



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0119/4
RNK:jld/lmk/kjf:jf

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 194**

August 22, 2007 - Offered by Senator COGGS.

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

Analysis by the Legislative Reference Bureau

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

This substitute amendment requires Commerce to regulate the business of installing and maintaining thermal system insulation and fire-stop products (insulation products) in commercial and industrial buildings and in residential buildings that contain four or more residential units. The substitute amendment defines thermal system insulation as a product used in a heating, ventilating, cooling, plumbing, or refrigeration system (heating or cooling system) to insulate any hot or cold surface on or in a building. The substitute amendment defines a fire-stop product as a product used in a heating or cooling system to prevent the spread of fire or smoke and that is installed on or around a pipe, duct, wire, or other penetration through a floor, ceiling, or wall of a building. The substitute amendment requires Commerce to license persons who install and maintain insulation products in heating and cooling systems (mechanics) and persons who are in the business of contracting to provide services for installing and maintaining insulation products in heating and cooling systems (contractors). The substitute amendment also requires Commerce to employ a state thermal system insulation and fire-stop inspector (state inspector). The substitute amendment establishes a thermal system insulation and fire-stop council (council). The council is responsible for recommending rules to Commerce that establish standards for the installation and maintenance of insulation products. The council must also provide other advice to Commerce including recommending training and continuing education requirements for persons who install or maintain thermal insulation or fire-stop products.

Under the substitute amendment, the state inspector must have at least ten years of experience as a mechanic and must have successfully completed a four-year apprenticeship in the trade of heat and frost insulation. The state inspector must inspect buildings to determine whether the buildings comply with standards established by Commerce for the installation and maintenance of insulation products (state standards). The state inspector must also keep complete and accurate records of all inspected buildings and give notice of noncompliance to the owner of every building who fails to comply with state standards. The substitute amendment authorizes the state inspector to enter and inspect buildings and to issue orders requiring the owner of a building to make repairs or alterations that are necessary for the building to comply with state standards.

The substitute amendment establishes minimum licensing requirements for insulation product mechanics and contractors. Under the substitute amendment, a person may not obtain a mechanic's license unless he or she has met requirements established by Commerce by rule and has either completed 160 hours of training and passed a written examination approved by Commerce or has successfully completed an approved apprenticeship program. The substitute amendment also provides that a person may install or maintain fire-stop products, but not thermal system insulation, without obtaining a license from Commerce if the person has successfully completed at least 40 hours of training or has successfully completed an approved apprenticeship program.

The substitute amendment specifies that, in order to be licensed as a contractor, a person must meet requirements established by Commerce by rule, must be registered with the Department of Workforce Development as a contractor that

employs and trains apprentices, and be skilled in the installation of insulation products. The substitute amendment allows Commerce to waive any licensing requirement for contractors or mechanics for a person who is licensed in another state in which the standards for licensure are at least as strict as the requirements under the substitute amendment. It also allows Commerce to waive any licensing requirement for experienced mechanics who submit evidence satisfactory to Commerce that the mechanic is qualified for licensure. The substitute amendment also provides that Commerce may not renew a license issued to a mechanic unless the mechanic completes a continuing education course during the previous license period that is approved by Commerce.

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

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

1 **SECTION 1.** 15.157 (15) of the statutes is created to read:

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

7 (a) Two members who represent major insulation companies.

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

10 (c) Two members who are mechanics with at least 10 years of experience in the
11 area of heat and frost insulation.

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

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

1 20.143 **(3)** (j) *Safety and building operations.* The amounts in the schedule for
2 the purposes of chs. 101, 145, and 168 and ss. 236.12 (2) (a), 236.13 (1) (d) and (2m),
3 and 236.335. All moneys received under ch. 145, ss. 101.136 (4) (b), 101.177 (4) (a)
4 4., 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2),
5 101.973 (7), and 236.12 (7), except moneys received under s. 101.9208 (2m), and all
6 moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to
7 this appropriation.

