Prepare for prevailing wage rule changes

MORE LOCAL road construction projects in Wisconsin will need to meet prevailing wage standards starting in January 2010. That is when local governments must require contractors to pay the prevailing wage rate on projects with an estimated construction costs of $25,000 or more.

The lower threshold is part of a change in the state law governing prevailing wage rules. Other changes clarify what types of projects qualify under the new rules and establish an expanded payroll reporting process for contractors. New provisions extend the prevailing wage requirements to private projects that receive $1 million or more in public funding or where developers plan to dedicate infrastructure improvements to the local government.

Change in threshold

What is most significant for local road officials is the much lower $25,000 threshold for projects. Previous laws required public agencies to mandate that contractors meet prevailing wage on single-trade projects budgeted at $48,000 or more, and multi-trade projects at $234,000 and up. One trade accounts for 85 percent or more of total labor costs in a single-trade project. In multi-trade projects, no single trade equals more than 85 percent of labor costs. The previous rule generally did not affect road projects in small communities since many qualified as multi-trade and had costs below $234,000.

The revised law makes clear which projects fall under the wage rules, including major highway, street and bridge construction. Minor service and maintenance work, like pavement repairs with a projected life span of five years or less, are among projects that do not qualify.

Understanding wage rules

The state’s Department of Workforce Development (DWD) administers Wisconsin’s prevailing wages laws. DWD establishes wage determinations for each county based on an annual wage/benefit survey of construction and related industries. The law applies whenever state or local agencies solicit bids or negotiate contracts on construction projects that meet the threshold. Local governments that do business under ordinances or other conditions that set wages at or higher than the established wage determination rates are exempt from applying for wage determinations.

DWD’s Labor Standards Bureau Director Robert Anderson says the changes alter the state’s approach from a two-tiered system adjusted annually for inflation to a single $25,000 threshold that does not adjust for inflation. This makes the Wisconsin statutes similar to the single-threshold standard of federal prevailing wage laws. The federal government uses a $2,000 threshold that dates to the 1930s. Anderson adds that the Wisconsin changes also match federal reporting rules. “They are more consistent with how the U.S. Department of Labor credits payments such as fringe benefits, making it easier for contractors to follow a similar system since some projects are covered under both state and federal laws.”

Avoid liability

In 2010, the state plans to apply the new single threshold to projects with bids issued after the first of the year. For projects in negotiation, DWD will impose the revised prevailing wage rule on projects that have a signed contract or other proof of agreement made after January 1.

State and local government units are responsible for meeting the wage laws according to the steps outlined here:

- Determine if project qualifies for a wage determination

For projects contracted locally but funded by federal dollars, he says both state and federal prevailing wage laws apply. Where the rates vary, the project is required to pay the higher of the two rates.

The lower $25,000 threshold means more local road projects will need to meet Wisconsin’s prevailing wage standards.
DNR creates single points of contact

THE WISCONSIN Department of Natural Resources recently designated a network of Transportation Liaisons to act as “single points of contact” for local units of government seeking information on approvals needed to build, reconstruct or maintain local roads.

According to Cameron Bump, Statewide Transportation Liaison for the DNR, the Local Roads Initiative responds to requests from counties, cities, towns and villages for a process that makes it easier to find answers and keep projects moving forward. Twenty liaisons familiar with road construction and safety issues are located throughout the state, each person serving local agencies in multiple counties.

The Transportation Liaisons, who have experience working with WisDOT on state highway projects, will help local street and road officials determine if a project requires DNR approvals, which permits and approvals to get and whether a specific activity involves approvals from other state or federal agencies. Activities that might require permits/approvals include:

- Bridge and culvert replacements
- Repairs to flood-damaged roads
- Road reconstruction or rehabilitation
- Ditch cleaning, shoulder widening and maintenance
- New roads, expansions or realignments

Improved process

Besides Designating a one-stop source for information, Bump says the program debuts an improved review process. “We are tailoring it to be more relevant to transportation projects,” he notes. “This involves asking the right questions, updating our forms and the directions for permit applications.”

