

Clearinghouse Rule 99-164

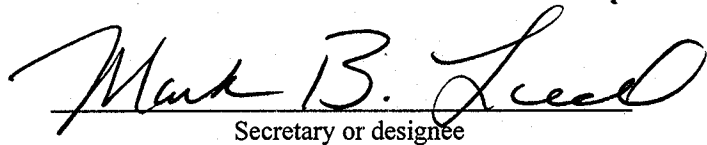
Rules Certificate

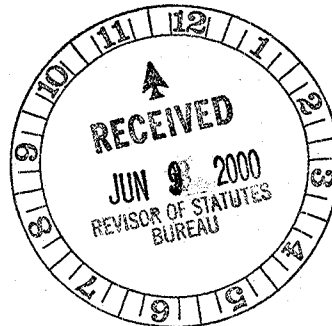
STATE OF WISCONSIN)
) ss
DEPARTMENT OF WORKFORCE DEVELOPMENT)

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules, relating to prevailing wage rates were duly approved and adopted by this department on June 8, 2000.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 8th day of June 2000.


Secretary or designee



8/1/00

99-164

Order Adopting Rules

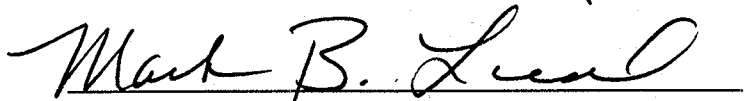
Pursuant to authority vested in the Department of Workforce Development by ss. 66.293, 103.49, and 227.11, Stats., the Department of Workforce Development amends, creates, and repeals rules of Wisconsin Administrative Code chapters DWD Chapter 290 and 294 relating to prevailing wage rates..

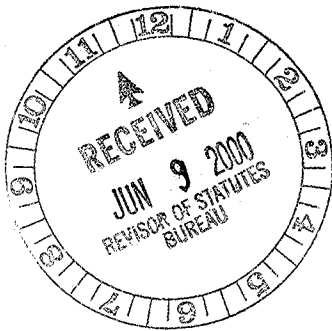
The attached rules shall take effect on August 1, 2000, pursuant to s. 227.22, Stats.

Adopted at Madison, Wisconsin this

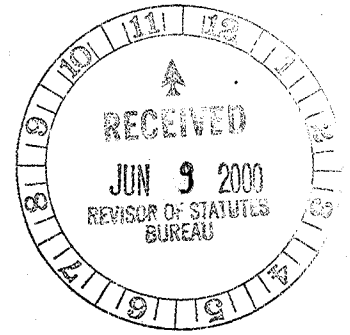
Date: 6-8-00

Department of Workforce Development


Secretary or designee



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



Prevailing Wage Rates

The Wisconsin Department of Workforce Development proposes an order to repeal 290.01(3), (7), (8), (9), (12), and (14); 290.02(5); 290.06; and 290.07; to renumber 290.12(2) and 290.155; to renumber and amend 290.01(22); to amend 290.01(intro), (4), (6), (10)(intro)(note), (10)(a), (10)(b), (10)(c), (18)(a), (18)(b), and (18)(c)(intro); 290.02(3) and (4); 290.03(title) and (1); 290.05; 290.08(title), (1), (3), and (note); 290.09(title), (1)(intro), (1)(a), (2), and (4); 290.12(title) and (1); 294.01(1)(a), (1)(c), and (2)(a); 294.02(2) and (5); 294.03(1)(b); 294.04(1), (2), (3)(a), and (3)(b); 294.05(2)(a)(intro), (2)(a)4., (3)(b)2.b., (5)(a), (5)(b), and (5)(c); 294.06(title), (1), and (2); and 294.08(title), (intro), and (note); to repeal and recreate 290.01(10)(intro), (17), and (21); 290.035; 290.04; 290.09(1)(b); 290.11; 290.13; 290.14; 290.16 and 294.02(3), (9), and (11); and to create 290.01(9), (17m), and (20p); 290.025(note); 290.03(3); 290.09(5); 290.12(2); 290.155(2), (3), (4); 290.17; and ch. 290 Appendix A relating to prevailing wage rates.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 66.293, 103.49, and 227.11, Stats.

Statutes interpreted: ss. 66.293 and 103.49, Stats.

The proposed rule includes substantive changes suggested by a focus group representing the major parties with interests related to these rules, statutory updates, and clarifications to rule language.

Substantive changes

Fringe benefits to apprentices. The proposed rule requires a consistent method for providing fringe benefits to apprentices who work on public works projects. In the past, there has been no standard practice on the provision of fringe benefits in the private sector or on public works projects. The proposed rule provides that apprentices receive the same percentage of journeypersons' fringe benefits as they receive of journeypersons' hourly basic rate of pay when they are working on public works projects.

