

**Publication Date:** December 29, 2008  
**Effective:** January 1, 2009 through May 30, 2009  
**Hearing Date:** February 12, 2009

**Department of Workforce Development - Equal Rights Division**  
**EMERGENCY RULE**

The Wisconsin Department of Workforce Development amends s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

**Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

**Statutes interpreted:** Sections 66.0903 (5), and 103.49 (3g), Stats.

**Explanation of agency authority.** The 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. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

**Summary of the emergency rule.** Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$45,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$221,000. This rule adjusts the thresholds from \$45,000 to \$48,000 for a single-trade project and from \$221,000 to \$234,000 for a multi-trade project based on a 5.71% increase in the construction cost index between December 2007 and December 2008.

**Summary of related federal law.** The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

**Comparison with laws in adjacent states.** Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. 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. 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 thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

**Anticipated costs incurred by the private sector.** The rule does not have a significant fiscal effect on the private sector.

**Effect on small business.** The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**Analysis used to determine effect on small business.** Many construction companies are small businesses. The adjustment of the thresholds for application of the prevailing wage and payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

**Rule Text**

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

**DWD 290.155 (1)** This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$45,000~~ \$48,000 and any multi-trade public works project for which the estimated cost of completion is below ~~\$221,000~~ \$234,000.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect on January 1, 2009, as provided in s. 227.24(1)(d), Stats.