

2005 DRAFTING REQUEST

Bill

Received: 04/29/2005

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: Mark Gottlieb (608) 267-2369

By/Representing: Ron Sklansky

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Employ Priv - prevailing wage

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gottlieb@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prevailing wage rate; require separate determinations for wages and fringe benefits

Instructions:

See Attached--draft bill to support JCRAR objection to CR04-081, which required DWD to calculate the prevailing wage rate as the sum of the hourly basic rate of pay and the hourly contribution for fringe benefits. Instead, require those calculations to be made separately.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 04/29/2005	lkunkel 05/10/2005					S&L
/1			chaugen 05/11/2005		Inorthro 05/11/2005	mbarman 05/25/2005	

FE Sent For:

↳ At Intro.

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/?	gmalaise	1/mk	ch 5-11	ch JF 5-16			

FE Sent For:

<END>

4/27/05

Motion

The Joint Committee for Review of Administrative Rules, pursuant to s. 227.19
(4) (d) 6. and (5) (d), Stats., objects to Clearinghouse Rule 04-081.

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

Report From Agency

OFFICE OF THE SECRETARY

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Proposed Rules Relating to Prevailing Wage Rates

Chapter DWD 290/CR 04-081

Rule Analysis for Legislative Review

Need for rules

Recent dramatic increases in the cost of health insurance have necessitated that the Department review its interpretation of the methodology for determining the prevailing wage rates. The Department proposes to determine whether there is a majority of hours reported that receive a total economic benefit that is the sum of the hourly rate of pay and the hourly fringe equivalent rather than requiring an exact match of the figures separately. The proposed methodology will not penalize unions that agree to a lower rate of pay during the contract period to cover the increased cost of health insurance.

Public hearing response

A public hearing was held in Madison on August 17, 2004. A summary of the hearing comments and the Department's responses is attached.

Response to Legislative Council staff recommendations

The Department's response is attached.

Final regulatory flexibility analysis

The proposed rule will have an effect on small business as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of small businesses.

Department contacts

Robert Anderson, Bureau Director
Bureau of Labor Standards
Equal Rights Division
266-3345

Elaine Pridgen, Rules Coordinator
Office of Legal Counsel
267-9403

State of Wisconsin
Department of Workforce Development
Equal Rights Division

Chapter DWD 290

Prevailing Wage Rates on Public Works Projects

The Wisconsin Department of Workforce Development proposes an order to renumber and amend s. DWD 290.01(16)(b), to amend s. DWD 290.015(3), and to create s. DWD 290.01(16)(b), relating to prevailing wage rates on public works projects and affecting small business.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903, 103.005(1), 103.49, and 227.11, Stats.

Statutes interpreted: Sections 66.0903(1)(g) and 103.49(1)(d), Stats.

Related statutes or rules: none

Explanation of agency authority. The Department of Workforce Development administers the statutory requirements that the prevailing wage rate must be paid for covered employees in a trade or occupation engaged in erection, construction, remodeling, repairing, or demolition on a state or local public works project.

Sections 66.0903(1)(g) and 103.49(1)(d), Stats., delineate how the Department determines the prevailing wage rate for a trade or occupation on a public works project. First, a survey is done to collect data on the hourly wage rates and hourly fringe equivalent rates for a trade or occupation in that area. If there is a majority of hours worked at a particular wage rate plus fringe equivalent rate, those rates become the prevailing wage rate for that trade. If there is no rate at which a majority of the hours worked in that trade is paid, a weighted average methodology applies based on the pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

Summary of the proposed changes. The statutory language on determining prevailing wage rates was enacted in 1995 Wisconsin Act 215. Since that time, the Department has had an informal policy of looking at the hourly wage rate and hourly fringe equivalent rate as separate figures and requiring an exact match of both the hourly rate of pay and the hourly fringe equivalent rate in determining whether there is a majority of hours worked in a trade or occupation at a particular rate.

The Department's policy of requiring an exact match of both the hourly wage rate and the hourly fringe equivalent rate has resulted in situations that do not seem to comply with the intent of the prevailing wage law. For example, if a collective bargaining agreement is renegotiated and the hourly wage rate is reduced to cover the increased cost of health insurance in the fringe equivalent, the hours worked under the two different agreements will be considered as hours worked at different rates even though the total

economic benefit and liability is the same. Counting the rates under the original and renegotiated collective bargaining agreements with the same total economic benefit and liability as different rates means that the union rates may not be selected as the prevailing wage rates even if a majority of hours worked in a trade were by union workers.

