

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
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- Executive Sessions ... ES
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
- 97hr_JCR-AR_Misc_pt32c_Test
- Record of Comm. Proceedings ... RCP
-

Vera Stroud
16940 West Shadow Drive
New Berlin, Wisconsin 53151
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FEB 10 1997

February 6, 1997

Representative Richard A. Grobschmidt
Room 111 North, State Capitol
P.O. Box 8952
Madison, WI 53708



Dear Representative Grobschmidt,

I am mailing you the enclosed copy of a letter to my Representative, Mary Lazich, for your information as Co-Chairman of the Joint Committee for Review of Administrative Rules.

Thank you for your attention to this matter.

Sincerely yours,



Vera Stroud

enclosure

Vera Stroud
16940 West Shadow Drive
New Berlin, Wisconsin 53151
(414) 679-2132 1702

January 13, 1997

Rep. Mary Lazich
P.O. Box 8952
Madison, WI 53708

Dear Representative ~~Lazich~~, *Mary*

It came to my attention at the December 1996 Conference of the State Land Conservation Districts that NR 718, NR 518, and NR 419 are to be changed in the near future to facilitate landspreading of soils contaminated by motor fuels, as well as benzene and kerosene.

These changes were proposed in 1995 and several hearings have been held. The hearings were attended chiefly by representatives of agricultural cooperatives, who it is believed, asked for the changes in the rules, speaking in favor, and representatives of environmental organizations speaking against. The contaminated soils are created from spills of gasoline, diesel fuel, No. 1 or No. 2 fuel oil, kerosene, aviation gasoline, jet fuel, (which either singly or in a mixture) may be spread on a piece of land (no determination of what size) to a concentration of 6,000 pounds, in most counties. The counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha Counties have a limit of 2,000 pounds of contaminants (no matter what size the receiving land happens to be), because these counties lie in the "non-attainment" area for air pollutants. Benzene may also be a component of the mix or by itself, but because of its carcinogenic nature, can only be spread if the concentration is no more than 300 pounds, (or the "facility" is required to comply with the Lowest Achievable Emission Rates, in accordance with ch. NR 445"). In addition there is a maximum for metal contaminants, such as arsenic, cadmium, hexavalent chromium, trivalent chromium and lead.

The "landspreading facility" must be a minimum of one acre. There is no requirement to get a permit from the DNR (change in the rule), except that the DNR Department of Air Management must be notified. Also the chair of the town or municipality in which the facility is located must be notified. However, he/she is not required to take any action whatsoever. The material may be spread only once on a given piece of ground, to a depth of 4 inches. It must be plowed under with manure within three days of spreading. After that, the landowner has three years to do very complex testing of the soil to see if the contaminants have been abated by this method.

It has been suggested that the reason the farm cooperatives asked for these rule changes is that the state fund (based on a 3c a gallon tax paid by consumers to clean up this kind of contamination) is running out of money. The difference in cost between the environmentally preferred way of decontaminating these soils, i.e. incineration or bio-remediation is a maximum of \$30/ton vs. a minimum of \$8/ton for landspreading. But if landspreading occurs, the contaminated soil must be tested to see that it qualifies, and in three years further tests must be done on the receiving land to see that decontamination has taken place. Where are the actual savings?

Meanwhile, for the three days that the contaminated soils are allowed to lie on top, so that the vapors can rise into the atmosphere, the surrounding area is receiving air pollution. It is small comfort that less of the pollution will arise from contaminated soils spread in Waukesha County, because the prevailing winds coming from the West will ensure that we experience it anyway. I would be very surprised if the EPA didn't have an opinion on this potential violation of more stringent air quality standards shortly to be implemented.

Representative Mary Lazich

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Although there are safeguards to the surface water in the rule (the usual distance from a lake or stream), there is nothing said about a groundwater recharge area, or a perched water table. There is also nothing said about how to decontaminate soils that contain the heavy metals mentioned on the first page of this letter.

I have emphasized previously that the receiving "facility" can be any size from one acre up. That means that a really heavy dose of contaminants could be situated on only one acre. The rule makes no provision that neighbors must be notified, that proper signage must be utilized (one sign is deemed sufficient), or that this contamination of the soils is written into the deed. This land could well change hands before the three year deadline for a scientific report is up.

Manitowoc County has taken a stand and prohibited the landspreading of any soils contaminated with the pollutants allowed by this rule. Calumet County has restricted the landspreading of any soil containing these contaminants unless they are generated on site. Waukesha County is asking that this restriction be placed in the rule for all the SE Counties which have a lower pollution threshold.

I find it hard to believe that the DNR could be going along with so many provisions which have a potentially damaging effect on the Wisconsin population. Please look into this, and, hopefully, Legislative action can stop the rule change from going into effect, or at least change the most damaging aspects. Of course, the ideal would be to fund the farm cooperatives for the maximum \$22/ton difference between landspreading it and handling it in an environmentally safe manner.

It was great to see you in late December!

Sincerely yours,



Vera Stroud

cc: Rep. Marc Duff

MAR 06 1997

March 4, 1997

JOINT COMMITTEE FOR REVIEW
OF ADMINISTRATIVE RULES
P. O. Box 7882
Madison, WI 53707-7882

RE: Wis. Statutes 301.046, 301.048, and 304.02
DOC §333.04, Wis. Administrative Code

Dear Joint Committee Members,

I would like to bring something to your attention that I believe you could help me with.

