

CR 90-88

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

RECEIVED
AUG 29 1990
9:55 am
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Gerald Whitburn, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Minimum Cost of Public Works Projects Requiring a Prevailing Wage Rate Determination and Related Material were duly approved and adopted by this department on August 27, 1990.

(Subject)
(Date)
I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 4:00 p.m. in the city of Madison, this 27th day of August A.D. 1990.



Secretary



RULES in FINAL DRAFT FORM

Rule: Ind 90, 92 and 94

Relating to: Minimum Cost of Public Works Projects Requiring a Prevailing
Wage Rate Determination and Related Material

An order to amend Ind 90.03, 90.04, 90.05, 90.09(4), 90.155, 92.03, 92.04, 92.05, 92.05(6), note to amend Ind 90 (3/), (11/), Ind 92 (3/) and repeal and recreate Ind 90.10(1)(c) and Ind 94.08(1)(a) relating to prevailing wage rates.

Analysis of Proposed Rule

The primary rule change that is being proposed concerns adjusting the minimum project coverage thresholds applicable to all state building and municipal public works projects that are subject to s. 103.49 or s. 66.293(3), Stats. DILHR is required, by statute, to make these adjustments every two years. The last adjustment became effective on July 1, 1987. This proposal raises the thresholds from \$9,000 and \$90,000 to \$10,000 and \$100,000. The adjustments are based on the change in the Composite Cost Index, as compiled by the U.S. Department of Commerce, which occurred since the date the last similar adjustment became effective.

All of the remaining rule changes are being proposed as clean-up language to clarify the existing rules. These changes are being proposed to ensure consistency and clarity.

Statutory Authority: ss. 101.02(1) and 66.293(3)(c), Stats.

Statutes Interpreted: ss. 66.293(3) and 103.49, Stats.

SECTION 1. Ind 90.03 (title) is amended to read:

Ind 90.03 (title) PROPER CLASSIFICATION OF LABORERS, WORKERS AND MECHANICS.

SECTION 2. Ind 90.04 (title) and (1) are amended to read:

Ind 90.04 (title) STRAIGHT TIME WAGES. (1) An employer performing work subject to a department wage determination may discharge minimum wage obligations for the payment of straight time wages and economic and fringe benefits by paying in cash, making payments or incurring costs for bona fide economic or fringe benefits (a) identical to, or of the same type as the ones found prevailing by the department and included in the wage determination, or (b) not of the type found prevailing by the department, but filed with and regulated by either the United States secretary of labor under the Employee Retirement Income Security Act of 1974, or state of Wisconsin commissioner of insurance under ch. ~~211~~ 641, Stats., or by a combination thereof. Before an employer can be given credit for any other unfunded economic or fringe benefit plan, the employer must supply a copy of the plan to the department and comply with all of the other provisions of s. Ind 90.01(9)(c).⁹

SECTION 3. Ind 90.05 (title) is amended to read:

Ind 90.05 (title) OVERTIME WAGES.

SECTION 4. Ind 90.09(4) is amended to read:

Ind 90.09(4) Each exemption is subject to revocation for cause at any time, and also subject to observance of the applicable provisions of Wisconsin laws, rules and regulations of the department, and of the agreements included in the petition and application. The provisions of ch. Ind 90 and ~~ss.~~ ss. 66.293(3)(a), (e), (f), (g), (h), (i), (j), (k), (m), and (n) and 103.49(1) and (2), Stats., remain in effect and are not included within an exemption.

SECTION 5. Ind 90.10(1)(c) is repealed and recreated to read:

Ind 90.10(1)(c) The request shall be received prior to the date contracts are awarded or negotiated.

SECTION 6. Ind 90.155 is amended to read:

Ind 90.155 MINIMUM PROJECT COSTS. Section 66.293(3), Stats., does not apply to any public works project for which the estimated cost of completion is below ~~\$9,000~~ \$10,000, where a single trade is involved, and ~~\$90,000~~ \$100,000 where more than one trade is involved on such project.

Note: The dollar amounts in this section were adjusted on _____ when the estimated project cost of completion ceiling was changed from ~~\$8,000~~ \$9,000 to ~~\$9,000~~ \$10,000 where a single trade is involved and from ~~\$80,000~~ \$90,000 to ~~\$90,000~~ \$100,000 where more than one trade is involved.

SECTION 7. Explanatory footnotes for chapter Ind 90 number 3 and 11 are amended to read:

³The phrase "fund, plan or program" is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the department will be guided by the experience of the United States department of labor and United States treasury department in administering the Employee Retirement Income Security Act of 1974, of the U.S. department of labor in administering other related programs, and of the Wisconsin state insurance commissioner in administering employe welfare funds under ch. ~~211~~ 641, Stats.

¹¹The United States department of commerce's composite cost index is computed by the bureau of the census. It is the ratio of the estimate of total new construction put in place in current dollars (seasonally adjusted) to the corresponding estimate in ~~1967~~ 1982 dollars. This index measures the combined result of cost changes as well as monthly changes in the weights of different types of construction in the current dollar construction activity aggregate.

SECTION 8. Ind 92.03 (title) is amended to read:

Ind 92.03 (title) PROPER CLASSIFICATION OF LABORERS, WORKERS AND MECHANICS.

SECTION 9. Ind 92.04 (title) and (1) are amended to read:

Ind 92.04 (title) STRAIGHT TIME WAGES. (1) An employer performing work subject to a department wage determination may discharge minimum wage obligations for the payment of straight time wages and economic and fringe benefits by paying in cash, making payments or incurring costs for bona fide economic or fringe benefits (a) identical to, or of the same type as the ones found prevailing by the department and included in the wage determination, or (b) not of the type found prevailing by the department, but filed with and regulated by either the United States secretary of labor under the Employee Retirement Income Security Act of 1974, or state of Wisconsin commissioner of insurance under ch. ~~211~~ 641, Stats., or by a combination thereof. Before an employer can be given credit for any other unfunded economic or fringe benefit plan, the employer must supply a copy of the plan to the department and comply with all of the other provisions of s. Ind 92.01(8)(c).⁹

SECTION 10. Ind 92.05 (title) is amended to read:

Ind 92.05 (title) OVERTIME WAGES.

SECTION 11. Explanatory footnotes for Chapter Ind 92 number 3 is amended to read:

³The phrase "fund, plan or program" is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the department will be guided by the experience of the United States department of labor and United States treasury department in administering the Employee Retirement Income Security Act of 1974, of the U.S. department of labor in administering other related programs, and of the Wisconsin state insurance commissioner in administering employee welfare funds under ch. ~~211~~ 641, Stats.

SECTION 12. Ind 94.05(6) (title) is amended to read:

Ind 94.05(6) (title) NOTICE OF DEPARTMENT DECISION.

SECTION 13. Ind 94.08(1)(a) is repealed and recreated to read:

Ind 94.08(1)(a) The contractor, or a shareholder, officer or partner of the contractor, presently owns or has owned, within the preceding 3 years, at least a 25% interest in the other construction business; and

The above cited rules shall take effect on the first day of the month following publication pursuant to s. 227.22(2) (intro.), Stats.

Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



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State of Wisconsin Department of Industry, Labor and Human Relations

August 28, 1990

Gary Poulson
Assistant Revisor of Statutes
Suite 702
30 West Mifflin Street
Madison, Wisconsin 53703

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 90-88

RULE NO. Ind 90, 92 and 94

RELATING TO: Minimum Cost of Public Works Projects Requiring a Prevailing
Wage Rate Determination and Related Material

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Whitburn".

Gerald Whitburn
Secretary