Section DWD 290.015(3) provides that if the rates in a collective bargaining agreement are found to prevail for a particular trade in a particular area, any future increases or decreases in the collective bargaining agreement are to be included in the prevailing wage rate determinations. The proposed rule will make it less likely that a renegotiated collective bargaining agreement with the same total economic benefit and liability will negatively affect whether future increases or decreases under the collective bargaining agreement are incorporated in prevailing wage determinations. If the majority of hours worked in that trade in that area are by union workers, the future increases or decreases in the union contract will be reflected in the prevailing wage rates for that trade.

Under the proposed rule, the Department would determine whether there is a majority of hours reported that receive a total economic benefit that is the sum of the hourly rate of pay and hourly fringe equivalent. If there is a majority of hours worked at the rate that is that sum and there is more than one combination of hourly rates of pay plus hourly fringe equivalent rates that equal that sum, the prevailing wage rate will be the most commonly reported hourly basic rate of pay and corresponding hourly fringe equivalent rate that resulted in that sum.

If the sum of the hourly basic rate of pay and fringe 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 fringe 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. (paragraph added in response to hearing comment)

Summary of analytical methodology used to develop the proposed rule. The statutory language that directs the Department to consider the “hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefits paid directly or indirectly, for a majority of the hours worked in the trade” could be interpreted to require either an exact match of the hourly wage rate and the hourly fringe equivalent rate as separate figures or a match of the hourly wage rate and fringe equivalent rate as a combined rate that is the sum of the two rates. The Department has determined that the method of using the sum of the hourly wage rate and the hourly fringe equivalent more closely complies with statutory intent.

Federal law. There are no federal prevailing wage rate regulations that apply to state or local public works projects. The federal prevailing wage regulations that apply to federally-funded public works projects determine the prevailing hourly rate of pay and the prevailing fringe equivalent as completely separate inquiries. Under the federal system, the resulting combination of the hourly rate of pay and fringe equivalent issued by the U.S. Department of Labor may result in a combination of hourly pay and fringe equivalent that is not the most commonly paid total economic benefit on private projects.

Comparison with rules in adjacent states. Iowa. No prevailing wage law.

Minnesota. The prevailing hourly wage rate is set at the most commonly paid hourly wage rate. The fringe equivalent rate is set at the most commonly paid rate at that hourly wage rate.

Michigan. The prevailing wage rates are the collective bargaining agreement rates.

Illinois. Only employers who do work on public works projects are surveyed. The prevailing rates are the most commonly paid wage rates and the corresponding fringe equivalent rates.

Anticipated costs incurred by private sector. There will be no significant fiscal effect on the private sector.

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

Analysis and supporting documentation used to determine effect on small business. Small businesses will have increased flexibility to offer "cafeteria-style" benefit plans to their employees and have their wage rates selected as the prevailing wage.

SECTION 1. DWD 290.01 (16) (b) is renumbered as DWD 290.01 (16)(c) and as renumbered is amended to read:

DWD 290.01 (16) (c) 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~~ sum of the hourly basic rates of pay and corresponding hourly contributions rates that include the highest-paid 51% of hours worked.

SECTION 2. DWD 290.01 (16) (b) is created to read:

DWD 290.01 (16) (b) In determining whether there is a majority of hours worked at a particular rate of pay, the department shall consider the sum of the hourly basic rate of pay plus corresponding hourly contributions rate. If there is a majority of hours worked at the rate that is that sum and there is more than one combination of hourly basic rates plus hourly contributions rates that equal that sum, the prevailing wage rate shall be the hourly basic rate of pay and corresponding hourly contributions rate with the most hours reported that resulted in that sum.