Cross-Classifications. The proposed rule allows workers to perform tasks in more than one classification during a work week without a requirement that they be paid a separate pay rate for the other classifications if the work in the other classifications is performed for 15% or less of their work time for the week. The department previously

had an informal policy of allowing work in other classifications up to 20% of the work week without separate pay rates.

Debarment. Falsifying, deliberately destroying, or failing to keep required payroll records on a public works project is added as an independent cause for debarment. It was previously a cause only when done in combination with one of the other three causes. Only responsible officers and directors of a business that commits a debarable offense may be debarred.

Exempt local governmental units. Local governmental units seeking an exemption from the state prevailing wage law on the grounds that they have their own local ordinance on prevailing wage must show that they have enacted a methodology to enforce the payment of the prevailing wage rates before an exemption from the state law will be granted.

Standard contract language. Every state agency or local governmental unit must ensure that standardized language is in every prime contract that states the contractor's obligation to pay or ensure the payment of the prevailing wage rates to all workers on the project.

Miscellaneous. The classification of projects is updated to reflect current construction industry practices.

The prevailing wage rate determination for projects of a local governmental unit or exempt local governmental unit may be posted at the place normally used to post public notices if there is no appropriate site on a project to post it. This provision does not apply to state-owned projects.

The list of debarred contractors will be sent to exempt local governmental units quarterly only if there has been a change in the list. The debarment list may be sent by a method other than first-class mail.

A written summary or tape recording of a debarment hearing must be requested before the hearing.

Statutory updates

Statutory references and terminology are updated to be consistent with 1995 Wisconsin Act 215. The term "municipality" is changed to "local governmental unit" and "fringe benefit" is changed to "economic benefit." The rule is amended to reflect the statute's addition of demolition work to prevailing wage law coverage. The rule repeals language on hours of labor because the statute now determines what is considered standard hours of labor and what is considered overtime.

Clarification

The section on determining the estimated cost of completion of a project for purposes of meeting the minimum estimated project cost for application of the prevailing wage law is amended to clarify what types of costs should be included and what work may be considered a separate project.

Definitions of the terms “service and maintenance work,” and “supply and installation contract” are created to clarify when work falls in these two categories that are not covered under the prevailing wage law.

“Truck driver” is added to the phrase “laborer, worker, or mechanic” in various places throughout the rule that refer to covered employees. The addition of “truck driver” is for clarification and consistency with statutory language and is not a substantive change.

The definition of “public works project” is rewritten to include information formerly contained in the definition of “erection, construction, remodeling, or repairing” and “erection, construction, remodeling, or repairing” is repealed as a defined term. The definition of the term “trade or occupation” is rewritten for clarity.

Requirements on retention of payroll and records of work done on a project have been moved to a different section of the rule with no effect on the rule content. The record retention requirement was previously in both s. DWD 290.07 and ss. 290.13 and 290.14 and is now only in ss. DWD 290.13 and 290.14.

SECTION 1. DWD 290.01 (intro) is amended to read:

DWD 290.01 (intro) Definitions. The following definitions shall apply ~~in~~ to all prevailing wage rate determinations made ~~issued~~ by the department pursuant to this chapter:

SECTION 2. DWD 290.01 (3) is repealed.

SECTION 3. DWD 290.01 (4) and (6) are amended to read:

DWD 290.01 (4) “Contractor,” ~~under s. 66.293 (3) (g) and (h), Stats.,~~ means a person, including a construction manager or consultant, who has entered into a contract with a municipality state agency or local governmental unit for a project of public works project.

DWD 290.01 (6) “Employer,” ~~as used in these rules and in s. 66.293 (3) (f), Stats.,~~ includes means any contractor, subcontractor, agent or other person, doing or contracting to do all or a part of the work.

SECTION 4. DWD 290.01 (7), (8), and (9) are repealed.

SECTION 5. DWD 290.01 (9) is created to read:

DWD 290.01 (9) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b), Stats.

SECTION 6. DWD 290.01 (10)(intro) is repealed and recreated to read:

DWD 290.01 (10)(intro) "Hourly contributions" is the per hour cost of the economic benefits paid to a laborer, worker, mechanic or truck driver by his or her employer, in addition to the hourly basic rate of pay. Payment for food, lodging, mileage, riding time, waiting time, call-in pay, uniforms, and the use of an employer's vehicle are excluded.

SECTION 7. DWD 290.01 (10)(intro)(note), (a), (b), and (c) are amended to read:

Note: Specific economic ~~and fringe~~ benefits. (Interpretation)

(a) The term "other bona fide economic benefit" is the so-called "open end" provision. This was included so that new ~~fringe economic~~ benefits may be recognized by the department as they become prevailing. A particular ~~fringe economic~~ 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 or~~ giving credit to any and all economic benefits, some of which might be illusory or not genuine, the qualification required by the department is that ~~such the economic and fringe~~ benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic 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 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, defrayal of costs of apprenticeship or other similar programs, or other bona fide economic benefits, but only where the employer is not required by other federal, state, or local law to provide any of ~~such the~~ benefits. Employers may take credit for contributions made under such conventional plans without requesting the approval of the department.

