

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

**Amendments to Chapter DWD 290, Relating to
Prevailing Wage Rates**

The Wisconsin Department of Workforce Development proposes to repeal DWD 290.015(6m), DWD 290.15, DWD 290.155(2)(a), to renumber and amend DWD 290.17, to amend DWD 290.001, DWD 290.01(2), (4), (6), (16)(a), (20), and (20p), DWD 290.015(1), (2), (3), (6) and (7), DWD 290.03(2)(intro.), DWD 290.08(1) and (2), DWD 290.09(1)(intro.), (1)(b)(intro.), (1)(b)3, (2) and (4), DWD 290.10(1) and (2)(intro.), DWD 290.11(title), (2), (4) and (5), DWD 290.12(1) and (3), DWD 290.13(1) and (2)(a)(intro.), DWD 290.14(1), DWD 290.155(1), (2)(intro.), (3) and (4), DWD 290.16, to repeal and recreate DWD 290.01(17) and (17m), and to create DWD 290.01(3), (5m), (6m), (11m), (12), and (22), DWD 290.03(2m) and (3), DWD 290.08(1m), DWD 290.11(1m), DWD 290.13(3), DWD 290.14(3), DWD 290.145, DWD 290.155(1m), DWD 290.17(2) and (3), DWD 290.18 and DWD 290.19, relating to amending the rules of the prevailing wage program in response to statutory changes made by 2009 Wisconsin Act 28.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Secs. 103.005(1) and 227.11(2), Stats.

Statutes interpreted: Sections 66.0903, 66.0904 and 103.49, Stats.

Explanation of agency authority. The state 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. Changes to the state prevailing wage law were enacted in 2009 Wisconsin Act 28, including:

- A new threshold level determines the applicability of the law. Under the current law, any project of public works with an estimated completion cost of at least \$25,000 requires a prevailing wage rate determination.
- Contractors are required to provide a monthly report of wage payments made to employees on public works projects. These reports are posted on an

internet website maintained by the department. A contractor may submit a copy of its collective bargaining agreement (CBA) if the payments made under the CBA meet the prevailing wage requirements.

- Under sec. 66.0904, Stats., the prevailing wage law now also covers a private project which receives \$1,000,000 or more in direct financial assistance from a local governmental unit.

Summary of the proposed rule. The proposed rule amends the Department's existing rule on the prevailing wage program to reflect the changes made by 2009 Wisconsin Act 28 and repeals a number of obsolete provisions. In addition, the proposed rule covers the following issues:

- The proposed rule clarifies that, depending on its actions, a state agency or a local governmental unit may be an "employer" or a "contractor."
- The proposed rule provides that the Department may conduct wage surveys by electronic means.
- The proposed rule provides that no corrections or recalculations to an annual survey may be completed after March 1 of each year.
- The proposed rule provides that, if a state agency, local governmental unit, or developer receiving more than \$1,000,000 in direct financial assistance has not requested a prevailing wage rate determination for a project covered by the law, and the Department later issues a prevailing wage rate determination for such a project, then, in addition to the payment of the increased wages which the state agency, local governmental unit or developer must make to reimburse the employer of workers who were not correctly paid, the state agency, local governmental unit or developer must also reimburse the employer for any liquidated damages that employers may have been required to pay.
- The proposed rule provides that, when the Department is required to include a future contractual wage increase or decrease in a determination, it shall also, upon request, include any future contractual increase or decrease in overtime pay.
- The proposed rule defines "incidental work" as work performed in a classification other than an employee's primary classification that is paid at a lower wage rate and performed for 15% or less of the employee's time.

Summary of related federal law. The federal prevailing wage law (known as the Davis Bacon Act) applies to a federal public works project for which the contract cost is greater than \$2,000. It does not apply to a private project which receives financial assistance from public funds unless the assistance is on such a scale that the project is determined to be a public project.

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. In addition to public works projects, the Minnesota law covers the construction of a “value-added agricultural product processing facility” that is financed in whole or part with certain state loans or grants. 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. The Illinois law requires certified monthly payroll reports. 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 proposed rule is based on the new or amended requirements the statutes as affected by 2009 Act 28.