SECTION 3. DWD 290.015 (3) is amended to read:

DWD 290.015 (3) COLLECTIVE BARGAINING AGREEMENTS. If ~~a collectively bargained wage rate and fringe benefit package is~~ 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 a that particular trade or occupation on a that 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 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 premium pay,

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

SECTION 4. 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.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2926/7
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1 AN ACT ...; relating to: the determination of prevailing wage rates and prevailing
2 fringe benefit rates for workers employed on state or local projects of public
3 works and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the prevailing wage rate, which is defined as 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 (fringe benefits), paid for a majority of the hours worked in a person's trade or occupation in the area in which a public works project is located, except that if there is no rate at which a majority of the hours worked in a trade or occupation on projects in an area is paid, "prevailing wage rate" is defined as the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution for fringe benefits, weighted by the number of hours worked, paid for all hours worked at the hourly basic rate of pay of the highest-paid 51 percent of hours worked in the trade or occupation in the area. Currently, the Department of Workforce Development (DWD) must determine the prevailing wage rate for each trade or occupation commonly employed on projects of public works in each area of the state by January 1 of each year, which determination may also include the determination of future prevailing wage rates when those rates can be determined. ^{that}

This bill deletes from the definition of "prevailing wage rate" the references to the hourly contribution for fringe benefits and instead creates a separate definition of "prevailing fringe benefit rate." As such, the bill requires DWD to make separate determinations of the prevailing wage rate and the prevailing fringe benefit rate and

requires laborers, workers, mechanics, and truck drivers employed on a state or local project of public works who are covered under the prevailing wage law to be paid at the prevailing wage rate and at the prevailing fringe benefit rate. The bill defines the “prevailing fringe benefit rate” as the hourly contribution for fringe benefits paid for a majority of the hours worked in a person’s trade or occupation in the area in which a public works project is located, except that 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 fringe benefit rate” is defined as the average hourly contribution for fringe benefits, weighted by the number of hours worked, paid for all hours worked at the hourly contribution for fringe benefits of the highest-contribution 51 percent of hours worked in the trade or occupation on projects in the area.

This bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objection by the Assembly Committee on Labor on October 26, 2004, and the objection of the Joint Committee for Review of Administrative Rules on April 27, 2005, to the issuance of Clearinghouse Rule 04-081 by DWD. The proposed rule required DWD to determine the prevailing wage rate by calculating the sum of the hourly basic rate of pay and the hourly contribution for fringe benefits, rather than making those calculations separately.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0903 (title) of the statutes is amended to read:

2 **66.0903 (title) Municipal prevailing wage, fringe benefit, and hour**
3 **scales.**

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

4 **SECTION 2.** 66.0903 (1) (a) of the statutes is amended to read:

5 66.0903 (1) (a) “Area” means the county in which a proposed project that is
6 subject to this section is located or, if the department determines that there is
7 insufficient wage and fringe benefit data in that county, “area” means those counties
8 that are contiguous to that county or, if the department determines that there is
9 insufficient wage ^{and fringe benefit} data in those counties, “area” means those counties that are
10 contiguous to those counties or, if the department determines that there is
11 insufficient wage and fringe benefit data in those counties, “area” means the entire

1 state or, if the department is requested to review a determination under sub. (3) (br),
2 “area” means the city, village, or town in which a proposed project that is subject to
3 this section is located.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

4 **SECTION 3.** 66.0903 (1) (cd) of the statutes is created to read:

5 66.0903 (1) (cd) “Hourly contribution for fringe benefits” has the meaning given
6 in s. 103.49 (1) (bd).

7 **SECTION 4.** 66.0903 (1) (cm) of the statutes is amended to read:

8 66.0903 (1) (cm) “Insufficient wage and fringe benefit data” has the meaning
9 given in s. 103.49 (1) (bg).

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

10 **SECTION 5.** 66.0903 (1) (er) of the statutes is created to read:

11 66.0903 (1) (er) 1. Except as provided in subd. 2., “prevailing fringe benefit
12 rate” for any trade or occupation engaged in the erection, construction, remodeling,
13 repairing, or demolition of any project of public works in any area means the hourly
14 contribution for fringe benefits paid directly or indirectly for a majority of the hours
15 worked in the trade or occupation on projects in the area.

16 2. If there is no rate at which a majority of the hours worked in the trade or
17 occupation on projects in the area is paid, “prevailing fringe benefit rate” for any
18 trade or occupation engaged in the erection, construction, remodeling, repairing, or
19 demolition of any project of public works in any area means the average hourly
20 contribution for fringe benefits, weighted by the number of hours worked, paid
21 directly or indirectly for all hours worked at the hourly contribution for fringe
22 benefits of the highest-contribution 51 percent of hours worked in that trade or
23 occupation on projects in that area.