8 **SECTION 3.** 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act
9 456, is amended to read:

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

16 **SECTION 4.** 101.02 (21) (a) of the statutes, as affected by 2005 Wisconsin Act
17 456, is amended to read:

18 101.02 **(21)** (a) In this subsection, “license” means a license, permit or
19 certificate of certification or registration issued by the department under s. 101.09
20 (3) (c), 101.122 (2) (c), 101.136, 101.143 (2) (g), 101.15 (2) (e), 101.17, 101.177 (4) (a),
21 101.178 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935,
22 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15,
23 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

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

1 **101.136 Regulation of thermal system installation. (1) DEFINITIONS.** In
2 this section:

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

6 (b) “Contractor” means a person who is engaged in the business of contracting
7 to provide services for installing or maintaining thermal system insulation and
8 fire-stop products in heating, ventilating, cooling, plumbing, and refrigeration
9 systems and whose business derives its principal source of income from providing
10 those services.

11 (c) “Council” means the thermal system insulation and fire-stop council.

12 (d) “Fire-stop product” means a product that is used in a heating, ventilating,
13 cooling, plumbing, or refrigeration system to prevent the spread of fire or smoke and
14 that is installed on or around a pipe, duct, wire, or any other penetration through a
15 floor, ceiling, or wall of a building.

16 (e) “Mechanic” means a person who installs or maintains thermal system
17 insulation and fire-stop products in heating, ventilating, cooling, plumbing, and
18 refrigeration systems.

19 (f) “State inspector” means the state thermal system insulation and fire-stop
20 inspector.

21 (g) “Thermal system insulation” means a product that is used in a heating,
22 ventilating, cooling, plumbing, or refrigeration system to insulate any hot or cold
23 surface including a pipe, duct, valve, boiler, flue, or tank, or equipment on or in a
24 building.

1 **(2) DUTIES OF THE THERMAL SYSTEM INSULATION AND FIRE-STOP COUNCIL.** (a) The
2 council shall do all of the following:

3 1. Recommend to the department rules establishing standards for the
4 installation and maintenance of thermal system insulation and fire-stop products
5 in buildings.

6 2. Recommend to the department requirements for the licensure of mechanics
7 and contractors and circumstances under which the department may take
8 disciplinary action against a mechanic or contractor including suspension and
9 revocation of a license.

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

11 4. Recommend to the department training and continuing education
12 requirements for persons who are authorized by the department to install or
13 maintain thermal system insulation or fire-stop products.

14 (b) The council may consult with engineering authorities and other
15 organizations concerned with safety and health issues related to thermal system
16 insulation and fire-stop products and mold in performing its duties under this
17 subsection.

18 **(3) STATE THERMAL SYSTEM INSULATION AND FIRE-STOP INSPECTOR.** (a) The
19 department shall employ a person who has at least 10 years of experience as a
20 mechanic, and who has successfully completed a 4-year apprenticeship in the trade
21 of heat and frost insulation, as the state thermal system insulation and fire-stop
22 inspector. The state inspector shall work under the direct supervision of the
23 secretary or his or her designee.

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

1 1. Inspect buildings constructed, or in which the mechanical systems have been
2 altered, on or after the effective date of this subdivision [revisor inserts date], to
3 determine whether the installation or maintenance of thermal system insulation
4 and fire-stop products in those buildings and structures complies with the standards
5 established by the department under sub. (4) (d). The state inspector shall conduct
6 the inspections on a random basis and whenever requested to do so by a local building
7 inspector.

8 2. Keep complete and accurate records of all inspected buildings including a list
9 identifying all buildings that are in compliance with the standards established by the
10 department under sub. (4) (d), a list of all buildings that are not in compliance with
11 the standards established by the department under sub. (4) (d), and a list of all orders
12 that the state inspector issues under par. (c) 2.

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

16 (c) The inspector may do any of the following:

17 1. Enter any newly constructed or newly remodeled building in which a
18 mechanical system was altered at a reasonable hour for the purpose of inspecting,
19 or gathering information about, any thermal system insulation or fire-stop product.

20 2. Issue an order requiring the owner of a building to make repairs or
21 alterations that the inspector determines are necessary in order for the building to
22 comply with the standards established by the department under sub. (4) (d). The
23 inspector shall issue such an order in writing.