The goal is to simplify the approach to approvals and keep it consistent with the rules on minimizing environmental impact. Existing laws and permit fees still apply. But now local road officials have direct access to a single individual who can handle the majority of approval-related issues or get answers from other DNR experts.

Bump suggests local governments contact the Transportation Liaison about state approvals in the early planning stages of a road project. This gives local agencies and the DNR a chance to identify and resolve potential regulatory issues before spending scarce local resources.

Local road officials also can research environmental considerations that govern the standard conditions for bridge and culvert replacements under Trans 207. Culverts: Proper Use and Installation, a fact sheet available free from the Transportation Information Center, reviews the planning and technical aspects of culvert design and construction, and permit requirements.

Working together

Bump notes that local roads projects are where a single point of contact can make a difference. “Getting to know the people in local agencies is important to this effort,” he adds. “It is another practical step toward providing improved customer assistance to local governments.”

Local officials can find out more about the Transportation Liaison serving their county on the DNR website (see Resources, left).

Sign retroreflectivity: on the road to compliance

ED. NOTE: The new minimum retroreflectivity standard for highway signs adopted by the Federal Highway Administration (FHWA) is two years into a three-tier, phase-in period that requires public agencies to implement sign management or assessment methods, and systematically replace signs that do not meet requirements. Participants at Transportation Information Center (TIC) sign retroreflectivity workshops last fall offered a snapshot of how local street and highway departments in Wisconsin plan to apply the standards. TIC instructor Don Walker reviews the requirements and what he learned.

OVER 400 LOCAL AGENCY officials took time to learn about the new highway sign nighttime visibility requirements at a series of TIC workshops in September. Initially, many expressed frustration over having to meet additional requirements at a time when they have limited resources. Results from surveys conducted before and after each workshop provide insights into current practice and plans to meet the requirements.

Only 12 percent of agencies that attended the workshops are conducting organized, documented night sign inspections although the method has been part of MUTCD (Manual on Uniform Traffic Control Devices) guidance for more than 50 years. On the positive side, 86 percent selected a method for future inspection, and learned about the benefits of a sign inventory and how to evaluate the new sheeting materials.

Standard resets requirement

MUTCD always required that most signs be visible at night. Following extensive research, the new standards define the minimum level of retroreflectivity for each sign color. The regulations call on highway agencies to develop procedures that ensure their signs meet the new requirements.

While it may be obvious during the day that some signs are in poor condition, the only way to be sure of good nighttime visibility has been to do a night inspection. New equipment is available to measure daytime sign retroreflectivity. Since the equipment is expensive and the process labor intensive...
track expected sign life

Another strategy is to follow a management method of replacing signs when they reach the end of their useful life. This entails knowing expected sign life for each sheeting type and color, and having a way to track the life of installed signs. This method eliminates the labor requirements for night inspections and, as information about sign life for each color and type of sign sheeting is more widely available, it becomes an easy and efficient approach. Many agencies now mark the back of signs with the installation date to help track sign life.

About 35 percent of workshop participants plan on using a combination of sign assessment and management methods to meet the new requirements. The TIC and FHWA publications weigh the advantages of each approach.

A sign inventory helps keep track of sign life, condition, and anticipated replacement timelines. There are computer-based systems on the market. See articles in Crossroads Spring 2007 and Spring 2008 for information on this topic. Local agencies also can develop their own simple manual system.

new materials

Sign sheeting materials have changed significantly in the past few years. Engineering grade was the standard for many years and nearly 50 percent of workshop participants report using it. Newer products, often called high intensity, have begun to replace engineering grade for locations that require better nighttime visibility.

Many state and local agencies are choosing high intensity prismatic sheeting material for new signs, motivated to switch by the material’s longer life and brighter nighttime visibility. Comments from the September workshops demonstrate this fact.

act to meet requirements

Federal or state programs have helped local governments pay for sign inventories and sign replacement in the past. There are no programs currently available to assist with the upgrades and no plans to introduce any new ones.