The Taycheedah Correctional Institution, in Fond du Lac, does NOT follow the Wisconsin Statutes or the Wisconsin Administrative Code as far as the three (3) Early Release Programs are concerned. These programs were obviously passed into law to alleviate the overcrowding of the prison system but if the prisons do NOT use these programs then they are lying to the State Government when they say they are overcrowded and need to build more beds. I don't know if this happens at all the prisons, but I do know that it is happening here at TCI and it should be investigated. Especially since there is an EMPTY housing unit on grounds that could easily house 65-70 women!

The three Early Release Programs that I mentioned are:

§301.046, STATS. COMMUNITY RESIDENTIAL CONFINEMENT (CRC)

A person NOT serving a sentence longer than 3 years and eligible for parole may be confined at their residence.

§301.048, STATS. INTENSIVE SANCTIONS PROGRAM (DIS)

A person serving a felony sentence NOT punishable by life imprisonment and usually a non-violent offender, may be confined to their place of residence with intense supervision for a year or more.

§304.02, STATS. SPECIAL ACTION PAROLE (SAR)

A person who is NOT incarcerated for an assaultive crime, is 18 months from Mandatory Release, and the prison population equals or exceeds the statewide prisoner population limit under §301.055, STATS.

§DOC 333.04, Wis. Admin. Code INTENSIVE SANCTIONS (DIS)

A person is either sentenced by a Court to this program; paroled by the parole commission; transferred to DIS by DOC in lieu of revocation of parole or probation; or transferred to DIS by DAI provided the inmate has a case plan that includes an intended residence, either a school or job placement or an alternative acceptable to the PRC; AND that person is NOT serving a life sentence in a Type 1 prison.

Wouldn't you think that if a woman who has been "eligible", under Wisconsin Statutes as well as the Administrative Code, since October of 1995 would have already been OUT on the Intensive Sanctions Program? If the prison administration followed the laws of this State as well as their OWN administrative code, then this woman would have been released to this program.

Let me tell you, that is NOT the way things work at TCI!

The Program Review Committee at TCI won't allow the eligible women to apply for DIS, even though they meet the criteria according to Wisconsin Statutes AND the Administrative Code.

Stephen Puckett, the Offender and Classification Chief for the Department of Corrections, either ignores the appeals of these eligible women or chooses not to answer them. Either way, there are women currently incarcerated at TCI, who are eligible for DIS, and are NOT being allowed to apply for and going out on this program!

I happen to be one of those women and I am asking you, as members of the JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES to please look into this situation and find out HOW Taycheedah Correctional officials are getting away with IGNORING the laws of this State as well as their own administrative rules.

I look forward to your response and I thank you for taking the time to investigate this matter.

Sincerely,

Debi Christie

DEBI CHRISTIE
751 Highway K
Fond du Lac, WI 54935-9099

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APR 07 1997

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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 97-033

AN ORDER to repeal DWD 290.17; to renumber chapter ILHR 290 and DWD 290.03 and 290.12; to amend chapter DWD 290 (title) and DWD 290.01 (2), (6), (7), (16) and (19), 290.03 (title), 290.08 (title) and 290.155; to repeal and recreate DWD 290.01 (15), 290.015 and 290.10; and to create DWD 290.001, 290.01 (20) to (22), 290.025, 290.03 (2) and (3), 290.035, 290.08 (4) and 290.12 (2), relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

03-03-97 RECEIVED BY LEGISLATIVE COUNCIL.

03-31-97 REPORT SENT TO AGENCY.

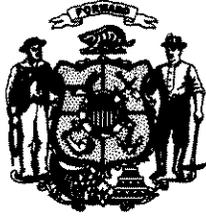
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CLEARINGHOUSE RULE 97-033

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. SECTION 12 of this rule-making order creates s. DWD 290.025 which establishes a state-sponsored "trainee program" in order to "allow employers to introduce unskilled workers to the construction trades." The rule sets forth training program requirements and provides that trainees shall be paid "at least the applicable minimum wage rate" rather than a prevailing wage rate.

The department does not appear to have the statutory authority to adopt this rule as part of its rules relating to the determination and administration of prevailing wage rates for state and local public works contracts. Section DWD 290.025 establishes a training program that has no relationship or bearing on prevailing wage rate determinations or the administration of that state program. Further, the rule does not appear to be authorized under any of the three prevailing wage rate statutes [ss. 66.293, 103.49 and 103.50, Stats.] or the boilerplate authorization of s. 103.005 (1), Stats.

b. SECTION 13 of this rule-making order expands the scope of s. DWD 290.03 to authorize the establishment of a prevailing wage rate for a "subjourneyperson" category in the construction trades. However, s. DWD 290.03 (2) (c) requires a ratio at the work site of not more than "one subjourneyperson for each two journeypersons."

Once again, this provision appears to be a "work rule" that has nothing to do with the determination and administration of prevailing wage rates on public works projects. As a result, there appears to be no statutory authority for including the subject matter of par. (c) as a portion of this rule submission.