Effect on small business. Because the proposed rule carries forward the new or amended requirements of the statutes as affected by 2009 Act 28, the proposed rule of itself does not have an effect on small business.

Agency contact person. Julie Eckenwalder, Section Chief, Construction Wage Standards Section, (608) 266-3148, Julie.Eckenwalder@dwd.wisconsin.gov .

SECTION 1. DWD 290.001 is amended to read:

DWD 290.001 This chapter applies to all prevailing wage rate determinations under ss. 66.0903, 66.0904, and 103.49, Stats., and to the certification of prevailing wage rates and the notification of minor subcontractors under s. 103.50, Stats.

SECTION 2. DWD 290.01(2) is amended to read:

DWD 290.01(2) “Area” has the same meaning as in ss. 66.0903(1)(a), 66.0904(1)(a), 103.49(1)(a), Stats., and 103.50(1)(a), Stats.

Note: S. 66.0903(1)(a), Stats., provides that “area” means “the county in which a proposed project of public works that is subject to this section is located or, if the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county or, if the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties or, if the department determines that there is insufficient wage data in those counties, “area” means the entire state or, if the department is requested to review a determination under sub. (3) (br), “area” means the city, village or town in which a proposed project of public works that is subject to this section is located.” The same definition is provided in s. 66.0904(1)(a), Stats., except that the cross-reference relating to the review of a determination is to s. 66.0904(4)(e), Stats. The same definition is provided in s. 103.49(1)(a), Stats., except that the cross-reference relating to the review of a

determination is to s. 103.49(3)(c), Stats. The same definition is provided in s. 103.50(1)(a), Stats., except that there is no cross-reference relating to the review of a determination.

SECTION 3. DWD 290.01(3) is created to read:

DWD 290.01(3) “Bona fide economic benefit” has the same meaning as in ss. 66.0903(1)(am), 66.0904(1)(am), and 103.49(1)(am), Stats..

Note: Ss. 66.0903(1)(am) and 66.0904(1)(am), Stats., both provide that “bona fide economic benefit” has the meaning given in s. 103.49(1)(am). S. 103.49(1)(am) provides that “bona fide economic benefit” means “an economic benefit for which an employer makes irrevocable contributions to a trust or fund created under 29 USC 186(c) or to any other bona fide plan, trust, program or fund no less often than quarterly or, if an employer makes annual contributions to such a bona fide plan, trust, program or fund, for which the employer irrevocably escrows moneys at least quarterly based on the employer’s expected annual contribution.”

SECTION 4. DWD 290.01(4) is amended to read:

DWD 290.01(4) “Contractor” means a person, including but not limited to a sole proprietor, a partnership, a corporation, a limited liability company, a construction manager or consultant, a Wisconsin state agency as defined in s. 103.49(1)(f), Stats., or a local governmental unit as defined in s. 66.0903(1)(d), Stats., who has entered into a contract with a state agency or local governmental unit for a project of public works project, or who has entered into a contract with an owner or developer of real property for a publicly funded private construction project.

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."

SECTION 5. DWD 290.01(5m) is created to read:

DWD 290.01(5m) “Direct financial assistance” has the same meaning as in s. 66.0904(1)(c), Stats.

Note: S. 66.0904(1)(c), Stats., provides that “direct financial assistance” means “means moneys, in the form of a grant or other agreement or included as part of a contract, cooperative agreement, or any other arrangement, including a redevelopment agreement under s. 66.1333 (5), economic development agreement, contract under s. 66.1105 (3), or assistance provided under s. 66.1109,

that a local governmental unit directly provides or otherwise directly makes available to assist in the erection, construction, repair, remodeling, demolition, of a private facility. "Direct financial assistance" does not include any of the following:

1. A public works contract, a supply procurement contract, a contract of insurance or guaranty, a collective bargaining agreement, or any other contract under which moneys are not directly provided or otherwise directly made available for that assistance.