Key dates and steps related to the new requirements begin in January 2012, by which time each agency must select and implement the specific sign assessment or management methods. By 2015 critical sign types must meet the specific retroreflectivity values outlined in MUTCD. Road name signs must meet them by 2018.

It has always been important that signs on local roads be visible at night. This requires that they meet retroreflectivity standards, but also that signs are installed properly and unobstructed by overgrown brush and trees, ensuring road users a clear view of the signs day or night.

management methods guide WisDOT sign program

The Wisconsin Department of Transportation follows the three management methods set out in the new FHWA minimum retroreflectivity standard in its highway sign monitoring and replacement program: expected sign life, blanket replacement and control signs.

Matt Rauch, State Signing Engineer with WisDOT, says bringing all traffic signs into compliance is a huge task at both state and local levels. He adds, “Unless you set clear priorities, where do you start?” The starting point for WisDOT is to assess sign life on critical signs first—regulatory, warning and school safety signs—and tackle guide signs next. The state also is aggressive about including replacement signs on most road improvement projects. WisDOT uses prismatic high intensity sheeting or better for all new signs. As part of a control signs project, the department runs performance tests on a variety of prismatic products to measure their retroreflective durability. Rauch and others take readings every six months on a group of signs installed at an outside test deck that mirrors field conditions. In its early stages, Rauch expects the project to provide valuable comparison data on the different sign materials and support a safe and cost-effective sign replacement program.
NR40 sets new parameters for limiting the introduction and spread of invasive species in Wisconsin.

Best practices target invasive species

BEFORE HE JOINED with other transportation officials in an effort last year to evaluate effective ways of controlling the proliferation of invasive plants along Wisconsin roadways, Alvin Geurts saw this vegetation as part of a homogeneous landscape—wild growth to tame with periodic mowing. “When I drive along the county roads now, I recognize specific invasive species at a glance,” says the Outagamie County Highway Commissioner. “I can see how they crowd out native plants and how extensive the problem is.”

The eye-opener for Geurts was his participation in a working group assembled by the Wisconsin Council on Forestry to develop a Best Management Practices (BMPs) manual that supports a new program to identify, classify and control the spread of invasive species along transportation and utility corridors. The group included officials from towns, counties, utility companies and the Wisconsin Department of Transportation (WisDOT).

NR40 sets new parameters

The program is based on NR40, a state administrative rule that went into effect September 2009. NR40 establishes classification of invasive species and regulates certain categories of plants. The BMPs identify measures that ROW (right-of-way) managers can take to minimize the introduction and spread of invasive plants by applying maintenance resources effectively. A growing concern for more than 20 years, experts point to invasive species as a threat to ecological balance and the economic value of Wisconsin’s lands and water.

Kelly Kearns, Plant Conservation Program Manager for Endangered Resources at the Wisconsin Department of Natural Resources (DNR), says NR40 sets new parameters for limiting the introduction and spread of invasive species in Wisconsin. It classifies certain species as prohibited (defined as not established in the state or present in limited numbers) or restricted (widespread presence) and regulates their “transport, possession, transfer, and introduction.”

Kearns and DNR Forestry Invasive Plants Coordinator Tom Boos will present a section on NR40 and the BMPs at the Transportation Information Center “Road Maintenance” workshops in March. They plan to introduce the rule and discuss how local ROW managers can apply the recommendations. See Calendar listing on page 8 for information on workshop dates and locations.

Delaying enforcement

Although NR40 includes enforcement, Kearns says the DNR does not intend to issue citations in the first season. “Our focus is to circulate information about the rule and the best management practices by conducting workshops around the state and making ourselves available to answer questions,” she explains. “It’s important to educate people about identifying the plants on the list and what actions they can take to control them.”

To assist, the DNR is producing a detailed reference book with facts and photos about the plants on the NR40 list. The book, A Field Guide to Terrestrial Invasive Plants in Wisconsin, will be available to ROW managers statewide.

