance and if the person making the request is a person specified in sub. (2m),
24 the department shall charge the person making the request the actual cost of the
25 inspection. If the contractor, subcontractor or agent subject to the inspection is found

1 to be in compliance and if the person making the request is not a person specified in
2 sub. (2m), the department shall charge the person making the request \$250 or the
3 actual cost of the inspection, whichever is greater.

4 **SECTION 50.** 103.49 (6) of the statutes is renumbered 103.49 (3g) and amended
5 to read:

6 103.49 (3g) (title) NONAPPLICABILITY. This section shall does not apply to a
7 contractor or to work under a contract, described or referred to in sub. (2) if any
8 project to which 40 USC 276a applies or to any project involving multiple trades for
9 which the estimated cost of completing the project completion is less than the
10 estimated cost of completion \$150,000 or an amount determined by the department
11 under s. 66.293 (3) (e) as adjusted by the department (5).

12 **SECTION 51.** 103.49 (6m) of the statutes is created to read:

13 103.49 (6m) LIABILITY AND PENALTIES. (a) Except as provided in pars. (b) and
14 (d), any contractor, subcontractor or agent thereof who violates this section may be
15 fined not more than \$200 or imprisoned for not more than 6 months or both. Each
16 day that any such violation continues shall be considered a separate offense.

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

1 (c) Any person employed on a project that is subject to this section who
2 knowingly permits a contractor, subcontractor or agent thereof to pay him or her less
3 than the prevailing wage rate set forth in the contract governing such project, who
4 gives up, waives or returns any part of the compensation to which he or she is entitled
5 under the contract, or who gives up, waives or returns any part of the compensation
6 to which he or she is normally entitled for work on a project that is not subject to this
7 section during a week in which the person works both on a project that is subject to
8 this section and on a project that is not subject to this section, is guilty of an offense
9 under s. 946.15 (2).

10 (d) Whoever induces any individual who seeks to be or is employed on any
11 project that is subject to this section to permit any part of the wages to which the
12 individual is entitled under the contract governing such project to be deducted from
13 the individual's pay and deposited with a labor organization for the purpose of
14 subsidizing bids on other projects by threat not to employ or admit to labor
15 organization membership, by threat of dismissal from such employment or labor
16 organization membership or by any other means is guilty of an offense under s.
17 946.15 (3).

18 (e) Any person employed on a project that is subject to this section who
19 knowingly permits any part of the wages to which he or she is entitled under the
20 contract governing such project to be deducted from his or her pay and deposited with
21 a labor organization for the purpose of subsidizing bids on other projects is guilty of
22 an offense under s. 946.15 (4).

23 **SECTION 52.** 103.49 (7) (title) of the statutes is created to read:

24 103.49 (7) (title) DEBARMENT.

1 **SECTION 53.** 103.49 (7) (a) of the statutes, as affected by 1995 Wisconsin Act 27,
2 is amended to read:

3 103.49 (7) (a) Except as provided under pars. (b) and (c), the department shall
4 distribute to all state agencies, ~~as defined in s. 20.001 (1),~~ and to the University of
5 Wisconsin Hospitals and Clinics Authority a list of persons whom the department
6 has found to have failed to pay the prevailing wage rate determined under sub. ~~(1)~~
7 (3) or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked
8 ~~on a project in excess of the prevailing hours of labor~~ determined under sub. ~~(1)~~ (3)
9 at any time in the preceding 3 years. The department shall include with any such
10 name the address of such person and shall specify when ~~and how~~ such person has
11 failed to pay the prevailing wage rate ~~determined under this subsection~~ and when
12 ~~and how~~ such person has failed to pay less than 1.5 times the hourly basic rate of pay
13 for all hours worked ~~on a project in excess of the prevailing hours of labor~~ determined
14 under ~~this subsection~~ sub. (3). A state agency or the University of Wisconsin
15 Hospitals and Clinics Authority may not award any contract to such person unless
16 otherwise recommended by the department or unless 3 years have elapsed from the
17 date the department issued its findings or date of final determination by a court of
18 competent jurisdiction, whichever is later.