(c) Economic benefits which an employer is required to pay pursuant to other federal, state, or local law are excluded. No credit shall be taken for the payments made for such economic benefits. For example, payments for worker's compensation insurance under either a compulsory or elective state statute are not payments for economic benefits under ss. 66.293 or 103.49, Stats. The omission in the above-mentioned statutes of any express reference to these payments, which are common in the construction industry, suggests that these payments shall not be regarded as an economic benefit.

DWD 290.01 (10)(a) *Contribution irrevocably made by an employer to a trustee or to a third person.* Contributions for bona fide economic ~~or fringe~~ benefits made to a trustee or to a third person irrevocably ~~will~~ shall be considered in ascertaining any hourly ~~contributions~~ contribution. The "third person" must be one who is not affiliated with the employer. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund, except those used for apprenticeship training, must be set up ~~in such a way that in no event will~~ so that the employer be unable to recapture any of the required contributions paid in or ~~in any way~~ to divert the funds.

DWD 290.01 (10)(b) *Fund, plan, or program.* The ~~contributions~~ contribution for an economic and ~~fringe benefits~~ benefit must be made pursuant to a bona fide fund, plan, or program.

Note: 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.

DWD 290.01 (10)(c) *Unfunded plans.* 1. The reasonable anticipated ~~costs~~ cost to an employer pursuant to an enforceable written commitment to carry out a financially responsible plan or program, ~~will~~ shall be considered as an economic and fringe benefits benefit.

Note: These provisions are intended to permit the consideration of economic and ~~fringe~~ benefits ~~meeting that~~ meet the requirements and ~~which~~ are provided from the general assets of an employer.

2. No type of economic ~~or fringe~~ benefit is eligible for consideration as a so-called unfunded plan unless all of the following criteria apply:

- a. A copy has been supplied to the department;
- b. It could be reasonably anticipated to provide economic benefits described in ~~s-~~ ss. 66.293 or 103.49, Stats., and this subsection;
- c. It is a bona fide commitment; ~~and~~;
- d. The plan or program providing the economic benefits has been communicated in writing to the affected laborers, workers, and mechanics and truck drivers affected.

Note: As in the case of ~~other economic and fringe benefits payable under s. 66.293, Stats., benefit~~ contributions made to a fund, plan, or program, an unfunded plan or program must be “bona fide” and not a mere simulation or sham ~~for avoiding to avoid~~ compliance with ~~s-~~ ss. 66.293 or 103.49, Stats. In evaluating the per hour cost of the fringe benefit contribution for employers that “self-insure” all or a portion of their employes’ health insurance, the department may use guidance from the discussion on determining the applicable premium for self-insured plans under the Consolidated Omnibus Reconciliation Act (COBRA) in the *Employer’s Handbook: Mandated Health Benefits*, Thompson Publishing Group, 1725 K Street, N.W., Suite 200, Washington, D.C. 20006

SECTION 8. DWD 290.01 (12) and (14) are repealed.

SECTION 9. DWD 290.01 (17) is repealed and recreated to read:

DWD 290.01 (17) “Public works project” or “project” means erection, construction, remodeling, repairing, or demolition building or work under contract with a Wisconsin

state agency or local governmental unit as defined in s. 66.293(1)(d) or 103.49(1)(f), Stats., including alterations, painting, and decorating and not including service and maintenance work, warranty work, and work under a supply and installation contract.

SECTION 10. DWD 290.01 (17m) is created to read:

DWD 290.01 (17m) “Service and maintenance work” means work on facilities or equipment routinely performed to prevent breakdown or deterioration.

SECTION 11. DWD 290.01 (18) (a), (b), and (c)(intro.) are amended to read:

DWD 290.01 (18) (a) “Site of ~~work~~ project” means the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by a contractor or subcontractor in connection with the project.

(b) “Site of ~~work~~ project” includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, when these facilities are substantially dedicated to the performance of the contract or project and are located in proximity to the actual construction location.

(c) “Site of ~~work~~ project” does not include:

SECTION 12. DWD 290.01(20p) is created 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.

SECTION 13. DWD 290.01 (21) is repealed and recreated to read:

DWD 290.01 (21) “Trade or occupation” means one of the job classifications recognized by the department that identifies the primary purpose and typical duties regularly performed by laborers, workers, mechanics and truck drivers employed in the

erection, construction, remodeling, repairing or demolition of any building or any other public works project.

