

them. These payroll records shall be retained and made available for a period of at least 3 years following the completion of the project of public works and shall not be removed without prior notification to the municipality.¹⁰

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86.

Ind 90.14 Evidence of compliance by contractor. Upon completion of the project of public works and prior to final payment therefor, each contractor shall file with the municipality an affidavit stating:

(1) That the contractor has complied fully with the provisions and requirements of s. 66.293 (3), Stats., and ch. Ind 90; that the contractor has received evidence of compliance from each of the agents and subcontractors; and the names and addresses of all of the subcontractors and agents who worked on the project.

(2) That full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employe and the actual wages paid therefor; where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. The records shall be retained and made available for a period of at least 3 years following the completion of the project of public works and shall not be removed without prior notification to the municipality.¹⁰

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. (2), Register, January, 1986, No. 361, eff. 2-1-86.

Ind 90.15 Adjusting minimum project cost of completion. Minimum threshold estimated project cost of completion figures for s. 66.293 (3) (c), Stats., for projects of public works where a single trade is involved and projects of public works where more than one trade is involved shall be adjusted as soon as possible after January 1, 1976 and every 2 years thereafter on the basis of changes in the U.S. department of commerce's composite cost index, or other similar index.¹¹

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76.

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 \$10,000, where a single trade is involved, and \$100,000, where more than one trade is involved on such project.

Note: The dollar amounts in this section were adjusted on November 1, 1990 when the estimated project cost of completion ceiling was changed from \$9,000 to \$10,000 where a single trade is involved and from \$90,000 to \$100,000 where more than one trade is involved.

History: Cr. Register, November, 1976, No. 251, eff. 12-1-76; r. and recr. Register, January, 1980, No. 289, eff. 2-1-80; am. Register, May, 1982, No. 317, eff. 6-1-82; am. Register, December, 1984, No. 348, eff. 1-1-85; am. Register, June, 1987, No. 378, eff. 7-1-87; am. Register, October, 1990, No. 418, eff. 11-1-90.

Ind 90.16 Cost of inspection. Any person may request an inspection under s. 66.293 (3) (m), Stats. The request shall be made in writing, identifying the project, employer and trade or occupation involved and including a statement to the effect that the requestor is willing to pay for the complete cost of the inspection if the employer is found to be in compliance. The department shall maintain a record of the cost it incurs in

making the inspection and this amount shall be charged to the requestor if the employer subjected to the inspection is found to be in compliance.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76; r. and recr. Register, January, 1986, No. 361, eff. 2-1-86.

Ind 90.17 Date of notification. The date of notification by mail shall be the date entered on the document unless established otherwise by proof.

History: Cr. Register, January, 1976, No. 241, eff. 2-1-76.

EXPLANATORY FOOTNOTES FOR CHAPTER Ind 90

¹ Specific economic and fringe benefits. (Interpretation)

(a) The term "other economic benefit" as used in s. 103.49, Stats., is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the department as they become prevailing. A particular fringe benefit need not be recognized beyond a particular area in order for the department to find that it is prevailing in that area.

(b) To insure against considering and giving credit to any and all economic and fringe benefits some of which might be illusory or not genuine, the qualification required by the department is that such economic and fringe benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic or fringe benefit is bona fide in the ordinary case where benefits are those common in the construction industry and which are established under a usual fund, plan or program. The following are typical conventional economic and fringe benefits: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide economic and fringe benefits, but only where the employer is not required by other federal, state, or local law to provide any of such benefits. Employers may take credit for contributions made under such conventional plans without requesting the approval of the department.

(c) Economic and fringe benefits which an employer is obligated to provide under other federal, state, or local law are excluded. No credit may be taken under s. 66.293, Stats., for the payments made for such benefits. For example, payments for worker's compensation insurance under either a compulsory or elective state statute are not payments for economic or fringe benefits under s. 66.293, Stats. The omission in s. 103.49, Stats., of any expressed reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide economic and fringe benefits under s. 103.49, Stats.

² Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which were paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employes in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employe contributions, will be borne by the employer. In such case the return by the insurance company to the employer of sums paid in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contribution made pursuant to the plan.

³ The 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. 641, Stats.

⁴ These provisions are intended to permit the consideration of economic and fringe benefits meeting the requirements and which are provided from the general assets of an employer.

⁵ As in the case of other economic and fringe benefits payable under s. 66.293, Stats., an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with s. 66.293, Stats.