

Publication Date: December 29, 2009
Effective Dates: January 1, 2010 through May 30, 2010

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

**EMERGENCY RULE
DWD 290 - Prevailing Wage Rates**

The Wisconsin Department of Workforce Development creates s. DWD 290.20, relating to the application of new and amended statutes relating to the thresholds for the requirement of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and , in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The 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 the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rules provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 66.0903(5), 66.0904(5) and 103.49(3g), Stats.

Explanation of agency authority. As the state agency responsible for the administration and enforcement of the state prevailing wage laws, the Department has the authority under secs. 103.005(1) and 227.11(2), Stats., to promulgate and amend administrative rules which interpret the statutes for which it is responsible.

Summary of the emergency rule. The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and , in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

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determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

Summary of related federal law. The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

Comparison with laws in adjacent states. Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. 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. 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 facts relevant to this rule have been summarized in the Finding of Emergency.

Anticipated costs incurred by the private sector. The rule does not have a significant fiscal effect on the private sector.

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, because the prevailing wage costs are ultimately borne by the entities that contract for the projects.

Analysis used to determine effect on small business. As stated in the paragraph immediately above, the prevailing wage costs are ultimately borne by the entities that contract for the projects. Also, to the extent that the changes in the threshold rate enacted in 2009 Wisconsin Act 28 have any other fiscal effect, this rule does not create any fiscal effect that is independent of the effect of the statutory changes in the budget act.

Rule Text

SECTION 1. DWD 290.20 is created to read:

DWD 290.20 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.

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| 2009 Session LRB or Bill No./Adm. Rule No. DWD 290.20 | | |
| FISCAL ESTIMATE DOA-2048 N(R03/97) | <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL | |
| Amendment No. if Applicable | | |
| Subject Effective dates of new and amended provisions of the prevailing wage laws | | |
| Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation. | | |
| <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation | <input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs | |
| Local: <input checked="" type="checkbox"/> No local government costs | | |
| 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |
| Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | Affected Ch. 20 Appropriations | |
| Assumptions Used in Arriving at Fiscal Estimate The emergency rule does not create any costs that are separate from costs potentially due to the new statutory provisions created by 2009 Act 28. | | |
| Long-Range Fiscal Implications None | | |
| Agency/Prepared by: (Name & Phone No.) DWD/Howard Bernstein (608) 266-9427 | Authorized Signature/Telephone No. | Date 12/22/09 |