24 **(4) RULES.** The department shall promulgate rules establishing all of the
25 following:

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

4 (b) License fees for mechanics and contractors. The rules shall establish fees
5 for the licensing of mechanics and contractors that are not less than \$250 nor more
6 than \$1,000 for each license period.

7 (c) Training and continuing education requirements for mechanics.

8 (d) Standards for the installation and maintenance of thermal system
9 insulation and fire-stop products in buildings. The department shall base the
10 standards, to the extent possible, on national industry standards for installing and
11 maintaining thermal system insulation and fire-stop products.

12 (e) Procedures governing the assessment of forfeitures under sub. (14)
13 including the procedure for issuing an order for an alleged violation of this section,
14 the procedure for contesting an order issued for an alleged violation of this section,
15 and the procedure for contesting the assessment of a forfeiture for an alleged
16 violation of this section.

17 **(5) COMPLIANCE WITH INSTALLATION STANDARDS.** Beginning on the first day of the
18 18th month beginning after the effective date of this subsection, every contractor
19 who contracts to install or maintain thermal system insulation or fire-stop products
20 shall ensure that such installation and maintenance complies with the standards
21 established by the department under sub. (4) (d).

22 **(6) LICENSING OF MECHANICS AND CONTRACTORS.** (a) 1. Except as provided in sub.
23 (9) (b), beginning on the first day of the 18th month beginning after the effective date
24 of this subdivision, no person may install or maintain thermal system insulation or
25 fire-stop products in any building unless that person is a mechanic licensed by the

1 department under this section, is working under the direct supervision of a licensed
2 mechanic, or is serving an apprenticeship with a licensed contractor who meets the
3 requirements specified under ch. 106.

4 2. A person wishing to obtain a mechanic's license shall apply for a license by
5 submitting an application on a form provided by the department together with the
6 applicable fee.

7 (b) 1. Except as provided in sub. (9) (b), beginning on the first day of the 18th
8 month beginning after the effective date of this subdivision [revisor inserts date],
9 no person may contract to install or maintain thermal system insulation or fire-stop
10 products in any building unless that person is a contractor licensed by the
11 department under this subsection.

12 2. A person wishing to obtain a contractor's license shall apply for a license from
13 the department by submitting an application on a form provided by the department
14 together with the applicable fee.

15 **(7) REQUIREMENTS FOR LICENSURE OF MECHANICS.** (a) Except as provided in par.
16 (b), the department may not issue a license to a mechanic unless the mechanic
17 demonstrates, in a manner satisfactory to the department, that he or she has met the
18 requirements established by the department by rule and either of the following
19 requirements:

20 1. He or she has successfully completed at least 160 hours of relevant training
21 approved by the department, upon consultation with the council, and has passed a
22 written examination approved by the department.

23 2. He or she has successfully completed an apprenticeship that meets the
24 requirements specified under ch. 106 and that includes relevant training in
25 installing and maintaining thermal system insulation and fire-stop products.

1 (b) The department may waive any requirement, or any portion of a
2 requirement under par. (a) for any person with experience in installing or
3 maintaining thermal system insulation and fire-stop products upon submission of
4 evidence satisfactory to the department that the person is qualified for licensure.

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

10 **(8) REQUIREMENTS FOR LICENSURE OF CONTRACTORS.** The department may not
11 issue a license to a contractor unless the contractor meets all of the following
12 requirements:

13 (a) The contractor is registered with the department of workforce development
14 as a contractor that employs and trains apprentices in the trade of heat and frost
15 insulation.

16 (b) The contractor is skilled in the planning, superintending, and practical
17 installation of thermal system insulation and fire-stop products.

18 (c) The contractor demonstrates, in a manner satisfactory to the department,
19 that the contractor has met the requirements established by the department by rule.

20 **(9) LICENSING EXCEPTIONS.** (a) The department may waive a licensing
21 requirement under sub. (7) or (8) for any person who is licensed as a mechanic or
22 contractor in another state in which the standards for licensure are at least as strict
23 as the requirements under subs. (7) or (8).

