



2013 ASSEMBLY BILL 791

February 20, 2014 - Introduced by Representatives BARCA, KAHL, SINICKI, HESSELBEIN, OHNSTAD, JOHNSON, YOUNG, HEBL, GENRICH, SARGENT, BERCEAU, HINTZ, WRIGHT, ZAMARRIPA, SHANKLAND, BERNARD SCHABER, BARNES, MILROY, WACHS, HULSEY, C. TAYLOR, ZEPNICK, KOLSTE and GOYKE, cosponsored by Senators RISSER, MILLER, VINEHOUT, LEHMAN, HARRIS and T. CULLEN. Referred to Committee on Labor.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 109.09 (1); and **to create** 16.705 (1s) of the statutes; **relating**
2 **to:** minimum hourly wages for procurement contracts entered into by an
3 executive branch agency, granting rule-making authority, and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Under current law, an executive branch agency may contract for services if the services can be performed more economically or efficiently by contract than by a state employee. This bill generally requires a person who has a contract with the state to provide services valued at \$100,000 or more to pay each full-time employee over age 18 who spends at least one-half of his or her work time performing work under the contract an hourly wage that is at least equal to the lesser of an hourly wage paid to a state employee completing similar duties or an "hourly living wage." Under this bill, the Department of Workforce Development (DWD) must calculate the "hourly living wage" as the quotient of the federal poverty level for a three-person household and 2080, and must post the most recent hourly living wage on a publicly available Internet site. The bill provides that a contractor may provide a lower hourly wage amount if the contractor provides health insurance or contributes to the employee's deferred compensation plan.

Under this bill, DWD enforces the wage requirement. If DWD receives a complaint that a contractor has violated the requirement, DWD must investigate the complaint in a manner similar to how it investigates other alleged wage claims. If DWD finds that the contractor has paid an employee an amount that is less than the

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minimum hourly wage amount, DWD must order the contractor to pay the employee the amount of his or her unpaid wages and to pay a forfeiture of \$20 per day per such employee and may order the contractor to pay the employee additional liquidated damages in an amount up to the amount of the unpaid wages. In addition, under current law, the Department of Administration (DOA) must maintain a list of persons who have violated laws governing state procurement and the persons on the list are ineligible for state contracts. Under this bill, a person who is found to have paid its employees an amount that is less than the minimum hourly wage amount would be added to that list of ineligible persons.

This bill requires DWD to develop a notice that lists the hourly living wage and the contact information of DWD and requires a contractor to post the notice in a conspicuous place for the contractor's employees. A contractor who violates the posting requirement is subject to a forfeiture of up to \$50 per violation.

For further information see the *state* 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.** 16.705 (1s) of the statutes is created to read:

2 16.705 (1s) (a) In this subsection:

3 1. "Contractor" means a person who provides services under a contract with the
4 state under this subchapter, either directly or as a subcontractor, if the services
5 under the contract are estimated to cost at least \$100,000, except that "contractor"
6 does not include a person who provides services under a contract with the state under
7 this subchapter, either directly or as a subcontractor, if the services under the
8 contract are estimated to cost less than \$500,000 and the person employs no more
9 than 10 employees.

10 2. "Employee" means an individual who is employed by a contractor to spend
11 at least half of his or her work hours each week performing work under the contract,
12 who is at least 18 years of age, and who works at least full time for 13 consecutive
13 weeks for the duration of the contract.

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1 3. “Hourly living wage” is the most recent hourly living wage determined by the
2 department of workforce development under par. (c).

3 4. “Minimum hourly wage amount” means the lesser of the hourly living wage
4 or an hourly wage paid to a state employee completing similar duties at the time bids
5 or proposals are solicited.

6 (b) 1. Except as otherwise provided under this paragraph, a contractor shall
7 pay an employee for work performed under the contract an hourly wage that is no
8 less than the minimum hourly wage amount.

9 2. If the contractor committed in its bid or proposal to provide health insurance
10 to an employee and certified in its bid or proposal the hourly cost of the contractor’s
11 share of the premium for that health insurance, the contractor may reduce the
12 employee’s minimum hourly wage amount by an amount up to the hourly cost of the
13 contractor’s share of the premium.

14 3. If the department of workforce development authorizes by rule that a
15 contractor may reduce the hourly living wage by the hourly cost of the contractor’s
16 contribution to an employee’s deferred compensation plan, a contractor may reduce
17 an employee’s minimum hourly wage amount by the hourly cost of the contractor’s
18 contribution but by no more than \$0.50 per hour.