19 **SECTION 54.** 103.49 (7) (b) of the statutes is amended to read:

20 103.49 (7) (b) The department may not include in a notification under par. (a)
21 the name of any person on the basis of having let work to a person whom the
22 department has found to have failed to pay the prevailing wage rate determined
23 under sub. ~~(1)~~ (3) or has found to have paid less than 1.5 times the hourly basic rate
24 of pay for all hours worked on a project in excess of the prevailing hours of labor
25 determined under sub. ~~(1)~~ (3).

1 **SECTION 55.** 103.49 (7) (d) of the statutes is amended to read:

2 103.49 (7) (d) Any person submitting a bid on a project that is subject to this
3 section shall be required, on the date the person submits the bid, to identify any
4 construction business in which the person, or a shareholder, member, officer or
5 partner of the person, if the person is a business, owns, or has owned at least a 25%
6 interest on the date the person submits the bid or at any other time within 3 years
7 preceding the date the person submits the bid, if the business has been found to have
8 failed to pay the prevailing wage rate determined under ~~this section sub. (3)~~ or to
9 have paid less than 1.5 times the hourly basic rate of pay for all hours worked ~~on a~~
10 project in excess of the prevailing hours of labor determined under this section sub.
11 (3).

12 **SECTION 56.** 103.50 (1) (a) of the statutes is amended to read:

13 103.50 (1) (a) “Area” ~~means the locality from which labor for any project within~~
14 ~~such area would normally be secured~~ means the county in which a proposed project
15 that is subject to this section is located and those counties that are contiguous to that
16 county.

17 **SECTION 57.** 103.50 (1) (b) of the statutes is amended to read:

18 103.50 (1) (b) “Hourly basic rate of pay” ~~means the hourly wage paid to any~~
19 ~~employe, excluding any contributions or payments for health and welfare benefits,~~
20 ~~vacation benefits, pension benefits and any other economic benefits, whether paid~~
21 ~~directly or indirectly~~ has the meaning given in s. 103.49 (1) (b).

22 **SECTION 58.** 103.50 (1) (c) of the statutes is amended to read:

23 103.50 (1) (c) “Prevailing hours of labor” ~~means the hours of labor per day and~~
24 ~~per week worked within the area by a larger number of workers of the same class~~
25 ~~than are employed within the area for any other number of hours per day and per~~

1 ~~week. In no event shall the prevailing hours of labor be deemed to be more than 8~~
2 ~~hours per day nor more than 40 hours per week~~ has the meaning given in s. 103.49
3 (1) (c).

4 **SECTION 59.** 103.50 (1) (d) of the statutes is amended to read:

5 103.50 (1) (d) “Prevailing wage rate” for any trade or occupation in any area
6 means the hourly basic rate of pay, plus the hourly contribution for health and
7 welfare insurance benefits, vacation benefits, pension benefits and any other bona
8 fide economic benefit, ~~whether paid directly or indirectly, paid to the largest number~~
9 ~~of workers engaged in the same class of labor within the area, including rental rates~~
10 ~~for truck hire paid to those who own and operate the truck. In no event shall the~~
11 ~~prevailing wage rate for any class of labor be deemed to be less than a reasonable and~~
12 ~~living wage, nor shall truck rental rates established pursuant to this provision be~~
13 ~~subject to the provisions of sub. (2) relating to hours worked in excess of the~~
14 ~~prevailing hours when operated in excess of 8 hours in any one day or 40 hours in any~~
15 ~~one week~~ for a majority of the hours worked in the trade or occupation in the area,
16 or if there is no rate at which a majority of the hours worked in the trade or occupation
17 in the area is paid, then the prevailing wage rate shall be the average hourly basic
18 rate of pay, weighted by the number of hours worked, plus the average hourly
19 contribution, weighted by the number of hours worked, for health insurance benefits,
20 vacation benefits, pension benefits and any other bona fide economic benefit, paid
21 directly or indirectly to all persons employed in that trade or occupation in that area.

22 **SECTION 60.** 103.50 (1) (e) of the statutes is created to read:

23 103.50 (1) (e) “Truck driver” has the meaning given in s. 103.49 (1) (f).

