

# ☞ 09hr\_SC-LEUA\_CRule\_10-092\_pt01



Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Labor, Elections, and Urban Affairs (SC-LEUA)

### 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**

Robb

Rule 10-092?

**Plotkin, Adam**

**From:** Robb Kahl [r.kahl@cbgwi.com]  
**Sent:** Friday, September 03, 2010 3:32 PM  
**To:** Plotkin, Adam  
**Subject:** PreviaIng Wage  
**Attachments:** Sen Coggs Memo on PW Rules.doc

Adam:

Memo on outstanding issues and proposed fixes attached. Thanks.

Robb B. Kahl  
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Construction Business Group  
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Adam:

Here are the outstanding issues:

ITEM 1

**-DWD 290.01(4) and DWD 290.01(6).** To address some current confusion about application of prevailing wage laws to government entities, the following note, slightly revised from that proposed by DWD as shown below, should be inserted after these sections:

Note: In an Opinion of the Attorney General issued on November 12, 2009, OAG-5-09, the Attorney General states that, effective January 1, 2010, state prevailing wage rates must be paid to the employees of a local governmental unit that enters into an agreement to perform services for another local governmental unit on a project of public works. Under this rule, the same requirement also applies to any agreement and services entered into before January 1, 2010, and to work done pursuant to the joint exercise of any power or duty under sec. 66.00301(2) before or after January 1, 2010.

ITEM 2

**-DWD 290.015(3).** This rule needs modification to allow recognition of the prevailing wage 2 times pay on Sunday and Holidays found in CBA's that set the wage rate in a county. DWD 290.05 and Sec. 103.50(2), Wis. Stats., both provide items like Sunday and Holiday pay need be "at least" 1.5 times pay. As such, if our CBA rate prevails, then the 2 times premium on Sunday and Holidays found in the CBA should apply. There is great frustration for union contractors because their CBA provides for 2 times pay on Sundays and Holidays but even when our rates prevail and we get a contract match these premiums are not applied to the determination. If the CBA rate prevails, this additional premium should apply to all workers whether they are union or not. Proposed revision below:

(3) COLLECTIVE BARGAINING AGREEMENTS. If the Sum of the hourly basic rate of pay and allowable hourly contributions rate in a collective bargaining agreement that has been filed with the department for the current survey period is equal to the sum of the hourly basic rate of pay and hourly contributions rate that is found to prevail in a particular area for that particular trade or occupation on that particular type of work and the majority of hours used to determine the prevailing wage rates were submitted under a collective bargaining agreement, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. The department may shall also include in its determinations any future contractual increase or decrease in overtime and premium pay, with

the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

Item 3

-DWD 290.03(3). Currently the rule provides that a worker may perform up to 15% of their time performing a different classification of duties but not get paid for those duties accordingly at the discretion of the employer. First of all, this provision directly contradicts the statutory language. Specifically, Sec. 66.0903(4)(a) and (a)1 (and corresponding section in Secs. 66.0904 and 103.49) provide that, with the exceptions in certain circumstances of truckers as spelled out in that section under subpart (b), "[a]ll laborers, workers, mechanics, and truck drivers employed on the site of a project of public works . . . [s]hall be paid the prevailing wage rate". The legislature went to great pains under subpart (b) to spell out the exceptions to this directive for truck drivers along with the specific areas of nonapplicability under Sec. 66.0903(5). Nowhere in this statutory provisions does it qualify its directive that workers must be paid the prevailing wage rate for work performed except for up to 6 hours per week at the discretion of the employer based upon that employers job assignments. The legislature has shown it knows how to spell out specific exemptions as noted above and in the new Sec. 66.0903(2)(d) (e.g. sidewalks and storm sewer work in turnkey projects is now exempt from prevailing wage law) so this provision as currently worded and applied contradicts the legislative intent of having prevailing wages apply for each hour worked except as carved out specifically by the legislature. By eliminating the 15% or less provision in DWD 290.03(3), DWD will be brought in line with the US Department of Labor's application of Davis Bacon laws and the Wisconsin Department of Transportation's application of state prevailing wage laws. This provision as currently worded has frankly only caused confusion and encouraged misclassification abuse because unless DWD or CBG is on site every day monitoring a project, investigators are told the one day a project is checked that the person who is operating equipment is only doing so for that one hour the investigator happened to stop by (under 15% easily) and they are not then paid correctly. As currently worded, the law is impossible to monitor and enforce and is therefore often abused. We would like this provision eliminated in its entirety or alternatively do the change below:

(3) A laborer, worker, mechanic or truck driver that performs work in more than one occupational classification during a given work week shall be cross-classified and compensated for all work performed in each classification, unless work other than the primary classification, is incidental to the primary classification and would be paid a lower prevailing wage rate in which case the incidental work shall be paid at the higher prevailing wage rate of the primary classification.

Deleted: is performed for 15% or less of the time spent working on a particular public works project during a given work week.

Items

Robb

**DWD 290.155(4) and DWD 290.155(3).** Without request by any interested parties, DWD is proposing to exempt the cost of "project owner employees" in determining whether a project exceeds the \$25,000 threshold. This has not been DWD's past and current interpretation of the law (confirmed via email from DWD as recent as 8/31/10). This means that when the City of Milwaukee does a public construction job, the past and current interpretation was the City of Milwaukee employees working on the project need not be paid prevailing wages but the cost of their regular wages needs to be factored in to determine if the project crosses the threshold (\$25,000) to trigger application of the prevailing wage laws. Additionally, since "Project Owner" is left undefined, in addition to the public works projects this law would apply to, it would apply to projects privately owned so that workers of private developers/contractors would be exempt from the law -- certainly something the legislature did not intend. The code should be changed to address a separate volunteer issue but that is it so it should read as follows:

(4) The estimated cost of completion of a project of public works project shall not include land cost, architectural fees, engineering fees, planning and research costs, the labor costs of volunteers and administrative costs.

We should also address this issue by clarifying this past and current practice by changing DWD 290.155(3) as follows:

(3) The estimated cost of completion of a project of public works project shall include labor costs based on the most current prevailing wage rates available from the department except that the labor costs of local governmental unit or state agency project owner employees shall be included at their standard applicable wage rate for the project, material, furnishings, and other things of value required to be supplied by a contractor or its subcontractors to construct a specific project.

Thanks.

Robb



Robb 2

**Plotkin, Adam**

CRule 1002?

