



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-011

AN ORDER to amend DWD 290.15 and 290.155 (1); and to create chapter DWD 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

01-31-02 RECEIVED BY LEGISLATIVE COUNCIL.

02-14-02 REPORT SENT TO AGENCY.

RS:RJC:tlu

LRB or Bill No./Adm. Rule No.
DWD 290.15, 290.155, and
293

Amendment No. if Applicable

ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R03/97)

Subject

Adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under the rule, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$35,000 but less than \$36,000 or a multi-trade project that costs more than \$172,000 but less than \$175,000 is not covered by the prevailing wage requirement.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
DWD/Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Elaine Pridgen 267-9403

Date

12/18/01

FISCAL ESTIMATE WORKSHEET

2001 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 290.15, 290.155(1), and
293

Amendment No.

Subject
Adjustment of Thresholds for Application of the Prevailing Wage Rates an Payment and Performance Assurance Requirements

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
0

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 (FTE)	0 (- FTE)
State Operations - Other Costs		0	0 -
Local Assistance		0	0 -
Aids to Individuals or Organizations		0	0 -
TOTAL State Costs by Category		\$0	\$ -
B. State Costs by Source of Funds			
GPR		\$0	\$0-
FED		0	0 -
PRO/PRS		0	0 -
SEG/SEG-S		0	0 -
III. State Revenues -		Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$0	\$0-

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/ Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

Elaine Pridgen
267-9427

Date
12/19/01

Scott McCallum
Governor

Jennifer Reinert
Secretary



OFFICE OF THE SECRETARY

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**State of Wisconsin
Department of Workforce Development**

March 11, 2002

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 02-011


Rule number: DWD 290.15, 290.1155(1), and DWD 293

Relating to: Adjustment of thresholds for application of the prevailing wage rates and payment and performance assurance requirements

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


Jennifer Reinert
Secretary

Scott McCallum
Governor

Jennifer Reinert
Secretary



State of Wisconsin

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Department of Workforce Development

Rule Analysis for Legislative Review

Proposed rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements

**DWD 290.15, DWD 290.155(1), and DWD 293
CR 02-011**

Need for rules

The proposed rules adjust the thresholds for application of prevailing wage rates in proportion to any change in construction costs since the thresholds were last determined, pursuant to ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15. The proposed rules also adjust the thresholds for various requirements for payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work, pursuant to s. 779.14(1s), Stats.

Public hearing response

A public hearing was held in Madison on February 27, 2002. Jim Boullion of Associated General Contractors of Wisconsin registered in favor of the proposed rules, and Jerry Kultgen of Schmitz Ready Mix appeared for information only.

Response to Legislative Council staff recommendations

No comments were received.

Final regulatory flexibility analysis

The proposed rule does not affect small business as defined in s. 227.14, Stats.

Fiscal effect

Under the proposed rule, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$35,000 but less than \$36,000 or a multi-trade project that costs more than \$172,000 but less than \$175,000 is not covered by the prevailing wage requirement.

Department contacts

Mike Dixon, Section Chief
Construction Wage Standards Section
Equal Rights Division
266-0028

Elaine Pridgen
Administrative Rules Coordinator
Office of Legal Counsel
267-9403



State of Wisconsin
Department of Workforce Development
Equal Rights Division

**Adjustment of Thresholds for Application of Prevailing Wage Rates and
Payment and Performance Assurance Requirements**

DWD 290.15, DWD 290.155(1), and DWD 293

The Wisconsin Department of Workforce Development proposes to amend ss. 290.15 and 290.155(1) and create chapter DWD 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903(5), 103.49(3g), 779.14(1s), and 227.11, Stats.
Statutes interpreted: Sections 66.0903(5), 103.49(3g), and 779.14, Stats.

Adjustment of thresholds for application of prevailing wage rates. The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000.

Pursuant to ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. This rule adjusts the thresholds from \$35,000 to \$36,000 for single-trade projects and from \$172,000 to \$175,000 for multi-trade projects based on a 1.7% increase in the construction cost index between December 2000 and December 2001. Section DWD 290.15 is also amended to clarify that the department rounds off the thresholds to the nearest thousand.