2. Form, Style and Placement in Administrative Code

- a. In the treatment clause of SECTION 1, insert "Chapter" before "ILHR."
- b. Section DWD 290.001 states that the rule applies to all prevailing wage rate determinations under ss. 66.293 and 103.49, Stats. However, the introduction to s. ILHR 290.01 states that the definitions in that section apply to wage rate determinations made by the department pursuant to s. 66.293, Stats. The department should ensure that the cross-references in ch. DWD 290 refer to s. 103.49, Stats., when appropriate. Also, in s. DWD 290.001, the word "section" should be replaced by the word "chapter."
- c. The definitions in s. DWD 290.001 should be alphabetized.
- d. SECTION 6 of the rule should be redrafted as two separate SECTIONS of the rule-making order. The treatment clause of the first SECTION should provide that "DWD 290.01 (7) is renumbered DWD 290.01 (7) (a) and amended to read:". The treatment clause of the next SECTION should provide that "DWD 290.01 (7) (b) is created to read:". The introductory clause should also be redrafted to reflect these changes. [See ss. 1.02 (1) and 1.04 (2), Manual.]
- e. In s. DWD 290.015 (6), delete "statute" and substitute "s. 66.293 (3) (bm) or 103.49 (3) (b), Stats."
- f. The Note following SECTION 11 and other sections of the rule-making order indicate that certain materials are included in an Appendix. However, the text of the Appendix has not been included with the rules. This Appendix should have been included as part of the rules submitted to the Rules Clearinghouse.
- g. In s. DWD 290.025 (2) (intro.), the word "must" should be replaced by the word "shall."
- h. In s. DWD 290.025 (2) (c), the second sentence is not substantive material and should be contained in a note to the rule.
- i. In s. DWD 290.035, the use of parenthetical remarks should be avoided. For example, in sub. (1) (b), the phrase "greenhouses (not incidental to retail)" can be replaced by the phrase "greenhouses that are not incidental to retail."
- j. Section DWD 290.035 (3) (a) should conclude with the phrase "under subs. (1), (2), (4) and (5)."
- k. In the second sentence of s. DWD 290.10 (3), substitute "shall" for "will." [See s. 1.01, Manual.]
- l. In s. DWD 290.12 (2), the word "must" should be replaced by the word "shall."
- m. In SECTION 22, delete all the material after "below" and substitute:

~~\$11,000, where a single trade is involved, and \$110,000 where more than one trade is involved on such project~~ \$30,000, and any

multi-trade public works project for which the estimated cost of completion is below \$150,000.

2. Form, Style and Placement in Administrative Code

Sections DWD 290.015 (2) and 290.025 (2) (a) refer to forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. In s. DWD 290.015 (3), delete the first three commas in the first sentence which are unnecessarily confusing. Also, delete "its successor" and substitute "a successor agreement that is."

b. In s. DWD 290.025 (1), the word "employers" in the last sentence should be replaced by the word "employer."

c. Section DWD 290.025 (2), (3) and (5) imply that a training program may be approved by the department. A positive statement of the department's responsibility or authority to approve a training program should be included in this section.

d. In s. DWD 290.03 (3) (b), delete the third comma. Also, in order to fully comport with the provisions of ss. 66.293 (4) (a) 1. and 103.49 (2m) (a) 1., Stats., it appears in s. DWD 290.03 (3) (b) that the last occurrence of the word "or" should be replaced by the word "and."

e. The third sentence of s. DWD 290.035 (5) (a) should be deleted. The four-story limitation is adequately stated in the first sentence and in par. (b) and, therefore, the third sentence is redundant.

f. In s. DWD 290.10 (2) (d), reference is made to wage information for the contested trade or occupation on at least three similar projects. Paragraph (e) then refers to wage information from projects of the same type as the proposed project. Paragraph (e) appears to be redundant, given the language in par. (d). Is par. (e) necessary?



State of Wisconsin \ Department of Workforce Development

HEARING DRAFT of PROPOSED RULES

Rule No.:

DWD 290

Relating to:

Prevailing Wage Rates for State or Local Public Works Projects

CHAPTER DWD 290

PREVAILING WAGE RATES FOR STATE OR LOCAL PUBLIC WORKS PROJECTS

The Wisconsin Department of Workforce Development proposes an order to renumber ch. ILHR 290, DWD 290.03 and 290.12; to repeal DWD 290.17; to amend ch. DWD 290(title), DWD 290.01(2), (6), (7), (16), and (19), 290.03(title), 290.08(title), and 290.155; to repeal and recreate DWD 290.01(15), 290.015, and 290.10; and to create DWD 290.001, 290.01(20) to (22), 290.025, 290.03(2) and (3), 290.035, 290.08(4), and 290.12(2), relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Analysis

Authority for rule. §103.005(1), Stats., in conjunction with §§66.293, 103.49 and 103.50, Stats.

Statutes interpreted. §§66.293, 103.49 and 103.50, Stats.

Introduction. 1995 Wisconsin Act 215 made a number of major changes to the laws which require the Department of Workforce Development to determine prevailing wage rates for state and local public works projects. In place of case-by-case investigations, the department is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances. This rule establishes deadline and appeal criteria for the process that will be used to compile the annual survey results and consider requests for review, and makes further code changes as explained below.

Annual survey. The rule establishes procedures for the annual survey of wage rate information that is now required by statute. The department will set a deadline date for the return of survey information and will not compile responses that are late. Determinations will be made for each "area," which is defined by statute as a county, or (if there is insufficient data) a county with its surrounding contiguous counties, or (if there is still insufficient data) that territory included with the next tier of contiguous counties, or (if there is still insufficient data) the entire state. The department may include in its determinations future prevailing wage rates if a collectively bargained wage rate and fringe benefit package is found to prevail in a particular area for a particular trade or occupation and future rates are provided for by the agreement or its successor. If the wage rate data from all available sources is insufficient, the department may consider wage rate data for a similar trade or occupation in making its determinations.

