F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	01/27/09		
SPONSOR	Cisneros	**LAST UPDATED**	03/19/09	**HB**	
SHORT TITLE	Prevailing Wage Rate on Public Works Projects			**SB**	33/aSJC/aHBIC
				ANALYST	Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$32,600.0	$32,600.0	$65,200.0	Recurring	Federal Funds/Capital Outlay/Severance Tax Bonds/General Obligation Bonds
Total	$27,700.0	$30,100.0	$14,400.0	$72,200.0	Recurring	State Road Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public School Facilities Authority (PSFA)
Regulation and Licensing Department (RLD)
General Services Department (GSD)
Workforce Solutions Department (WSD)
Public Education Department (PED)
State Personnel Office (SPO)
Higher Education Department (HED)
New Mexico Corrections Department (NMCD)
Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Department of Transportation (NMDOT)
Associated Contractors of New Mexico (ACNM)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to Senate Bill 33 clarifies that the Public Works Minimum Wage Act shall not affect an existing contract or a contract that may be entered into pursuant to invitations for bids “or requests for proposals” that are outstanding at the time of enactment of the act.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 33 on page 5, line 6, strikes "and", and inserts the following: (2) the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates made pursuant to this subsection; (3) any interested person shall have the right to submit to the director written data, personal opinion and arguments supporting changes to the prevailing wage rate and prevailing fringe benefit rate determination. The succeeding paragraphs are also renumbered accordingly.

Synopsis of Original Bill

Senate Bill 33 amends the Public Works Minimum Wage Act by inserting new language in lieu of section (B) that currently requires the Labor and Industrial Division (LID) to conduct an annual wage survey by using the voluntary submission of data from contractors. The new language will allow the LID director to set the prevailing wage rates on public works projects by using collective bargaining agreements. The proposed legislation also clarifies, by statute, that fringe benefits are included in the prevailing wage.

The proposed legislation repeals Section 13-4-12 NMSA 1978 which defines the term "wages" and provides a listing of what fringe benefits are. The proposed legislation add a new section 13-4-10.1 NMSA 1978 which defines director, division, fringe benefit, labor organization and wage.

The proposed legislation also aligns the monetary thresholds for contractor registration with the Labor Relations Division of WSD and the minimum bid that is subject to wage rates by raising the bid value for registration from $50,000 to $60,000.

FISCAL IMPLICATIONS

The fiscal impact of Senate Bill 33 is estimated by GSD, PSFA and NMDOT to be around $137.4 million over the next three fiscal years (FY09-FY11). In FY10, GSD is estimating a fiscal impact of $1 million, PSFA is estimating a fiscal impact of $31.6 million and NMDOT is estimating a fiscal impact of $30.1 million.

The Associated Contractors of New Mexico (ACNM) provided a comparison of collective bargaining rates in New Mexico to Davis Bacon wage rates (Attachment 3). ACNM noted that the comparison shows an increase, on average, of 50 percent in labor costs when collective bargaining rates are applied.

ACNM also noted that the proposed legislation may significantly increase costs for NMDOT projects. On the initial craft requirements alone, the increase in cost is projected to be between $14 and $16 million. Additionally, ACNM estimates that as additional crafts are added in the future the cost increases will rise to as much as $60 million. ACNM expressed concern that now is not the time to add additional costs to NMDOT, especially with the shortages of resources for the department.

State agencies have had difficulty determining fiscal impact regarding this bill, even to the extent of one agency submitting and retracting its fiscal analysis, due to not having the needed information to determine a dollar amount fiscal impact. PSFA reported they needed from

Workforce Solutions Department (WSD) a comparisons of current wage rate calculations to collective bargaining agreements in order to able to calculate the direct fiscal impact. PSFA, GSD and NMDOT reported they requested this comparison information from WSD. However, the state agencies were unable to acquire the information from WSD.

The LFC requested, on behalf of the state agencies, current wage rate calculations compared to collective bargaining agreements from WSD. WSD reported that only NMDOT requested comparison information, and the department provided prevailing wage information to them. WSD noted it indicated to NMDOT that they do not have collective bargaining agreement information as that information is not provided to WSD and belongs to the individual bargaining units for dozens of crafts across the state. WSD did provide the LFC with a contact within the New Mexico Building and Construction Trades Council that did have information on prevailing wages and collective bargaining agreement wages. LFC acquired the comparison information and forwarded it to PSFA and GSD for fiscal impact analysis (Attachment 1).