Note: A "Dictionary of Occupational Classifications and Work Descriptions for Use on All Public Works Projects in the State of Wisconsin" may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P. O. Box 8928, Madison, WI 53708 or at the DWD web site at <http://www.dwd.state.wi.us/er/dictionary1.htm>.

SECTION 14. DWD 290.01 (22) is renumbered DWD 290.01 (16m) and amended to read:

DWD 290.01 (16m) "~~Wage-Prevailing wage rate~~ determination" includes the original determination and subsequent determinations modifying or otherwise changing the provisions of the original determination.

SECTION 15. DWD 290.02 (3) and (4) are amended to read:

DWD 290.02 (3) Apprentices shall be paid a percentage of the applicable ~~journeyman's-journeyman's~~ hourly basic rate of pay and hourly fringe benefit contributions specified in the prevailing wage rate determination issued for a project.

(4) The appropriate ~~hourly basic rate~~ percentage shall be obtained from each apprentice's contract or indenture.

SECTION 16. DWD 290.02 (5) is repealed.

SECTION 17. DWD 290.025 (note) is created to read:

DWD 290.025 Subjourneypersons.

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://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 18. DWD 290.03 (title) and (1) are amended to read:

DWD 290.03 (title) Classification of laborers, workers, and mechanics and truck drivers. (1) Wages paid for work done in any given trade or occupation shall be computed at a wage rate not less than the prevailing wage rate ~~listed~~ specified in the prevailing wage rate determination issued for a project. The type of work done for the most similar trade or occupation, and not a previously assigned occupational title, shall determine the required minimum prevailing wage rate payable. ~~The applicable rate for~~

~~the type of work done shall be determined according to the prevailing local practices in the area.~~

SECTION 19. DWD 290.03 (3) is created 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 performed for 15% or less of the time spent working on a particular public works project during a given work week.

SECTION 20. DWD 290.035 is repealed and recreated to read:

DWD 290.035 Classification of projects. (1) BUILDING OR HEAVY CONSTRUCTION. A building or heavy construction project includes sheltered enclosures with walk-in access for the purpose of housing persons, employes, machinery, equipment, or supplies and nonsheltered work such as canals, dams, dikes, reservoirs, and storage tanks. A sheltered enclosure need not be habitable in order to be considered a building. The installation of machinery or equipment, both above and below grade level, does not change a project's character as a building. Building or heavy construction includes on-site grading, utility work, and landscaping.

Note: Examples of building or heavy construction projects include, but are not limited to, antenna towers; apartment buildings of 5 or more stories; enclosed arenas; athletic fields, excluding all paving work; auditoriums; automobile parking garages or ramps; banks or financial buildings; barracks; bathhouses; indoor or outdoor bleachers; breakwaters; caissons; canals; channels; channel cut-offs; chemical complexes or facilities; churches; city halls; civic centers; cofferdams; coke ovens; commercial or retail buildings; courthouses; dams; demolition; detention facilities or jails; dikes; docks; dormitories; dredging; factories; fire stations; flood control; fueling facilities; gas and oil pipelines; golf courses; grandstands; hospitals; hotels; industrial buildings; industrial incinerators; institutional buildings; irrigation; jetties; kennels; kilns; land drainage; land leveling; land reclamation; landfills; landscaping; laterals; levees; libraries; lift stations, excluding drop-in type; locks; manufacturing plants; marine work; mausoleums; motels; museums; nursing and convalescent facilities; office buildings; oil refineries; out-patient clinics; outdoor electrification; passenger or freight terminals; police stations; ponds; post offices; power plants; prefabricated buildings; pumping stations; railroad construction; reservoirs; rest areas; restaurants; revetments; schools; service stations; shopping centers; shoreline rehabilitation; ski tows; storage tanks, including above ground, below grade, or removal; stores; swimming pools, excluding projects subject to sub. (5); subways; theaters; tipples; unsheltered piers or wharves; viaducts other than state highway or local street; warehouses; water or sewage treatment plants; water towers; waterways; water wells, excluding projects under sub. (5).

(2) SEWER, WATER, OR TUNNEL CONSTRUCTION. A sewer, water, or tunnel construction project includes those projects that primarily involve public sewer or water distribution, transmission, or collection systems and related tunnel work, excluding

buildings. Sewer, water, or tunnel construction performed within the lot line of a building or heavy construction project are subject to sub. (1).

Note: Examples of sewer, water, or tunnel construction projects include, but are not limited to, aqueducts; catch basins; cofferdams; compressed air tunnels; culverts; forcemains; free air tunnels; drop-in lift stations; manholes; marine work; open cut trenches; sanitary sewers; sewage collection or disposal lines; shafts; storm sewers; tunnels, except for subways; water mains; and water supply or distribution lines.

(3) AIRPORT PAVEMENT OR STATE HIGHWAY CONSTRUCTION. An airport pavement or state highway construction project includes all airport projects and all projects awarded by the Wisconsin department of transportation that do not include buildings.