1 SECTION 6. 66.0903 (1) (g) 1. of the statutes is amended to read:

2 66.0903 (1) (g) 1. Except as provided in subd. 2., “prevailing wage rate” for any
3 trade or occupation engaged in the erection, construction, remodeling, repairing, or
4 demolition of any project of public works in any area means the hourly basic rate of
5 pay, ~~plus the hourly contribution for health insurance benefits, vacation benefits,~~
6 ~~pension benefits and any other bona fide economic benefit,~~ paid directly or indirectly,
7 for a majority of the hours worked in the trade or occupation on projects in the area.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

8 SECTION 7. 66.0903 (1) (g) 2. of the statutes is amended to read:

9 66.0903 (1) (g) 2. If there is no rate at which a majority of the hours worked in
10 the trade or occupation on projects in the area is paid, “prevailing wage rate” for any
11 trade or occupation engaged in the erection, construction, remodeling, repairing, or
12 demolition of any project of public works in any area means the average hourly basic
13 rate of pay, weighted by the number of hours worked, ~~plus the average hourly~~
14 ~~contribution, weighted by the number of hours worked, for health insurance benefits,~~
15 ~~vacation benefits, pension benefits and any other bona fide economic benefit,~~ paid
16 directly or indirectly for all hours worked at the hourly basic rate of pay of the
17 highest-paid ~~51%~~ 51 percent of hours worked in that trade or occupation on projects
18 in that area.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

19 SECTION 8. 66.0903 (3) of the statutes is amended to read:

20 66.0903 (3) PREVAILING WAGE RATES, FRINGE BENEFIT RATES, AND HOURS OF LABOR.
21 (am) A local governmental unit, before making a contract by direct negotiation or
22 soliciting bids on a contract, for the erection, construction, remodeling, repairing, or
23 demolition of any project of public works, including a highway, street, or bridge

1 construction project, shall apply to the department to determine the prevailing wage
2 rate and prevailing fringe benefit rate for each trade or occupation required in the
3 work contemplated. The department shall conduct investigations and hold public
4 hearings as necessary to define the trades or occupations that are commonly
5 employed on projects that are subject to this section and to inform itself as to the
6 prevailing wage rates and prevailing fringe benefit rates in all areas of the state for
7 those trades or occupations, in order to determine the prevailing wage rate and
8 prevailing fringe benefit rate for each trade or occupation. The department shall
9 issue its determination within 30 days after receiving the request and shall file the
10 determination with the requesting local governmental unit.

11 (ar) The department shall, by January 1 of each year, compile the prevailing
12 wage rates and prevailing fringe benefit rates for each trade or occupation in each
13 area. The compilation shall, in addition to the current prevailing wage rates and
14 prevailing fringe benefit rates, include future prevailing wage rates and prevailing
15 fringe benefit rates when those prevailing wage rates and prevailing fringe benefit
16 rates can be determined for any trade or occupation in any area and shall specify the
17 effective date of those future prevailing wage rates and prevailing fringe benefit
18 rates. If a construction project extends into more than one area there shall be but
19 one standard of prevailing wage rates and prevailing fringe benefit rates for the
20 entire project.

21 (av) In determining prevailing wage rates and prevailing fringe benefit rates
22 under par. (am) or (ar), the department may not use data from projects that are
23 subject to this section, s. 103.49, or 103.50 or 40 USC 276a 3141 to 3148 unless the
24 department determines that there is insufficient wage and fringe benefit data in the
25 area to determine those prevailing wage rates and prevailing fringe benefit rates, in

1 which case the department may use data from projects that are subject to this
2 section, s. 103.49² or 103.50 or 40 USC 276a 3141 to 3148.

3 (bm) Any person may request a recalculation of any portion of an initial
4 determination within 30 days after the initial determination date if the person
5 submits evidence with the request showing that the prevailing wage rate or
6 prevailing fringe benefit rate for any given trade or occupation included in the initial
7 determination does not represent the prevailing wage rate or prevailing fringe
8 benefit rate for that trade or occupation in the area. The evidence shall include wage
9 rate or fringe benefit rate information reflecting work performed by persons working
10 in the contested trade or occupation in the area during the current survey period.
11 The department shall affirm or modify the initial determination within 15 days after
12 the date on which the department receives the request for recalculation.