**From:** Robb Kahl [r.kahl@cbgwi.com]  
**Sent:** Thursday, September 16, 2010 3:35 PM  
**To:** Bernstein, Howard I - DWD  
**Cc:** Feldman, Andrew - DWD; Plotkin, Adam; George, Mary Beth  
**Subject:** RE: Modifications to proposed DWD 290  
**Attachments:** 9-16 mtg.doc

Howard:

Attached are my comments/proposed changes. We have the other items to address (project owner's labor costs, stockpile definition, and fringe benefits compliance affirmation statement on payroll reports) that I would like to get clarification on today too if possible since the same will not be in the rules as I understand it but are nonetheless important. Thanks.

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**From:** Bernstein, Howard I - DWD [mailto:Howard.Bernstein@dwd.wisconsin.gov]  
**Sent:** Wednesday, September 15, 2010 3:45 PM  
**To:** Robb Kahl  
**Cc:** Feldman, Andrew - DWD  
**Subject:** Modifications to proposed DWD 290

Robb - Here is the language that I have prepared. Items (1) and (2) are exactly as discussed yesterday. Item (3), cross classification, is redrafted a little from your version, but accomplishes the same result. Item (4) is the same (reference to project owner costs removed), but there has been an internal drafting suggestion to refer to the "value of the work performed by volunteers" rather than the "labor cost of volunteers."

**(1) Note to DWD 290.01(4) and (6):**

**Note:** In an Opinion of the Attorney General issued on November 12, 2009, OAG-5-09, the Attorney General states that, effective January 1, 2010, state prevailing wage rates must be paid to the employees of a local governmental unit that enters into an agreement to perform services for another local governmental unit on a project of public works. Under this rule, the same requirement also applies to any agreement and services entered into before January 1, 2010, and to

09/16/2010

any work that is claimed to be done pursuant to the joint exercise of powers or duties under sec. 66.0301(2), Stats., before or after January 1, 2010, when the circumstances show that the work comes under the definition of work done by a "contractor" or "employer."

**(2) DWD 290.015(3) is amended to read:**

**DWD 290.015(3)** If the sum of the hourly basic rate of pay and allowable hourly contributions rate in a collective bargaining agreement that has been filed with the department for the current survey period is equal to the sum of the hourly basic rate of pay and hourly contributions rate that is found to prevail in a particular area for that particular trade or occupation on that particular type of work and the majority of hours used to determine the prevailing wage rates were submitted under a collective bargaining agreement, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. The department ~~may determine~~ shall also include in its determinations any future contractual increase or decrease in overtime and premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

**(3) DWD 290.01(11m) is created to read:**

**DWD 290.01(11m)** "Incidental work" means work performed in a classification other than an employee's primary classification for 15% or less of the employee's time during a given work week.

**DWD 290.03(3) is amended to read:**

**DWD 290.03(3)** (3) A laborer, worker, mechanic or truck driver that performs work in more than one occupational classification during a given work week shall be cross-classified and compensated for all work performed in each classification, unless work other than the primary classification is incidental to the primary classification and would be paid a lower prevailing wage rate ~~performed for 15% or less of the time spent working on a particular public works project during a given work week.~~

**(4) DWD 290.155(4) is amended to read:**

**DWD 290.155(4)** The estimated cost of completion of a project of public works project shall not include land cost, architectural fees, engineering fees, planning and research costs, the value of the work performed by volunteers, and administrative costs.

Howard Bernstein, Legal Counsel  
Wisconsin Department of Workforce Development

(608) 266-9427



**(1) Note to DWD 290.01(4) and (6):**

Note: In an Opinion of the Attorney General Issued on November 12, 2009, OAG-5-09, the Attorney General states that, effective January 1, 2010, state prevailing wage rates must be paid to the employees of a local governmental unit that enters into an agreement to perform services for another local governmental unit on a project of public works. Under this rule, the same requirement also applies to any agreement for services entered into before January 1, 2010, and to any work that is claimed to be done pursuant to the joint exercise of powers or duties under sec. 66.0301(2), Stats., before or after January 1, 2010, when the circumstances show that the work comes under the definition of work done by a "contractor" or "employer."

Deleted: and

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¶  
**DWD 290.01(11m)** "Incidental work" means work performed in a classification other than an employee's primary classification for 15% or less of the employee's time during a given work week.¶

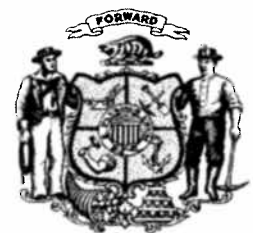
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# WISCONSIN STATE LEGISLATURE



DWD

Rule 10-092?

**Plotkin, Adam**

**From:** Bernstein, Howard I - DWD [Howard.Bernstein@dwd.wisconsin.gov]  
**Sent:** Thursday, September 16, 2010 1:35 PM  
**To:** George, Mary Beth; Plotkin, Adam  
**Cc:** Feldman, Andrew - DWD  
**Subject:** FW: Modifications to proposed DWD 290

Hello Mary Beth and Adam -

Attached below is the draft language that I have sent to Robb Kahl in response to the points that he has raised. I haven't heard back from him yet, but I believe, based on his meeting with Andy and me on Tuesday, that these rule changes respond to all of his concerns.

Howard Bernstein, Legal Counsel  
Wisconsin Department of Workforce Development

(608) 266-9427

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**From:** Bernstein, Howard I - DWD  
**Sent:** Wednesday, September 15, 2010 3:45 PM  
**To:** 'Robb Kahl'  
**Cc:** Feldman, Andrew - DWD  
**Subject:** Modifications to proposed DWD 290

Robb - Here is the language that I have prepared. Items (1) and (2) are exactly as discussed yesterday. Item (3), cross classification, is redrafted a little from your version, but accomplishes the same result. Item (4) is the same (reference to project owner costs removed), but there has been an internal drafting suggestion to refer to the "value of the work performed by volunteers" rather than the "labor cost of volunteers."

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for  
OK both

**(2) DWD 290.015(3) is amended to read:**

**DWD 290.015(3)** If the sum of the hourly basic rate of pay and allowable hourly contributions rate in a collective bargaining agreement that has been filed with the department for the current survey period is equal to the sum of the hourly basic rate of pay and hourly contributions rate that is found to prevail in a particular area for that particular trade or occupation on that particular type of work and the majority of hours used to determine the prevailing wage rates were submitted under a collective bargaining agreement, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or a successor agreement that is filed before January 1 of the calendar year following the end of the survey period. The department ~~may determine~~ shall also include in its determinations any future contractual increase or decrease in overtime and premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

OK  
both

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CUT?  
ops

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**DWD 290.03(3) is amended to read:**

**DWD 290.03(3)** (3) A laborer, worker, mechanic or truck driver that performs work in more than one occupational classification during a given work week shall be cross-classified and compensated for all work performed in each classification, unless work other than the primary classification is incidental to the primary classification and would be paid a lower prevailing wage rate performed for 15% or less of the time spent working on a particular public works project during a given work week.

cut?

