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**Modifications From Agency**

September 21, 2010

The Honorable Spencer Coggs, Chair  
Senate Committee on Labor, Elections and Urban Affairs  
123 South, Capitol  
Madison WI 53707

The Honorable Christine Sinicki, Chair  
Assembly Committee on Labor  
114 North, Capitol  
Madison WI 53708

**Re: Clearinghouse Rule 10-092, DWD 290**

Dear Senator Coggs and Representative Sinicki:

In accordance with sec. 227.19(4)(b)3, Stats., the Department of Workforce Development is submitting a germane modification to proposed rule CR 10-082 (DWD 290), relating to relating to amending the rules of the prevailing wage program in response to statutory changes made by 2009 Wisconsin Act 28. This modification is in response to a meeting on September 16<sup>th</sup> with members of your staffs and Robb Kahl of the Construction Business Group.

The modification is as follows:

(1) The note to DWD 290.01(4) and (6) is amended to read:

**Note: In an Opinion of the Attorney General issued on November 12, 2009, OAG-5-09, the Attorney General states that, effective January 1, 2010, state prevailing wage rates must be paid to the employees of a local governmental unit that enters into an agreement to perform services for another local governmental unit on a project of public works. Under this rule, the same requirement also applies to any agreement for services entered into before January 1, 2010, and to any work that is claimed to be done pursuant to the joint exercise of powers or duties under sec. 66.0301(2), Stats., before or after January 1, 2010, when the circumstances show that the work comes under the definition of work done by a "contractor" or "employer."**

(2) DWD 290.015(3) is amended to read:

DWD 290.015(3) If 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 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. The department ~~may determine~~ , upon request, shall also include in its determinations any future contractual increase or decrease in overtime and premium pay, with the exception of height pay, pay for work with particular products, shift differential, and supervisory pay.

**(3) DWD 290.01(11m) is created to read:**

**DWD 290.01(11m)** “Incidental work” means work performed in a classification other than an employee’s primary classification that is paid a lower prevailing wage rate and performed for 15% or less of the employee’s time spent working on a particular project of public works or a particular publicly funded private construction project during a given work week.

**DWD 290.03(3) is amended to read:**

**DWD 290.03(3)** A laborer, worker, mechanic or truck driver that performs work in more than one occupational classification during a given work week shall be cross-classified and compensated for all work performed in each classification, unless work other than the primary classification is incidental work. Incidental work shall be compensated at the higher primary classification prevailing wage rate performed for 15% or less of the time spent working on a particular public works project during a given work week.

**(4) DWD 290.155(4) is amended to read:**

**DWD 290.155(4)** The estimated cost of completion of a project of public works project shall not include land cost, architectural fees, engineering fees, planning and research costs, the projected value of the hourly labor performed by volunteers, the value of donated materials, and administrative costs.

Sincerely,

Howard Bernstein  
Legal Counsel