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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/12/15

SPONSOR HTPWC LAST UPDATED \_\_\_\_\_ HB 55 & 80/HTPWCS

SHORT TITLE Public Works Project Wages Through Survey SB \_\_\_\_\_

ANALYST Sanogo/Klundt

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	TBD	TBD	TBD		Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
U.S. Department of Labor (USDOL)

#### Responses Received From

Workforce Solutions Department (WSD)  
Attorney General’s Office (AGO)  
Economic Development Department (EDD)  
Department of Transportation (DOT)

### SUMMARY

The House Transportation and Public Works Committee Substitute for HB 55 and HB 80 proposes to determine wage rate and fringe benefit rates on public works projects through a survey process conducted by the director of the Labor Relations program of the Workforce Solutions Department (WSD) by amending Section 13-4-11 NMSA 1978. The prevailing wage rates determined under the bill would be compiled and kept on file as official records. The bill would delete Subsection B of the statute, in which the director must use the prevailing rates of collective bargaining agreements that exist in the locality of the project.

### FISCAL IMPLICATIONS

This bill will essentially restore prevailing wage calculations to the survey method in use prior to 2009. While no agency analysis quantified the fiscal implication of prevailing wage calculations on public works projects, it may be assumed to be significant. The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment (USDOL). This means any significant increase would have considerable fiscal implications on labor costs for public projects.

Prior to 2009, the New Mexico prevailing wage rate was calculated through a survey process. However, due to legislation passed in 2009 which changed the calculation process for prevailing

wage, rates have been unchanged due to pending litigation. The Supreme Court of New Mexico heard oral arguments regarding the regulations promulgated by WSD regarding prevailing wage calculations; however no opinion has been issued.

The labor relations division (LRD) of the Workforce Solutions Department reports that its duties would not change under the proposed legislation. LRD would continue to perform its duties with respect to prevailing wage, including gathering relevant data, following procedures of setting and publicizing prevailing wage each year, and enforcing the Public Works Minimum Wage Act.

The Department of Transportation (DOT) reports it is unknown if the changes would result in rate changes that might impact future project budgets.

### **SIGNIFICANT ISSUES**

The prevailing wage law covers only construction workers in specific types of occupations. Federally, the prevailing wage for the covered occupations is determined by the USDOL through surveys of wages paid in those occupations in surrounding areas, so that the wages reflect the local economy. The prevailing wage is not established by either the state or federal government, but instead by these surveys, which are to include both union and nonunion labor. A state with a higher construction wage in general will therefore have a higher prevailing wage. The surveys are conducted on a regular basis to respond to changing local economies.

Nationally, states have adopted their own versions of prevailing wages, to set threshold requirements for payment of prevailing wages on state-funded public works projects. The state prevailing laws apply only to publicly-funded construction projects, such as roads or public buildings, when state dollars are involved. As with the federal law, the state prevailing wage laws usually apply only to construction workers in specific occupations, and then only if the contract was in excess of the state’s established threshold.

States with their own prevailing wage generally set their prevailing wage by conducting surveys of local wages and collective bargaining agreements, and referring to the federal prevailing wage for their area. Some simply use the federal prevailing wage. Below is a list of state prevailing wage thresholds. (NCSL)

#### **Threshold Amounts for Contract Coverage Under State Prevailing Wage Laws**

<b>STATE</b>	<b>THRESHOLD AMOUNT</b>
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 \$ 15,000 for alteration, repair, renovation, demolition, or reconstruction

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Hawaii	\$ 2,000
Illinois	None
Indiana	\$ 350,000
Kentucky	\$ 250,000
Maine	\$ 50,000
Maryland	\$ 500,000
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	\$ 100,000
New Jersey	\$ 2,000 \$ 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
Wyoming	\$ 25,000

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States without prevailing wage laws include:

- 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
- 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 -

Prevailing wage laws require that wages for construction workers on public works projects be calculated to reflect local wages for similar jobs. HB 80 would re-institute the methodology for calculating prevailing wage that existed prior to 2009. Laws 2004, Ch.206 altered the calculation of prevailing wage by setting prevailing wage based on collective bargaining agreements in the locality or nearest locality. In addition, the bill included provisions allowing “any interested person” to submit information supporting or opposing a prevailing wage, and requiring the Labor Relations program director to give “due regard” to the information submitted.

WSD reports that the interpretation of the 2009 legislation has varied; and since 2010 no prevailing wage rates have been set using the methodology articulated in the 2009 bill. After enactment of the 2009 legislation, the Labor Relations program’s director made attempts to issue regulations and rates. Those actions were the subject of legal challenges. Similarly, in early 2011, WSD held a hearing and subsequently published new regulations to implement the 2009 legislation. The agency’s regulations have been a continuing subject of litigation since that time, with multiple related matters pending in state district court and in the state Supreme Court.

WSD believes the calculation for prevailing wage is not likely to be resolved without a legislative action.

#### **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.