

the director to distribute a list to all departments of the state giving the names of persons or firms that have been found to have “willfully” violated the act. Finally, the amendment inserts language indicating that a person who has violated the act shall be liable for liquidated damages “beginning with the first day of covered employment” in the amount of “\$100” dollars for each calendar day the contractor permitted an individual to work in violation of the provisions of the act.

Synopsis of Original Bill

House Bill 442 increases the minimum contract value that triggers a prevailing wage rate determination on public construction projects from \$20,000 to \$60,000. The contract value was last revised in 1965. The bill clarifies the Labor and Industrial Division Director’s ability to issue subpoenas. In addition, the bill extends the director’s ability to prohibit release of payment, for probable cause relating to a violation of the Public Works Minimum Wage Act, until investigation is completed.

The bill also:

- Removes the requirement to prove that violations were “willful” in debarment proceedings.
- Increases liquidated damage payment to affected employees from \$10.00 per day to three times the actual amount of underpaid wages
- Includes violations of implementing rules as grounds for liquidated damages.
- Grants a private right of action to underpaid employees on Public works projects beyond the increase in liquidated damages.

Significant Issues

EMNRD indicates the proposed legislation will increase the number of non-wage rate public works projects performed. It may be financially beneficial to the agency performing the work due to lower wage rates that may be paid to the labor performing the job.

PERFORMANCE IMPLICATIONS

DOL projects the impact on division operation are unknown but will be minimal from both the increase in defining dollar amounts and the increase in liquidated damages. Increased subpoena power will expedite resolution of alleged violations to the Public Works Minimum Wage Act.

FISCAL IMPLICATIONS

The New Mexico State Parks Division may benefit financially when performing public works contracts less than \$60 thousand in value. In cases where the cost of the project is less than \$60 thousand the labor pool will drive the cost of construction instead of a NMDOL wage rate determination.

The potential cost savings to smaller capital outlay projects could be significant. The Deficiencies Correction Program administered by the Public School Facilities Authority has assisted with approximately 200 projects totaling \$7.9 million since April 2002 that would have been affected by the change proposed in this bill. Previous bill analyses on similar measures in the past have

estimated savings in the area of 15%. Based on this assumption, approximately \$1.19 million could have been realized and expended on other life-safety and health improvements throughout the state.

ADMINISTRATIVE IMPLICATIONS

The additional authority given to the director of the labor and industrial division to attach and prohibit the release of payment and performance bonds submitted by contractors under New Mexico's Little Miller Act may make it more difficult for the NMDOT to close out. However, NMDOT states since NMDOT projects rarely are small; the Act would have minimal impact on the NMDOT.

CONFLICT

Conflicts with HB333, which exempts public school projects that are budgeted for less than \$250.0.

OTHER SUBSTANTIVE ISSUES

Public School Facilities Authority indicates the administrative burden to comply with the Act for a contractor to perform work on a contract of \$20 thousand is excessive. Raising the threshold to \$60 thousand would likely have the effect of increased local participation in the bidding of small public school construction. The most obvious benefit of the proposed change is that it will broaden the overall number of small, local firms participating in school construction and keep more of the school construction dollars and construction jobs in the local economies where they may be most needed.

Lastly, the Public School Facilities Authority notes that proposing to eliminate or raise the minimum wage threshold is controversial. However, the potential for an increase in participation of local contractors in local school projects is also very beneficial, especially to more disadvantaged rural economies.

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