24 **SECTION 61.** 103.50 (2) of the statutes is amended to read:

1 103.50 (2) (title) ~~HOURS PREVAILING WAGE RATES AND HOURS OF LABOR~~. No laborer
2 or mechanic person described in sub. (2m) in the employ of the a contractor or of any,
3 subcontractor, agent or other person ~~doing or contracting to do all or a part of the~~
4 ~~work performing any work on a project~~ under a contract based on bids as provided
5 in s. 84.06 (2) to which the state is a party for the construction or improvement of any
6 highway shall may be permitted to work a longer number of hours ~~per day or per~~
7 calendar week than the prevailing hours of labor determined ~~pursuant to this~~
8 ~~section; nor shall he under sub. (3); nor may he or she~~ be paid a lesser rate of wages
9 than the prevailing wage rate of wages thus determined, ~~for in~~ the area in which the
10 work is to be done; except that any such ~~laborer or mechanic person~~ may be permitted
11 or required to work more than such prevailing ~~number of hours per day and of labor~~
12 per calendar week if he or she is paid for all hours worked in excess of the prevailing
13 hours of labor at a rate of at least ~~1-1/2~~ 1.5 times his or her hourly basic rate of pay.
14 This section ~~shall not apply to wage rates and hours of employment of laborers or~~
15 mechanics engaged in the processing or manufacture of materials or products or to
16 the delivery thereof by or for commercial establishments which have a fixed place of
17 business from which they regularly supply such processed or manufactured
18 materials or products; except that this section shall apply to laborers or mechanics
19 who deliver mineral aggregate such as sand, gravel or stone which is incorporated
20 into the work under the contract by depositing the material substantially in place,
21 directly or through spreaders, from the transporting vehicle.

22 **SECTION 62.** 103.50 (2m) of the statutes is created to read:

23 103.50 (2m) COVERED EMPLOYES. (a) All of the following employees shall be paid
24 the prevailing wage rate determined under sub. (3) and may not be permitted to work
25 a greater number of hours per calendar week than the prevailing hours of labor

1 determined under sub. (3), unless they are paid for all hours worked in excess of the
2 prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay:

3 1. All laborers, workers, mechanics and truck drivers employed on the site of
4 a project that is subject to this section, or employed in delivering mineral aggregate
5 such as sand, gravel or stone that is immediately incorporated into the work, and not
6 stockpiled or further transported by truck, on the site of a project that is subject to
7 this section by depositing the material substantially in place, directly or through
8 spreaders, from the transporting vehicle, or employed in transporting excavated
9 material or spoil from and returning to the site of a project that is subject to this
10 section.

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

16 (b) Notwithstanding par. (a), a laborer, worker, mechanic or truck driver who
17 is regularly employed in the processing, manufacturing or delivery of materials or
18 products by or for a commercial establishment that has a fixed place of business from
19 which the establishment regularly supplies processed or manufactured materials or
20 products is not entitled to receive the prevailing wage rate determined under sub.
21 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours
22 worked in excess of the prevailing hours of labor determined under sub. (3).

23 **SECTION 63.** 103.50 (3) (a) of the statutes is amended to read:

24 103.50 (3) (a) The department shall conduct investigations and hold public
25 hearings necessary to define ~~classes of laborers and mechanics~~ the trades or

1 occupations that are commonly employed in the highway construction industry and
2 to inform itself as to the hours of labor and prevailing wage rates and prevailing
3 hours of labor in all areas of the state for all classes of labor and mechanics commonly
4 employed in highway construction work, with a view to ascertaining and
5 determining prevailing hours of labor, those trades or occupations, in order to
6 ascertain and determine the prevailing wage rates and hourly basic rates of pay
7 prevailing hours of labor accordingly.

8 **SECTION 64.** 103.50 (3) (b) of the statutes is repealed and recreated to read:

9 103.50 (3) (b) Any person may request a review of any portion of a wage
10 determination within 30 days after the determination date if the person submits
11 evidence with the request showing that the prevailing wage rate or prevailing hours
12 of labor for any given trade or occupation included in the determination does not
13 represent the prevailing wage rate or prevailing hours of labor for that trade or
14 occupation in the area where the proposed project is located. That evidence shall
15 include wage rate and hours of labor information for the contested trade or
16 occupation on at least one similar project located in the area where the proposed
17 project is located and on which some work has been performed within the previous
18 12 months. The department shall affirm or modify the original determination within
19 15 days after the date on which the department receives the request for review.

