

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Espinoza **ORIGINAL DATE** 1/27/16  
**LAST UPDATED** 2/1/16 **HB** 200/aHBEC

**SHORT TITLE** Public Works Prevailing Wage & Projects **SB** \_\_\_\_\_

**ANALYST** Klundt

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	(\$37.3 million possible reduction in costs)	(\$37.3 million possible reduction in costs)	(\$37.3 million possible reduction in costs)		Recurring	GF,STB, SSTB, Local GOB, SB9, HB33 & Other

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)  
 Department of Transportation (DOT)  
 Administrative Office of the Courts (AOC)  
 Public School Facilities Authority (PSFA)

### SUMMARY

#### Synopsis of HBEC Amendment

The House Business and Employment Committee amendment to HB 200 provides clarifying language. First, the amendment states that the exemption set forth in HB 200 applies to public roads and public highways as defined in NMSA 1978, § 67-2-1. Second, the amendment provides that projects and contracts for facilities of school districts, state chartered charter schools, post-secondary educational institutions and state educational institutions identified in Article 12, Section 11 of the constitution of New Mexico are not covered under state prevailing wage law.

Synopsis of Bill Original Bill

HB 200 proposes to make three changes to the method for calculating the prevailing minimum wage and fringe benefit rates to be paid on public works projects subject to the Public Works Minimum Wage Act. First, HB 200 calls for the Director of the Labor Relations Division of the Department of Workforce Solutions to conduct a continuing field survey and to accept voluntary submissions of information from interested parties. Based on the field survey, the Director would set the wage and fringe benefit rate for a particular classification as the weighted average of the hours reported for that classification or the classification most similar. Second, HB 200 caps prevailing wage and fringe benefit rates at the rates of the Federal Davis-Bacon Act. Third, HB 200 exempts projects and contracts for public roads and educational institutions from the Public Works Minimum Wage Act.

**FISCAL IMPLICATIONS**

This bill proposes to exempt projects and contracts for public roads and educational institutions from the Public Works Minimum Wage Act which was amended in 2009 but recently was implemented in September 2105 due to previous litigation. WSD currently issues wage rate decisions for all projects subject to the Public Works Minimum Wage Act.

Based on the current statute requirements using collective bargaining agreements, wage rates were issued by the Director for January 2016 through July 2016. PSFA estimates that the increase in wages and fringe benefits paid on public works projects under this bill could be up to 22.6 percent for Type “B” – General Building classification of construction with up to a 30.2 percent increase for Type “A” – Street, Highway, Utility & Light Engineering work. If HB 200 is enacted, public works projects under this bill would see a considerable reduction in wages and fringe benefits costs on all PSFA projects. The total fiscal impact of these changes is not currently known but it may be assumed to be a significant reduction in labor cost. PSFA estimate that on PSCOC project, up to \$17.3 million could be avoided in FY16 if wage rates were based on field surveys versus collective bargaining agreements.

NMDOT estimates the setting of prevailing wage rates based solely on collective bargaining agreements under the 2009 version of the Public Works Minimum Wage Act will have a direct impact to the cost of highway and infrastructure construction projects. As a result of the 2009 version of the Act, there is an overall increase in state wage rates of 30 percent based on average construction project labor costs, which NMDOT estimated to result in an overall increase of 3.25 percent to the entire program. Based on the 2015-16 active construction program, implementing the 2009 version of the Act will result in an increase of \$20 to \$22 million to the ongoing cost of highway construction.

Fiscal assumptions of additional operating budget impact represent a conservative estimate and could increase as other public works projects are evaluated.

**SIGNIFICANT ISSUES**

This bill proposes to exempt projects and contracts for public roads and educational institutions from the Public Works Minimum Wage Act. WSD currently issues wage rate decisions for all projects subject to the Public Works Minimum Wage Act. For FY14, WSD issued wage decision for 1,822 public works projects covering \$1.9 billion. In FY15, WSD issued wage decisions for

1,878 public works projects covering \$1.8 billion total costs. WSD estimates the exemption proposed in HB 200 would have resulted in 806 projects, amounting to approximately \$1.2 billion, which would not have been subject to the prevailing wage. The exemption would have applied to approximately 44 percent of all New Mexico public works projects. In FY15, WSD estimates 944 projects would have been, amounting to approximately \$1.1 billion, which would not have been subject to the prevailing wage.<sup>1</sup> Thus, in FY15, the exemption would have applied to approximately 48 percent of projects.