NMDOT submitted an analysis indicating that the proposed legislation would have a $60 to $90 million impact on the department's construction program. NMDOT requested that this be withdrawn since absent WSD data they could not ensure their estimate was accurate.

NMDOT stated the fiscal impact analysis previously issued by the department was withdrawn because it was based upon incomplete and flawed data as follows: the previous analysis was based on out-of-state collective bargaining prevailing wage rate information for the laborer and mechanic classifications, which is higher than New Mexico's existing prevailing wage rate. The New Mexico collective bargaining prevailing wage rate has since been provided by WSD. This information establishes that, while the in-state collective bargaining prevailing wage rate is, in some instances, higher than the New Mexico prevailing wage rate for certain classifications, the overall fiscal impact to NMDOT is less than originally calculated using out-of-state collective bargaining prevailing wage rate information. WSD has assured that there will not be a need to use out-of-state collective bargaining prevailing wage rate information to calculate the New Mexico prevailing wage rate as provided by the proposed legislation.

Based on the information provided by WSD on the collective bargaining prevailing wage rates in New Mexico, the NMDOT now concludes Senate Bill 33 has a fiscal impact to the NMDOT.

In calculating the impact NMDOT makes the following assumptions based upon NMDOT's transportation-related construction activities: First, approximately 25 percent of NMDOT's construction costs are attributable to direct labor. Second, approximately 87.1 percent of this direct labor cost is comprised of wages paid to non-supervisory laborers.

NMDOT estimates its construction program over the next three years as follows:

	FY09	**FY10**	**FY11**	**Total**
State Transp Imprv Program (STIP)	162.0	162.0	142.0	466.0
Gov Richardson's Inv Partn (GRIP)	168.0	207.0	96.0	471.0
Am Recov & Reinv Act (Stimulus)	126.0	126.0	0.0	252.0
	456.0	495.0	238.0	1189.0

Based on NMDOT's comparison of the collective bargaining agreement wage information as compared to New Mexico's current prevailing wage information provided by WSD, NMDOT would expect to experience a net increase in direct labor costs, including fringe benefits, of 32.1 percent as follows:

Net Increase in Labor Costs for NMDOT Projects: Comparison between CBA rates and NM prevailing wage rates
Assume:
32.1% increase as noted above

	FY09			FY10			FY11			TOTALS		
	Fed'l	State	Total	Fed'l	State	Total	Fed'l	State	Total	Fed'l	State	Total
STIP	9.04	2.26	**11.3**	9.04	2.26	**11.3**	7.92	1.98	**9.9**	**26**	**6.5**	**32.5**
GRIP	9.36	2.34	**11.7**	11.52	2.89	**14.4**	5.36	1.34	**6.7**	**26.24**	**6.66**	**32.9**
Stim	8.8	0.0	**8.8**	8.8	0.0	**8.8**	0.0	0.0	**0.0**	**17.6**		**17.6**
	27.2	**4.6**	**31.8**	**29.36**	**5.14**	**34.5**	**13.28**	**3.32**	**16.6**			
Overall Estimated Impact to NMDOT for each of the indicated FY's given use of CBA wages										**69.84**	**13.16**	**83**

NMDOT, however, calculates a 27.9 percent impact because NMDOT contractors currently pay more than the New Mexico prevailing wage in several classifications.

Net Increase in Labor Costs for NMDOT Projects: Comparison between CBA rates and adjusted rates paid by Contractors over the prevailing wage rate
Assume:
27.9% increase as noted above

	FY09			FY10			FY11			TOTALS		
	Fed'l	State	Total	Fed'l	State	Total	Fed'l	State	Total	Fed'l	State	Total
STIP	7.84	1.96	9.8	7.84	1.96	9.8	6.88	1.72	8.6	**22.64**	**5.66**	**28.3**
GRIP	8.16	2.04	10.2	10.06	2.52	12.6	4.64	1.16	5.8	**22.88**	**5.72**	**28.6**
Stim	7.7	0.0	7.7	7.7	0.0	7.7	0.0	0.0	0.0	**15.3**	**0.0**	**15.3**
	23.7	4	**27.7**	**25.6**	**4.48**	**30.1**	11.52	2.88	**14.4**			
Overall Estimated Impact to NMDOT for each of the indicated FY's given use of CBA wages										**60.82**	**11.38**	**72.3**

PSFA stated the total fiscal impact of using collective bargaining agreements to set the prevailing wages for public works projects in New Mexico is difficult to determine as it will vary by type of project and the categories of labor required to perform the work.