2. Any moneys allocated by the city of Milwaukee for the purchase of public access easements that are located entirely in the Milwaukee Riverwalk Site Plan Review Overlay District established by the city of Milwaukee, as amended to June 1, 2009, or for the construction of dockwalls, walkways, plazas, parks, private roadways open to the public, or similar improvements, or for any other public infrastructure improvements, that are located entirely in that district, if the work on those improvements is subject to s. 66.0903 or is exempted from that section under s. 66.0903(6).

SECTION 6. DWD 290.01(6) is amended to read:

DWD 290.01(6) "Employer" means any contractor, subcontractor, agent or other person, including a Wisconsin state agency as defined in s. 103.49(1)(f), Stats., or a local governmental unit as defined in s. 66.0903(1)(d), Stats., doing or contracting to do all or a part of the work.

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."

SECTION 7. DWD 290.01(6m) is created to read:

DWD 290.01(6m) "Facility" means all or any portion of a building, a structure, land, infrastructure, or other real property.

SECTION 8. DWD 290.01(11m) and (12) are 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 290.01(12)(a) For the projects of a local governmental unit under s.

66.0903, Stats., “minor service or maintenance work” has the same meaning as in s.

66.0903(1)(dr), Stats.

Note: S. 66.0903(1)(dr), Stats., provides that “minor service or maintenance work” means “a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; the depositing of gravel on an existing gravel road applied solely to maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration.”

(b) For the projects of the state or a state agency under s. 103.49, Stats., “minor service or maintenance work” has the same meaning as in s.103.49(1)(bj), Stats.

Note: S. 103.49(1)(bj), Stats., provides that “minor service or maintenance work” means “a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years cleaning of drainage or sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration.”

(c) For the projects of owners or developers under s. 103.0904, Stats., “minor service or maintenance work” has the same meaning as in s. 66.0904(1)(fm).

Note: S. 66.0904(1)(fm) provides that “minor service or maintenance work” means “a publicly funded private construction project that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, that has a projected life span of no longer than 5 years; the depositing of gravel on an existing gravel road applied solely to maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches or structures; or any other limited, minor work on private facilities or equipment that is routinely performed to prevent breakdown or deterioration.”

SECTION 9. DWD 290.01(16)(a) is amended to read:

DWD 290.01(16)(a) “Prevailing wage rate” has the same meaning as in ss.

66.0903(1)(g), 66.0904(1)(h), 103.49(1)(d), and 103.50(1)(d), Stats.

Note: S. 66.0903(1)(g), Stats., provides: “1. Except as provided in subd. 2., “prevailing wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means 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, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area.

2. 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 wage rate” for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any

area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.” Ss. 103.49(1)(d) and 103.50(1)(d), Stats., contain the same definition. S. 66.0904(1)(h), Stats., contains the same definition except that it refers to a “publicly funded private construction project” instead of a “project of public works.”

SECTION 10. DWD 290.01(17) is repealed and recreated to read:

DWD 290.01(17)(a) For the projects of a local governmental unit under s.

66.0903, Stats., “project of public works” or “public works project” or “project” has the same meaning as in s. 66.0903(2), Stats.

Note: S. 66.0903(2), Stats., provides: “Subject to sub. (5), this section applies to any project of public works erected, constructed, repaired, remodeled, demolished for a local governmental unit, including all of the following:

- (a) A highway, street, bridge, building, or other infrastructure project.
- (b) A project erected, constructed, repaired, remodeled, demolished by one local governmental unit for another local governmental unit under a contract under s. 66.0301 (2), 83.03, 83.035, or 86.31 (2) (b) or under any other statute specifically authorizing cooperation between local governmental units.
- (c) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit in lieu of the local governmental unit contracting for the erection, construction, repair, remodeling, demolition of the facility.
- (d) A road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, a local governmental unit, including under s. 236.13 (2), for ownership or maintenance by the local governmental unit.”

(b) For the projects of the state or a state agency under s. 103.49, Stats.,

“project of public works” or “public works project” or “project” has the same meaning as in s.103.49(1m), Stats.