Note: Examples of airport pavement or state highway construction projects include, but are not limited to, airport aprons, runways, or taxiways; base courses; bituminous pavement; brick paving; bridges; concrete pavement; curbs; excavation or embankment for road construction; fencing; grade crossing elimination or separation, such as overpasses or underpasses; guard rails; gutters; landscaping; lighting or traffic control; marine work; medians; parkways; public sidewalks; resurfacing; shoulders; signs; stabilizing courses; and storm sewers, sanitary sewers, or water supply lines incidental to airport pavement or state highway construction.

(4) LOCAL STREET OR MISCELLANEOUS PAVING CONSTRUCTION. A local street or miscellaneous paving construction project includes roads, streets, alleys, trails, bridges, paths, parking lots and driveways that are not subject to sub. (5), public sidewalks, and racetracks. Projects awarded by the Wisconsin department of transportation are excluded.

Note: Examples of local street or miscellaneous paving construction projects include, but are not limited to, alleys; athletic field paving work; base courses; bike or bridle paths; bituminous pavement; brick paving; bridges; concrete pavement; curbs; driveways; excavation or embankment for road construction; fencing; grade crossing elimination or separation, such as overpasses or underpasses; guard rails; gutters; landscaping; lighting or traffic control; marine work; medians; parking lots; parkways; public sidewalks; racetracks; recreational trails; resurfacing; roadways; shoulders; signs; and stabilizing courses.

(5) RESIDENTIAL OR AGRICULTURAL CONSTRUCTION. A residential or agricultural construction project includes single family houses or apartment buildings of no more than 4 stories in height and all buildings, structures, or facilities that are primarily used for agricultural or farming purposes, excluding commercial buildings. For classification purposes, the primary consideration is the exterior height of a residential building in stories. Residential or agricultural construction includes all incidental items such as site work, driveways, parking lots, private sidewalks, swimming pools, and private septic systems or sewer and water laterals connected to a public system.

Note: Examples of residential or agricultural construction projects include, but are not limited to, apartment buildings of 4 stories or less, barns, breeding facilities, condominiums of 4 stories or less, convents, cribs, fencing, garages, grain bins, greenhouses that are not incidental to retail, irrigation wells, land clearing, manure pits, nurseries, sheds, silos, single-family houses, stables, storage or outbuildings, student housing of 4 stories or less, swimming pools, town or row houses, training, riding or exhibition facilities, and water wells that are not subject to sub. (1).

SECTION 21. DWD 290.04 is repealed and recreated to read:

DWD 290.04 Straight time wages. (1) An employer may discharge its obligation for payment for work done less than or equal to the prevailing hours of labor as defined in s. 103.49(1)(c), Stats., by paying the total prevailing wage rate in cash or by paying in cash and incurring costs for bona fide economic benefits if the total of the cash payment and the total hourly contribution for the bona fide economic benefits equal or exceed the total prevailing wage rate.

(2) Before an employer can be given credit for any unfunded economic benefit plan or program, the employer shall supply a copy of the plan or program to the department and comply with all other provisions of s. DWD 290.01 (10)(c).

(3) Unconventional plans shall be approved by the department before any credit will be given to an employer.

SECTION 22. DWD 290.05 is amended to read:

DWD 290.05 Overtime wages. All hours worked by a laborer, worker, ~~or mechanic or truck driver~~ in excess of the prevailing hours of labor per day or per calendar-week, must be paid at a rate at least ~~1½~~ 1.5 times the hourly basic rate of pay. Sums paid by an employer for ~~fringe and bona fide~~ economic benefits shall be excluded in the computation of the overtime premium. In no event can the rate upon which the overtime premium is calculated be less than the amount determined by the department as the hourly basic rate of pay (~~i.e., cash rate~~). Nor can the rate upon which the overtime premium is calculated be less than the straight time cash payment made to the laborer, worker, ~~or mechanic or truck driver~~ or be less than the employee's normal hourly basic rate of pay, if it is higher. Contributions by employees are not excluded from the rate upon which the overtime premium is computed; that is, an employee's overtime premium rate is computed on the taxable earnings before any deductions are made for the employee's contributions to bona fide economic ~~and fringe~~ benefits. The employer's contributions,

costs or cash payments for bona fide economic and fringe benefits may be excluded in computing the overtime premium rate so long as the exclusions do not reduce the overtime premium rate below the hourly basic rate contained in the prevailing wage rate determination issued for a project.

SECTION 23. DWD 290.06 and 290.07 are repealed.

SECTION 24. DWD 290.08 (title), (1), (3), and (note) are amended to read:

DWD 290.08 (title) Prevailing Wage wage rate determinations in- for individual projects. (1) ~~A municipality~~ Every state agency or local governmental unit shall request the department to ~~ascertain~~ determine the prevailing wage rate, ~~hours of labor and hourly basic pay 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.

