

# Changes to Prevailing Wage Laws Benefit Wisconsin Developers

The recently enacted budget bill included several changes to Wisconsin's prevailing wage laws. Effective July 1, 2011, these changes narrow the scope of the prevailing wage laws by (1) repealing, or altering, many of the changes added to the laws by the prior budget, (2) adding specific exemptions to the prevailing wage laws, (3) prohibiting local governmental units from enacting local prevailing wage ordinances and voiding any such ordinances currently in effect and (4) decreasing the administrative burden for contractors subject to prevailing wage requirements.

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## **Background**

For many decades, Wisconsin has required local governmental units entering into public works contracts by direct negotiation or solicitation of bids to insure that the prevailing wage rate is paid to workers employed for the project. The Labor Standards Bureau of Wisconsin's Department of Workforce Development conducts an annual survey of wage rates paid to various construction trades. When a public works project is contemplated, the Labor Standards Bureau uses this survey to issue a determination as to the minimum wage rate to be paid to the various employees working on the public works project. It is generally acknowledged that the prevailing wage rate represents a wage closely approximating that paid to union workers as the computation formula weighs heavily in favor of the union wage rate.

The 2009 state budget bill included several provisions intended to expand the applicability of the prevailing wage laws. These 2009 provisions lowered the threshold for projects requiring payment of the prevailing wage rate to \$25,000 in total project costs and created a new class of project requiring the payment of the prevailing wage rate. The new class added to the prevailing wage laws was publically funded private construction projects. Publically funded private construction projects included any project that received \$1 million or more in governmental grants, loans, funding, or property transfers from a local government unit.

The 2009 changes resulted in increased costs and administrative burdens for private developers. Many developers and trade organizations argued that the



increased costs and burdens of the revised prevailing wage laws stifled economic development.

## **Current Changes**

The 2011 budget bill attempted to alleviate the negative effects of the 2009 additions to the prevailing wage laws by making the changes described below. The Department of Workforce Development has indicated that these changes will apply to projects on which the primary contract award date is on or after July 1, 2011.

### **Raises Thresholds**

The budget bill creates a tri-tiered threshold for the applicability of the prevailing wage laws. If the estimated cost of project completion is equal to or greater than the thresholds described below, prevailing wage rates must be paid on such projects. Any project of public works that uses a single trade for 85 percent or more of the work has a threshold of \$48,000. Any project of public works in which a single trade does not account for 85 percent of the work (a multiple-trade project), that uses a private contractor and is performed for a city or village with a population of less than 2,500 people, or a town, has a threshold of \$234,000. All other multiple-trade projects have a threshold of \$100,000.

### **Repeals Applicability to Publically Funded Private Construction Projects**

The applicability of the prevailing wage laws to publically funded private construction projects was repealed entirely. This removes one of the primary sources of concern for developers. The prevailing wage laws, however, remain applicable to projects that are completed by private developers and then dedicated or leased to, or acquired by, governmental units (subject to the thresholds described above and the specific exemption for most residential subdivision developments described below).

### **Eliminates Local Prevailing Wage Laws**

One of the most significant additions to the prevailing wage laws is a prohibition on local governmental units (e.g., counties, cities, villages, towns, local authorities, etc.) from enacting local ordinances requiring the payment of the prevailing wage



rate. Not only does this provision apply to future ordinances, it also voids any current ordinances requiring payment of prevailing wage rates.

## Adds Specific Exemptions

In addition to the broad changes discussed above, the budget bill also adds the following specific exemptions from the prevailing wage laws:

- Road, street, bridge, sanitary sewer or water main projects that are part of a development in which at least 90 percent of the lots contain or will contain two dwelling units or less. This exemption will apply to most work performed by residential subdivision developers.
- Minor maintenance performed by towns on roads, drainage or sewer facilities or other minor work on public facilities.
- Work for which the local governmental unit is not required to compensate any contractor, subcontractor, contractor's or subcontractor's agent or any other individual for performing the work.
- Certain nursing home projects in counties containing less than 50,000 people, provided the project commences no later than July 1, 2012.
- Projects on residential properties containing two dwelling units or less.

## Decreases Administrative Burden

The state budget bill also decreases the administrative burden associated with the prevailing wage program. Previously, every contractor on a prevailing wage project was required to submit a monthly certified record of its employees to the Department of Workforce Development. This requirement is no longer required for any months after June 2011. However, upon a request from a petitioner, the Department of Workforce Development may request similar records no more than once per quarter. While the 2011 changes to the prevailing wage laws are generally positive for developers, the implementation of the changes is likely to raise some questions. Developers and any other parties interested in these changes should contact their [Reinhart real estate attorney](#) with any such questions.

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