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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

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August 31, 2010

Senator Jim Holperin
Co-Chair, Joint Committee for the
Review of Administrative Rules
Room 409 South
State Capitol

Representative Josh Zepnick
Co-Chair, Joint Committee for the
Review of Administrative Rules
Room 219 North
State Capitol

Re: CR 10-029 – Informational copies of proposed rule in final draft
form submitted for legislative review (DWD 293, bond thresholds)

Dear Senator Holperin and Representative Zepnick:

Enclosed for your information are copies of the documents delivered to the Senate and
Assembly Chief Clerks earlier today.

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Bernstein'. The signature is fluid and cursive, written over the word 'Sincerely,'.

Howard Bernstein
Legal Counsel

Enc.

Jim Doyle
Governor

Roberta Gassman
Secretary



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State of Wisconsin
Department of Workforce Development

Notification of Rule Referral

August 31, 2010
Proposed Rule in Final Draft Form

Adjustment of Thresholds for Payment and
Performance Assurance Requirements

DWD 293.02
CR 10-029

In accordance with s. 227.19, Stats., the Department of Workforce Development has referred:

Clearinghouse Rule Number: 10-029

Rule Number: DWD 293.02

Relating to: the amendment of thresholds for payment and performance assurance bond requirements and affecting small businesses

to the Senate and Assembly Chief Clerks for referral to the appropriate standing committees for legislative review.

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State of Wisconsin
Department of Workforce Development

Rule Analysis for Legislative Review

August 31, 2010

Proposed Rule in Final Draft Form

**Adjustment of Thresholds for Payment and
Performance Assurance Requirements**

DWD 293.02

CR 10-029

Basis and Purpose of the Proposed Rules

Explanation of agency authority. Section 779.14, Stats., sets the cost thresholds for the payment and performance assurance bond 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 biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the proposed rule. Chapter DWD 293 provides threshold amounts for various payment and performance assurance bond requirements that apply to contracts issued by state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. This rule adjusts these thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009.

Summary of related federal law. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. This threshold is in the statute and is rarely adjusted.

Summary of factual data and analytical methodology. Section DWD 293.01 provides that the Department will adjust the thresholds on the basis of the change in the construction cost index as published in the *Engineering News-Record*, a national construction trade publication. Thresholds are rounded to the nearest thousand.

Comparison with similar rules in adjacent states. Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department is not aware of a performance bond requirement for public works contracts in Iowa.

Effect on small business. The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small business. Many construction companies are small businesses. The adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

Agency contact person. Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, Julie.Eckenwalder@dwd.wisconsin.gov

Public Hearing Summary

A public hearing was held in Madison on March 31, 2010. There were no appearances.

Written comments and responses

The following written comments were received.

(1) National Association of Surety Bond Producers

The Association notes that Wisconsin is required to adjust the statutory bonding requirement thresholds by statute. It describes the effect of the statute as "unfortunate" because each threshold increase "will ensure that more state and local public construction projects will be undertaken without the benefit of payment bond protection . . ." The Association urges DWD to reconsider the need for threshold adjustments and report on this topic to the state legislature.

(2) The Surety and Fidelity Association of America

This commenter also notes that the raising of minimum threshold amounts for bonding and surety requirements may increase the number of projects in which payment protection is not available to subcontractors. It states that the department should reconsider any increases to threshold amounts.

In response to these comments, DWD has not changed the proposed rule. As noted by the first commenter, the statute requires that these amounts be adjusted for inflation. DWD's discretion is limited to the determination of the correct percentage amount to apply to the adjustment.

Response to Legislative Council Staff Recommendations

All comments were accepted.

Department Contacts

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**State of Wisconsin
Department of Workforce Development
Equal Rights Division**

**Adjustment of Thresholds for Payment and
Performance Assurance Requirements**

DWD 293.02

The Wisconsin Department of Workforce Development proposes to amend s. DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005(1), 779.14 (1s), and 227.11, Stats.
Statute interpreted: Section 779.14, Stats.

Explanation of agency authority. Section 779.14, Stats., sets the cost thresholds for the payment and performance assurance bond 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 biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the proposed rule. Chapter DWD 293 provides threshold amounts for various payment and performance assurance bond requirements that apply to contracts issued by state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. This rule adjusts these thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009.

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Summary of factual data and analytical methodology. Section DWD 293.01 provides that the Department will adjust the thresholds on the basis of the change in the

construction cost index as published in the *Engineering News-Record*, a national construction trade publication. Thresholds are rounded to the nearest thousand.

Comparison with similar rules in adjacent states. Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department is not aware of a performance bond requirement for public works contracts in Iowa.

Effect on small business. The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small business. Many construction companies are small businesses. The adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

Agency contact person. Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, Julie.Eckenwalder@dwd.wisconsin.gov

SECTION 1. DWD 293.02 is amended to read:

DWD 293.02 (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 ~~\$15,000~~ \$16,000 but not exceeding ~~\$139,000~~ \$148,000.

(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 ~~\$139,000~~ \$148,000 but not exceeding ~~\$345,000~~ \$369,000.

(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 ~~\$345,000~~ \$369,000.

(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 ~~\$15,000~~ \$16,000 but not exceeding ~~\$69,000~~ \$74,000.

(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 ~~\$69,000~~ \$74,000 but not exceeding ~~\$139,000~~ \$148,000.

(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 ~~\$139,000~~ \$148,000.

SECTION 2. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s.

227.22 (2) (intro), Stats.



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 10-029

AN ORDER to amend DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

03-01-2010 RECEIVED BY LEGISLATIVE COUNCIL.

03-26-2010 REPORT SENT TO AGENCY.

RS:JKR

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-029

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

The agency should follow the format for the rule summary described in s. 1.02 (2), Manual, and include the “Related statute or rule” heading. If no information is included under the heading, the agency should note that under the heading.

5. Clarity, Grammar, Punctuation and Use of Plain Language

In the fiscal estimate, “proposed rule” should replace “proposed.”

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R03/97)

Subject Adjustment of thresholds for payment and performance assurance bond 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

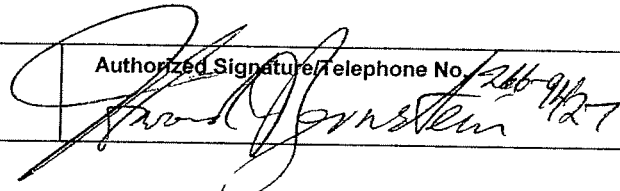
The proposed rule does not have a fiscal effect because its impact is limited to adjusting the cost thresholds for bond requirements to account for increases due to inflation.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)
DWD/Howard Bernstein (608) 266-9427

Authorized Signature/Telephone No. 266-9427



Date
8/30/10