Recalculation requests. Within 30 days after the department issues its initial determinations, any person may request a recalculation of any portion of a particular determination. In future years, a recalculation request will not be granted for the consideration of data that was not submitted on time. However, for the 1996 survey only, the department will accept recalculation requests on this basis.

Project determinations. The department will continue to issue prevailing wage rate determinations for individual projects. A project determination remains in effect until the end of the year (if issued on or before June 30) or for 180 days (if issued after June 30). A local government unit or state agency which receives a project determination may request an administrative review of any portion of a determination if it makes a written request within 30 days, the request is received before construction contracts are awarded or negotiated, and the request includes wage rate information for the contested trade or occupation from at least 3 similar projects within the city, village or town where the proposed project is located that took place and were reported within the survey period. In conducting administrative reviews, the department will consider other wage rate information on similar projects within the city, village or town where the proposed project is located and will issue a decision as to the prevailing wage rate for the contested trade or occupation in that city, village or town, using the same calculation criteria employed in the survey determinations.

“Highest-paid 51%.” When calculating the “highest-paid 51% of hours worked” for the purpose of determining the weighted average wage for a particular trade or occupation, the department will include all hours worked at the wage and corresponding fringe benefits that include the highest-paid 51% of hours worked.

Definitions and classifications. The rule adopts a detailed definition of the term “site of work” and describes in detail the characteristics of projects classified as agricultural, building, heavy, highway and residential construction. The rule also creates definitions for “minor subcontract” and “subjourneyperson” and specifies when the prevailing wage laws apply to employes who process, manufacture, pick up or deliver materials from a commercial establishment with a fixed place of business.

Trainees. The proposed rule allows for the employment of one or more trainees on a prevailing wage project when certain conditions are met. In addition to on the job training, the employer is required provide 30 hours of safety and necessary job skills training.

Subjourneypersons. This proposed rule contains the same provision on the topic of subjourneypersons as the emergency rule that is currently in effect. Under this provision, the department will determine a separate prevailing wage rate for a subjourneyperson category in a particular trade or occupation within a county when there are at least 500 countable hours reported for the trade or occupation in that county and the reported hours for a subjourneyperson category are greater than or equal to 25% of the reported hours for the journeyperson category, or (if the “25% of reported hours” condition is not met) if there is a subjourneyperson rate in a

collective bargaining agreement filed with the department which reflects the prevailing wage rate for that county and trade. The proposed rule also establishes a maximum ratio of one subjourneyperson for each two journeypersons employed in the same trade or occupation by the same employer at each site of work.

The department has already received many comments on this aspect of the rule and expects to receive many more. The department has convened an advisory committee to provide assistance in reviewing this and other prevailing wage issues, and the department intends to review the comments on the subjourneyperson issue carefully, with the assistance of the committee.

Minor subcontractors. A contractor or subcontractor that hires a minor subcontractor (defined as a subcontract of less than \$2,000 in cost and less than 3 days of work) must provide, within 7 days of the date that work is first performed by the minor subcontractor, either a copy of the prevailing wage rate determination for the project, or a written notice which states that the work to be performed is subject to a prevailing wage rate determination.

Threshold costs. In accordance with amendments to the statutes, these amounts are amended so that the prevailing wage rate requirements do not apply to a single-trade project with an estimated cost below \$30,000 or a multi-trade project with an estimated cost below \$150,000.

SECTION 1. ILHR 290 is renumbered DWD 290.

SECTION 2. DWD 290(title) is amended to read:

Chapter DWD 290

CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS

SECTION 3. DWD 290.001 is created to read:

DWD 290.001 Scope. This section applies to all prevailing wage rate determinations under ss. 66.293 and 103.49, Stats., and to the certification of prevailing wage rates and the notification of minor subcontractors under s.103.50, Stats.

SECTION 4. DWD 290.01(2) is amended to read:

DWD 290.01(2) “Area” ~~means the county or other locality from which labor for any project would normally be secured~~ has the same meaning as in ss. 66.293(1)(a), 103.49(1)(a) and 103.50(1)(a), Stats.

Note: See the Appendix for the text of statutory definitions.

SECTION 5. DWD 290.01(6) is amended to read:

DWD 290.01(6) “Laborers, workers, and mechanics and truck drivers” ~~include~~ includes ~~preapprentices, helpers, subjourneypersons, trainees enrolled in a program approved by the department, learners and properly registered and indentured apprentices but exclude~~ excludes clerical, supervisory, and other personnel not performing manual labor.

SECTION 6. DWD 290.01(7) is amended to read:

DWD 290.01(7)(a) “~~The prevailing~~ Prevailing wage rate” ~~included in a wage determination for any given trade or occupation is the hourly basic rate plus the hourly contributions for the types of economic or fringe benefits for that trade or occupation~~ has the same meaning as in s. 66.293(1)(g), 103.49(1)(d), and 103.50(1)(d), Stats.

Note: See the Appendix for the text of statutory definitions.

(b) In calculating the weighted average of the “highest-paid 51% of hours worked” in a trade or occupation, the department shall include all hours worked at the wage and corresponding fringe benefits that include the highest-paid 51% of hours worked.

SECTION 7. DWD 290.01(15) is repealed and recreated to read:

DWD 290.01(15)(a) “Site of work” means the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by a contractor or subcontractor in connection with the project.

(b) "Site of work" includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, when these facilities are substantially dedicated to the performance of the contract or project and are located in proximity to the actual construction location.

(c) "Site of work" does not include: 1. A permanent home office, branch plant establishment, fabrication plant or tool yard whose location and continued operation is determined without regard to a particular contract or project.