**(4) DWD 290.155(4) is amended to read:**

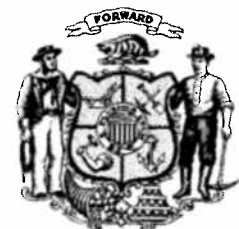
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Howard Bernstein, Legal Counsel  
Wisconsin Department of Workforce Development

(608) 266-9427



# WISCONSIN STATE LEGISLATURE



## Clearinghouse Rule 10-092



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

## Amendments to Chapter DWD 290, Relating to Prevailing Wage Rates

The Wisconsin Department of Workforce Development proposes to repeal DWD 290.015(6m), DWD 290.15, DWD 290.155(2)(a), to renumber and amend DWD 290.17, to amend DWD 290.001, DWD 290.01(2), (4), (6), (16)(a), (17), (20), and (20p), DWD 290.015(1), (2), (6) and (7), DWD 290.025(1), DWD 290.03(2)(intro.), DWD 290.08(1), and (2), DWD 290.09(1)(intro.), (1)(b)(intro.), (1)(b)3, (2) and (4), DWD 290.10(1) and (2)(intro.), DWD 290.11(title), (1), (2), (4) and (5), DWD 290.12(1) and (3), DWD 290.13(1) and (2)(a)(intro.), DWD 290.14(1), DWD 290.155(1), (2)(intro.), (3) and (4), DWD 290.16, to repeal and recreate DWD 290.01(17m), and to create DWD 290.01(3), (5m), (6m), (12), and (22), DWD 290.015(3m), DWD 290.03(2m), DWD 290.13(3), DWD 290.14(3), DWD 290.145, DWD 290.155(1m), DWD 290.17(2), (3), and (4), DWD 290.18 and DWD 290.19, relating to amending the rules of the prevailing wage program in response to statutory changes made by 2009 Wisconsin Act 28.

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### Analysis Prepared by the Department of Workforce Development

**Statutory authority:** Secs. 103.005(1) and 227.11(2), Stats.

**Statutes interpreted:** Sections 66.0903, 66.0904 and 103.49, Stats.

**Explanation of agency authority.** The state prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition 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. Changes to the state prevailing wage law were enacted in 2009 Wisconsin Act 28, including:

- A new threshold level determines the applicability of the law. Under the current law, any project of public works with an estimated completion cost of at least \$25,000 requires a prevailing wage rate determination.

- Contractors are required to provide a monthly report of wage payments made to employees on public works projects. These reports are posted on an internet website maintained by the department. A contractor may submit a copy of its collective bargaining agreement (CBA) if the payments made under the CBA meet the prevailing wage requirements.
- Under sec. 66.0904, Stats., the prevailing wage law now also covers a private project which receives \$1,000,000 or more in direct financial assistance from a local governmental unit.

**Summary of the proposed rule.** The proposed rule amends the Department's existing rule on the prevailing wage program to reflect the changes made by 2009 Wisconsin Act 28. In addition, the proposed rule covers the following issues:

- The proposed rule clarifies that, depending on its actions, a state agency or a local governmental unit may be an "employer" or a "contractor."
- The proposed rule provides that the Department may conduct wage surveys by electronic means.
- The proposed rule provides that the Department may determine residential rates as a percentage of building or heavy construction rates rather than as a separate survey category.
- The proposed rule provides that no corrections or recalculations to an annual survey may be completed after March 1 of each year.
- The proposed rule provides that, if a state agency, local governmental unit, or developer receiving more than \$1,000,000 in direct financial assistance has not requested a prevailing wage rate determination for a project covered by the law, and the Department later issues a prevailing wage rate determination for such a project, then, in addition to the payment of the increased wages which the state agency, local governmental unit or developer must make to reimburse the employer of workers who were not correctly paid, the state agency, local governmental unit or developer must also reimburse the employer for any liquidated damages that employers may have been required to pay.

**Summary of related federal law.** The federal prevailing wage law (known as the Davis Bacon Act) applies to a federal public works project for which the contract cost is greater than \$2,000. It does not apply to a private project which receives financial assistance from public funds unless the assistance is on such a scale that the project is determined to be a public project.

**Comparison with rules in adjacent states.** Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. In addition to public works projects, the Minnesota law covers the construction of a “value-added agricultural product processing facility” that is financed in whole or part with certain state loans or grants. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. The Illinois law requires certified monthly payroll reports. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

**Summary of factual data and analytical methodologies.** The proposed rule is based on the new or amended requirements the statutes as affected by 2009 Act 28.

**Effect on small business.** Because the proposed rule carries forward the new or amended requirements of the statutes as affected by 2009 Act 28, the proposed rule of itself does not have an effect on small business.

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

**Comments and deadline for submission.** Comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or [Howard.Bernstein@dwd.wisconsin.gov](mailto:Howard.Bernstein@dwd.wisconsin.gov) . The deadline for submission is August 13, 2010.

**SECTION 1. DWD 290.001 is amended to read:**

**DWD 290.001** This chapter applies to all prevailing wage rate determinations under ss. 66.0903, 66.0904, and 103.49, Stats., and to the certification of prevailing wage rates and the notification of minor subcontractors under s. 103.50, Stats.

**SECTION 2. DWD 290.01(2) is amended to read:**

**DWD 290.01(2)** “Area” has the same meaning as in ss.66.0903(1)(a), 66.0904(1)(a), 103.49(1)(a) and 103.50(1)(a), Stats.

**Note:** S. 66.0903(1)(a), Stats., provides that “area” means the county in which a proposed project of public works that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, “area” means the



entire state or, if the department is requested to review a determination under sub. (3) (br), "area" means the city, village or town in which a proposed project of public works that is subject to this section is located.

**SECTION 3. DWD 290.01(3) is created to read:**

**DWD 290.01(3)** "Bona fide economic benefit" has the same meaning as in ss. 66.0903(1)(am) and 103.49(1)(am), Stats..

Note: S. 66.0903(1)(am), Stats., provides that "bona fide economic benefit" has the meaning given in s. 103.49(1)(am). S. 103.49(1)(am) provides that "bona fide economic benefit" means "an economic benefit for which an employer makes irrevocable contributions to a trust or fund created under 29 USC 186(c) or to any other bona fide plan, trust, program or fund no less often than quarterly or, if an employer makes annual contributions to such a bona fide plan, trust, program or fund, for which the employer irrevocably escrows moneys at least quarterly based on the employer's expected annual contribution."