20 **SECTION 65.** 103.50 (3) (c) of the statutes is created to read:

21 103.50 (3) (c) The department shall withhold from inspection and copying
22 under s. 19.35 (1) all personally identifiable information submitted to the
23 department by contractors, subcontractors and agents thereof for the purpose of
24 assisting the department in determining prevailing wage rates and prevailing hours
25 of labor under this subsection.

1 **SECTION 66.** 103.50 (3g) of the statutes is created to read:

2 103.50 **(3g)** NONAPPLICABILITY. This section does not apply to any project
3 described in sub. (2) that is subject to 40 USC 276a.

4 **SECTION 67.** 103.50 (4) of the statutes is amended to read:

5 103.50 **(4)** (title) CERTIFICATION OF PREVAILING WAGE RATES AND HOURS AND WAGES
6 OF LABOR. The department of industry, labor and human relations shall prior to May
7 1 of the current each calendar year certify to the department of transportation the
8 prevailing hours of labor, the prevailing wage rate rates and the hourly basic rate of
9 pay for all such classes of laborers and mechanics prevailing hours of labor in each
10 area for all trades or occupations commonly employed in the highway construction
11 industry. The certification shall in addition to the current prevailing hours of labor,
12 the prevailing wage rates and the hourly basic rates of pay prevailing hours of labor
13 include future hours and prevailing wage rates and prevailing hours of labor when
14 such hours and prevailing wage rates and prevailing hours of labor can be
15 determined for any such classes of laborers and mechanics trade or occupation in any
16 area and shall specifically set forth specify the effective dates thereof when date of
17 certification of those future hours and rates are certified prevailing wage rates and
18 prevailing hours of labor. If a construction project extends into more than one area
19 there shall be but one standard of hours of labor and prevailing wage rates and
20 prevailing hours of labor for the entire project.

21 **SECTION 68.** 103.50 (5) of the statutes is amended to read:

22 103.50 **(5)** APPEALS TO GOVERNOR. If the department of transportation deems
23 considers any determination of the department of industry, labor and human
24 relations as to the prevailing hours of labor, prevailing wage rates and the hourly

1 ~~basic rates of pay prevailing hours of labor~~ in an area to have been incorrect, it may
2 appeal to the governor, whose determination shall be final.

3 **SECTION 69.** 103.50 (6) of the statutes is amended to read:

4 103.50 (6) CONTENTS OF CONTRACTS. ~~The prevailing hours of labor, the prevailing~~
5 ~~wage rates and the hourly basic rates of pay and classifications for all labor as~~
6 ~~certified by the department shall be specifically set forth in the proposals and~~
7 ~~contracts for each highway construction contract to which the state is a party~~
8 prevailing hours of labor determined under sub. (3) shall be published in the notice
9 issued for the purpose of securing bids for a project. If any contract or subcontract
10 for a project that is subject to this section is entered into, the prevailing wage rates
11 and prevailing hours of labor determined under sub. (3) shall be physically
12 incorporated into and made a part of the contract or any subcontract, and may not
13 be changed during the time that the contract or subcontract is in force and shall,
14 together with the provisions of ~~sub.~~ subs. (2) and (7), be kept posted on the project
15 by the employer department of transportation in at least one conspicuous place for
16 the information of employees working on the project.

17 **SECTION 70.** 103.50 (7) (a) of the statutes is amended to read:

18 103.50 (7) (a) Except as provided in ~~par.~~ pars. (b) and (d), any contractor,
19 subcontractor or agent thereof who violates this section may be fined not less than
20 \$50 ~~nor~~ more than \$200 or imprisoned for not more than ~~18~~ 6 months or both. Each
21 day that any such violation continues shall be ~~deemed~~ considered a separate offense.