2. A fabrication plant, batch plant, borrow pit, job headquarters, tool yard or similar facility which is established by a supplier of materials before the opening of bids, whether or not the operations of the facility may be substantially dedicated to the performance of the contract for a period of time.

SECTION 8. DWD 290.01(16) is amended to read:

DWD 290.01(16) "Department" means the state of Wisconsin department of ~~industry,~~
~~labor and human relations~~ workforce development.

SECTION 9. DWD 290.01(19) is amended to read:

DWD 290.01(19) "Prevailing hours of labor;" ~~included in a wage determination for any given trade or occupation, are the hours per day and per calendar week for which hourly basic rates of pay are paid~~ has the same meaning as in s. 103.49(1)(c), Stats.

Note: See the Appendix for the text of statutory definitions.

SECTION 10. DWD 290.01(20) and (21) are created to read:

DWD 290.01(20) "Minor subcontract" means a subcontract with an estimated cost that is less than \$2,000.00 and an estimated work duration of less than 3 days.

(21) "Subjourneyperson" means a semi-skilled worker who regularly and routinely works under the direction of, and directly assists, a skilled trade employe by using the tools of a specific trade. "Subjourneyperson" does not include an apprentice or a laborer.

(22) "Allowable rate" means the rate determined by the department from its review of a collective bargaining agreement by subtracting items which do not represent bona fide fringe benefits.

Note: This term is used in DWD 290.015(3). Two examples of items which do not represent bona fide fringe benefits are industry or contract administration funds.

SECTION 11. DWD 290.015 is repealed and recreated to read:

DWD 290.015 Collecting and compiling wage rate information.

(1) ANNUAL SURVEY. 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 for completion and return.

(2) SURVEY DEADLINE. 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 that is on or before the deadline date and it is properly completed.

(3) COLLECTIVE BARGAINING AGREEMENTS. If a collectively bargained wage rate and fringe benefit package is found to prevail in a particular area, for a particular trade or

occupation, on a particular type of work, and that rate is identical to an allowable rate in a collective bargaining agreement for that trade or occupation which has been filed with the department during the current survey period, the department shall include in its determinations any future contractual increase or decrease provided for in the collective bargaining agreement or its successor filed before January 1 of the calendar year following the end of the survey period. The department may determine premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

(4) **CORRECTIONS.** The department may correct errors in compiling data from the completed surveys, based upon its own determination or its inquiry to an employer.

(5) **INSUFFICIENT DATA.** If the wage rate data which the department may consider from all sources is insufficient to determine the prevailing wage rate for a particular trade or occupation in a particular area or for a particular type of project, the department may consider wage rate data compiled for a similar trade or occupation.

(6) **INITIAL DETERMINATIONS AND RECALCULATION REQUESTS.** (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 statute, if the request and the accompanying evidence are received at the department's offices within 30 days after the initial determination date.

Note: See the Appendix for the text of statutory provision on the evidence required for a recalculation request.

(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 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.

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. §§66.293(3)(bm), 103.49(3)(b).

(6m) **RECALCULATION REQUESTS FOR THE 1996 SURVEY.** For recalculation requests which pertain to the 1996 survey, the department will accept for consideration data that could have been submitted as a part of the annual survey but was not submitted on time.

(7) **FINAL DETERMINATIONS.** The department shall issue its final annual prevailing wage determinations after it has issued decisions on all timely recalculation requests.

SECTION 12. DWD 290.025 is created to read:

DWD 290.025 Trainees. (1) **PURPOSE.** The purpose of the trainee program is to allow employers to introduce unskilled workers to the construction trades. Trainees will benefit from this program because it will allow them to learn about occupations in the construction trades and may lead to the attainment of lifelong skills through the apprenticeship program. Every effort should be made by each employers to ensure that its trainees reflect the makeup of the workforce in the local labor market.

(2) **CRITERIA.** A trainee program must meet the following requirements for the program to be recognized on a project subject to the state prevailing wage law:

(a) For each trainee, the employer shall provide to the department an application form with the trainee's name and a plan which describes the training program. The employer may meet this requirement by completing Form DWD 290.025(3)(c).

(b) The trainee shall be at least 18 years old, or, if under age 18, the trainee shall be employed subject to the state and federal laws governing the employment of minors.

(c) The trainee shall be paid at least the applicable minimum wage rate. The department recommends that the trainee's wage rate be set as a percentage of the hourly basic rate for the journeyman in the same trade. After six months of employment with the same employer, the trainee shall receive the same amount of fringe benefits as the equivalent journeyman, which may be provided as a cash equivalent.

(3) PROGRAM. An approved trainee program shall meet the following requirements:

(a) In addition to the training provided by the trainee's employment, the program shall include 30 hours of safety and necessary job skills training to be completed throughout the period of trainee employment. Safety and necessary job skills training may be provided in any location apart from the immediate work area, including a trailer or office at the work site. Safety and necessary job skills training shall include training in job site safety and basic concepts that are essential to the trade, such as the recognition and use of tools intrinsic to the trade, basic mathematics, or basic electrical concepts, as determined by the employer.

(b) The program shall have a duration of up to 12 months and may be extended for one 6 month period.

(4) EMPLOYMENT. Each employer may employ at least one trainee. An employer may employ one additional trainee for every two journeymen in the trade that are working for the employer. The trainee shall not work alone on a job site and there shall be at least one journeyman present at all times that a trainee is on a job site.

(5) COMPLAINTS. The department shall accept complaints from any party to a trainee agreement. If upon investigation the department finds that the terms of the agreement have not been observed, the department may terminate the agreement or decertify the training program.