(3) The department may be notified about ensuing projects as far in advance as possible. However, the official request to the department to ~~ascertain and determine~~ the prevailing wage rate, ~~hours of labor and hourly basic pay rates~~ for all trades and occupations required ~~in- to complete~~ the work contemplated shall be made between 50 ~~and- to~~ 60 days before making a contract by direct negotiation or soliciting bids.

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, P.O. Box 8928, Madison WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 25. DWD 290.09 (title), (1) intro, and (1)(a) are amended to read:

DWD 290.09 (title) Procedure for requesting exemption from applying to department for individual project prevailing wage rate determinations.

(1) The petition of any ~~municipality~~ local governmental unit for exemption from applying to the department ~~for ascertainment and determination of~~ to determine the prevailing wage rates for any individual public works projects, ~~hours of labor and hourly basic pay rates pursuant to s. 66.293 (3) (d), s. 66.293 (6), Stats., should shall~~ be sent to the department and shall include:

(a) A certified copy of the ordinance or other enactment setting forth the standards, policy, procedure and practice followed in ~~ascertaining and determining~~ the prevailing

wage rates, ~~hours of labor and hourly basic pay rates in~~ for all trades and ~~or~~ occupations required in the work contemplated.

SECTION 26. DWD 290.09 (1)(b) is repealed and recreated to read:

DWD 290.09 (1) (b). A current schedule of prevailing wage rates for all trades or occupations required for any public works project, setting forth all of the following:

1. The trades or occupations required.
2. The current and future hourly basic rates of pay, the hourly contribution for bona fide economic benefits and any premium pay, if applicable, for these trades or occupations.
3. The types of public works projects, by kind and size, that are subject to the ordinance or other enactment.
4. The effective date of the hourly basic rates of pay and hourly contribution for bona fide economic benefits.

SECTION 27. DWD 290.09 (2) and (4) are amended to read:

DWD 290.09 (2) Upon request of the department, the ~~municipality-local~~ governmental unit 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 ss. ~~66.293 (3) (a), (e), (f), (g), (h), 66.293 (1), (3), (4), (5), (8), (9)(b) and (c), (10), (11) and (12), Stats. remain in effect~~ and are not included within an exemption.

SECTION 28. DWD 290.09 (5) is created to read:

DWD 290.09 (5) No exemption shall be granted unless the local governmental unit has enacted a methodology to enforce the payment of the prevailing wage rates determined pursuant to its ordinance or enactment and that methodology has been approved by the department.

SECTION 29. DWD 290.11 is repealed and recreated to read:

DWD 290.11 Procedure when a state agency or local governmental unit fails to request a required prevailing wage rate determination or incorporate a required prevailing wage rate determination into a contract. (1) When the department finds that a state agency or local governmental unit has not requested a prevailing wage rate determination as required under s. 66.293(3)(am) or 103.49(3), Stats., the department shall promptly notify the state agency or local governmental unit of the noncompliance.

(2) The state agency or local governmental unit 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.

(3) The department shall issue the prevailing wage rate determination within 30 days of the notice of noncompliance.

(4) The local governmental unit or state agency 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 failed to incorporate a prevailing wage rate determination into a contract or bid, the local governmental unit or state agency 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. 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.

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, P.O. Box 8928, Madison WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 30. DWD 290.12 (title) and (1) are amended to read:

DWD 290.12 (title) Posting of prevailing wage rates and hours. (1) A clearly legible copy of the prevailing wage rate determination issued by the department or exempted municipality-local governmental unit for the project, together with the

provisions of ~~s. 66.293 (3) (a) and (e)~~, ss. 66.293 (10)(a) and (11)(a) or ss. 103.49 (2) and (6m), Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project on the site of each project by the ~~employer~~ contracting state agency or local governmental unit engaged on the project and ~~such~~ the notice shall remain posted during the full time any ~~laborers, workers or mechanics are~~ laborer, worker, mechanic or truck driver is employed on the project.

SECTION 31. DWD 290.12 (2) is renumbered DWD 290.12 (3).

SECTION 32. DWD 290.12 (2) is created to read:

DWD 290.12 (2) If there is no appropriate site on a project, a local governmental unit may post the prevailing wage rate determination at the place normally used to post public notices.

SECTION 33. DWD 290.13 and 290.14 are repealed and recreated to read:

DWD 290.13 Evidence of compliance by agent and subcontractor.

(1) AFFIDAVIT OF COMPLIANCE. Upon completion of their portion of work on a public works 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 public works 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:

(i) An accurate record of the name, trade or occupation, hours worked, and actual wages paid for all of its employees who performed work on the project.

(ii) A properly completed agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, from each of its agents or subcontractors that performed work on the project.