13 (br) In addition to the recalculation under par. (bm), the local governmental
14 unit that requested the determination under this subsection may request a review
15 of any portion of a determination within 30 days after the date of issuance of the
16 determination if the local governmental unit submits evidence with the request
17 showing that the prevailing wage rate or prevailing fringe benefit rate for any given
18 trade or occupation included in the determination does not represent the prevailing
19 wage rate or prevailing fringe benefit rate for that trade or occupation in the city,
20 village, or town in which the proposed project is located. That evidence shall include
21 wage rate or fringe benefit rate information for the contested trade or occupation on
22 at least 3 similar projects located in the city, village, or town where the proposed
23 project is located and on which some work has been performed during the current
24 survey period and which were considered by the department in issuing its most
25 recent compilation under par. (ar). The department shall affirm or modify the

1 determination within 15 days after the date on which the department receives the
2 request for review.

3 (dm) A reference to the prevailing wage rates and prevailing fringe benefit
4 rates determined by the department or a local governmental unit exempted under
5 sub. (6) and to the prevailing hours of labor shall be published in the notice issued
6 for the purpose of securing bids for the project. If any contract or subcontract for a
7 project of public works, including a highway, street, or bridge construction project,
8 is entered into, the prevailing wage rates and prevailing fringe benefit rates
9 determined by the department or exempted local governmental unit and the
10 prevailing hours of labor shall be physically incorporated into and made a part of the
11 contract or subcontract, except that for a minor subcontract, as determined by the
12 department, the department shall prescribe by rule the method of notifying the
13 minor subcontractor of the prevailing wage rates, prevailing fringe benefit rates, and
14 prevailing hours of labor applicable to the minor subcontract. The prevailing wage
15 rates, prevailing fringe benefit rates, and prevailing hours of labor applicable to a
16 contract or subcontract may not be changed during the time that the contract or
17 subcontract is in force. No person performing the work described in sub. (4) may be
18 paid less than the prevailing wage rate and prevailing fringe benefit rate in the same
19 or most similar trade or occupation determined under this subsection; nor may he
20 or she be permitted to work a greater number of hours per day or per week than the
21 prevailing hours of labor, unless he or she is paid for all hours worked in excess of
22 the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate
23 of pay.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995
a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

24 **SECTION 9.** 66.0903 (4) (a) (intro.) of the statutes is amended to read:

1 66.0903 (4) (a) (intro.) Subject to par. (b), all of the following employees shall
2 be paid the prevailing wage rate and prevailing fringe benefit rate determined under
3 sub. (3) and may not be permitted to work a greater number of hours per day or per
4 week than the prevailing hours of labor, unless they are paid for all hours worked in
5 excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic
6 rate of pay:

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

7 **SECTION 10.** 66.0903 (4) (b) (intro.) of the statutes is amended to read:

8 66.0903 (4) (b) (intro.) Notwithstanding par. (a) 1., a laborer, worker, mechanic,
9 or truck driver who is regularly employed to process, manufacture, pick up, or deliver
10 materials or products from a commercial establishment that has a fixed place of
11 business from which the establishment regularly supplies processed or
12 manufactured materials or products is not entitled to receive the prevailing wage
13 rate or prevailing fringe benefit rate determined under sub. (3) or to receive at least
14 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the
15 prevailing hours of labor unless any of the following applies:

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

16 **SECTION 11.** 66.0903 (8) of the statutes is amended to read:

17 66.0903 (8) POSTING. For the information of the employees working on the
18 project, the prevailing wage rates and prevailing fringe benefit rates determined by
19 the department or exempted local governmental unit, the prevailing hours of labor,
20 and the provisions of subs. (10) (a) and (11) (a) shall be kept posted by the local
21 governmental unit in at least one conspicuous and easily accessible place on the site

1 of the project or, if there is no common site on the project, at the place normally used
2 by the local governmental unit to post public notices.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

3 **SECTION 12.** 66.0903 (9) (c) of the statutes is amended to read:

4 66.0903 (9) (c) Upon completion of a project and before receiving final payment
5 for his or her work on the project, each contractor shall file with the local
6 governmental unit authorizing the work an affidavit stating that the contractor has
7 complied fully with the requirements of this section and that the contractor has
8 received an affidavit under par. (b) from each of the contractor's agents and
9 subcontractors. A local governmental unit may not authorize a final payment until
10 the affidavit is filed in proper form and order. If a local governmental unit authorizes
11 a final payment before an affidavit is filed in proper form and order or if the
12 department determines, based on the greater weight of the credible evidence, that
13 any person performing the work specified in sub. (4) has been or may have been paid
14 less than the prevailing wage rate, less than the prevailing fringe benefit rate, or less
15 than 1.5 times the hourly basic rate of pay for all hours worked in excess of the
16 prevailing hours of labor and requests that the local governmental unit withhold all
17 or part of the final payment, but the local governmental unit fails to do so, the local
18 governmental unit is liable for all back wages and fringe benefits payable up to the
19 amount of the final payment.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

20 **SECTION 13.** 66.0903 (10) (a) of the statutes is amended to read:

21 66.0903 (10) (a) Each contractor, subcontractor, or contractor's or
22 subcontractor's agent performing work on a project that is subject to this section
23 shall keep full and accurate records clearly indicating the name and trade or

1 occupation of every person performing the work described in sub. (4) and an accurate
2 record of the number of hours worked by each of those persons and the actual wages
3 and fringe benefits paid for the hours worked.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

4 **SECTION 14.** 66.0903 (10) (b) of the statutes is amended to read:

5 66.0903 (10) (b) The department or the contracting local governmental unit
6 may demand and examine, and every contractor, subcontractor, and contractor's or
7 subcontractor's agent shall keep, and furnish upon request by the department or
8 local governmental unit, copies of payrolls and other records and information
9 relating to the wages and fringe benefits paid to persons performing the work
10 described in sub. (4) for work to which this section applies. The department may
11 inspect records in the manner provided in ch. 103. Every contractor, subcontractor,
12 or agent performing work on a project that is subject to this section is subject to the
13 requirements of ch. 103 relating to the examination of records.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

14 **SECTION 15.** 66.0903 (10) (d) of the statutes is amended to read:

15 66.0903 (10) (d) Section 103.005 (5) (f), (11), (12), and (13) applies to this
16 section, except that s. 103.005 (12) (a) does not apply to any person who fails to
17 provide any information to the department to assist the department in determining
18 prevailing wage rates and prevailing fringe benefit rates under sub. (3) (am) or (ar).
19 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
20 connection with any proceeding under this section, including proceedings under sub.
21 (11) (a).

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

22 **SECTION 16.** 66.0903 (11) (a) of the statutes is amended to read:

1 66.0903 (11) (a) Any contractor, subcontractor, or contractor's or
2 subcontractor's agent who fails to pay the prevailing wage rate or prevailing fringe
3 benefit rate determined by the department under sub. (3) or who pays less than 1.5
4 times the hourly basic rate of pay for all hours worked in excess of the prevailing
5 hours of labor is liable to any affected employee in the amount of his or her unpaid
6 wages ~~or his or her~~, unpaid fringe benefits, or unpaid overtime compensation and in
7 an additional equal amount as liquidated damages. An action to recover the liability
8 may be maintained in any court of competent jurisdiction by any employee for and
9 in behalf of that employee and other employees similarly situated. No employee may
10 be a party plaintiff to the action unless the employee consents in writing to become
11 a party and the consent is filed in the court in which the action is brought.
12 Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded
13 to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.

14 **SECTION 17.** 66.0903 (11) (b) 2. of the statutes is amended to read:

15 66.0903 (11) (b) 2. Whoever induces any person who seeks to be or is employed
16 on any project that is subject to this section to give up, waive, or return any part of
17 the wages or fringe benefits to which the person is entitled under the contract
18 governing the project, or who reduces the hourly basic rate of pay or hourly
19 contribution for fringe benefits normally paid to a person for work on a project that
20 is not subject to this section during a week in which the person works both on a
21 project that is subject to this section and on a project that is not subject to this section,
22 by threat not to employ, by threat of dismissal from employment, or by any other
23 means is guilty of an offense under s. 946.15 (1).

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60.