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FISCAL IMPACT REPORT

SPONSOR: Ruiz DATE TYPED: 03/21/03 HB 616/aHFI#1/aSCORC

SHORT TITLE: Amend Public Works Minimum Wage Act SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 142, HB 580

SOURCES OF INFORMATION

LFC Files

Response Received From

New Mexico Department of Labor (DOL)

Energy Minerals and Natural Resources Department (EMNRD)

New Mexico Commission on Higher Education (NMCHE)

SUMMARY

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee amendment to House Bill 616 deletes language permitting lawsuits for damages, attorney fees and reasonable costs, as outlined below:

~~D. In addition to all other remedies, an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employee or a person acting as a contractor shall have a private right of action for damages, attorney fees and reasonable costs."~~

Synopsis of HFI#1 Amendment

House Floor amendment #1 to House Bill 616 clarifies that liquidated damages shall be as out-

lined below:

In the event of any violation of the Public Works Minimum Wage Act, contractors, subcontractors, employers or persons acting as contractors shall be liable to any affected employee for liquidated damages equal up to three times the actual amount of underpaid wages when the contractor, subcontractor, employer or persons acting as a contractor has willfully required or permitted an individual laborer or mechanic to work in violation of the provisions of the Public Works Minimum Wage Act.

Synopsis of Original Bill

House Bill 616 amends the Public Works Minimum Wage Act, NMSA 1978 §13-4-11 through §13-4-14, to increase the minimum contract value from \$20.0 to \$100.0 for public works projects that are subject to minimum wage requirements. HB 616 grants more authority and duties to the Director of the Labor and Industrial Division of the New Mexico Department of Labor (DOL), clarifies the definition of wages and increases the liabilities for violation of the public works minimum wage act. The bill would also provide a private cause of action, which greatly expands current enforcement mechanisms.

Significant Issues

The increased threshold for public works projects will reduce the number of projects that require use of prevailing wages.

The bill adds a new section which provides that, in addition to all other remedies, an employee adversely affected by a violation of the Act shall have a private right of action for damages, attorney fees and reasonable costs and increases the potential liquidated damages to three times the actual amount of underpaid wages.

FISCAL IMPLICATIONS

The New Mexico Commission on Higher Education (NMCHE) stated that adoption of this bill could save funds on many ongoing upgrade projects, especially for public education. According to the Energy Minerals and Natural Resources Department (EMNRD), 70% of State Park Division's construction projects are less than \$100.0.

However, most public sector capital projects exceed the threshold of \$100.0. Consequently, most construction contracts awarded by the institutions will continue to be covered by the Act's prevailing wage provisions.

The fiscal impact would be difficult to determine for construction projects over \$100.0. Under HB616, if the state inadvertently became a party to a contract that is in violation of the Minimum Wage Act, the state could incur new liability.

ADMINISTRATIVE IMPLICATIONS

HB616 creates new administrative responsibilities for contractors and the state. The increased burden to contractors will be passed on to the state in the form of higher bids. Rigid monitoring

of construction projects by the state will increase administrative costs and could delay approving/analyzing invoices submitted by the contractors.

TECHNICAL ISSUES

HB 616 adds a subsection D to NMSA 1978 §13-4-11, which refers to the bonding requirements. On page 4, line 10, there is reference to the time limits in “that section” (NMSA 1978 §13-4-18), but the time limits are actually in Section 13-4-19 NMSA.

RELATIONSHIP

HB 142 would repeal the Public Works Minimum Wage Act.

HB 580 amends the Public Works Minimum Wage Act, NMSA 1978 §13-4-11 through §13-4-17 to permit a municipality, county or school district, by majority vote of the governing body, to exempt itself from the Public Works Minimum Wage Act.

RLG/njw