**SECTION 4. DWD 290.01(4) is amended to read:**

**DWD 290.01(4)** "Contractor" means a person, including but not limited to a sole proprietor, a partnership, a corporation, a limited liability company, a construction manager or consultant, a Wisconsin state agency as defined in s. 103.49(1)(f), Stats., or a local governmental unit as defined in s. 66.0903(1)(d), Stats., who has entered into a contract with a state agency or local governmental unit for a project of public works project, or who has entered into a contract with an owner or developer of real property for a publicly funded private construction project.

**SECTION 5. DWD 290.01(5m) is created to read:**

**DWD 290.01(5m)** "Direct financial assistance" has the same meaning as in s. 66.0904(1)(c), Stats.

Note: S. 66.0904(1)(c), Stats., provides that "direct financial assistance" means "means moneys, in the form of a grant or other agreement or included as part of a contract, cooperative agreement, or any other arrangement, including a redevelopment agreement under s. 66.1333 (5), economic development agreement, contract under s. 66.1105 (3), or assistance provided under s. 66.1109, that a local governmental unit directly provides or otherwise directly makes available to assist in the erection, construction, repair, remodeling, demolition, of a private facility. "Direct financial assistance" does not include any of the following:

1. A public works contract, a supply procurement contract, a contract of insurance or guaranty, a collective bargaining agreement, or any other contract under which moneys are not directly provided or otherwise directly made available for that assistance.

2. Any moneys allocated by the city of Milwaukee for the purchase of public access easements that are located entirely in the Milwaukee Riverwalk Site Plan Review Overlay District established by the city of Milwaukee, as amended to June 1, 2009, or for the construction of dockwalls, walkways, plazas, parks, private roadways open to the public, or similar improvements, or for any other public infrastructure improvements, that are located entirely in that district, if the work on those improvements is subject to s. 66.0903 or is exempted from that section under s. 66.0903 (6).

**SECTION 6. DWD 290.01(6) is amended to read:**

**DWD 290.01(6)** "Employer" means any contractor, subcontractor, agent or other person, including a Wisconsin state agency as defined in s. 103.49(1)(f), Stats., or a local governmental unit as defined in s. 66.0903(1)(d), Stats., doing or contracting to do all or a part of the work.

**SECTION 7. DWD 290.01(6m) is created to read:**

**DWD 290.01(6m)** "Facility" means all or any portion of a building, a structure, land, infrastructure, or other real property.

**SECTION 8. The notes to DWD 290.01(10) are repealed.**

**SECTION 9. DWD 290.01(12) is created to read:**

**DWD 290.01(12)** "Minor service or maintenance work" has the same meaning as in s. 66.0903(1)(dr), Stats.

**Note:** S. 66.0903(1)(dr), Stats., provides that "minor service or maintenance work" means "a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; the depositing of gravel on an existing gravel road applied solely to maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration."

**SECTION 10. DWD 290.01(16)(a) is amended to read:**

**DWD 290.01(16)(a)** "Prevailing wage rate" has the same meaning as in ss. 66.0903(1)(g), 66.0904(1)(h), 103.49(1)(d), and 103.50(1)(d), Stats.

**Note:** S. 66.0903(1)(g), Stats., provides: "1. Except as provided in subd. 2., "prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly, for a majority of the hours worked in

the trade or occupation on projects in the area.

2. If there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, "prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any

area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area."

**SECTION 11. DWD 290.01(17) is amended to read:**

(17) "Project of public works" or "Public works project" or "project" has the same meaning as in ss. 66.0903 (2) and s.103.49 (1m), Stats. ~~means erection, construction, remodeling, repairing, or demolition building or work under contract with a Wisconsin state agency or local governmental unit as defined in s. 66.0903 (1) (d) or 103.49 (1) (f), Stats., including alterations, painting, and decorating and not including service and maintenance work, warranty work, and work under a supply and installation contract.~~

Note: S. 66.0903(2), Stats., provides: "Subject to sub. (5), this section applies to any project of public works erected, constructed, repaired, remodeled, demolished for a local governmental unit, including all of the following:

- (a) A highway, street, bridge, building, or other infrastructure project.
- (b) A project erected, constructed, repaired, remodeled, demolished by one local governmental unit for another local governmental unit under a contract under s. 66.0301 (2), 83.03, 83.035, or 86.31 (2) (b) or under any other statute specifically authorizing cooperation between local governmental units.
- (c) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit in lieu of the local governmental unit contracting for the erection, construction, repair, remodeling, demolition of the facility.
- (d) A road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, a local governmental unit, including under s. 236.13 (2), for ownership or maintenance by the local governmental unit."

**SECTION 12. DWD 290.01(17m) is repealed and recreated to read:**

**DWD 290.01(17s)** "Publicly funded private construction project" has the same meaning as in s.66.0904(1)(i), Stats.

Note: S. 66.0904(1)(i), Stats., provides that "publicly funded private construction project" means: "a construction project in which the developer, investor, or owner of the project receives direct financial assistance from a local governmental unit for the erection, construction, repair, remodeling, demolition, including any alteration, painting, decorating, or grading, of a private facility, including land, a building, or other infrastructure. 'Publicly funded private construction

project' does not include a project of public works or a housing project involving the erection, construction, repair, remodeling, demolition of any of the following:

1. An residential property, if the project is supported by affordable housing grants, home improvement grants, or grants from a local housing trust fund.
2. A residential property containing 4 dwelling units or less.
3. A residential property that contains retail, office, or commercial components, if the project is intended to increase the supply of affordable housing in a community."

**SECTION 13. DWD 290.01(20) is amended to read:**

(20) "Subjourneyperson" means a worker who primarily works under the direction of, and directly assists, a skilled trade employee by frequently using the tools of a specific trade. "Subjourneyperson" does not include an apprentice, a laborer, a heavy equipment operator or a truck driver.

**SECTION 14. DWD 290.01(20p) is amended to read:**

**DWD 290.01(20p)** "Supply and installation contract" ~~means a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work of any kind is performed on the site of a project, and the total labor cost to install the material does not exceed 20% of the total cost of the supply and installation contract~~ has the same meaning as in s. 66.0903(1)(im), Stats.

Note: S. 66.0903(1)(im), Stats., provides that "supply and installation contract" means "a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work is performed on the site of the project of public works, and the total labor cost to install the material does not exceed 20 percent of the total cost of the contract."

