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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/07  
 LAST UPDATED 3/9/07      HB \_\_\_\_\_

SPONSOR Taylor

SHORT TITLE Prevailing Wage and Fringe Benefit Rates      SB 958

ANALYST Lucero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	* Minimal to Substantial	* Minimal to Substantial	Recurring	Capital Outlay/General Fund/

(Parenthesis ( ) Indicate Revenue Decreases)

\* The effect to individual agency capital outlay projects will vary by the size of the project, amount of labor needed, and whether the work would have occurred by union or non-union laborers. There may be a minimal impact to smaller agencies but potentially a substantial impact to larger agencies such as NMDOT and public school facility construction.

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		* (Minimal)	*(Minimal)	*(Minimal)	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

\* As noted below, there may be a cost savings to NMDOL.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Transportation (NMDOT)  
 Public Education Department (PED)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Department of Labor (NMDOL)  
 Regulation and Licensing Department (RLD)  
 General Services Department (GSD)

## SUMMARY

### Synopsis of Bill

Senate Bill 958 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 bill also clarifies, by statute, that fringe benefits are included in the prevailing wage.

The bill also repeals Section 13-4-12 NMSA 1978 which defines the term “wages” and provides a listing of what fringe benefits are. The bill replaces Section 13-4-12 NMSA 1978 with new definitions and material on pages 9 and 10 of the bill.

## FISCAL IMPLICATIONS

NMDOT states that the fiscal implication is indeterminate at this time, but possibly substantial. Bids for NMDOT projects could be significantly higher because all bidders would be required to pay wage and fringe benefit rates determined solely by collective bargaining agreements, which are typically higher than the prevailing wage rates determined by the Labor Department.

NMDOL provided a preliminary analysis of the effect to street, highway, utility and light engineering prevailing wage rates should the bill be passed. (Please see Attachment 1)

Analysis indicates that the GRIP program will be impacted significantly in that it is estimated that 40 percent of the project costs are related to labor costs. There is approximately \$700 million in work that has yet to be contracted. A conservative seventeen percent increase to labor costs, based on rates in Attachment 1 would increase GRIP costs by a minimum of \$47.6 million. An increase of this magnitude will significantly impact NMDOT’s ability to meet all scheduled projects. NMDOT’s remaining construction programs will also be impacted as a result of this Bill.

The Public Education Department (PED) believes that there is a possibility that there could be a reduction in the number of qualified bidder applicants which may cause delays in the awarding of public works projects. This may raise construction costs and result in funding and project delays. It is important to note that every 1 percent increase in labor costs would increase school construction costs by approximately \$2.2 million. At the 3 percent estimate provided by DOL for Type 3 building costs, this translates to an annual cost of \$6.6 million. At present this would pay two-thirds of the cost of a small elementary school.

According to NMDOL’s Labor and Industrial Division:

The bill will allow the LID to redirect the fiscal resources from an annual wage survey to the duty of conducting more audits of companies working on public works projects. This in turn may enable the division to collect more monies for the Public Works Apprenticeship & Training fund.

The impact to contractors and other governmental entities: For most occupations, the

collective bargaining wage is higher than the prevailing wage from the Labor and Industrial Division survey. The voluntary survey completed in June 2006, uses data reported from 2005 payrolls. The collective bargaining rates are current rates. Type A (street, highway and utility) shows the largest differences in the wage rate comparisons with some trade classifications increasing more than 50 percent. Type B (general building) prevailing wages are similar to those in the collective bargaining contracts; with wages being about **3 percent** higher on average under collective bargaining. Types C (residential) and D (heavy engineering) are categories which are used less and is more difficult analyze. The Labor and Industrial Division reports that wage rate requests, that are required for all public projects over \$60,000, are evenly divided between Type A and Type B.

Although collective bargaining wages are higher for most occupations, companies bidding on public projects may already be unionized and paying the higher rates already. This would mean that the bids for projects might not necessarily increase if the collective bargaining rates are already being paid. However some companies might have to increase their bids if they are not currently paying those rates.

Type B, general building, wages are only an average of about 3 percent higher using collective bargaining, but Type A, street, highway, utility, wages are significantly higher but the Division does not have all the data needed to do the comparison.

SN 958 may increase the cost of public works or construction contracts over \$60,000. Property Control Division (PCD) of the General Services Department (GSD) does not collect labor cost data, and therefore cannot estimate the fiscal impact of this bill.

## **SIGNIFICANT ISSUES**

NMDOT states that Currently, on public projects exceeding \$60,000, contractors are required to pay the prevailing wage rate, which includes fringe benefits, determined by the compiling of wage rate information by the Director of the Labor and Industrial Division of the Labor Department and the voluntary submission of wage rate information by contractors, contractors associations, labor organizations, interested persons and public officers to the Director. This bill would eliminate input from any source other than the unions because the prevailing wage rate would be determined only by collective bargaining agreements between “labor organizations and their signatory employers.”

New Mexico Corrections Department (NMCD) states it is unlikely that this bill will adversely affect the number or quality of contractors bidding on the Department’s public works projects; however, it is possible that if the wages and benefits are set too high, fewer contractors will bid on the Department’s public works projects/contracts and on public works projects of state agencies in general.

NMDOL states that last year over \$1.8 billion dollars was funded in public works projects by all the political subdivisions in the state (city, county, and state projects). This translates into 1,550 public works projects. Because of the time consumed in conducting an annual wage survey, many of these projects could not be audited.

## **PERFORMANCE IMPLICATIONS**

Requires that the prevailing wage rate and fringe benefit rates be compiled by the Director of Labor and Industrial and be updated in accordance with new collective bargaining agreements. Does not specify how often the updates should occur for non-Union employers.

## **ADMINISTRATIVE IMPLICATIONS**

By using collective bargaining agreements to conduct an annual wage survey, the time element involved in collecting data to completion of the survey will be reduced from a five (5) month project to a two-week project.

As stated above, there could be an administrative savings to NMDOL's Labor and Industrial Division because wage surveys would no longer be necessary. NMDOT, NMCD, PED, and GSD all state that there could be an increased cost to public works projects by allowing prevailing wage determinations to be based solely on collective bargaining agreements.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB 882; Relates to HB 1237

## **TECHNICAL ISSUES**

The bill does not address whether the minimum \$60,000 may include the cost of the fringe benefits.

## **OTHER SUBSTANTIVE ISSUES**

It is unclear why there is a need to repeal Section 13-4-12 NMSA 1978 and to re-define 'fringe benefits' on page 9 of this bill. It is also unclear whether the new definition completely matches the old definition or if there is an expansion of what is being considered fringe benefits. The bill defines fringe benefits on page 9, Section 5 item B as payments made by a contractor, subcontractor, employer or person acting as a contractor for:

“holidays; time off for sickness or injury; time off for personal reasons or vacation; bonuses; authorized expenses incurred during the course of employment; health, life, accident or disability insurance; profit-sharing plans; contributions made on behalf of an employee to a retirement or other pension plan; and any other compensation paid to an employee other than wages.”

Currently, the State statute designates fringes as:

“an enforceable commitment to carry out a financially responsible plan or program that was communicated in writing to the laborers and mechanics affected for: 1) medical or hospital care; 2) pensions on retirement or death; 3) compensation for injuries or illness resulting from occupational activity; or 4) insurance to provide for any of the foregoing; and for: 5) unemployment benefits; 6) life insurance; 7) disability and sickness insurance; 8) accident insurance; 9) vacation and holiday pay; 10) costs of apprenticeship or other similar programs; or for 11) other bona fide fringe benefits; but only where the contractor, subcontractor, employer or a person acting as a contractor is not required by other federal, state or local law to provide any of the foregoing or similar benefits.”

SB 958 puts the New Mexico “Public Works Minimum Wage Act” (13-4-11 through 13-4-17 NMSA 1978), also commonly referred to as the “Little Davis-Bacon Act” in alignment with the Federal wage act known as the Davis-Bacon Act by including fringe benefits in the wage determination. Currently, NMDOL by way of rule making authority calculates fringe rates when determining prevailing wages. This bill would create in statute what is currently done by rule.

This bill seeks to amend New Mexico’s statutes concerning public works projects by including fringe benefits in the calculation of prevailing wages. The idea of paying prevailing wages comes from a federal law enacted by the Davis-Bacon Act of 1931 which established the requirement for paying prevailing wages on federal public works projects. All federal government construction contracts and most contracts for federally assisted construction over \$2,000 must include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects. Critics of Davis-Bacon argue that the law protects unions because non-union employers who bid on federal contracts must pay wages at union negotiated wage rates and include union negotiated benefits (or cash equivalent). According to the Congressional Budget Office (CBO) estimates in 1994, the Davis-Bacon Act inflates the cost of federal construction by an average of 5 percent to 15 percent. Also, an Oregon State University study estimated the cost in rural areas to be 26 to 38 percent due to the Davis-Bacon Act.

In 1999, Rep. Ron Paul (R-Texas) introduced federal legislation titled The Davis-Bacon Repeal Act and argued that: “Most small construction firms cannot afford to operate under Davis-Bacon's rigid job classifications or hire the staff of lawyers and accountants needed to fill out the extensive paperwork required to bid on a federal contract. Therefore, Davis-Bacon prevents small firms from bidding on federal construction projects, which, unfortunately, constitute 20 percent of all construction projects in the United States. Because most minority-owned construction firms are small companies, Davis-Bacon keeps minority-owned firms from competing for federal construction contracts”.

The Davis-Bacon Act mandates that a "prevailing wage," be paid on all federally-funded construction projects. The United States Department of Labor (USDOL) determines "prevailing wages" but often relies on large contracts of public record and use large geographic areas to define local areas which many times leads to published rates in excess of actual prevailing wages in an area. Many small contractors cannot afford to pay these government-imposed higher wage rates, and are thus shut out of federally-funded construction projects.

This bill will require smaller business owners to either provide similar fringe benefit packages as larger employers (or those provided by unions) or pay a wage which is equivalent to “wages plus fringes” when bidding on local and state government contracts.

### **ALTERNATIVES**

Limit the use of collective bargaining contracts to areas of the state where unionized workers compose 50 percent or more of the local workforce.

Publish two prevailing wage rates; one for rural areas (fewer unionized workers), another for urban areas.

# Attachment 1

## Public Works - Wage Rates

### Type "A" - Street, Highway, Utility & Light Engineering - Effective June 22, 2006

Trade Classification	Base Rate	Fringe Rate	Prevailing Wage	Collective Bargaining Base Rate	Collective Bargaining Fringe Rate	Collective Bargaining Prevailing Wage	Increase (decrease)	Percent change (where data was avail)
Bricklayer/Blocklayer/Stone mason	\$9.71	\$0.26	\$9.97	No Collective Bargaining		no information	No info av	#VALUE!
Carpenter/Lather	\$12.23	\$0.44	\$12.67	No Info av	No info av	no information	No info av	#VALUE!
Cement Mason	\$11.80	\$0.26	\$12.06	No Info av	No info av	no information	No info av	#VALUE!
Ironworker	\$17.91	\$6.03	\$23.94	\$21.15	\$9.03	\$30.18	\$6.24	26.07%
Painter (Brush/Roller/Spray)	\$13.56	\$0.44	\$14.00	No Info av	No info av	no information	No info av	#VALUE!
Electricians			\$0.00	No Info av	No info av	no information	No info av	#VALUE!
Groundman (Outside)	\$21.79	\$8.56	\$30.35	\$17.70	\$8.64	\$26.34	(\$4.01)	-13.21%
Equipment Operator (O/S)	\$24.61	\$8.56	\$33.17	\$23.69	\$9.72	\$33.41	\$0.24	0.72%
Lineman/Wireman or Tech (Outside)	\$25.20	\$8.56	\$33.76	\$27.87	\$10.89	\$38.76	\$5.00	14.81%
Cable Splicer	\$26.38	\$8.56	\$34.94	\$28.93	\$8.67	\$37.60	\$2.66	7.61%
Plumber/Pipefitter	\$21.38	\$4.33	\$25.71	No Highway	Work	no information	No info av	#VALUE!
Laborers			\$0.00			\$0.00	\$0.00	#DIV/0!
Group I	\$9.95	\$0.35	\$10.30	\$10.16	\$4.40	\$14.56	\$4.26	41.36%
Group II	\$10.25	\$0.35	\$10.60	\$10.46	\$4.40	\$14.86	\$4.26	40.19%
Group III	\$10.65	\$0.35	\$11.00	\$10.86	\$4.40	\$15.26	\$4.26	38.73%
<b>GROUP IV (NEW)</b>	-	-		\$11.11	\$4.40	\$15.51		#DIV/0!
Operators			\$0.00			\$0.00	\$0.00	#DIV/0!
Group I	\$12.97	\$0.26	\$13.23	\$15.14	\$4.75	\$19.89	\$6.66	50.34%
Group II	\$13.17	\$0.26	\$13.43	\$15.89	\$4.75	\$20.64	\$7.21	53.69%
Group III	\$13.75	\$0.26	\$14.01	\$16.00	\$4.75	\$20.75	\$6.74	48.11%
Group IV	\$13.77	\$0.26	\$14.03	\$16.08	\$4.75	\$20.83	\$6.80	48.47%
Group V	\$13.77	\$0.26	\$14.03	\$16.15	\$4.75	\$20.90	\$6.87	48.97%
Group VI	\$13.92	\$0.26	\$14.18	\$16.34	\$4.75	\$21.09	\$6.91	48.73%
Group VII	\$13.97	\$0.26	\$14.23	\$16.72	\$4.75	\$21.47	\$7.24	50.88%
Group VIII	\$14.12	\$0.26	\$14.38	\$16.95	\$4.75	\$21.70	\$7.32	50.90%
Group IX	\$14.62	\$0.26	\$14.88	omit	omit	no information	No info av	#VALUE!
Group X	\$15.42	\$0.26	\$15.68	omit	omit	no information	No info av	#VALUE!
Truck Drivers			\$0.00			\$0.00	\$0.00	#DIV/0!
Group I	\$11.64	\$0.26	\$11.90	no info	No info av	no information	No info av	#VALUE!
Group II	\$11.84	\$0.26	\$12.10	no info	No info av	no information	No info av	#VALUE!
Group III	\$12.04	\$0.26	\$12.30	no info	No info av	no information	No info av	#VALUE!
Group IV	\$12.24	\$0.26	\$12.50	no info	No info av	no information	No info av	#VALUE!