22 **SECTION 71.** 103.50 (7) (b) of the statutes is amended to read:

23 103.50 (7) (b) Whoever induces any individual who seeks to be or is employed
24 on any project that is subject to this section to give up ~~or forego~~, waive or return any
25 part of the wages to which ~~he or she~~ the individual is entitled under the contract

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

7 **SECTION 72.** 103.50 (7) (c) of the statutes is amended to read:

8 103.50 (7) (c) Any person employed on a project ~~under a contract~~ that is subject
9 to this section who knowingly permits ~~the a~~ contractor ~~or,~~ subcontractor or agent
10 thereof to pay him or her less than the prevailing wage rate set forth in the contract,
11 ~~or governing such project,~~ who gives up, waives or returns any part of the
12 compensation to which he or she is entitled under the contract, or who gives up,
13 waives or returns any part of the compensation to which he or she is normally
14 entitled for work on a project that is not subject to this section during a week in which
15 the person works both on a project that is subject to this section and on a project that
16 is not subject to this section, is guilty of an offense under s. 946.15 (2).

17 **SECTION 73.** 103.50 (7) (d) and (e) of the statutes are created to read:

18 103.50 (7) (d) Whoever induces any individual who seeks to be or is employed
19 on any project that is subject to this section to permit any part of the wages to which
20 the individual is entitled under the contract governing such project to be deducted
21 from the individual's pay and deposited with a labor organization for the purpose of
22 subsidizing bids on other projects by threat not to employ or admit to labor
23 organization membership, by threat of dismissal from such employment or labor
24 organization membership or by any other means is guilty of an offense under s.
25 946.15 (3).

1 (e) Any person employed on a project that is subject to this section who
2 knowingly permits any part of the wages to which he or she is entitled under the
3 contract governing such project to be deducted from his or her pay and deposited with
4 a labor organization for the purpose of subsidizing bids on other projects is guilty of
5 an offense under s. 946.15 (4).

6 **SECTION 74.** 103.50 (8) of the statutes is amended to read:

7 103.50 (8) ENFORCEMENT AND PROSECUTION. The department of transportation
8 shall require adherence to subs. (2) and (6). The department of transportation may
9 demand and examine, and every contractor ~~and~~ subcontractor and agent thereof
10 shall furnish, copies of any payrolls and ~~it may examine all other records and~~
11 information relating to hours of work and the wages paid ~~laborers and mechanics on~~
12 ~~the~~ to persons specified in sub. (2m) for work to which this section is applicable. Upon
13 request of the department of transportation or upon complaint of alleged violation,
14 the district attorney of the county in which the work is located shall make such
15 investigation as necessary and prosecute violations in a court of competent
16 jurisdiction. Section 111.322 (2m) applies to discharge and other discriminatory acts
17 arising in connection with any proceeding under this section.

18 **SECTION 75.** 227.01 (13) (t) of the statutes is amended to read:

19 227.01 (13) (t) Ascertains and determines ~~prevailing hours of labor, wage rates~~
20 ~~and truck rental rates under s. 103.50 and~~ prevailing wage rates and prevailing
21 hours of labor under ~~s. ss. 103.49 and 103.50~~, except that any action or inaction which
22 ascertains and determines prevailing ~~hours of labor, wage rates and truck rental~~
23 rates prevailing hours of labor under ss. 103.49 and 103.50 is subject to judicial
24 review under s. 227.40.

25 **SECTION 76.** 946.15 (1) of the statutes is amended to read:

1 946.15 (1) Any employer, or any agent or employe of an employer, who induces
2 any person who seeks to be or is employed pursuant to a public contract as defined
3 in s. 66.29 (1) (c) or who seeks to be or is employed on a project on which a prevailing
4 wage rate determination has been established made by the department of industry,
5 labor and human relations under s. 66.293 (3), 103.49 (3) or 103.50 (3) or by a local
6 governmental unit, as defined in s. 66.293 (1) (d), under s. 66.293 (6) to give up, waive
7 or return any part of the compensation to which that person is entitled under his or
8 her contract of employment or under the prevailing wage determination made by the
9 department or local governmental unit, or who reduces the hourly basic rate of pay
10 normally paid to an employe for work on a project on which a prevailing wage rate
11 determination has not been made under s. 66.293 (3) or (6), 103.49 (3) or 103.50 (3)
12 during a week in which the employe works both on a project on which a prevailing
13 wage rate determination has been made and on a project on which a prevailing wage
14 rate determination has not been made, is guilty of a Class E felony.