SECTION 13. DWD 290.03(title) is amended to read:

DWD 290.03 Classification of laborers, workers and mechanics.

SECTION 14. DWD 290.03 is renumbered DWD 290.03(1).

SECTION 15. DWD 290.03(2) and (3) are created to read:

DWD 290.03(2) (a) The department shall recognize and determine a prevailing wage rate within a county for a subjourneyperson category in a trade or occupation when there are at least 500 countable hours reported for the trade or occupation within the county and par. (b) applies.

(b)1. The department shall determine whether the reported hours for the subjourneyperson category are greater than or equal to 25% of the reported hours for the journeyperson category in the same trade or occupation within the county. If they are, the department shall determine a subjourneyperson rate based on this data. If they are not, the department shall proceed under subd. 2.

2. If required by subd. 1, the department shall determine whether a collectively bargained wage rate and fringe benefit package prevails in the county for a particular trade or occupation, and whether that rate is identical to an allowable rate in a collective bargaining agreement for that trade or occupation which has been filed with the department during the current survey period, and whether the collective bargaining agreement includes a rate for a classification equivalent to a subjourneyperson. If these conditions are present, the department shall determine a

subjourneyperson rate based on the rate in the collective bargaining agreement. The department shall not consider data from contiguous counties when making determinations under this subdivision.

(c) Within each trade or occupation at each site of work, the ratio of subjourneypersons to journeypersons, all employed in the same trade or occupation by the same employer, may not exceed one subjourneyperson for each two journeypersons.

(3) 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:

(a) The laborer, worker, mechanic or truck driver is employed to deliver mineral aggregate such as sand, gravel or stone that is immediately incorporated into the work, and not stockpiled or further transported by truck, to or from the site of a project that is subject to this chapter by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

(b) The laborer, worker, mechanic or truck driver is employed to transport excavated material or spoil from, or to return to the site of a project that is subject to this chapter.

SECTION 16. DWD 290.035 is created to read:

DWD 290.035 Classification of projects. (1) **AGRICULTURAL.** (a) An agricultural construction project includes all buildings, structures or facilities that are primarily used for agricultural or farming purposes and excludes commercial and residential buildings.

(b) Examples of agricultural construction projects include, but are not limited to, barns, breeding facilities, cribs, fencing, greenhouses (not incidental to retail), irrigation or water wells, land clearing, manure pits, sheds, silos, stables, storage and outbuildings, and training, riding and exhibition facilities.

(2) **BUILDING.** (a) A building construction project includes sheltered enclosures with access for the purpose of housing persons, machinery, equipment and supplies. It includes all construction of these structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. A structure need not be habitable to be a building construction project. The installation of heavy machinery or equipment does not change the character of a building construction project.

(b) Examples of building construction projects include, but are not limited to, apartment buildings (five stories and above), arenas (enclosed), auditoriums, automobile parking garages, banks and financial buildings, barracks, bathhouses, bleachers (indoor or outdoor), churches, city halls, civic centers, commercial buildings, courthouses, detention facilities, dormitories, fire stations, grandstands, hospitals, hotels, industrial buildings, institutional buildings, libraries, mausoleums, motels, museums, nursing and convalescent facilities, office buildings, out-patient clinics, passenger and freight terminal buildings, police stations, post offices, power plants, prefabricated buildings, restaurants, retirement homes, schools, service stations, shopping centers,

stadiums, stores, subway stations, theaters, warehouses, and water and sewage treatment plants (building only).

(3) HEAVY. (a) A heavy construction project includes projects that are not properly classified as building, residential, agricultural or highway construction projects.

(b) Examples of heavy construction projects include, but are not limited to, antenna towers, breakwaters, caissons (other than buildings or highways), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), flood control projects, golf courses (other than buildings), industrial incinerators (other than buildings), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land reclamation, landfills, levees, locks, oil refineries, pipelines, ponds, pumping stations (pre-fabricated drop-in units), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers, shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor with no buildings), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterways, water supply lines (not incidental to buildings), water and sewage treatment plants (other than buildings), and water wells (other than residential or agricultural).

(4) HIGHWAY. (a) A highway construction project includes roads, streets, highways, bridges, runways, taxiways, alleys, trails, paths, parking areas, sidewalks and other similar construction not incidental to agricultural, building, heavy or residential construction projects.

(b) Examples of highway construction projects include, but are not limited to, airport runways, airport taxiways, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway), grade crossing elimination (overpasses or underpasses), guard rails on highway, gutters, highway or pedestrian bridges, highway signs, medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, shoulders, stabilizing courses, storm or sanitary sewers and water supply lines (incidental to road construction), street paving, surface courses, and trails.

(5) RESIDENTIAL. (a) A residential construction project includes single family houses or apartment buildings of no more than four stories in height. It includes all incidental items such as water wells, site work, driveways, parking areas, utilities, and private sidewalks. For classification purposes, the exterior height of a residential building, in terms of stories, is the primary consideration.

(b) Examples of residential construction projects include, but are not limited to, town or row houses, apartment buildings (four stories or less), condominiums (four stories or less), single family houses, garages and outbuildings, and student housing (four stories or less).

SECTION 17. DWD 290.08(title) is amended to read:

DWD 290.08 Wage determinations for individual projects.

SECTION 18. DWD 290.08(4) is created to read:

DWD 290.08(4) A prevailing wage rate determination that is issued on or before June 30 in a particular year shall remain in effect for the remainder of the calendar year. A prevailing wage rate determination that is issued after June 30 shall remain in effect for 180 days.