Boos says it will take time for everyone to adapt to the changes. He envisions the transportation right-of-way recommendations becoming routine practices in most road maintenance operations. “ROW managers are major players here,” he observes. “They are in a position to help us minimize the spread of plants statewide that have a negative impact on our natural resources.”

Cost considerations

The rule asks land managers to take “reasonable precautions” to protect against the spread of invasive plants and the BMPs describe practices they can adapt to different needs and resources. The main recommendations involve mowing plants before they flower, not planting known invasive plants and cleaning equipment after use to avoid introducing plant material to other areas.

Geurts of Outagamie County says cost could be an obstacle to implementation as local budgets get tighter. But he feels it is possible for local governments to keep costs in check while adopting best practices. “We’re not being asked to do anything excessive but to improve on what most of us are already doing.”

Another member of the BMP working group, Wisconsin Towns Association Executive Director Richard Stadelman, underscores Geurts’ point by emphasizing that the goal of the program is to control the spread and introduction of invasive species, not eradicate them.

Stadelman says it will be a challenge to identify specific invasive plants as part of a maintenance program, but the key is to strike a balance that also controls costs. “If maintenance managers concentrate initial efforts on the highest priority species, they have a chance to test the best practices while they keep roads passable and safe. It’s a good place to start.”

According to Boos, safety was a key concern in developing the recommended control practices for vegetation management. The mandate to maintain safe sight distances remains paramount even as ROW managers modify their approach in other cost-effective ways following NR40 principles.

WisDOT role important

Gary Birch, an ecologist with the WisDOT Division of Transportation Development, says the department is reviewing the impact of NR40 on its policies and mowing directives for state highways.

WisDOT also is working with the DNR to create programs on invasive species management for use around the state. Birch hopes to circulate the DNR Field Guide at future workshops, part of “a monumental effort” to help road maintenance managers and crew members recognize problem plants and what methods to use, when.

A concern raised by counties is whether NR40 will affect WisDOT’s directive authorizing one mowing per season on the roads they maintain for the state. Mowing plants before they flower is the most common and effective method for controlling invasive species.

A mowing guide in the BMP manual designates early summer as the time to mow most species, timing at odds with the current state directive to mow once at the end of summer. Birch says it is unclear if WisDOT will adopt an earlier time in response to the new rule or ask counties to choose the best single time for controlling species in their area.

Another WisDOT priority is to find a way to pay for any added costs that come with implementation of NR40 in their contracts with the counties. Daunting as it seems, Birch points out these standards are long overdue and important to how the state moves ahead on an important issue.

Counties and towns together

County highway departments will play an important role in applying the new rule since they maintain rights-of-way on both county and state trunk highway systems and do the same for many townships. Geurts hopes to provide area towns and villages with information on NR40 and how to identify and control the spread of plants on the list. “Outreach is important in helping all of us understand the negative impact of invasive species and the need for an effective management program,” he says.

Use available tools

The DNR views NR40 as a critical response to the significant change in vegetation that has occurred across the state over the past decades. The department encourages local governments to learn about and use the tools available to minimize the spread of damaging plant species. Kearns and Boos report that feedback from participants in an early NR40 training session showed many land managers recognize the invasive plant problem and want to know how to address it through reasonable measures.

By going to the DNR website, local street and highway officials can get more background on NR40, information about future training opportunities and a link to download a PDF copy of the Field Guide.

Field Guide breaks new ground

A Field Guide to Terrestrial Invasive Plants in Wisconsin features text and pictures of each plant to help land managers identify prohibited and restricted plants targeted by Wisconsin’s new identification, classification and control rule. The publication includes maps that show the current range of individual species, an overview of control methods and links to additional resources. Published by the Wisconsin DNR, the Field Guide breaks new ground with its comprehensive review of Wisconsin’s terrestrial invasive plants.


The mandate to maintain safe sight distances remains paramount even as ROW managers modify their approach in other cost-effective ways following the principles of NR40.
Many public agencies will see the impact of the new rules in higher overall project costs and, for some, cutbacks in the number of projects they undertake.