15 **SECTION 77.** 946.15 (2) of the statutes is amended to read:

16 946.15 (2) Any person employed pursuant to a public contract as defined in s.
17 66.29 (1) (c) or employed on a project on which a prevailing wage rate determination
18 has been established made by the department of industry, labor and human relations
19 under s. 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit, as defined
20 in s. 66.293 (1) (d), under s. 66.293 (6) who gives up, waives or returns to the employer
21 or agent of the employer any part of the compensation to which the employe is
22 entitled under his or her contract of employment or under the prevailing wage
23 determination made by the department or local governmental unit, or who gives up
24 any part of the compensation to which he or she is normally entitled for work on a
25 project on which a prevailing wage rate determination has not been made under s.

1 66.293 (3) or (6), 103.49 (3) or 103.50 (3) during a week in which the person works
2 part-time on a project on which a prevailing wage rate determination has been made
3 and part-time on a project on which a prevailing wage rate determination has not
4 been made, is guilty of a Class C misdemeanor.

5 **SECTION 78.** 946.15 (3) of the statutes is created to read:

6 946.15 (3) Any employer or labor organization, or any agent or employe of an
7 employer or labor organization, who induces any person who seeks to be or is
8 employed on a project on which a prevailing wage rate determination has been made
9 by the department of industry, labor and human relations under s. 66.293 (3), 103.49
10 (3) or 103.50 (3) or by a local governmental unit, as defined in s. 66.293 (1) (d), under
11 s. 66.293 (6) to permit any part of the wages to which that person is entitled under
12 the prevailing wage rate determination made by the department or local
13 governmental unit to be deducted from the person's pay and deposited with the labor
14 organization for the purpose of subsidizing bids on other projects is guilty of a Class
15 E felony.

16 **SECTION 79.** 946.15 (4) of the statutes is created to read:

17 946.15 (4) Any person employed on a project on which a prevailing wage rate
18 determination has been made by the department of industry, labor and human
19 relations under s. 66.293 (3), 103.49 (3) or 103.50 (3) or by a local governmental unit,
20 as defined in s. 66.293 (1) (d), under s. 66.293 (6) who permits any part of the wages
21 to which that person is entitled under the prevailing wage rate determination made
22 by the department or local governmental unit to be deducted from his or her pay and
23 deposited with a labor organization for the purpose of subsidizing bids on other
24 projects is guilty of a Class C misdemeanor.

25 **SECTION 80. Nonstatutory provisions.**

1 (1) CERTIFICATION OF PREVAILING WAGE RATES AND HOURS OF LABOR.
2 Notwithstanding section 103.50 (4) of the statutes, as affected by this act, the
3 department of industry, labor and human relations shall certify to the department
4 of transportation, within 90 days after the effective date of this subsection, the
5 prevailing hours of labor, as defined in section 103.49 (1) (c) of the statutes, as
6 affected by this act, and the prevailing wage rate, as defined in section 103.49 (1) (d)
7 of the statutes, as affected by this act, for all trades or occupations that are commonly
8 employed in the highway construction industry in each area, as defined in section
9 103.49 (1) (a) of the statutes, as affected by this act, of the state in accordance with
10 the methodologies provided in section 103.49 (1) (c) and (d) of the statutes, as affected
11 by this act.

12 **SECTION 81. Initial applicability.**

13 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employe
14 covered by a collective bargaining agreement that is in effect on the effective date of
15 this subsection that contains provisions that are inconsistent with this act on the day
16 after the collective bargaining agreement expires or on the day that the collective
17 bargaining agreement is modified, extended or renewed.

18 (2) STATE HIGHWAY PROJECTS. Subject to subsection (1) , the prevailing hours of
19 labor and prevailing wage rates certified by the department of industry, labor and
20 human relations under SECTION 80 of this act first apply to work performed on a
21 project that is subject to section 103.50 of the statutes, as affected by this act, 60 days
22 after the date on which the department of transportation receives those certified
23 prevailing hours of labor and prevailing wage rates from the department of industry,
24 labor and human relations.