SECTION 19. DWD 290.10 is repealed and recreated to read:

DWD 290.10 Procedure for an administrative review. (1) This section applies to a request for review by a local government unit under s. 66.293(3)(br), Stats., or a state agency under s. 103.49(3)(c), Stats.

(2) A request for review by a local governmental unit or a state agency will be accepted for consideration if the request meets the following requirements:

(a) The request is in writing.

(b) The request is made within 30 days from the date the determination was issued. A request is timely under this section if it is received by mail with a postmark date within the review period.

(c) The request is made at least ten days before the date that construction contracts are awarded or negotiated.

(d) The request includes wage rate information for the contested trade or occupation on at least 3 similar projects located in the city, village or town where the proposed project is located and on which some work was performed within the applicable survey period and which was previously considered by the department in issuing the determination.

(e) The wage rate information in the request is from projects of the same type as the proposed project.

(3) In the course of its review, the department shall consider wage rate information from all other similar projects on which work was performed within the city, village or town during the

applicable survey period. The department will follow the same calculation criteria employed in the survey determinations.

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. §§66.293(3)(br), 103.49(3)(c).

SECTION 20. DWD 290.12 is renumbered DWD 290.12(1).

SECTION 21. DWD 290.12(2) is created to read:

DWD 290.12(2) Within 7 days of the date that work is first performed by a minor subcontractor, a contractor or subcontractor that hires a minor subcontractor must either provide a copy of the prevailing wage rate 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 22. DWD 290.155 is amended to read:

DWD 290.155 ~~Section 66.293(3), Stats.,~~ This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below \$11,000 \$30,000, where a single trade is involved, and any multi-trade public works project for which the estimated cost of completion is below \$110,000 \$150,000 where more than one trade is involved on such project.

Note: §103.49(1), Stats., defines “single-trade public works project” as “a public works project in which a single trade accounts for 85% or more of the total labor cost of the project,” and “multi-trade public works project” is defined as “a public works project in which no single trade accounts for 85% or more of the total labor cost of the project.”

SECTION 23. DWD 290.17 is repealed.

SECTION 24. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

(End)

JUN 09 1997

May 29, 1997

Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

Dear Sen. Grobschmidt:

I would like to request that the Jt. Committee for Review of Administrative Rules immediately hold an information hearing asking the DNR to address the rules and issues raised at the meeting called by Rep. Lorraine Seratti on May 29, 1997 in regard to the permitting process associated with the structures in navigable waters.

Thank you for your consideration.

Sincerely,

Bunny J. Replinski
P.O. Box 2754
Crivitz 54114

JUN 09 1997

May 29, 1997

Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

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Thank you for your consideration.

Sincerely,



Marie Brault

Simon & Marie Brault

P.O. Box 52

Crivitz 54114

JUN 09 1997

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Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

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Thank you for your consideration.

Sincerely,

Jay Deschane
602 Ruelle Ave
County WI 54114

JUN 09 1997

May 29, 1997

Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

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Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Guy DeShazo".

JUN 09 1997

May 29, 1997

Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

Dear Sen. Grobschmidt:

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Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chad DeScha", with a long horizontal flourish extending to the right.

JUN 06 1997

May 29, 1997

Sen. Richard Grobschmidt, Co-Chair
Jt. Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707

Dear Sen. Grobschmidt:

I would like to request that the Jt. Committee for Review of Administrative Rules immediately hold an information hearing asking the DNR to address the rules and issues raised at the meeting called by Rep. Lorraine Seratti on May 29, 1997 in regard to the permitting process associated with the structures in navigable waters.

Thank you for your consideration.

Sincerely,


1012 Royal Blvd.
Green Bay 54303



KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

May 30, 1997

Linda Stewart, Secretary
Department of Workforce Development
Room 400X
201 E. Washington Avenue
Madison, WI 53702

Dear Secretary Stewart:

As you may be aware, on April 30, 1997, Clearinghouse Rule 97-023, relating to the administration of child care funds and required parent copayments, was referred to the Senate Committee on Labor, Transportation and Financial Institutions for legislative review.

Pursuant to s. 227.19(4)(b)a, Stats., I am notifying you of my interest in meeting with representatives of your agency to discuss provisions of this rule. That meeting may be conducted as a public hearing. As soon as a date, time and location for this meeting or hearing is determined, I will notify you.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Kim Plache

Kimberly M. Plache, Chairperson
Senate Committee on Labor,
Transportation and Financial Institutions

c Donald Schneider, Senate Chief Clerk
Committee Members
Sen. Richard Grobschmidt
Rep. Glenn Grothman
Dan Fernbach

KP:ja

JUL 07 1997

Daniel P. Vrakas
Wisconsin State Representative

Chair: Assembly Committee on Labor & Employment
Vice-Chair Majority Caucus

July 7, 1997

Linda Stewart, Secretary
Department of Workforce Development
GEF 1 - Room 400X
Madison, Wisconsin 53702

Dear Secretary ~~Stewart~~ *Linda*:

Clearinghouse Rule 97-033, relating to the administration of prevailing wage rates for workers employed on state and local public works projects, was referred to the Assembly Labor and Employment Committee on June 9 1997 for legislative review.

Pursuant to section 227.19(4)(b)a, WI Stats., I am notifying you of my desire to meet with you or representatives of your agency to discuss provisions of this rule. That meeting may be conducted as a public hearing. I will contact you in the near future to arrange a time and location for the meeting.

I thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Daniel P. Vrakas
State Representative
33rd Assembly District

DPV:jak

cc: Charlie Sanders, Assembly Chief Clerk
Committee Members
Senator Plache
~~Senator Grobschmidt~~
Bob Conlin, Legislative Council

JUL 11 1997



State Senator
Kevin Shibilski

July 10, 1997

Charles H Thompson
Secretary of Transportation
PO Box 7910
Madison WI 53707-7910

John

Dear Secretary Thompson:

I am writing regarding a problem with the Department of Transportation Administrative Code. This problem was brought to my attention by a constituent of mine.

Six years ago Nancy Stevenson, owner of the Birdhouse Bed & Breakfast, 1890 Red Pine Lane Stevens Point, was given permission to erect a small sign advertising her establishment by the Portage County Planning and Zoning Commission. She had complied with all town and county ordinances and regulations. The sign was erected on County Highway P and directed people to her business.

Approximately one year ago the Department of Transportation District 4 administrator, Donna Yanda determined that Highway P came under state jurisdiction and that the sign was not in compliance with state code. Ms. Yanda and Mr. Bob Hardie in Madison, both stated that their hands were tied by state code that did not allow the department to make exceptions.

I would like to suggest an addition to the Wisconsin Administrative Code Trans 200.03(7) Guidance Signs for Resorts, Hotels, County Institutions, etc. Perhaps the following would suffice: "Special exceptions may be approved by the Department at the request of the local Planning and Zoning Commission." This would allow the department to address the special and extraordinary local circumstances as they might arise.

Thank you for your consideration. I look forward to your response.

Sincerely,

Kevin

KEVIN W. SHIBILSKI
State Senator
24th District

KS:dak

✓ cc: Senator Richard Grobschmidt Co-Chair, Joint Committee for Review of Administrative Rules



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: July 17, 1997
TO: SENATOR GWENDOLYNNE MOORE
FROM: Dan Fernbach, Senior Staff Attorney
SUBJECT: Clearinghouse Rule 97-044, Relating to Continuing Education Requirements for Assessors

Last month, Clearinghouse Rule 97-044, relating to continuing education requirements for assessors, was submitted by the Department of Revenue (DOR) for legislative approval. Clearinghouse Rule 97-044 was referred to the Senate Committee on Economic Development, Housing and Government Operations on June 26, 1997.

Under current s. 73.09 (4), Stats., all local assessors and DOR assessment personnel must complete certain continuing education requirements in order to qualify for recertification. Specifically, s. 73.09 (4) (b) requires that recertification may be accomplished by either passing an examination or attending four of the last five DOR-sponsored annual meetings for local assessors and by meeting continuing education requirements. The statute, in s. 73.09 (4) (c), then provides that:

Recertification is contingent upon submission of a notarized application for renewal, at least 60 days before the expiration date of the current certificate, attesting to the completion of the requirements specified in par. (b) [Emphasis added.]

However, Clearinghouse Rule 97-044 proposes to amend current s. Tax 12.065 (2) (c) and (5) (a) 2., Wis. Adm. Code, as follows:

Tax 12.065 (2) (c) The program shall be attended and completed ~~not later than 2 months~~ prior to the expiration of the applicant's current certification period.

Tax 12.065 (5) (a) 2. Individuals attending the course shall provide evidence of satisfactory competition to the department ~~within~~

30 days of conclusion of this course, prior to the expiration of the applicant's current certification period.

Responding to the obvious discrepancy between state law and the proposed rules, the Legislative Council Rules Clearinghouse in its "comments" to Clearinghouse Rule 97-044, dated April 16, 1997, informed the department that:

The amendment to s. Tax 12.065 (2) (c) appears to create a conflict with s. 73.09 (4) (c), Stats. The statutory language requires assessors to apply for recertification at least 60 days before their certification expires. The application must attest to the completion of continuing education requirements. Current s. Tax 12.065 (2) (c) requires continuing education programs to be attended and completed not later than two months prior to the expiration of the applicant's current certification period. SECTION 1 of Clearinghouse Rule 97-044 would require only that the program be attended and completed prior to the expiration of the applicant's current certification period. The department should explain how SECTION 1 of Clearinghouse Rule 97-044 is consistent with s. 73.09 (4) (c), Stats.

In the plain language analysis to Clearinghouse Rule 97-044, transmitted to the Legislature on June 24, 1997, the DOR responds to the above-cited Clearinghouse "comment" as follows:

Section 73.09 (4) states that the application is *contingent* upon submission of the application at least 60 days prior to certification expiration. Webster's New World dictionary defines *contingent* as "possible" or "not always or necessarily true". The department does not view the requirement as a strict deadline (as is connoted by the administrative rule language, *shall*). It is a physical impossibility, for example, for an individual whose certification expires on December 1 and who is legally required to attend the annual Assessor Conference held in November, to comply with such a rigid requirement. When read in its entirety, the law contemplates that an individual has a full 5 years to complete the educational requirements (not 5 years minus two months).

It appears that the department's interpretation of the meaning of the word "contingent," as used in s. 73.09 (4) (c), is somewhat strained since Webster's also defines the word to mean "dependent on or conditioned by something else." It seems clear that this is the meaning that the Legislature intended when using the word "contingent" in the statute, and is the only interpretation that makes any sense in the context of that provision.

In light of the above, you might wish to request a meeting with the agency to discuss modifications to the rule prior to the expiration of the Committee's review period on July 26, 1997.

DF:lah:kjf:jt