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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

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

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

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

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

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February 13, 2009

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

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

Re: CR 09-001 – Informational copies of proposed rule in final draft form (DWD 290.155, adjustment of thresholds for application of prevailing wage rates)

Dear Senator Holperin and Representative Zepnick:

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Bernstein', written over a horizontal line.

Howard Bernstein
Legal Counsel

Enc.

cc: Hector Colon

Jim Doyle
Governor

Roberta Gassman
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State of Wisconsin
Department of Workforce Development

Notification of Rule Referral

February 13, 2009
Proposed Rule in Final Draft Form

Proposed Rules Relating to Adjustment of Thresholds
for Application of Prevailing Wage Rates
DWD 290.155
CR 09-001

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

Clearinghouse Rule Number: 09-001

Rule Number: DWD 290.155

Relating to: the adjustment of thresholds for the application of prevailing wage rates

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

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State of Wisconsin
Department of Workforce Development

Rule Analysis for Legislative Review

February 13, 2009
Proposed Rule in Final Draft Form

**Proposed Rules Relating to Adjustment of Thresholds
for Application of Prevailing Wage Rates**
DWD 290.155
CR 09-001

Basis and Purpose of the Proposed Rules

The proposed rule adjusts the thresholds for application of prevailing wage rates in proportion to any change in construction costs since the thresholds were last determined. A more detailed explanation of the proposed rule is provided in the analysis that accompanies the text of the proposed rule.

Public Hearing Summary

A public hearing was held in Madison on February 12, 2009. No comments were received.

Response to Legislative Council Staff Recommendations

All comments were accepted.

Final Regulatory Flexibility Analysis

The proposed rule does not affect small businesses as defined in s. 227.114 (1), Stats.

Department Contacts

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Construction Wage Standards Section
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(608) 266-3148

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(608) 266-9427



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 09-001

AN ORDER to amend DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

01-14-2009 RECEIVED BY LEGISLATIVE COUNCIL.

01-27-2009 REPORT SENT TO AGENCY.

RS:JK

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-001

Comments

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

2. Form, Style and Placement in Administrative Code

- a. In the introductory clause, “s. DWD 290.155 (1)” should replace “s. 290.155 (1).” [s. 1.02 (1), Manual.]
- b. The rule summary must include information under specific headings, as described in s. 1.02 (2), Manual. It appears that the following headings are not included: (1) related statute or rule; and (2) analysis and supporting documents used to determine effect on small business or in preparation of economic impact report. The agency should follow the format described in s. 1.02 (2), Manual. If no information is included under a heading, the agency should note that under the heading.
- c. In SECTION 1, the period at the end of s. DWD 290.155 (1) should not be underlined. [s. 1.06 (4), Manual.]

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

- a. In the “Statutes interpreted” portion of the rule preface, the comma following “66.0903 (5)” should be removed.
- b. In the “Explanation of agency authority” portion of the rule preface, a comma should be inserted after “project” on line 3.

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject

Adjustment of thresholds for application of 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 Costs - May be possible to Absorb Within Agency's Budget Yes No

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

Decrease Costs

Local: No local government costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
4. <input type="checkbox"/> Decrease 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 |
|--|--|--|

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed and emergency rules provide that a state agency or local governmental unit contracting for the construction of a single-trade public works project that is estimated to cost more than \$45,000 but less than \$48,000 or a multi-trade project that is estimated to cost more than \$221,000 but less than \$234,000 is not covered by the prevailing wage requirement.

Long-Range Fiscal Implications

None

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

Authorized Signature/Telephone No.

Howard Bernstein 266-9427

Date

2/12/09

FISCAL ESTIMATE WORKSHEET

2009 Session

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 290.155(1)

Amendment No.

Subject
Adjustment of Thresholds for Application of the Prevailing Wage Rates

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

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

NET ANNUALIZED FISCAL IMPACT

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

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

Authorized Signature/Telephone No.

Howard Bernstein 266-9427

Date

2/12/09



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

**February 13, 2009
Proposed Rule in Final Draft Form**

Adjustment of Thresholds for Application of Prevailing Wage Rates

DWD 290.155 (1) CR 09-001

The Wisconsin Department of Workforce Development proposes to amend s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Analysis Prepared by the Department of Workforce Development

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

Statutory authority: Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

Explanation of agency authority. 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 those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

Related statute or rule. Section 66.0903, Stats., is the statute establishing the state prevailing wage program for local government projects. Section 103.49, Stats., is the statute establishing the state prevailing wage program for local highway projects. Chapters DWD 290, 293 and 294, Wis. Admin. Code, are the state administrative rules for these programs.

Plain language analysis of the proposed rule. Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$45,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$221,000. This rule adjusts the thresholds from \$45,000 to \$48,000 for a single-trade project and from \$221,000 to \$234,000 for a multi-trade project based on a 5.71% increase in the construction cost index between December 2007 and December 2008.

Summary of, and comparison with, existing or proposed federal regulations. 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 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. 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 thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report. By adjusting the threshold amounts for inflation on an annual basis, the proposed rule ensures that there is no effect on the state agencies and local units of government that are subject to the prevailing wage law. There is no effect on small business because all businesses are free to decide whether or not to bid on a project that is subject to the prevailing wage law.

Effect on small business. The proposed rule does not affect small businesses.

Agency contact person. Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, 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 . The deadline for submission is February 12, 2009.

Rule text:

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

DWD 290.155 (1) This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$45,000~~ \$48,000 and any multi-trade public works project for which the estimated cost of completion is below ~~\$221,000~~ \$234,000.

SECTION 2. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.

(End)