PSFA reported based on collective bargaining agreement wage information provided to the PSFA, it is estimated that there will be a 1 to 4 percent increase in the Type "B" – General Building classification of construction which is typical for public school buildings. Type "A" – Streets, Highway, Utility & Light Engineering classifications for projects such as site work, fields and parking lots at schools will increase by over 37.8 percent. Based on estimated annual expenditures of state and local school construction sources of $500 million, there will be an annual fiscal impact of up to $31.6 million.

Public School Finance Authority Fiscal Impact Analysis
($ MILLIONS)

	Total	Annual Rate of Exp.	Est. Expenditures
Local GO Bonds Outstanding 12/31/08	$ 1,239.4	15%	185.9
2 mill Levy (SB-9) Local Capacity 12/31/08	$96.8	70%	67.7
PSCO State Participation (avg. FY05-FY09)	$202.0	100%	202.0
SB9 State Participation FY09	$20.0	70%	14.0
Legislative Appropriations (avg (FY05-FY09)	$36.2	100%	36.2
Total			505.9

Inputs of School Construction	Ratio	Est. Expenditures
Labor	50%	252.9
Materials	50%	252.9

Delta of Labor Cost Increase of 1%	1%	$ 2.529
Delta of Material Cost Increase of 1%	1%	$ 2.529

	Ratio of Rate Type on Average Construction Project	Share of Labor Cost
A Rates	25%	$ 0.632
B Rates	75%	$ 1.897
		$ 2.529

	Delta	Fiscal Impact $
A Rates	38%	$ 24.028
B Rates	4%	$ 7.588
	TOTAL ESTIMATED IMPACT (Millions):	$ 31.616

PSFA stated in examining the data provided, it is important to note that there were examples of extreme outliers and many classifications of labor which did not have comparable collective bargaining rates. As WSD has stated that the current wage rates closely mirror the collective bargaining rates already, it is unclear how these current rates could have been calculated when some of the provided collective bargaining rates are up to $5.81 per hour lower.

PSFA noted a 2002 report *The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law* conducted by the Legislative Service Commission reported that the exemption of school construction from the State's collective bargaining method of determining prevailing wages had an overall savings of 10.7 percent . Also, a 1999 report from the State of Alaska estimates that using collective bargaining agreements in lieu of surveys increased rates of different labor classifications by 2 percent to 10.5 percent with an average of approximately 5 percent.

PSFA reported the true cost of the impact of the bill is difficult to estimate as it is not known how many contractors and subcontractors chose not to bid on public works projects due to the administrative burden of the process. Many small contractors lack to resources to comply with the requirements which reduces the pool of available bidders. Limited competition, especially in the rural areas in New Mexico, has greatly contributed to the huge escalations in construction costs. Between 2005 and 2007 costs for rural school construction in NM increased as much as 85 percent, while construction in urban areas rose approximately 30 percent. These figures when compared to other regional states which saw approximately 20 percent increases in construction costs over the same period would tend to indicate that some other factors are affecting New Mexico construction prices beyond the higher material and fuel costs that were universally experienced.

PSFA noted although recent bids have revealed a more favorable square foot cost for school construction due to the downturn in the economy and reduction in fuel prices, there has also been a reduction in revenues to fund schools which have severely impacted the State's ability to meet the $3.6 billion in school construction needs.

GSD stated if wage rates as determined by collective bargaining agreements rather than a survey of prevailing wages results in higher wage rates, costs for capital projects managed by Property Control Division (PCD) could go up. Increases could impact projects in rural areas and small towns more than in larger cities.

GSD reported collective bargaining agreement data recently made available makes possible a rough estimate of the fiscal impact of this bill on PCD capital projects. PCD projects a 4 percent average increase in labor costs for a Type "B" - General Building classification, the most common project type for PCD. It is not prudent to try to predict future funding for PCD capital projects, however taking a five year average of appropriations gives a rough estimate to predict future expenditures. The five-year average of appropriations to PCD is $53 million.

GSD noted a comparison of the collective bargaining agreements and WSD wage rates shows an average 4 percent increase over all job classifications. For a total estimated expenditure on construction only (no "soft" costs such as design, testing, etc.) of $53 million annually, the estimated impact is $1.0 million based on about 50 percent of total construction costs attributable to labor.