Note: S. 103.49(1m), Stats., provides: “Subject to sub. (3g), this section applies to any project of public works erected, constructed, repaired, remodeled, demolished for the state or a state agency, other than a highway, street, or bridge construction or maintenance project, including all of the following:

- (a) A project erected, constructed, repaired, remodeled, demolished by one state agency for another state agency under any contract or under any statute specifically authorizing cooperation between state agencies.
- (b) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or a state agency contracting for the erection, construction, repair, remodeling, demolition of the facility.
- (c) A “sanitary sewer” or water main project in which the completed sanitary sewer or water main is acquired by, or dedicated to, the state for ownership or maintenance by the state.”

SECTION 11. DWD 290.01(17m) is repealed and recreated to read:

DWD 290.01(17s) “Publicly funded private construction project” has the same meaning as in s.66.0904(1)(i), Stats.

Note: S. 66.0904(1)(i), Stats., provides that “publicly funded private construction project” means: “a construction project in which the developer, investor, or owner of the project receives direct financial assistance from a local governmental unit for the erection, construction, repair, remodeling, demolition, including any alteration, painting, decorating, or grading, of a private facility, including land, a building, or other infrastructure. ‘Publicly funded private construction project’ does not include a project of public works or a housing project involving the erection, construction, repair, remodeling, demolition of any of the following:

1. An residential property, if the project is supported by affordable housing grants, home improvement grants, or grants from a local housing trust fund.
2. A residential property containing 4 dwelling units or less.
3. A residential property that contains retail, office, or commercial components, if the project is intended to increase the supply of affordable housing in a community.”

SECTION 12. DWD 290.01(20) is amended to read:

(20) “Subjourneyperson” means a worker who primarily works under the direction of, and directly assists, a skilled trade employee by frequently using the tools of a specific trade. “Subjourneyperson” does not include an apprentice, a laborer, a heavy equipment operator or a truck driver.

SECTION 13. DWD 290.01(20p) is amended to read:

DWD 290.01(20p) “Supply and installation contract” ~~means a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work of any kind is performed on the site of a project, and the total labor cost to install the material does not exceed 20% of the total cost of the supply and installation contract~~ has the same meaning as in ss. 66.0903(1)(im), 66.0904(1)(im) and 103.49(1)(fm), Stats.

Note: Each of the statutes cited provides that “supply and installation contract” means “a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work is performed on the site of the project of public works, and the total labor cost to install the material does not exceed 20 percent of the total cost of the contract.”

SECTION 14. The note to DWD 290.01(21) is amended to read:

Note: A “Dictionary of Occupational Classifications and Work Descriptions for Use on All Public Works Projects in the State of Wisconsin” may be viewed and downloaded at the DWD web site at http://dwd.wisconsin.gov/er/prevaling_wage_rate/Dictionary/dictionary_main.htm.

SECTION 15. DWD 290.01(22) is created to read:

DWD 290.01(22) “Volunteer” means an individual who by choice offers and performs the work identified in ss. 66.0903(4) , 66.0904(3) , or 103.49(2m), Stats., without compensation or expectation of compensation and under the direction of the project owner, except that a volunteer may receive reimbursement payments for the costs of food, lodging, mileage and other reasonable expenses.

SECTION 16. DWD 290.015(1), (2) and (3) are amended to read:

DWD 290.015(1) For the purpose of making prevailing wage rate determinations, the department shall conduct an annual survey of employers and compile the prevailing wage rate for each trade or occupation in each area. The survey shall consist of forms mailed by the department to employers or an electronic survey application for completion and return.

(2) The department shall include a deadline date on the forms sent to employers. A survey form shall be accepted for initial compilation if it is received at the department’s offices with a postmark or an electronic filing date that is on or before the deadline date and it is properly completed.

(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.

SECTION 17. DWD 290.015(6) is amended to read:

DWD 290.015(6)(a) The department shall issue its initial prevailing wage determinations based on the annual survey. Any person may request a recalculation of any portion of an initial determination, based upon the submission of the evidence required by s. 66.0903 (3)(bm), s. 66.0904(4)(d), Stats. or 103.49 (3) (b), Stats., if the request and the accompanying evidence are received at the department's offices within 30 days after the initial determination date.