24 (b) A person may install or maintain fire-stop products without a license issued
25 under this section if either of the following applies:

1 1. The person has successfully completed at least 40 hours of training, approved
2 by the department, in consultation with the council, in installing and maintaining
3 fire-stop products.

4 2. The person has successfully completed an apprenticeship that meets the
5 requirements specified under ch. 106 and that includes relevant training in
6 installing and maintaining fire-stop products.

7 **(10) TEMPORARY AND EMERGENCY LICENSES.** The department may promulgate
8 rules establishing standards and procedures for the issuance of temporary and
9 emergency licenses for mechanics and contractors. The rule shall provide that a
10 temporary or emergency license issued under this subsection is valid for a period of
11 30 days.

12 **(11) PROHIBITIONS.** No person may do any of the following:

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

15 (b) Engage in fraud, misrepresentation, or bribery in order to obtain a license
16 under this section.

17 (c) Fail to notify the department or the owner or lessee of any building that the
18 building fails to meet the standards established by the department by rule under
19 sub. (4) (d).

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

23 **(13) ASSESSMENT OF FORFEITURES BY THE DEPARTMENT.** (a) The department may
24 directly assess a forfeiture by issuing an order against any person who violates this

1 section or who fails to comply with an order issued by the state inspector under this
2 section.

3 (b) The department shall remit all forfeitures paid to the department under this
4 subsection to the secretary of administration for deposit in the school fund.

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

7 (d) The attorney general may bring an action in the name of the state to collect
8 any forfeiture imposed by the department, or interest accrued, if the forfeiture or
9 interest has not been paid after the exhaustion of all administrative and judicial
10 reviews.

11 **SECTION 6. Nonstatutory provisions.**

12 (1) COUNCIL. Notwithstanding the length of terms of the members of the
13 thermal system insulation and fire-stop council specified in section 15.157 (15) (a)
14 to (d) of the statutes, as created by this act, the initial members shall be appointed
15 for the following terms:

16 (a) Two members for a term that expires on July 1, 2010.

17 (b) Two members for a term that expires on July 1, 2011.

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

19 (2) SUBMISSION OF PROPOSED RULES. No later than the first day of the 18th month
20 beginning after the effective date of this subsection, the department of commerce
21 shall submit in proposed form the rules required under section 101.136 (4) and (10)
22 of the statutes, as created by this act, to the legislative council staff under section
23 227.15 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes, the
24 secretary of administration may not require the department of commerce to prepare

1 an economic impact report for the rules required under section 101.136 (4) and (10)
2 of the statutes, as created by this act.

3 (3) **EMERGENCY RULES.** Using the procedure under section 227.24 of the statutes,
4 the department of commerce shall promulgate as emergency rules the rules required
5 under section 101.136 (4) and (10) of the statutes, as created by this act.
6 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency rules
7 promulgated under this subsection may remain in effect until the date on which the
8 permanent rules required under section 101.136 (4) and (10) of the statutes, as
9 created by this act, take effect. Notwithstanding section 227.24 (1) (a) and (3) of the
10 statutes, the department of commerce is not required to provide evidence that
11 promulgating rules under this subsection as emergency rules is necessary for the
12 preservation of the public peace, health, safety, or welfare and is not required to
13 provide a finding of emergency for the rules promulgated under this subsection. The
14 department of commerce shall promulgate the rules required under this subsection
15 no later than the first day of the 18th month beginning after the effective date of this
16 subsection.

17 **SECTION 7. Fiscal changes.**

18 (1) **STATE THERMAL SYSTEM INSULATION AND FIRE-STOP INSPECTOR.** In the schedule
19 under section 20.005 (3) of the statutes for the appropriation to the department of
20 commerce under section 20.143 (3) (j) of the statutes, as affected by the acts of 2007,
21 the dollar amount is increased by \$78,100 for fiscal year 2007-08 and the dollar
22 amount is increased by \$78,100 for fiscal year 2008-09 to increase the authorized
23 FTE positions for the department of commerce by 1.0 PR position to perform the
24 responsibilities of the state thermal system insulation and fire-stop inspector.

