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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>HB20</u>	Sponsor	<u>Rehm</u>
Tracking Number	<u>.205347.1</u>	Committee Referrals	<u>HTPWC/HLEDC/HJC</u>
Short Title	<u>Public Works Prevailing Wage & Projects</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/6/17</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

House Bill 20 (HB20) amends the Public Works Minimum Wage Act, Section 13-4-11 NMSA 1978, to eliminate collective bargaining agreements as the basis for computing minimum wage on construction projects for roads and educational institutions. HB20 requires the Labor Relations Division Director of the Department of Workforce Solutions (DWS) to determine prevailing wage and fringe benefit rates for public works contracts over \$60 thousand through utilization of a statewide survey to compile wage and fringe benefit rate information by voluntary submission from interested parties, such as contractors and labor organizations. This method of determining prevailing wage and fringe benefit rates will be used in lieu of collective bargaining agreements between “labor organizations and their signatory employers and union contractors” for contracts and projects for public roads, public highways, facilities of school districts, state-chartered charter schools, postsecondary institutions, and state educational institutions. Prevailing wage and fringe benefit rates must not exceed project rates covered by the federal Davis-Bacon Act.

FISCAL IMPACT

HB20 does not contain an appropriation, but would have a fiscal impact on public works projects included in this bill by establishing prevailing wage rates and therefore labor costs. HB20 eliminates collective bargaining as the basis for prevailing wage calculations; this may be assumed to have a significant impact on overall project costs.

The Public School Facilities Authority (PSFA) estimated potential cost savings on all Public School Capital Outlay Council (PSCOC) funded projects if HB20 is enacted. The total fiscal impact is unknown but it may be assumed to be a reduction in labor costs. A similar bill in Ohio saw the costs of school projects decrease on average between 5 percent and 10 percent. Also, Maryland determined a decrease of between 11 percent and 14 percent through comparison of educational projects excluded from prevailing wages. This would likely result in decreases in construction costs, potentially making limited supplemental severance tax bond revenue

available for additional public school capital outlay projects. PSFA also noted that over 90 percent of construction workers in New Mexico are non-union.

The Department of Transportation (DOT) estimates current prevailing minimum wage rates are on average 30 percent higher than those mandated by the Davis-Bacon Act, therefore, HB20 would decrease average minimum wage rates and labor costs by 30 percent based on the published wage rates through the Davis-Bacon Act. As applied to the DOT construction program, this would result in a 3.25 percent decrease in program costs. DOT reported that HB20 will result in a decrease of \$20 million to \$22 million based on 2017-2018 active construction projects.

DWS issues wage rate decisions for all projects subject to the Public Works Minimum Wage Act. If HB20 was passed, the amount of public works projects requiring wage decisions would significantly decrease. Applied to FY16, HB20 would result in 874 fewer projects (about 49 percent of all New Mexico public works projects), which would not have been subject to the prevailing wage. For FY15, 944 projects would have been exempted under HB20 (about 48 percent of all projects).

SUBSTANTIVE ISSUES

In 2009, Senate Bill 33 (Laws 2009, Chapter 206) changed the annual wage survey process to allow the Labor Relations Director of DWS to set prevailing wage rates for public works projects using collective bargaining agreements. Prior to 2009, the director conducted an annual wage survey using voluntary data submission from contractors to set wage and fringe benefit rates.

HB20 would reinstitute the methodology for calculating prevailing wage and fringe benefit rates that existed prior to 2009. Despite SB33, no prevailing wage rates were set using collective bargaining agreements until the New Mexico Supreme Court issued an opinion requiring the director to comply with the law. The New Mexico Building and Construction Trades Council, along with union representation, petitioned the Supreme Court in early 2011 to require DWS to set rates in accordance with collective bargaining agreements. In June 2011 the Court gave the Secretary of DWS “four or five months to set prevailing wage and prevailing benefit rates under the act as amended in 2009.” However, DWS failed to comply, and again the council and affiliated unions filed a petition with the Supreme Court seeking to force DWS to set prevailing wage and fringe benefit rates by collective bargaining as established by the 2009 legislation. In 2015, the New Mexico Supreme Court ordered DWS to comply and DWS set rates based on collective bargaining agreements.