(b) The department will accept a recalculation request on the basis of evidence that the employer did not receive a survey, that the employer properly mailed a survey form which the department did not receive, or that the survey data previously submitted was erroneous. ~~Except as provided in sub. (6m), a~~ A recalculation request will not be granted for the consideration of data that could have been submitted as a part of the annual survey but was not submitted on time.

SECTION 18. The note to DWD 290.015(6) is amended to read:

Note: The department is required to affirm or modify the initial determination within 15 days after the date on which the department receives the request for recalculation. Sections 66.0903 (3) (bm), 66.0904 (4) (d) and 103.49 (3) (b), Stats.

SECTION 19. DWD 290.015(6m) is repealed.

SECTION 20. DWD 290.015(7) is amended to read:

DWD 290.015(7) FINAL DETERMINATIONS. The department shall issue its final annual prevailing wage determinations after it has issued decisions on all timely recalculation requests. No corrections under sub. (4) or recalculations under sub. (6) for the preceding year's survey may be completed after March 1.

SECTION 21. The note to DWD 290.025 is amended to read:

Note: "Request to Employ Subjourneyperson," form ERD-10880, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 22. DWD 290.03(2)(intro.) is amended to read:

DWD 290.03(2)(intro.) (2) A Under ss. 66.0903(4) and 103.49(2m), Stats., a laborer, worker, mechanic or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless any of the following applies:

SECTION 23. DWD 290.03(2m) is created to read:

DWD 290.03(2m) Under s. 66.0904, Stats., all laborers, workers, mechanics, and truck drivers employed on a publicly funded private construction project site of project, are entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

SECTION 23m. 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.

SECTION 24. DWD 290.08(1) is amended to read:

DWD 290.08(1) Every state agency or local governmental unit shall request the department to determine the prevailing wage rates for all trades or occupations required to complete any project of public works project which meets or exceeds the dollar thresholds provided in s. DWD 290.155.

SECTION 25. DWD 290.08(1m) is created to read:

DWD 290.08(1m) Every owner or developer of a publicly funded private construction project shall request the department to determine the prevailing wage rates for all trades or occupations required to complete the project.

SECTION 26. DWD 290.08(2) is amended to read:

DWD 290.08(2) ~~The~~ A request under this section shall be made on the form numbered ERD-5719, which shall be provided at no charge by the department, or on an equivalent electronic form.

SECTION 27. The note to DWD 290.08 is amended to read:

Note: “Application for a Prevailing Wage Determination Issued by the Department of Workforce Development,” form ERD-5719, is available at no charge from the Department of Workforce Development Equal Rights Division, on its web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 28. DWD 290.09(1)(intro.), (1)(b)(intro.), (1)(b)3, (2) and (4) are amended to read:

DWD 290.09(1)(intro.) The petition of any local governmental unit for exemption from applying to the department to determine the prevailing wage rates for any individual public works ~~projects~~ project pursuant to s. 66.0903 (6), Stats., or the petition of an owner or developer of real property for exemption from applying to the department to determine the prevailing wage rates for any individual publicly funded private construction project pursuant to s. 66.0904, Stats., shall be sent to the department and shall include:

(1)(b)(intro.) A current schedule of prevailing wage rates for all trades or occupations required for any project of public works or publicly funded private construction project, setting forth all of the following:

(1)(b)3 The types of projects of public works or publicly funded private construction projects, by kind and size, that are subject to the ordinance or other enactment.

(2) Upon request of the department, the local government unit or the owner or developer of real property shall also supplement its petition with information pertinent to determining the granting of an exemption.

(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. DWD 290, ~~and~~ s. 66.0903 (1), (3), (4), (5), (8), (9) (b)

and (c), (10), (11) and (12), Stats., and s. 66.0904 (1), (2), (3), (5), (7)(b) and (c), (8), (9) and (10), Stats., remain in effect and are not included within an exemption.