**SECTION 15. The note to DWD 290.01(21) is amended to read:**

Note: A "Dictionary of Occupational Classifications and Work Descriptions for Use on All Public Works Projects in the State of Wisconsin" may be viewed and downloaded at the DWD web site at [http://dwd.wisconsin.gov/er/prevaling\\_wage\\_rate/Dictionary/dictionary\\_main.htm](http://dwd.wisconsin.gov/er/prevaling_wage_rate/Dictionary/dictionary_main.htm).

**SECTION 16. DWD 290.01(22) is created to read:**

**DWD 290.01(22)** "Volunteer" means an individual who by choice offers and performs the work identified in ss. 66.0903 (4) , 66.0904 (3) , or 103.499 (2m), Stats.,

without compensation or expectation of compensation and under the direction of the project owner.

**SECTION 17. DWD 290.015(1) and (2) are amended to read:**

**DWD 290.015(1)** For the purpose of making prevailing wage rate determinations, the department shall conduct an annual survey of employers and compile the prevailing wage rate for each trade or occupation in each area. The survey shall consist of forms mailed by the department to employers or an electronic survey application for completion and return.

**(2)** The department shall include a deadline date on the forms sent to employers. A survey form shall be accepted for initial compilation if it is received at the department's offices with a postmark or an electronic filing date that is on or before the deadline date and it is properly completed.

**SECTION 18. DWD 290.015(3m) is created to read:**

**DWD 290.015(3m) RESIDENTIAL RATES.** The department may determine residential rates under DWD 290.035(5) as a percentage of building or heavy construction rates under DWD 290.035(1) and not conduct an annual survey for these rates.

**SECTION 19. DWD 290.015(6) is amended to read:**

**DWD 290.015(6)(a)** The department shall issue its initial prevailing wage determinations based on the annual survey. Any person may request a recalculation of any portion of an initial determination, based upon the submission of the evidence required by s. 66.0903 (3)(bm), s. 66.0904(4)(d), Stats. or 103.49 (3) (b), Stats., if the request and the accompanying evidence are received at the department's offices within 30 days after the initial determination date.

(b) The department will accept a recalculation request on the basis of evidence that the employer did not receive a survey, that the employer properly mailed a survey form which the department did not receive, or that the survey data previously submitted was erroneous. ~~Except as provided in sub. (6m), a~~ A recalculation request will not be granted for the consideration of data that could have been submitted as a part of the annual survey but was not submitted on time.

**SECTION 20. DWD 290.015(6m) is repealed.**

**SECTION 21. The note to DWD 290.015(6) is amended to read:**

**Note:** The department is required to affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation. Sections 66.0903 (3) (bm), 66.0904 (4) (d) and 103.49 (3) (b), Stats.

**SECTION 22. DWD 290.015(7) is amended to read:**

**DWD 290.015(7) FINAL DETERMINATIONS.** The department shall issue its final annual prevailing wage determinations after it has issued decisions on all timely recalculation requests. No corrections under (4) or recalculations under (6) for the preceding year's survey may be completed after March 1.

**SECTION 23. DWD 290.025(1) is amended to read:**

**DWD 290.025 Subjourneypersons.** (1) The department shall may include a determination of one or more subjourneyperson wage rates for a particular trade or occupation in a prevailing wage determination under the criteria set forth in this section.

**SECTION 24. The note to DWD 290.025 is amended to read:**

**Note:** "Request to Employ Subjourneyperson," form ERD-10880, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).

**SECTION 25. DWD 290.03(2)(intro.) is amended to read:**

**DWD 290.03(2)(intro.) (2)** A Under ss. 66.0903(4) and 103.49(2m), Stats., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

**SECTION 26. DWD 290.03(2m) is created to read:**

**DWD 290.03(2m)** Under s. 66.0904, Stats., all laborers, workers, mechanics, and truck drivers employed on a publicly funded private construction project site of project, are entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

**SECTION 27. DWD 290.08(1) and (2) are amended to read:**

**DWD 290.08(1)** Every state agency, or local governmental unit or owner or developer of real property shall request the department to determine the prevailing wage rates for all trades or occupations required to complete any project of public works or publicly funded private construction project which meets or exceeds the dollar thresholds provided in s. DWD 290.155.

(2) The request shall be made on the form numbered ERD-5719, which shall be ~~provided~~ made available at no charge by the department, or on an equivalent electronic form.

**SECTION 28. The note to DWD 290.08 is amended to read:**

Note: "Application for a Prevailing Wage Determination Issued by the Department of Workforce Development," form ERD-5719, is available at no charge from the Department of Workforce Development Equal Rights Division, on its web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).

**SECTION 29. DWD 290.09(1)(intro.), (1)(b)(intro.), (1)(b)3, (2) and (4) are amended to read:**

**DWD 290.09(1)(intro.)** The petition of any local governmental unit for exemption from applying to the department to determine the prevailing wage rates for any individual public works ~~projects~~ project pursuant to s. 66.0903 (6), Stats., or the petition of an owner or developer of real property for exemption from applying to the department to determine the prevailing wage rates for any individual publicly funded private construction project pursuant to s. 66.0904, Stats., shall be sent to the department and shall include:

**DWD 290.09(1)(b)(intro.)** A current schedule of prevailing wage rates for all trades or occupations required for any project of public works or publicly funded private construction project, setting forth all of the following:

**DWD 290.09(1)(b)3** The types of projects of public works or publicly funded private construction projects, by kind and size, that are subject to the ordinance or other enactment.

**DWD 290.09(2)** Upon request of the department, the local government unit or owner or developer of real property shall also supplement its petition with information pertinent to determining the granting of an of an exemption.

**DWD 290.09(4)** Each exemption is subject to revocation for cause at any time, and also subject to observance of the applicable provisions of Wisconsin laws, rules



and regulations of the department, and of the agreements included in the petition and application. The provisions of ch. DWD 290, ~~and~~ s. 66.0903 (1), (3), (4), (5), (8), (9) (b) and (c), (10), (11) and (12), Stats., and s. 66.0904 (1), (2), (3), (5), (7)(b) and (c), (8), (9) and (10), Stats., remain in effect and are not included within an exemption.

**SECTION 30. DWD 290.10(1) and (2)(intro.) are amended to read:**

**DWD 290.10(1)** This section applies to a request for review by a local government unit under s. 66.0903(3)(br) , an owner or developer of real property under 66.0904(4)(e), Stats., or a state agency under s. 103.49(3)(c), Stats.