From 2002-2008 there is $1.5 billion in outstanding capital outlay projects that are at least $60,000 or greater. Based on the GSD and PSFA analysis of an increase of 4 percent for "Type B – General Building" and 50 percent of construction cost for labor, the impact of Senate Bill 33 on the outstanding capital outlay projects would be around $30 million.

PED reported that school districts may incur additional bid prices due to increased operational overhead being applied to bidder. A reduction in the number of qualified bidder applicants may cause delays in the awarding of public works projects especially in the smaller rural districts. PED noted this may raise construction costs and result in funding and project delays.

WSD reported the use of collective bargaining agreements to calculate the prevailing wages would result in savings to the department by dispensing with the need to conduct an annual field survey. WSD estimates the saving would be approximately $61,000 by eliminating employee hours and annual maintenance fee of software.

HED reported that higher education institutions have different reactions to the fiscal impact of the proposed legislation. They generally note the wages required under both the federal and state prevailing wage laws help ensure that talented craftsmen are employed on major public works projects. One higher education institution indicates that union and nonunion laborers have generally received similar levels of pay and does not expect a significant fiscal impact. Another higher education institution anticipates an increased cost from the enactment of the proposed legislation but indicates the exact impact would be difficult to determine.

EMNRD reported that the level of financial impact of the proposed legislation will depend greatly on the fringe benefit rate determined by LID. Fringe benefits for state employees are approximately 28 percent of salary. A reasonable working number for labor costs on a public works job is 50 percent of the cost of a project is labor expense.

NMCD stated the fiscal impact is minimal since the cost of benefits is currently included in the prevailing wage rates.

SIGNIFICANT ISSUES

GSD noted the Senate Judiciary Committee amendment allows for other input from interested persons, to the director in making a wage rate determination.

WSD reported the Senate Judiciary Committee amendment addresses "fairness" issues raised by the Associated General Contractors.

SPO reported the Senate Judiciary Committee amendment restores authority to the division director of the Labor Relations Division of WSD in areas where the locality does not have a collective bargaining agreement in place, but still requires the division director to solely determine the prevailing wage and fringe benefit salary levels by the sole use of collective bargaining agreements where they exist.

SPO noted the Senate Judiciary Committee amendment allows "any" interested person to have the right to submit to the director written data, personal opinions and arguments supporting changes to the prevailing wage rate and prevailing fringe benefit rate determination. This could significantly delay the determination of the prevailing rate. By allowing any interested person to submit information, the division director must analyze every additional submission (even if it is not factual and/or a personal opinion) to determine if it is credible and if it should be included in the analysis. There is the potential for parties or industry groups with self-serving interests to provide irrelevant, fabricated or biased information as fact. This could result in additional costs to taxpayers.

GSD reported that the threshold for wage determination was raised to $60,000 in 2005. (Attachment 2)

PSFA reported New Mexico is one of 32 states with prevailing wage laws. The 18 states that do not have prevailing wage laws include: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Virginia. As of 2005 only four other states (Ohio, Mass., NJ, & NY) had adopted collective bargaining agreements to determine the prevailing wage. It is reported that over 90 percent of construction workers in New Mexico are nonunion. The WSD by rule uses the "modal" rate which is the wage most frequently occurring in the survey and commonly closely mirrors the organized labor wages:

RESULTS OF DIFFERENT FORMULAS FOR CALCULATING PREVAILING WAGE RATES					
Hypothetical employee wage rates	*Simple average (sum of diff. rates/# of diff. rates)*	*Median (middle number)*	*Mean (sum of all rates/total # of rates)*	*Modal digit (most common number)*	*Greatest number, but at least 40%*
10.75, 11.25, 11.50, 11.90, 12.25, 12.25, 13.50, 13.75, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04	12.46	13.75	13.48	15.04	15.04

PSFA noted "fringe benefits" are currently included in the definition of wages in Section 13-4-12 NMSA 1978 which would be repealed and replaced with new definitions. It is unclear as to the intent as the definitions are similar. Noted differences are sick leave not related to the job, bonuses, profit-sharing plans, and other "authorized expenses incurred during the course of employment" which are not defined.

SPO noted the proposed legislation excludes outstanding contracts and invitations from its requirements. The proposed legislation also removes the flexibility and authority of the division director of the Labor Relations Division of WSD and locks the division director into obtaining salary data from only one source. This could prove to be problematic in obtaining current and relevant prevailing wage data.

WSD reported labor organizations have indicated that conducting a full fledged field survey still results in a prevailing wage that is within three percent of those set by collective bargaining agreements. WSD noted the reason for this is that many public works projects are conducted by contractors who pay collective bargaining agreements rates, and these rates are submitted to the Labor Relations Division as part of the prevailing wage survey each year. In many instances, the collective bargaining agreement rate prevails in the field survey. WSD stated that the collective bargaining agreement rates already guides the rate of prevailing wages in the state.

EMNRD stated adding a fringe benefit rate to labor rates will increase the cost of performing public works projects statewide.

NMCD stated the prevailing wage rates could increase due to the proposed method of determining the rates. NMCD noted it is possible that if the wages and benefits are set too high, fewer contractors will bid on public work projects.

American Association of State Highway and Transportation Officials ("AASHTO") and National Cooperative Highway Research Program ("NCHRP") currently ranks the NMDOT third among the fifty states in its cost-effectiveness in delivering road construction projects.

PERFORMANCE IMPLICATIONS

PSFA reported increases in construction costs will limit 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.

GSD noted an increase in construction costs will reduce available funds for “brick and mortar” in Property Control Division projects by about 2 percent.

ADMINISTRATIVE IMPLICATIONS

PSFA noted WSD will experience administrative savings due to the elimination of the annual wage survey. However, the Senate Judiciary Committee amendment will require the director to consider voluntary submission of wage data in determining the prevailing wage. It is unclear how this will be administered and will need to be addressed by rule. Changing to collective bargaining agreements will require rule changes.

GSD stated the alignment of registration and bid threshold at $60,000 will simplify administration of the wage rates in Property Control Division projects.

PSFA stated it is unclear how often the collective bargaining agreements will be negotiated and any effect on other classifications of labor that are not currently covered by collective bargaining agreements.

DUPLICATION

Senate Bill 33 duplicates House Bill 329.

TECHNICAL ISSUES

WSD reported that the Labor and Industrial Division’s (LID) name has changed to the Labor and Industrial Bureau of the Labor Relations Division.

OTHER SUBSTANTIVE ISSUES

SPO reported there are many unions that have agreements with public and private signatory employers in all areas of New Mexico. It is unclear as to how the prevailing wage rate will be determined if data is derived from multiple agreements in the “locality”.

SPO stated that many organizations do not bargain for specific “fringe benefits” or these are not specifically laid out in the agreement. Therefore, it is unclear on how the determination of fringe benefits will be determined if the division director is unable to go outside of collective bargaining agreements. SPO reported the original language in the existing subsection B provides enough flexibility to the division director to obtain relevant data.

WSD stated the proposed legislation allows for adoption of regulation to further clarify the process in establishing rates via collective bargaining agreements.

GSD reported if the prevailing wage for public work projects were determined using "union" wages, workers might be more willing to work for union contractors or on government projects than for nonunion contractors and private projects making the latter less competitive. GSD also stated the proposed legislation could be challenged for violating the equal protection clause of the New Mexico State Constitution, Article II, Section 18.

NMDOT reported with regard to federal-aid projects, federal wage law and the Davis-Bacon Act both control. Federal wage law and the Davis-Bacon Act provide a minimum prevailing wage threshold and do not preempt a state's wage laws. Under the Davis-Bacon Act, governing federal public works projects, the prevailing federal rate is set by the Secretary of Labor. The Act requires that construction workers receive "wages that will be determined by the U.S. secretary of labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the state in which the work is to be performed.…" The federal and state prevailing wage rates may or may not be the same for a given job classification. Where the federal and state rates are different, and where a public works project is funded with both state and federal funds, generally the higher of the two rates is applied to a contract. With regard to the requirements of the Davis-Bacon Act, the proposed legislation has no impact on federal participation of NMDOT projects.

PSFA stated in regards to the federal Davis Bacon Act, there have been long-standing concerns raised as to the antiquated and unreliable process which utilizes "prevailing wage" for affected workers through surveys that collect data on wages and fringe benefits paid to workers in similar job classifications on comparable construction projects in the same geographical area which may not accurately reflect wages paid in the local area.

ALTERNATIVES

PSFA stated a statewide audit and cost-benefit analysis of the changing methodology of

calculating the prevailing wage rates should be performed prior to enactment of the measures specified in the proposed legislation.

ACNM recommends amending Senate Bill 33 to exempt NMDOT from the proposed legislation in order to avoid additional labor costs. ACNM also suggests that if NMDOT can not be exempt that ACNM be the designated agency to work with Workforce Solutions Department to develop the transportation prevailing scales because of the unique aspects of the transportation industry.

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