SECTION 29. DWD 290.10(1) and (2)(intro.) are amended to read:

DWD 290.10(1) This section applies to a request for review by a local government unit under s. 66.0903(3)(br) , an owner or developer of real property under 66.0904(4)(e), Stats., or a state agency under s. 103.49(3)(c), Stats.

(2)(intro.) A request for review by a local governmental unit, an owner or developer of real property, or a state agency will be accepted for consideration if the request meets the following requirements:

SECTION 30. The note to DWD 290.10 is amended to read:

Note: The department is required to affirm or modify the determination within 15 days after the date on which the department receives the request for review. Sections 66.0903 (3) (br), 66.0904 (4) (e) or 103.49 (3) (c), Stats.

SECTION 31. DWD 290.11(title) is amended to read:

DWD 290.11 Procedure when a ~~state agency or local governmental unit~~ covered entity fails to request a required prevailing wage rate determination or incorporate a required prevailing wage rate determination into a contract.

SECTION 32. DWD 290.11(1m) is created to read:

DWD 290.11(1m) When the department finds that an owner or developer has not requested a prevailing wage rate determination as required under s. 66.0904(4)(a), Stats., the department shall promptly notify the owner or developer of the noncompliance.

SECTION 33. DWD 290.11(2), (4), and (5) are amended to read:

DWD 290.11(2) The state agency or local governmental unit notified under sub. (1), or an owner or developer notified under sub. (1m), shall file an application for a

prevailing wage rate determination, on a form prescribed by the department, within 10 days of the department's notice of noncompliance.

(4) The local governmental unit or state agency notified under sub. (1), or an owner or developer notified under sub. (1m), may request a review of the prevailing wage rate determination within 30 days of the issuance of the determination pursuant to s. DWD 290.10.

(5) If the state agency or local governmental unit notified under sub. (1), or an owner or developer notified under sub. (1m), failed to incorporate a prevailing wage rate determination into a contract or bid, the local governmental unit or, state agency, owner or developer shall either terminate the contract and resolicit bids using the prevailing wage rate determination or incorporate the determination retroactive to the beginning of construction through supplemental agreement or change order. The employer shall be compensated for any increases in wages resulting from the change and any amount of liquidated damages assessed by the department to the employer under ss. 66.0903 (11)(a) , 66.0904(9)(a) or 103.49 (6m)(ag), Stats. The method of incorporation of the prevailing wage rate determination and the adjustment in the contract or bid price shall be in accordance with applicable procurement law.

SECTION 34. The note to DWD 290.11 is amended to read:

Note: "Application for a Prevailing Wage Determination Issued by the Department of Workforce Development," form ERD-5719, may be obtained at no charge from the Department of Workforce Development Equal Rights Division, on the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 35. DWD 290.12(1) and (3) are amended to read:

DWD 290.12(1) A clearly legible copy of the prevailing wage rate determination

issued by the department or exempted local governmental unit, together with the provisions of s. 66.0903 (10) (a) and (11) (a), ~~Stats. s. 66.0904 (8) (a) and (9) (a)~~, or s. 103.49 (2) and (6m), Stats., shall be kept posted in at least one conspicuous and easily accessible place on the site of each project by the contracting state agency, owner or developer of real property, or local governmental unit and the notice shall remain posted during the full time any laborer, worker, mechanic or truck driver is employed on the project.

~~(3) Within 7 days of~~ Before the date that work is first performed by a minor subcontractor, a contractor or subcontractor that hires a minor subcontractor shall ~~either~~ provide a copy of the prevailing wage determination for the project to the minor subcontractor ~~or provide written notification to the minor subcontractor that the work to be performed is subject to a prevailing wage rate determination issued by the~~ department.

SECTION 36. DWD 290.13(1) and (2)(a)(intro.) are amended to read:

DWD 290.13(1) AFFIDAVIT OF COMPLIANCE. Upon completion of their portion of work on a project of public works or a publicly funded private construction project and prior to receiving final payment for work on the project, each agent or subcontractor shall file an agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with its prime contractor.