(b) The required records shall be made available for inspection upon request of the department, state agency, or local governmental unit.

(c) The location of the required records shall be designated in the affidavit required under sub. (1). The records shall not be moved from the designated location without prior notice of the new location and the expected move date to the state agency or local governmental unit.

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://www.dwd.state.wi.us/er/pdfforms.htm>.

DWD 290.14 Evidence of compliance by prime contractor. (1) AFFIDAVIT OF COMPLIANCE. Upon completion of the public works 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 that awarded the contract.

(2) RECORD RETENTION. (a) Each prime contractor 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:

(i) An accurate record of the name, trade or occupation, hours worked, and actual wages paid for all of its employees who performed work on the project.

(ii) A properly completed agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, from each of its agents or subcontractors that performed work on the project.

(b) The required records shall be made available for inspection upon request of the department, state agency, or local governmental unit.

(c) The location of the required records shall be designated in the affidavit required under sub. (1). The records shall not be moved from the designated location without prior notice of the new location and the expected move date to the state agency or local governmental unit.

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://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 34. DWD 290.155 is renumbered DWD 290.155(1).

SECTION 35 DWD 290.155 (2), (3), and (4) are created to read:

DWD 290.155. (2) The estimated cost of completion of a 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 public works project only if all of the following apply to each portion of work:

- (a) It has a separate budget.
- (b) It is advertised separately.
- (c) It is bid or negotiated separately.
- (d) It is awarded separately.
- (e) It is not dependent on another segment of work for completion.

(3) The estimated cost of completion of a 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 public works project shall not include land cost, architectural fees, engineering fees, planning and research costs, and administrative costs.

SECTION 36. DWD 290.16 is repealed and recreated to read:

DWD 290.16 Complaints. Any person may request an inspection pursuant to s. 66.293 (10)(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 s. 66.293 (10)(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://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 37. DWD 290.17 is created to read:

DWD 290.17 Standard contract language. 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 public works project is subject to the provisions of either s. 66.293 or 103.49, Stats., and Wis. Admin. Code ch. DWD 290.

SECTION 38. Chapter 290 Appendix A is created to read:

Appendix A

Related labor standards state statutes and administrative rules that apply to public works projects

| Subject | Administrative Code or Statutory Reference |
|-----------------------------------------------------------|---------------------------------------------------|
| Child labor | ch. DWD 270 |
| Minimum wage | ch. DWD 272 |
| Business closing | ch. DWD 279 |
| Listing of deductions | s. DWD 272.10 |
| Waiting time | s. DWD 272.12 (2)(b) |
| Rest and meal periods | s. DWD 272.12 (2)(c) |
| Pay for training | s. DWD 272.12 (2)(f) |
| Travel time | s. DWD 272.12 (2)(g) |
| Wage garnishment | ch. DWD 278 |
| Compensatory time | s. 103.025, Stats. |
| Grooming | s. 103.14, Stats. |
| Deductions for faulty workmanship, loss, theft, or damage | s. 103.455, Stats. |
| Wage payment frequency | s. 109.03, Stats. |

SECTION 39. DWD 294.01 (1)(a) and (c) and (2)(a) are amended to read:

DWD 294.01 (1) (a) Prescribes certain policies and procedures governing the debarment of contractors from contracts involving any state agency or ~~municipality~~ local governmental unit.

(c) Prescribes the procedures to be used to inform state agencies, ~~municipalities~~ local governmental units and the general public of the contractors that have been declared ineligible to perform work on public works ~~construction~~ projects.

(2) (a) Every state agency or ~~municipality~~ local governmental unit shall solicit bids from, negotiate with, or award contracts to, and approve or allow subcontracts with only responsible contractors. Debarment is an appropriate means to effectuate this policy.

SECTION 40. DWD 294.02 (2) is amended to read:

DWD 294.02 (2) “Construction business” means:

(a) Any business engaged in erecting, constructing, remodeling, repairing, demolishing, altering, painting ~~and~~ or decorating buildings, structures, or facilities; and

(b) Any business engaged in supplying the delivery of mineral aggregate or the transporting of excavated material or spoil as provided by ~~s. 66.293 (3), 103.49 (2) or 103.50 (2)~~, s. 66.293 (4) or 103.49 (2m), Stats.

SECTION 41. DWD 294.02 (3) is repealed and recreated to read:

DWD 294.02 (3) “Contractor” means any individual or legal entity in a construction business involved on a public works project, including its responsible officers, directors, members, shareholders, or partners, irrespective of the name by which the group is designated, provided that any officer, director, member, shareholder, or partner is vested with the management of the affairs of the individual or legal entity.

SECTION 42. DWD 294.02 (5) is amended to read:

DWD 294.02 (5) “Debarment” means action taken by the department under s. DWD 294.05 to exclude a contractor from performing work, either as a prime contractor or subcontractor, for any state agency or ~~municipality~~ local governmental unit for a specified period. A contractor so excluded is “debarred.”