According to DWS, in 2015 New Mexico’s prevailing wage and fringe benefit rates increased dramatically over previous years due to the states’ Supreme Court ruling. Previously, it was the practice of DWS’s Labor Relations Division Director to conduct a field survey that was inclusive of not only information in collective bargaining agreements, but also other voluntary submissions of information such as hours worked and rates paid for particular classifications of workers. DWS notes not being able to consider information other than rates used in collective bargaining agreements means that the actual market for wages and fringe benefit rates is ignored.

ADMINISTRATIVE IMPLICATIONS

According to DWS, the agency does not have an information technology system in place to compile the prevailing wage and fringe benefit rate information gathered through the survey process as required by HB20. No cost estimate to build the IT system was provided.

OTHER SIGNIFICANT ISSUES

The Davis-Bacon Act requires workers on federally funded public works projects to be paid no less than locally prevailing wage and fringe benefits for corresponding work on similar projects in the area. The federal law applies to public works contracts over \$2,000. The local prevailing wage is determined by the U.S. Department of Labor through surveys of wages paid in those occupations in surrounding areas, so wages reflect the local economy. Surveys include both union and non-union labor. The provisions of HB20, if implemented, would not interfere with or undermine the Davis-Bacon Act.

Some states have adopted their own “Little Davis-Bacon” prevailing wage laws to set thresholds for payment of prevailing wage and fringe benefits on state-funded public works projects. States generally set the prevailing wage by conducting surveys of local wages and by using collective bargaining agreements. Some states simply use the federally prevailing wage. The threshold amounts for contract coverage range from no minimum threshold to \$250 thousand (see Attachment A). There are 20 states without prevailing wage laws (see Attachment B).

RELATED BILLS

Conflicts with HB213, Repeal Public Works Minimum Wage Act, a bill repealing the Public Works Minimum Wage Act in its entirety.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority
- Department of Workforce Solutions
- Department of Transportation
- Administrative Office of the Courts

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Table of Dollar Threshold Amounts for Contract Coverage under State Prevailing Wage Laws

State	Threshold Amount
Alaska	\$25,000
Arkansas	\$75,000
California	\$1,000
Connecticut	\$400,000 for new construction \$100,000 for remodeling
Delaware	\$100,000 for new construction \$15,00 for alteration, repair, renovation, rehabilitation, demolition, or reconstruction
Hawaii	\$2,000
Illinois	None
Indiana	None
Kentucky	\$250,000
Maine	\$50,000
Maryland	\$500,000 and either of the following criteria are met: (1) the contracting public body is a unit of State Government or an instrumentality of the State, and there is any State funding for the project; or (2) the contracting public body is a political subdivision, agency, person, or entity (such as a county), and the State funds 50% or more of the project except for school construction which must be 25% or more State funded.
Massachusetts	None
Michigan	None
Minnesota	\$25,000 where more than one trade is involved \$2,500 where a single trade is involved
Missouri	None
Montana	\$25,000
Nebraska	None
Nevada	\$250,000
New Jersey	\$2,000 \$15,444 \$50,000 – aggregate cost for maintenance and repair
New Mexico	\$60,000
New York	None
Ohio	\$200,000 for new construction \$60,000 for remodeling
Oregon	\$50,000
Pennsylvania	\$25,000
Rhode Island	\$1,000
Tennessee	\$50,000
Texas	None
Vermont	\$100,000
Washington	None
West Virginia	None
Wisconsin	\$100,000 where a multiple-trade project of public works is involved \$48,000 where a single trade project of public works is involved None of local governmental units
Wyoming	\$25,000

Source: U.S. Department of Labor

Twenty States Without Prevailing Wage Laws (January 2017)

Alabama – repealed in 1980

Arizona – invalidated by 1980 court decision; repealed in referendum in 1984

Colorado – repealed in 1985

Florida – repealed in 1979

Georgia

Idaho – repealed in 1985

Indiana – repealed in 2015

Iowa

Kansas – repealed in 1987

Louisiana – repealed in 1988

Mississippi

New Hampshire – repealed in 1985

North Carolina

North Dakota

Oklahoma – invalidated by 1995 court decision

South Carolina

South Dakota

Utah – repealed in 1981

Virginia

West Virginia – repealed in 2016