(2) RECORD RETENTION. (a) Each agent or subcontractor who performed work on a project of public works or a publicly funded private construction project shall retain the following records for at least 3 years after the last day on which the prime contractor and all its agents or subcontractors completed work on the site of the project:

SECTION 37. DWD 290.13(3) is created to read:

DWD 290.13(3) SUBCONTRACTOR NOTIFICATION. Any contractor, subcontractor, contractor's agent or subcontractor's agent who fails to provide its subcontractors and agents the applicable prevailing wage determination for the project as noted in DWD 290.17 is liable for any amount of liquidated damages assessed by the department to the subcontractor or agent under 66.0903(11)(a), 66.0904(9)(a), or 103.49(6m)(ag), Stats.

SECTION 38. The note to DWD 290.13 is amended to read:

Note: "Agent or Subcontractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-10584, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 39. DWD 290.14(1) is amended to read:

DWD 290.14(1) Upon completion of the project of public works or publicly funded private construction project and prior to receiving its final payment for work on the project, each prime contractor shall file a prime contractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with the state agency, or local governmental unit, or owner or developer of real property that awarded the contract.

SECTION 40. DWD 290.14(3) is created to read:

DWD 290.14(3) SUBCONTRACTOR NOTIFICATION. Any prime contractor who fails to provide its subcontractors and agents the applicable prevailing wage determination for the project as noted in DWD 290.17 is liable for any amount of liquidated damages assessed by the department to the subcontractor or agent under 66.0903(11)(a), 66.0904(9)(a), or 103.49(6m)(ag), Stats.

SECTION 41. The note to DWD 290.14 is amended to read:

Note: "Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-5724, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 42. DWD 290.145 is created to read:

DWD 290.145 Evidence of compliance by owner or developer of real property. Prior to the local governmental unit accepting the dedication of any work completed under s. 66.0903(2), Stats., each owner or developer of real property shall file an owner or developer affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with the local governmental unit.

Note: "Owner or Developer of Real Property Affidavit of Compliance with Prevailing Wage Rate Determination," ERD Form 16864, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 43. DWD 290.15 is repealed.

SECTION 44. DWD 290.155(1) is amended to read:

DWD 290.155(1) This chapter does not apply to any ~~single-trade public works~~ project of public works for which the estimated cost of completion is below ~~\$48,000~~ and any ~~multi-trade public works~~ project for which the estimated cost of completion is below ~~\$234,000~~ \$25,000.

SECTION 45. DWD 290.155(1m) is created to read:

DWD 290.155(1m) This chapter does not apply to a publicly funded private construction project that receives less than \$1,000,000 in direct financial assistance from a local governmental unit.

Section 46. DWD 290.155(2)(intro.) is amended to read:

DWD 290.155(2)(intro.) The estimated cost of completion of a project of public works ~~project~~ shall include all contracts and subcontracts that are closely related in

purpose, time, and place. Similar or related work may be considered a separate project of public works project only if all of the following apply to each portion of work:

Section 47. DWD 290.155(2)(a) and the note to DWD 290.155 are repealed.

Section 48. DWD 290.155(3) and (4) are amended to read:

DWD 290.155(3) The estimated cost of completion of a project of public works project shall include labor costs based on the most current prevailing wage rates available from the department, material, furnishings, and other things of value required to be supplied by a contractor or its subcontractors to construct a specific project.

(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.

SECTION 49. DWD 290.16 is amended to read:

DWD 290.16 Any person may request an inspection pursuant to ~~§~~ ss. 66.0903 (10) (c), 66.0904 (8) (c), or 103.49 (5) (c), Stats. The request shall be in writing and shall identify the involved project; contractor, subcontractor, or agent; and trade or occupation. The requestor shall sign a statement that he or she understands the obligation to pay costs assessed pursuant to ~~§~~ ss. 66.0903 (10) (c), 66.0904 (8) (c), or 103.49 (5) (c), Stats., if the contractor, subcontractor, or agent is found to be in compliance.

