



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: March 08, 2019

TIME: 3:52 PM

WSR 19-07-014

Agency: Department of Labor and Industries

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) 3/11/2019

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: This emergency rulemaking will amend Chapter 296-127 WAC, Prevailing Wage, to provide a new scope of work specific to landscape maintenance that is separate and unique from landscape construction. Under the emergency rule, the Landscape Maintenance Worker scope of work description is work involved in the tending to and maintenance of a previously beautified plot of land. A description of specific activities that may be within the scope and activities that are not included in the scope are listed in the rule.

Citation of rules affected by this order:

- New: WAC 296-127-01345
- Repealed:
- Amended:
- Suspended:

Statutory authority for adoption: chapter 39.12 RCW

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: 2018's Substitute Senate Bill 5493, effective June 7, 2018, revised RCW 39.12.015. Under the new law, the department is directed to "establish the prevailing rate of wage... established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements." Where no collective bargaining agreement (CBA) exists, the department is to conduct wage and hour surveys. Other methods may be used where a survey is not sufficient.

The department implemented SSB 5493 in the prevailing rates published on August 1, 2018. As a result of the new law, the rates for Landscape Construction ("Landscape Laborer") significantly increased. On February 25, 2019, the department received a petition from the Association of Washington Cities (AWC) to create a separate landscape maintenance scope of work. Due to the increase in costs, cities are deferring or eliminating necessary maintenance to keep public areas safe, including: preparing parks, athletic fields, trails and other recreational facilities for the spring and summer season; maintenance of critical vegetation on stormwater facilities like retention ponds; and storm related clean-up to remove dangerous debris from public spaces. Lack of adequate maintenance will result in unsafe facilities creating risks to the public and liability concerns for cities. The department has also heard from companies who contract with cities to do landscape maintenance work with concerns that contracts are not being renewed and workers will be laid off as result.

Under WAC 296-127-013, scope of work descriptions may be issued by the director or designee to determine the applicable prevailing wage and are created using authoritative sources including: apprenticeship standards; CBAs; dictionaries of occupational titles; experts from organized labor, licensed contractors, and contractors' associations; and recognized labor and management industry practice. Under WAC 296-127-01346, the introductory paragraph of the Landscape Construction scope of work description is work involved in the beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc. Upon review of the scope of the work, the department determined that

the separate scope for Landscape Maintenance Worker is appropriate. Based on information from the AWC and contractors, the rules meet the criteria for emergency rules as needed for the preservation of public health, safety, or general welfare.

The department is also filing a Preproposal Statement of Inquiry (CR-101) to initiate permanent rulemaking.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: March 8, 2019

Name: Joel Sacks

Title: Director

Signature:

