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

<b>Bill Number</b>	<u>HB213</u>	<b>Sponsor</b>	<u>Representatives Scott, Townsend &amp; Rehm</u>
<b>Tracking Number</b>	<u>.205860.1</u>	<b>Committee Referrals</b>	<u>HLEDC/HTPWC/HJC/HAFC</u>
<b>Short Title</b>	<u>Repeal Public Works Minimum Wage Act</u>		
<b>Analyst</b>	<u>Rogne</u>	<b>Original Date</b>	<u>1/31/2017</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

House Bill 213 (HB213) would institute a delayed repeal of the Public Works Minimum Wage Act. Existing contracts will be excluded from the provisions of HB213.

**FISCAL IMPACT**

HB213 does not contain an appropriation.

HB213 repeals the Public Works Minimum Wage Act, thus eliminating collective bargaining as the basis for determining prevailing wage and fringe benefit rates for applicable public works projects. The Department of Workforce Solutions (DWS) is responsible for establishing minimum wage rates under the Public Works Minimum Wage Act and for the implementation of HB213. According to DWS, if HB213 is enacted, DWS would define the procurement process, likely as competitive bidding to all interested parties. DWS noted this has the potential to save the state millions of dollars by allowing the competitive bid process to function as it does in the private sector.

DWS noted HB213 eliminates the requirement for contractors to register with DWS, a funding stream for the operation of the Labor Relations Division. Currently, contractors wishing to bid on a public works contract over \$60 thousand are required to register with DWS at a cost of \$400 biannually. The Labor Relations Division received over \$345 thousand in contractor registration fees in fiscal year 2016 (FY16).

The Public School Facilities Authority (PSFA) estimated potential cost savings on all Public School Capital Outlay Council (PSCOC) funded projects if HB213 is enacted. The total fiscal impact is unknown but it assumes 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 when comparing the costs of educational projects excluded from prevailing wages. HB213 could result in decreases in

construction costs, potentially making limited supplemental severance tax bond revenue available for additional public school capital outlay projects.

According to the Department of Transportation (DOT), HB213 would reduce public works wage rates on DOT projects by 30 percent, based on estimates the current prevailing wage and fringe benefit rates are 30 percent higher than federal minimum wage rates established through the Davis Bacon Act, 40 USC §3142 (2006). In the absence of state prevailing wages, federal prevailing wages would apply to public works projects, resulting in a 3.25 percent decrease in program costs. DOT notes HB213 would decrease the cost of ongoing highway construction by \$20 million to \$22 million beginning in FY19.

## **SUBSTANTIVE ISSUES**

HB213 repeals the Public Works Minimum Wage Act, sections 13-4-10 through 13-4-17 NMSA 1978, so that the prevailing minimum wage and fringe benefits for public works projects would not apply to contracts after the enactment date of July 1, 2018. Currently, collective bargaining agreements are used as the basis for computing minimum wage and fringe benefits on construction projects applicable to the Public Works Minimum Wage Act. Enactment of HB213 would not affect existing contracts or contracts that have already been awarded.

However, collective bargaining agreements were not used as the basis for calculating prevailing wage and fringe benefits for public works projects until 2015, despite the passage of Senate Bill 33 in 2009 making this change to the Public Works Minimum Wage Act. DWS implemented changes to the prevailing wages in the summer of 2015 as a result of a writ of mandamus issued by the New Mexico Supreme Court, *New Mexico Bldg. and Const. Trades Council v. Dean*, 2015-NMSC-023.

## **ADMINISTRATIVE IMPLICATIONS**

According to DWS, HB213 would reduce or eliminate many of the work duties and funding stream for a significant portion of the department. Currently, the Labor Relations Division has six management analysts, nine state investigators, three secretary administrators, two managers and one division director that spend 30 to 100 percent of their time on public works. A portion of the staff would either need to be laid off or reassigned. If staff is retained, the division would need a larger general fund appropriation to offset the loss of revenue from HB213's elimination of contractor registration fees.

According to DOT, implementation of HB213 would require DOT to revise procurement documents and contracts to eliminate the application of state wage rates and the requirement for contractor and subcontractor registration with DWS in qualifications-based proposal solicitations and in invitations for bid.

## **TECHNICAL ISSUES**

According to DWS, the impact of HB213 on the Public Works Apprenticeship and Training Act, Section 13-4D NMSA 1978, is unclear. DWS notes, "Currently, contractors that do not participate in an approved apprenticeship and training program are required to make contributions to the public works apprentice and training fund for all employee hours completed on public works general building, residential and heavy engineering projects. In FY16, the division collected \$985,133 in apprenticeship contributions of which 85 percent is distributed

directly to the apprenticeship programs. These contributions are made in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the division pursuant to the Public Works Minimum Wage Act policy manual. HB213 doesn't specify whether the Labor Relations Division would issue any kind of project decision on public works projects that would include an apprenticeship contribution or if that administrative function would stop."

### **OTHER SIGNIFICANT ISSUES**

The Davis-Bacon Act requires workers on federally funded public works projects to be paid no less than the 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 nonunion labor.

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).

Attachment A includes a list of threshold amounts for contract coverage under state prevailing wage laws. Attachment B includes a list of states without prevailing laws, including date of repeal if applicable.

### **RELATED BILLS**

Conflicts with HB20, Public Works Prevailing Wage & Projects, a bill amending the Public Works Minimum Wage Act to eliminate collective bargaining agreements as the basis for computing minimum wage on construction projects for roads and educational institutions.

### **SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee
- 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