19 (c) No later than 30 days after the effective date of this paragraph [LRB
20 inserts date], and within 90 days after the start of each fiscal year thereafter, the
21 department of workforce development shall determine the hourly living wage by
22 calculating 100 percent of the federal poverty level for a 3-person household divided
23 by 2080. The department of workforce development shall post the most recent hourly
24 living wage on an Internet site that can be accessed by the public.

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1 (d) 1. The department of workforce development may promulgate rules to
2 administer this subsection, including a rule requiring contractors to keep records
3 and submit reports to the department of workforce development if the department
4 of workforce development determines that such records and reports are necessary for
5 the effective administration and enforcement of this subsection.

6 2. The department of workforce development shall develop a notice for
7 contractors to post under par. (e) that lists the hourly living wage; the rights the
8 employee has under this subsection; and the name, address, and telephone number
9 of the department of workforce development. The notice shall be in English, Spanish,
10 and any other language the department of workforce development determines is
11 commonly used by employees at a work site. The department of workforce
12 development shall make the notice available at no charge to contractors as a hard
13 copy and in a format that the contractors may download from an Internet site.

14 (e) A contractor shall, during any period covered by the contract, post in a
15 conspicuous place, where notices to employees are customarily posted, the notice
16 developed under par. (d) 2. A contractor who violates this requirement is subject to
17 a forfeiture not to exceed \$50 per violation.

18 (f) 1. Each contractor shall keep full and accurate records indicating the name
19 of every employee, an accurate record of the number of hours worked by each
20 employee, and the actual wages paid for the hours worked.

21 2. The department of workforce development shall enforce this subsection. To
22 this end it may demand and examine, and every contractor shall keep and furnish
23 upon request by the department of workforce development, copies of payrolls and
24 other records and information relating to the wages paid to employees. The

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1 department of workforce development may inspect records and conduct interviews
2 of employees to enforce this subsection.

3 3. If any person makes an oral or written complaint to the department of
4 workforce development that a contractor has violated par. (b) 1., the department of
5 workforce development shall, in the manner provided under s. 109.09, investigate
6 the complaint within 30 days. If the complainant is an employee, the department of
7 workforce development shall keep the employee's information confidential.

8 4. If the department of workforce development finds that the contractor has
9 violated par. (b) 1., the department of workforce development shall order the
10 contractor to pay to any affected employee the amount of his or her unpaid wages and
11 to pay a forfeiture of \$20 per day for each employee whose pay violated par. (b) 1., and
12 may order the contractor to pay to any affected employee an additional amount equal
13 to 100 percent of the amount of those unpaid wages as liquidated damages.

14 (g) This subsection does not apply to any of the following:

15 1. A contract for services needed immediately to prevent or respond to an
16 imminent threat to public health or safety.

17 2. A contract with a public service company, a nonprofit organization, a county,
18 or a city.

19 3. A contract if compliance with par. (b) 1. would conflict with a federal program
20 requirement.

21 **SECTION 2.** 109.09 (1) of the statutes is amended to read:

22 109.09 (1) The department shall investigate and attempt equitably to adjust
23 controversies between employers and employees as to alleged wage claims. The
24 department may receive and investigate any wage claim which is filed with the
25 department, or received by the department under s. 109.10 (4), no later than 2 years

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1 after the date the wages are due. The department may, after receiving a wage claim,
2 investigate any wages due from the employer against whom the claim is filed to any
3 employee during the period commencing 2 years before the date the claim is filed.
4 The department shall enforce this chapter and ss. 16.705 (1s), 66.0903, 103.02,
5 103.49, 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may
6 sue the employer on behalf of the employee to collect any wage claim or wage
7 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
8 for actions under s. 109.10, the department may refer such an action to the district
9 attorney of the county in which the violation occurs for prosecution and collection and
10 the district attorney shall commence an action in the circuit court having appropriate
11 jurisdiction. Any number of wage claims or wage deficiencies against the same
12 employer may be joined in a single proceeding, but the court may order separate
13 trials or hearings. In actions that are referred to a district attorney under this
14 subsection, any taxable costs recovered by the district attorney shall be paid into the
15 general fund of the county in which the violation occurs and used by that county to
16 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
17 of the district attorney who prosecuted the action.

SECTION 3. Initial applicability.

18 (1) This act first applies to bids or proposals solicited on the effective date of this
19 subsection.
20

21 (END)