**DWD 290.10(2)(intro.)** A request for review by a local governmental unit, an owner or developer of real property, or a state agency will be accepted for consideration if the request meets the following requirements:

**SECTION 31. The note to DWD 290.10 is amended to read:**

**Note:** The department is required to affirm or modify the determination within 15 days after the date on which the department receives the request for review. Sections 66.0903 (3) (br), 66.0904 (4) (e) or 103.49 (3) (c), Stats.

**SECTION 32. DWD 290.11(title) is amended to read:**

**DWD 290.11** Procedure when a state agency, local governmental unit or owner or developer of real property fails to request a required prevailing wage rate determination or incorporate a required prevailing wage rate determination into a contract.

**SECTION 33. DWD 290.11(1), (2), (4) and (5) are amended to read:**

**DWD 290.11(1)** When the department finds that a state agency, an owner or developer of real property, or a local governmental unit has not requested a prevailing wage rate determination as required under s. 66.0903 (3) (am), 66.0904 (4) (a), or

103.49 (3), Stats., the department shall promptly notify the state agency, the owner or developer of real property, or the local governmental unit of the noncompliance.

(2) The state agency, the owner or developer of real property, or the local governmental unit shall file an application for a prevailing wage rate determination, on a form prescribed by the department, within 10 days of the department's notice of noncompliance.

(4) ~~The local governmental unit or~~ state agency, the owner or developer of real property, or the local governmental unit may request a review of the prevailing wage rate determination within 30 days of the issuance of the determination pursuant to s. DWD 290.10.

(5) If the state agency, the owner or developer of real property or the local governmental unit failed to incorporate a prevailing wage rate determination into a contract or bid, ~~the local governmental unit or~~ state agency, the owner or developer of real property or the local governmental unit shall either terminate the contract and resolicit bids using the prevailing wage rate determination or incorporate the determination retroactive to the beginning of construction through supplemental agreement or change order. The employer shall be compensated for any increases in wages resulting from the change and any amount of liquidated damages assessed by the department to the employer under ss. 66.0903 (11) (a), 66.0904 (9) (a) or 103.49 (6m) (aq), Stats. The method of incorporation of the prevailing wage rate determination and the adjustment in the contract or bid price shall be in accordance with applicable procurement law.

**SECTION 34. The note to DWD 290.11 is amended to read:**

**Note:** "Application for a Prevailing Wage Determination Issued by the Department of Workforce Development," form ERD-5719, may be obtained at no charge from the Department of Workforce

Development Equal Rights Division, on the DWD web site at  
[http://dwd.wisconsin.gov/er/prevaling\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevaling_wage_rate/default.htm).

**SECTION 35. DWD 290.12(1) and (3) are amended to read:**

**DWD 290.12(1)** A clearly legible copy of the prevailing wage rate determination issued by the department or exempted local governmental unit, together with the provisions of s. 66.0903 (10) (a) and (11) (a), ~~Stats. s. 66.0904 (8) (a) and (9) (a)~~, or s. 103.49 (2) and (6m), Stats., shall be kept posted in at least one conspicuous and easily accessible place on the site of each project by the contracting state agency, owner or developer of real property, or local governmental unit and the notice shall remain posted during the full time any laborer, worker, mechanic or truck driver is employed on the project.

**(3)** ~~Within 7 days of~~ Before the date that work is first performed by a minor subcontractor, a contractor or subcontractor that hires a minor subcontractor shall ~~either~~ provide a copy of the prevailing wage determination for the project to the minor subcontractor ~~or provide written notification to the minor subcontractor that the work to be performed is subject to a prevailing wage rate determination issued by the~~ department.

**SECTION 36. DWD 290.13(1) and (2)(a)(intro.) are amended to read:**

**DWD 290.13(1) AFFIDAVIT OF COMPLIANCE.** Upon completion of their portion of work on a project of public works or a publicly funded private construction project and prior to receiving final payment for work on the project, each agent or subcontractor shall file an agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with its prime contractor.

**(2) RECORD RETENTION.** (a) Each agent or subcontractor who performed work on a project of public works or a publicly funded private construction project shall retain the

following records for at least 3 years after the last day on which the prime contractor and all its agents or subcontractors completed work on the site of the project:

**SECTION 37. DWD 290.13(3) is created to read:**

**DWD 290.13(3) SUBCONTRACTOR NOTIFICATION.** Any contractor, subcontractor, contractor's agent or subcontractor's agent who fails to provide its subcontractors and agents the applicable prevailing wage determination for the project as noted in DWD 290.17 is liable for any amount of liquidated damages assessed by the department to the subcontractor or agent under 66.0903(11)(a), 66.0904(9)(a), or 103.49(6m)(ag), Stats.

**SECTION 38. The note to DWD 290.13 is amended to read:**

**Note:** "Agent or Subcontractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-10584, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).

**SECTION 39. DWD 290.14(1) is amended to read:**

**DWD 290.14(1)** Upon completion of the project of public works or publicly funded private construction project and prior to receiving its final payment for work on the project, each prime contractor shall file a prime contractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with the state agency, ~~or~~ local governmental unit, or owner or developer of real property that awarded the contract.

**SECTION 40. DWD 290.14(3) is created to read:**

**DWD 290.14(3) SUBCONTRACTOR NOTIFICATION.** Any prime contractor who fails to provide its subcontractors and agents the applicable prevailing wage

determination for the project as noted in DWD 290.17 is liable for any amount of liquidated damages assessed by the department to the subcontractor or agent under 66.0903(11)(a), 66.0904(9)(a), or 103.49(6m)(ag), Stats.

**SECTION 41. The note to DWD 290.14 is amended to read:**

**Note:** "Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-5724 may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).

**SECTION 42. DWD 290.145 is created to read:**

**DWD 290.145 Evidence of compliance by owner or developer of real property.** AFFIDAVIT OF COMPLIANCE. Upon completion of work on a project of public works or a publicly funded private construction project and prior to the local governmental unit accepting the dedication of any work completed under ss. 66.0903(2) or s. 66.0904, Stats., each owner or developer of real property shall file an owner or developer affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department with the local governmental unit.

**Note:** "Owner or Developer of Real Property Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-\_\_\_\_\_, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).

**SECTION 43. DWD 290.15 is repealed.**

**SECTION 44. DWD 290.155(1) is amended to read:**

**DWD 290.155(1)** This chapter does not apply to any ~~single-trade public works~~ project of public works for which the estimated cost of completion is below \$48,000 and any ~~multi-trade public works project for which the estimated cost of completion is below~~ \$234,000 \$25,000.