Adjustment of thresholds for payment and performance assurance requirements. Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14(1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

SECTION 1. DWD 290.15 is amended to read:

DWD 290.15 Every year, the department shall adjust the minimum estimated project cost of completion figures for both single-trade and multi-trade public works projects on the basis of the change in the construction cost index as published in the engineering news-record. The adjusted minimum estimated project cost of completion figures shall be rounded to the nearest thousand.

SECTION 2. DWD 290.155(1) is amended to read:

DWD 290.155(1) This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$35,000~~ \$36,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$172,000~~ \$175,000.

SECTION 3. Chapter DWD 293 is created to read:

Chapter DWD 293

PAYMENT AND PERFORMANCE ASSURANCE REQUIREMENTS

DWD 293.01 Payment and performance assurance requirements. The department of workforce development shall biennially adjust the contract prices that determine the payment and performance assurance requirements that apply to contracts with state and local governments for the performance of labor or furnishing materials for a public improvement or public work. These contract prices shall be adjusted on the basis of the change in the construction cost index as published in the engineering news-record and will be rounded to the nearest thousand. No adjustment shall be made for a biennium if the adjustment to be made would be less than 5%.

Note: The *Engineering News-Record* is a weekly publication of the McGraw-Hill Companies, 1221 Avenue of the Americas, New York, NY 10020. A construction cost index is published in the "Construction Economics" section of each issue.

DWD 293.02 Indexing of contract thresholds for payment and performance assurance requirements. (1) STATE CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14(1m)(c)1., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$11,000 but not exceeding \$109,000.

(b) The payment and performance assurance requirements in s. 779.14(1m)(c)2., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$109,000 but not exceeding \$272,000.

(c) The payment and performance assurance requirements in s. 779.14(1m)(c)3., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$272,000.

(2) LOCAL GOVERNMENT CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14(1m)(d)1., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$11,000 but not exceeding \$55,000.

(b) The payment and performance assurance requirements in s. 779.14(1m)(d)2., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$55,000 but not exceeding \$109,000.

(c) The payment and performance assurance requirements in s. 779.14(1m)(d)3., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$109,000.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

State of Wisconsin
Department of Workforce Development
Equal Rights Division



NOTICE OF PUBLIC HEARING

Adjustment of Thresholds for Application of Prevailing Wage Rates and Payment and Performance Assurance Requirements

DWD 290.15, DWD 290.155(1), and DWD 293

NOTICE IS HEREBY GIVEN that pursuant to Sections 66.0903(5), 103.49(3g), 779.14(1s), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment and creation of rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Hearing Information

**February 27, 2002
Wednesday
1:30 p.m.**

**GEF 1 Building, Room B103
201 E. Washington Avenue
MADISON**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903(5), 103.49(3g), 779.14(1s), and 227.11, Stats.
Statutes interpreted: Sections 66.0903(5), 103.49(3g), and 779.14, Stats.

Adjustment of thresholds for application of prevailing wage rates. The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce

Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000.

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Adjustment of thresholds for payment and performance assurance requirements. Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14(1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business as defined in s. 227.14, Stats.

Fiscal Impact

Under the rule, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$35,000 but less than \$36,000 or a multi-trade project that costs more than \$172,000 but less than \$175,000 is not covered by the prevailing wage requirement.

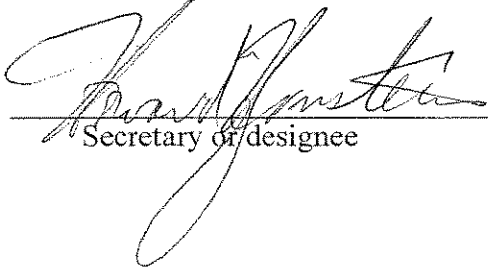
Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A paper copy may be obtained at no charge by contacting:

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Dept. of Workforce Development
201 E. Washington Avenue
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Madison, WI 53707-7946
(608) 267-9403
pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than March 1, 2002, will be given the same consideration as testimony presented at the hearing.



Secretary or designee



Date