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Prepare for prevailing wage rule changes

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based on estimated cost of completion and project type.

- Request rate determination at the DWD website.
- Incorporate prevailing wage rate into project specifications before putting the project out for bid or contracting with a vendor.
- Post prevailing wage determination at job site or another appropriate public place.
- Obtain affidavit of compliance from all contractors when they complete their work.

Anderson explains that contractors with collective bargaining agreements—including local governments contracting services to other local governments—that meet or exceed the wage rate can submit a copy of the labor contract in place of monthly payroll reports. When one group among multiple trades has a contract that pays below the rate, contractors must pay those workers prevailing wage regardless and submit payroll reports on the trade every month.

Curt Witynski, Assistant Director of the League of Wisconsin Municipalities and an attorney, cautions about the risk of liability local governments face if bid documents omit a clear statement of prevailing wage requirements. He explains, “The municipality could be held liable for back wages if a contractor’s employee registers a complaint about not being paid at the correct rate.”

Impact on local projects

Many public agencies will see the impact of the new rules in higher overall project costs and, for some, cutbacks in the number of projects they undertake. Stadelman and others anticipate the extra planning and paperwork will put new demands on towns and villages with fewer operational resources. WTA plans to offer programs about how to work with the new rules at its upcoming district meetings.

Even local governments exempt from pulling individual determinations on all projects feel the pinch. The City of Eau Claire operates under a local ordinance adopted in 2001 that requires contractors on all public works projects and those receiving city financial assistance to meet pay scales equal to state prevailing wage rates, including projects budgeted below current thresholds.

Eau Claire Director of Public Works Brian Amundson uses the DWD wage determination for Eau Claire County in all public works bidding. He notes the change in threshold will not affect the process he follows, but other requirements exceed resources. For example, while Amundson’s staff receives and files the weekly wage rate reports, they do not have the time or expertise to monitor compliance frequently during the course of a project.

Help from counties

Wisconsin counties also see more work ahead, like having to request wage determinations more often before bidding projects out. One advantage for larger agencies is more experience with the process, which means they can be a wage rate resource for smaller agencies. Barron County Highway Commissioner Mark Servi says although his department self-performs most projects, they file for determinations often enough to guide others in how to manage the process. He plans to assist public officials in the county’s towns and villages in dealing with the wage rate requirements. Servi anticipates that 95 percent of projects they contract will qualify now for prevailing wage in contrast to the majority that did not meet the threshold before. “Part of our role is to help towns adapt,” he says.

Servi will provide training on the topic at regular meetings of county and town officials. He recommends that local governments submit rate requests early in the bid cycle to avoid the rush.

Ron Chamberlain, Highway Commissioner for Adams County, anticipates seeing another layer of paperwork for projects contracted between counties. He also plans to help any local towns that are leery of the change.

Chamberlain suggests that the rule revisions alter expectations in how every local government manages existing resources, not only the paperwork. “There’s a learning curve ahead for all of us. It’s not insurmountable, but it is a challenge.”

Greater workload for DWD

Changes in the prevailing wage laws increase the number of requests to DWD. Witynski and Chamberlain both express concern about whether the department can handle the
greater workload, including the many questions from public agencies new to the rules.

DWD acknowledges the potential for a backlog given its own belt tightening. Anderson says they are taking steps to manage the workload and describes plans to have a system for electronic filing of requests in operation by mid-2010. The rule changes that require contractors to submit monthly certified payroll reports that are then posted on the DWD website will create greater transparency and better compliance.

Look for resources

Information about the changes to Wisconsin’s prevailing wage laws and the process for complying is available to local governments from the DWD website, see link below. Organizations can find background there on the wage rules, instructions and forms for requesting a determination and the facts they need to know about contractor compliance.

County highway departments are a potential source of informal guidance for local road and street officials. Training opportunities with WTA or other groups also provide opportunities for learning more about incorporating prevailing wage in local projects.