SECTION 43. DWD 294.02 (9) and (11) are repealed and recreated to read:

DWD 294.02 (9) “Local governmental unit” has the meaning given in s. 66.293 (1)(d), Stats.

DWD 294.02 (11) “State agency” has the meaning given in s. 103.49 (1)(f), Stats.

SECTION 44. DWD 294.03 (1)(b) is amended to read:

DWD 294.03 (1)(b) The department shall use the consolidated list to ensure that every state agency or ~~municipality~~ local governmental unit does not solicit bids from, negotiate with, or award contracts to, and approve or allow subcontracts with listed contractors, except as otherwise provided in s. DWD 294.05.

SECTION 45. DWD 294.04 (1), (2), and (3)(a) and (b) are amended to read:

DWD 294.04 (1) EFFECT. No state agency or ~~municipality~~ local governmental unit may knowingly solicit bids from, negotiate with or award contracts to, and approve or allow subcontracts with a debarred contractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (2) REVIEW. Prior to any of the procurement actions enumerated in sub. (1), with respect to a particular bidder, offeror or proposed subcontractor, every state agency or ~~municipality~~ local governmental unit shall review the consolidated list. If a bidder, offeror or proposed subcontractor is listed, it may not be awarded a contract or allowed to participate as a subcontractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (3)(a) If the department learns that a debarred contractor is employed on a public works project, it shall require the state agency or ~~municipality~~ local governmental unit to terminate the employment of the contractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (3)(b) Contract termination decisions shall be made only after review by and in consultation with the state agency or ~~municipality~~ local governmental unit purchasing personnel, department legal counsel and designated representative, and affected contractors to assure the propriety of the proposed contract termination.

SECTION 46. DWD 294.05 (2)(a)(intro), (2)(a)4., (3)(b)2.b., and (5)(a), (b), and (c) are amended to read:

DWD 294.05(2)(a)(intro) A conviction or civil judgment of a Wisconsin court, a finding of any Wisconsin state agency or ~~municipality~~ local governmental unit, a finding of the department or an admission of:

DWD 294.05(2)(a)4. Falsifying, deliberately destroying, or failing to keep adequate required payroll records on a public works project ~~when such conduct is related to a violation of subd. 1., 2. or 3.~~

DWD 294.05(3)(b)2.b. Ensure that an accurate written summary or tape recording of the hearing is prepared or taken and made available to the contractor, if one is requested before the hearing.

DWD 294.05 (5)(a) The designated representative shall issue a proposed ~~finding~~ findings of fact and order within 60 calendar days after the department received the last written response providing information or arguments in opposition to the proposed debarment as provided for in sub. (4) (c) or within 60 calendar days after a hearing has been held as provided for in sub. (4) (f). Any party to the action may request a copy of the proposed ~~finding~~ findings of fact and order and appeal it within 20 calendar days from the date of issuance by requesting, in writing, an opportunity to present oral or written arguments to the designated representative.

DWD 294.05 (5)(b) If a timely appeal is filed, the designated representative shall hold a hearing or review the written arguments on why the proposed order should be modified or reversed. The designated representative shall issue a ~~finding~~ findings of fact and final order within 30 calendar days of the receipt of the last argument filed.

DWD 294.05 (5)(c) If a timely appeal is not filed, the designated representative shall issue a ~~finding~~ findings of fact and final order within 20 calendar days after the appeal period expires.

SECTION 47. DWD 294.06 (title), (1), and (2) are amended to read:

DWD 294.06 (title) Notification to state agencies and ~~municipalities~~ local governmental units. (1) The department shall notify all state agencies and ~~municipalities~~ local governmental units of the names of all debarred contractors by providing them with a copy of the most current consolidated list available at the same time that the department issues a prevailing wage rate determination to them.

(2) ~~Municipalities~~ Local governmental units exempted from applying to the department for prevailing wage rate determinations, pursuant to s. ~~66.293 (3)(d)~~ 66.293 (6), Stats., and all state agencies shall be sent a copy of the most current consolidated list, ~~by first class mail,~~ at least quarterly, if any addition or deletion was made to the most current list.

SECTION 48. DWD 294.08 (title), (intro), and (note) are amended to read:

DWD 294.08 Disclosure of ownership of other construction business that failed to observe prevailing wage law. On the date a contractor submits a bid to or completes negotiations with a state agency or ~~municipality~~ local governmental unit, the contractor shall disclose the name of any other construction business which the contractor, or a shareholder, officer, or partner of the contractor, owns or has owned within the preceding 3 years only if both of the following apply:

Note: "Disclosure of Ownership," form ERD-7777, 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://www.dwd.state.wi.us/er/pdfforms.htm>.

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.