Note: “Wisconsin Prevailing Wage Rate Complaint,” form ERD-9850, is available at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

SECTION 50. DWD 290.17 is renumbered DWD 290.17(1), and as renumbered is amended to read:

DWD 290.17(1) Every state agency or local governmental unit shall insert or cause to be inserted a clause in every prime contract that clearly states that the applicable project of public works project is subject to the provisions of either s. 66.0903 or 103.49, Stats., and ch. DWD 290.

Section 51. DWD 290.17(2) and (3) are created to read:

DWD 290.17(2) Every owner or developer of real property shall insert or cause to be inserted a clause in every prime contract that clearly states that the applicable publicly funded private construction project is subject to the provisions of s. 66.0904, Stats. and ch. DWD 290.

(3) Every contractor who contracts with another contractor, subcontractor or agent to complete work on a project of public works or a publicly funded private construction project shall provide a copy of the applicable prevailing wage determination for the project to the contractor.

SECTION 52. DWD 290.18 and 290.19 are created to read:

DWD 290.18 ELECTRONIC CERTIFIED PAYROLL RECORDS (1)
CONTRACTOR REPORTING. Except as noted in sub. (2), by the 7th day of the month following a month in which a contractor, subcontractor, or contractor's or subcontractor's agent performs work on a prevailing wage project, the contractor, subcontractor, or contractor's or subcontractor's agent shall upload certified payroll records to the department's website that comply with the applicable electronic formatting requirements, including the identification of each person who has performed work on the prevailing wage project.

(2) UNION CONTRACTOR REPORTING. (a) If the contractor, subcontractor, or contractor's or subcontractor's agent has persons who are subject to a collective bargaining agreement performing work on a prevailing wage project for which the collective bargaining agreement wage rates equal or exceed the prevailing wage rate, then, by the 7th day of the month following the first month in which the contractor, subcontractor, or contractor's or subcontractor's agent performs work on the prevailing wage project, the contractor, subcontractor, or contractor's or subcontractor's agent shall upload certified payroll records that comply with the applicable electronic formatting requirements and upload an electronic copy of the applicable collective bargaining agreement if it does not already appear on the prevailing wage public display of collective bargaining agreements. For any month in which there is a change to the collective bargaining agreement wage rate, the contractor, subcontractor, or contractor's or subcontractor's agent shall upload subsequent certified payroll records that comply with the applicable electronic formatting requirements for union contractors and upload an electronic copy of the collective bargaining agreement if it does not already appear on the prevailing wage public display of collective bargaining agreements.

(b) If the contractor, subcontractor, or contractor's or subcontractor's agent has persons who are subject to a collective bargaining agreement performing work on a prevailing wage project for which the collective bargaining agreement wage rates do not equal or exceed the prevailing wage rate, then the contractor, subcontractor, or contractor's or subcontractor's agent is subject to sub. (1).

NOTE: Certified payroll records filing information is available on the prevailing wage website at: http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm.

DWD 290.19 Application of effective date. (1) PROJECTS OF PUBLIC WORKS, REQUESTS FOR BIDS. For projects under s. 66.0903, Stats., which are subject to bidding, the department shall apply the threshold amount of \$25,000 to projects for which a request for bids is issued after January 1, 2010.

(2) PROJECTS OF PUBLIC WORKS, NEGOTIATED CONTRACTS. For projects under s. 66.0903, Stats., which are covered by negotiated contracts, the department shall apply the threshold amount of \$25,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement.

(3) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, REQUESTS FOR BIDS. For projects under s. 66.0904, Stats., which are subject to bidding, the department shall apply the threshold amount of \$1,000,000 to projects for which a request for bids is issued after January 1, 2010 and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the request for bids is issued.

(4) PUBLICLY FUNDED PRIVATE CONSTRUCTION PROJECTS, NEGOTIATED CONTRACTS. For projects under s. 66.0904, Stats., which are covered by negotiated contracts, the department shall apply the threshold amount of \$1,000,000 to projects for which an agreement is made after January 1, 2010, as shown by a signed contract or other evidence of an agreement, and for which at least \$1,000,000 in direct financial assistance is committed as of the date that the negotiated agreement has been signed by all of the parties to the agreement.

SECTION 53. 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.