Resource

http://dwd.wisconsin.gov/prevailing_wage_rate/

Wisconsin Department of Workforce Development has links to a summary of wage law changes, the application process and other useful information.

Print copies of publications listed here available free from TIC. Download or request items at Publications on TIC website. Video, CDs, and DVDs loaned free through county UW-Extension offices. Also see the Video Catalog on TIC website.

TIC website
http://tic.engr.wisc.edu/

Publications

Culverts: Proper Use and Installation TIC Bulletin #15, 12 pp., 2004. Available from TIC. Information on planning and permit requirements, culvert types, design issues and installation.


Web Sources

U.S. Department of Labor link to federal wage determinations required on federally funded or assisted construction projects. http://www.gpo.gov/davisbacon/

Invasive Plants Association of Wisconsin reports news about the status of invasive species in Wisconsin. Includes contact information for regional Cooperative Weed Management Areas available to help ROW managers identify priority areas for invasive plants. http://www.ipaw.org/

Midwest Invasive Plants Network site has extensive information about resources available on invasive plants. www.mipn.org

DVD/VHS/Multimedia

Culverts: Not Just Something to Pass Over!, UW-Extension, 2002, 20 min., #19007 in DVD. Reviews culvert planning, design and installation with facts on environmental impacts, erosion and durability. Good overview for the public and elected officials.

Sign Retroreflectivity Guidebook and Toolkit, FHWA-CFU/09-005. New guidebook and CD toolkit from FHWA targets smaller agencies with information on implementing a retroreflectivity maintenance program. Includes step-by-step approach, inspection procedures and budget estimating tool. Learn more at this link: http://safety.fhwa.dot.gov/roadway_dept/night_visib/
TIC Workshops
Details, locations and registration forms are sent to all Crossroads recipients prior to each workshop. Additional information and online registration at:
http://tic.engr.wisc.edu/workshops/listing.lasso

Road Maintenance
Learn to recognize problems early and apply proper methods to stretch budgets and maintain good local roads, streets and highways. Includes review of new regulations for stopping the spread of invasive species and how to incorporate efforts into ROW maintenance operations.
Fee: $60
Mar 11 Barneveld Mar 17 Hayward
Mar 12 Pewaukee Mar 18 Tomahawk
Mar 15 Tomah Mar 19 De Pere
Mar 16 Eau Claire

On-Site Workshops
Save time and travel costs by bringing instruction to your shop or office. Schedule training that is convenient and tailored to your specific needs. On-site workshops let you train more people for the same cost or less. Include staff from other municipal departments, nearby communities, or businesses you contract with. Contact TIC to book the program and date you want. On-site workshops include:
- Basic Surveying for Local Highway Departments
- Basic Work Zone Traffic Control
- Flagger Training

Independent Study
Project Management 100: The Basics, Plus Important Insights #K205 Enroll Anytime

On-Site Workshops
Presented at eight locations in early April. Fee: $60
Mar 23 Barneveld Apr 1 De Pere
Mar 24 Waukesha Apr 6 Eau Claire
Mar 30 Tomah Apr 7 Hayward
Mar 31 Stevens Point Apr 8 Tomahawk

UW-Madison Seminars
Local government officials are eligible for a limited number of scholarships for these Engineering Professional Development courses held in Madison. Go to http://epd.engr.wisc.edu or 800-462-0876 for course details.

JANUARY 2010
19-20 Maintaining Asphalt Pavements #L030
21-22 Improving Public Works Construction Inspection Skills #L034

FEBRUARY 2010
2-3 Soil Engineering for Roads and Pavements #L275
4-5 Pavement Thickness Design #L277

APRIL 2010
6-7 Municipal Engineering Fundamentals for Non-Engineers #L043
8-9 Developing and Implementing Effective Municipal Capital Improvement Plans #L044
19-20 Comprehensive Practices for Effective Construction Management #K034
21 Principles and Practices of Construction Project Scheduling #K035
22-23 Principles and Practices of Estimating for Construction and Design Professionals #K036
26-28 Effective Roadway Lighting #L343

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