In 2015, the Labor Relations Division Director announced prevailing wage and fringe benefit rates that significantly increased from the previous years. The increase in rates was the result of the State Supreme Court's ruling that rates be set at the same rates as those set forth in collective bargaining agreements. The Director's past practice was to conduct a field survey that was inclusive of not only collective bargaining agreements, but also other voluntary submissions of information such as hours worked and rates paid for particular classifications of workers. WSD reports the inability to consider information outside of collective bargaining agreements meant that the actual market for wages and fringe benefit rates were underrepresented, impacting the agency's ability to ascertain a true prevailing wage.

WSD also notes that the Federal Davis-Bacon and Related Acts mandate prevailing wage and fringe benefit rates for projects involving Federal funds. The agency believes this bill would not interfere with or undermine the Federal Davis-Bacon and Related Acts. Moreover, HB 200 proposes to treat Davis-Bacon rates as the maximum rates on projects subject to New Mexico's Public Works Minimum Wage Act.

NMDOT reports the fiscal impact is based on HB 200's application to all 32,000 lane miles of roadway, which make up the state highway system, NMDOT could anticipate a program savings equal to the increase realized under the 2009 version of the Act.

Additionally, NMDOT has oversight authority over some local government road projects ("local government projects"), for example those associated with the Local Governments Road Fund. NMSA 1978, Section 67-3-28. Assuming HB 200 applies to all 66,965 lane miles of roadway certified by counties and municipalities annually, NMDOT anticipates a similar program savings for the ongoing cost of road construction to those local government projects.

## **PERFORMANCE IMPLICATIONS**

PSFA states decreases in construction costs as provided by this bill could increase the number of awards made by the PSCOC to bring schools to the statewide adequacy standards and resulting reduction of the overall facility condition index of public school facilities throughout the state.

## **ADMINISTRATIVE IMPLICATIONS**

WSD reports the agency does not currently have the Information Technology systems in place to compile prevailing wage and fringe benefit rate information gathered through the survey process required by HB 200; however, the agency anticipates a system can be developed with existing resources.

---

<sup>1</sup> The figures expressing the amounts of expenditures exempted by HB200 do not account for the impact on cost that the HB200 exemption would have had.

## RELATIONSHIP

HB 110 proposes to exempt projects performed outside of Class A counties from the Public Works Minimum Wage Act.

## TECHNICAL ISSUES

HB 200, as amended, specifically excludes contracts and projects for “public roads.” NMDOT notes that the statutory interpretation of “public roads” does not necessarily include, and is distinct from, the term “highways.” “Public road” is a more limited term. “Public highway” is defined to include “roads and highways ... and *public roads*...”, the latter referring to roads dedicated to public use or otherwise recognized by county or municipal authority. See NMSA 1978, § 67-2-1, emphasis added. Federal definitions of “highway” and “public roads” also support the interpretation that use of “public roads” does not necessarily include highways. See 23 U.S.C. §101(a) (11) (defining “highway” to include roads, streets, as well as bridges and appurtenant facilities) contrasted with 23 U.S.C. §101(a) (21) (defining “public road” as any road or street under public authority). As drafted, NMDOT highway projects which are not associated with public roads would not be exempted from prevailing wage and fringe rates. (See Amendments below, which reflects intent to exempt the broader category of public highways.)

The AGO suggests adding a definition for “educational institutions”.

## OTHER SUBSTANTIVE ISSUES

The federal Davis-Bacon Act requires that prevailing wages be paid on federally funded public works projects, such as construction, repair or alteration of public buildings, or construction of public roads or bridges. The federal law sets a minimum threshold of \$2,000, meaning if a public works contract is for an amount in excess of \$2,000, then prevailing wages must be paid. States must abide by the Davis-Bacon Act when federal funds are involved in public works projects within the state.

This bill would allow the prevailing wage and benefit rates to be determined by wage rate and fringe benefit field surveys and input from other sources rather than collective bargaining agreements between “labor organizations and their signatory employers and union contractors.” PSFA notes it is reported that over 90 percent of construction workers in New Mexico are nonunion.

Eighteen States do not have prevailing wage laws. These States are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Virginia.

The AGO notes this bill excludes two categories of public works projects from the statutory prevailing wage rate structure and instead authorizes WSD discretion in setting such rates. The AGO raised concerns for the potential for inconsistent execution in this discretion.

**AMENDMENTS**

To include public highways in the proposed prevailing wage exemptions, NMDOT suggests the following change to Section 13-4-11 (B), page 4, lines 3 -5:

B. The provisions of the Public Works Minimum Wage Act shall not apply to contracts and projects for public highways, as defined in Section 67-2-1 NMSA, public roads and educational institutions.

KK/al/jle