**SECTION 45. DWD 290.155(1m) is created to read:**

**DWD 290.155(1m)** This chapter does not apply to a publicly funded private construction project that receives less than \$1,000,000 in direct financial assistance from a local governmental unit.

**Section 46. DWD 290.155(2)(intro.) is amended to read:**

**DWD 290.15(2)(intro.)** The estimated cost of completion of a project of public works project or a publicly funded private construction project shall include all contracts and subcontracts that are closely related in purpose, time, and place. Similar or related work may be considered a separate project of public works project or publicly funded private construction project only if all of the following apply to each portion of work:

**Section 47. DWD 290.155(2)(a) and the note to DWD 290.155 are repealed.**

**Section 48. DWD 290.155(3) and (4) are amended to read:**

**DWD 290.155(3)** The estimated cost of completion of a project of public works project or a publicly funded private construction project shall include labor costs based on the most current prevailing wage rates available from the department, material, furnishings, and other things of value required to be supplied by a contractor or its subcontractors to construct a specific project.

**(4)** The estimated cost of completion of a project of public works project or a publicly funded project construction project shall not include land cost, architectural fees, engineering fees, planning and research costs, and administrative costs.

**SECTION 49. DWD 290.16 is amended to read:**

**DWD 290.16** Any person may request an inspection pursuant to ~~§. ss.~~ 66.0903 (10) (c), 66.0904 (8) (c), or 103.49 (5) (c), Stats. The request shall be in writing and shall identify the involved project; contractor, subcontractor, or agent; and trade or occupation. The requestor shall sign a statement that he or she understands the obligation to pay costs assessed pursuant to ~~§. ss.~~ 66.0903 (10) (c), 66.0904 (8) (c), or

103.49 (5) (c), Stats., if the contractor, subcontractor, or agent is found to be in compliance.

**Note: "Wisconsin Prevailing Wage Rate Complaint," form ERD-9850, is available at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).**

**SECTION 50. DWD 290.17 is renumbered DWD 290.17(1), and as renumbered is amended to read:**

**DWD 290.17(1)** Every state agency or local governmental unit shall insert or cause to be inserted a clause in every prime contract that clearly states that the applicable project of public works ~~project~~ is subject to the provisions of either s. 66.0903, 66.0904, or 103.49, Stats., and ch. DWD 290.

**Section 51. DWD 290.17(2), (3) and (4) are created to read:**

**DWD 290.17(2)** Every local governmental unit that enters into an agreement with an owner or developer of real property for a project subject to ss. 66.0903 or 66.0904, Stats., shall insert a clause that states that the project is subject to the provisions of ss. 66.0903 or 66.0904, Stats. and that the owner or developer of real property must apply to the department for a prevailing wage rate determination for the project under DWD 290.08.

**(3)** Every owner or developer of real property shall insert or cause to be inserted a clause in every prime contract that clearly states that the applicable publicly funded private construction project is subject to the provisions of s. 66.0904, Stats. and ch. DWD 290.

(4) Every contractor who contracts with another contractor, subcontractor or agent to complete work on a project of public works or a publicly funded private construction project shall provide a copy of the applicable prevailing wage determination for the project to the contractor.

**SECTION 52. DWD 290.18 and 290.19 are created to read:**

**DWD 290.18 ELECTRONIC CERTIFIED PAYROLL RECORDS (1)**

CONTRACTOR REPORTING. Except as noted in sub. (2), by the 7<sup>th</sup> day of the month following a month in which a contractor, subcontractor, or contractor's or subcontractor's agent performs work on a prevailing wage project, the contractor, subcontractor, or contractor's or subcontractor's agent shall upload certified payroll records to the department's website that comply with the applicable electronic formatting requirements, including the identification of each person who has performed work on the prevailing wage project.

(2) UNION CONTRACTOR REPORTING. (a) If the contractor, subcontractor, or contractor's or subcontractor's agent has persons who are subject to a collective bargaining agreement performing work on a prevailing wage project for which the collective bargaining agreement wage rates equal or exceed the prevailing wage rate, then, by the 7<sup>th</sup> day of the month following the first month in which the contractor, subcontractor, or contractor's or subcontractor's agent performs work on the prevailing wage project, the contractor, subcontractor, or contractor's or subcontractor's agent shall upload certified payroll records that comply with the applicable electronic formatting requirements and upload an electronic copy of the applicable collective bargaining agreement if it does not already appear on the prevailing wage public display of collective bargaining agreements. For any month in which there is a change to the collective bargaining agreement wage rate, the contractor, subcontractor, or contractor's



or subcontractor's agent shall upload subsequent certified payroll records that comply with the applicable electronic formatting requirements for union contractors and upload an electronic copy of the collective bargaining agreement if it does not already appear on the prevailing wage public display of collective bargaining agreements.

(b) If the contractor, subcontractor, or contractor's or subcontractor's agent has persons who are subject to a collective bargaining agreement performing work on a prevailing wage project for which the collective bargaining agreement wage rates do not equal or exceed the prevailing wage rate, then the contractor, subcontractor, or contractor's or subcontractor's agent is subject to sub. (1).

**NOTE: Certified payroll records filing information is available on the prevailing wage website at: [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/default.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm).**

**DWD 290.19 Application of effective date.** (1) PROJECTS OF PUBLIC WORKS, REQUESTS FOR BIDS. For projects under s. 66.0903, Stats., which are subject to bidding, the department shall apply the threshold amount of \$25,000 to projects for which a request for bids is issued after January 1, 2010.

(2) PROJECTS OF PUBLIC WORKS, NEGOTIATED CONTRACTS. For projects under s. 66.0903, Stats., which are covered by negotiated contracts, the department shall apply the threshold amount of \$25,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement.

(3) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, REQUESTS FOR BIDS. For projects under s. 66.0904, Stats., which are subject to bidding, the department shall apply the threshold amount of \$1,000,000 to projects for which a

request for bids is issued after January 1, 2010 and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the request for bids is issued.

(4) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, NEGOTIATED CONTRACTS. For projects under s. 66.0904, Stats., which are

covered by negotiated contracts, the department shall apply the threshold amount of \$1,000,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement, and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the negotiated agreement has been signed by all of the parties to the agreement.

**SECTION 53. 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.



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

**NOTICE OF PUBLIC HEARING**

**Prevailing Wages**

**DWD 290, Wis. Adm. Code**

NOTICE IS HEREBY GIVEN that pursuant to Sections 103.005(1), and 227.11(2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of rules relating to the state prevailing wage program and affecting small businesses.

**Hearing Information**

**Wednesday  
August 11, 2010  
10:00 a.m.**

**MADISON  
G.E.F. 1 Building, Room F 305  
201 E. Washington Avenue**

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 regarding communication or accessibility at the hearing, please call (608) 266-9427 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.

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**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 103.005(1) and 227.11(2), Stats.

**Statutes interpreted:** Sections 66.0903, 66.0904 and 103.49, Wis. Stats.

**Explanation of agency authority.** The state prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition 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. Changes to the state prevailing wage law were enacted in 2009 Wisconsin Act 28, including:

- A new threshold level determines the applicability of the law. Under the current law, any project of public works with an estimated completion cost of at least \$25,000 requires a prevailing wage rate determination.
- Contractors are required to provide a monthly report of wage payments made to employees on public works projects. These reports are posted on an internet website maintained by the department. A contractor may submit a copy of its collective bargaining agreement (CBA) if the payments made under the CBA meet the prevailing wage requirements.
- Under sec. 66.0904, Stats., the prevailing wage law now also covers a private project which receives \$1,000,000 or more in direct financial assistance from a local governmental unit.

**Summary of the proposed rule.** The proposed rule amends the Department's existing rule on the prevailing wage program to reflect the changes made by 2009 Wisconsin Act 28. In addition, the proposed rule covers the following issues:

- The proposed rule clarifies that, depending on its actions, a state agency or a local governmental unit may be an "employer" or a "contractor."
- The proposed rule provides that the Department may conduct wage surveys by electronic means.
- The proposed rule provides that the Department may determine residential rates as a percentage of building or heavy construction rates rather than as a separate survey category.
- The proposed rule provides that no corrections or recalculations to an annual survey may be completed after March 1 of each year.
- The proposed rule provides that, if a state agency, local governmental unit, or developer receiving more than \$1,000,000 in direct financial assistance has not requested a prevailing wage rate determination for a project covered by the law, and the Department later issues a prevailing wage rate determination for such a project, then, in addition to the payment of the increased wages which the state agency, local governmental unit or developer must make to reimburse the employer of workers who were not correctly paid, the state agency, local governmental unit or developer must also reimburse the employer for any liquidated damages that employers may have been required to pay.

**Summary of related federal law.** The federal prevailing wage law (known as the Davis Bacon Act) applies to a federal public works project for which the contract cost is greater than \$2,000. It does not apply to a private project which receives financial assistance from public funds unless the assistance is on such a scale that the project is determined to be a public project.

**Comparison with rules in adjacent states.** Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. In addition to public works projects, the Minnesota law covers the construction of a “value-added agricultural product processing facility” that is financed in whole or part with certain state loans or grants. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. The Illinois law requires certified monthly payroll reports. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

**Summary of factual data and analytical methodologies.** The proposed rule is based on the new or amended requirements the statutes as affected by 2009 Act 28.

**Effect on small business.** Because the proposed rule carries forward the new or amended requirements of the statutes as affected by 2009 Act 28, the proposed rule of itself does not have an effect on small business.

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

**Comments and deadline for submission.** Comments may be submitted to Howard Bernstein, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or [Howard.Bernstein@dwd.wisconsin.gov](mailto:Howard.Bernstein@dwd.wisconsin.gov) . The deadline for submission is August 13, 2010.

**Administrative rules website.** The proposed rules are available at the website <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting Howard Bernstein at the addresses given above or by telephone at (608) 266-9427.

\_\_\_\_\_  
Secretary or designee

\_\_\_\_\_  
Date

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 290  
Amendment No. if Applicable

**Subject**  
Prevailing wage rates

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

- Increase Costs - May be possible to Absorb Within Agency's Budget  Yes     No  
 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 create any new costs in the administration of the state prevailing wage program.

**Long-Range Fiscal Implications**  
None

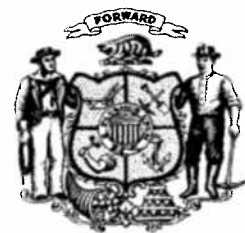
Agency/Prepared by: (Name & Phone No.)  
DWD/Howard Bernstein (608) 266-9427

Authorized Signature/Telephone No.

Date



# WISCONSIN STATE LEGISLATURE



# Prevailing Wage Rule

- Thu. 9/16 @ 4:30

- me, Robb Kahl, Howard Bernstein, Andy Feldman, Mary Beth, Chris

## Item 3

- DWD wants to match up w/ DOT
- add note saying DWD + DOT sync up
  - maybe put note right in the rule
- either Robb I language or new DWD language
- clarify definition of "incidental work" - add in definition of primary work
- changes could be a political problem
  - bringing in line of DOT + federal
  - probably wasn't statutory OK in the 1<sup>st</sup> place

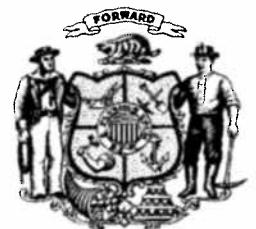
## Item 4

- changing back to "the labor cost" instead of "the value of the work"





# WISCONSIN STATE LEGISLATURE



Having now read through and compared Robb's suggested language with DWD's proposal below, here would be my summary:

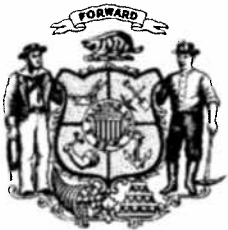
Items 1 & 2 – DWD wholly incorporated Robb's suggestions

Item 3 – DWD made a slight language change to Robb's suggestion, but it should not have an effect on the intent Robb was trying to achieve

Item 4 is the only one that I would have a question about. The language Robb wanted was "the labor costs of volunteers" which DWD changed to "the value of the work performed by volunteers." My concern is that the estimated value of work could potentially be calculated higher than the labor cost. For example, assume a bricklayer donates his time to put in a brick walk at the school. The cost of his labors might be calculated at an hourly wage rate (\$45/hour for a days wages of \$360), whereas the value of the work that he's providing is higher (the new brick walk is valued at \$1000). I could be misunderstanding the calculation of value of work, but it seems more ambiguous (with a potential to trend higher) than simply calculating the labor cost.



# WISCONSIN STATE LEGISLATURE



- 1) Labor costs of project owner employees factored into calculating whether a project crosses the \$25,000 threshold. Need legal opinion confirmation.
- 2) Change to “value of work performed by volunteers” versus labor costs. Why the change. Are donated materials calculated toward threshold?
- 3) Stockpile definition – would like to see a definition of “stockpile” to provide it is a “storage pile that is reloaded into trucks before being utilized on the project.” Otherwise need legal opinion confirmation.
- 4) Affirmative statement on payroll and CBA submissions that employer is current with pay and fringes.