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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/22

SPONSOR Duhigg/Chandler LAST UPDATED _____ HB _____

SHORT TITLE Prevailing Wage and Fringe Benefit Rates SB 4/aSJC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			Minimal			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 General Services Department (GSD)
 State Personnel Office (SPO)
 Workforce Solutions Department (WSD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 4 restructures the new language in the original bill into two paragraphs, clarifying that appeals of prevailing wage rate decisions shall not have the effect of creating a stay on the implementation of the rate. A newly added paragraph allows for a stay in the wage rate when a party or an interested person files a motion, provided that the court of competent jurisdiction gives an opportunity for any interested person to be heard on the matter.

Synopsis of Original Bill

Senate Bill 4 would establish deadlines for the director of the labor relations division of the Workforce Solutions Department to set prevailing wage rates for public contract employees. Deadlines are no later than October 1st for rates that take effect the next January 1st. Additionally, the bill would allow the prevailing wage rate to take effect during an appeal of the

rate unless the rate is modified by the Labor and Industrial Commission or if a district court grants a stay during the pendency of an appeal.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SPO, GSD, WSD, and the courts said there would be no fiscal impact from this bill.

SIGNIFICANT ISSUES

The AGO provided the following:

As the bill is currently drafted, an appellant challenging the Director's prevailing wage and fringe rate determination would need to file an action in District Court to stay the implementation of the rates "during the pendency of an appeal." SB 4, p. 4. Because the Bill permits the Labor and Industrial Commission to stay the rates only upon issuing a final decision, this could lead to appellants filing multiple legal actions simultaneously. One of these legal actions would be the administrative appeal to the Commission pursuant to Section 13-4-15 NMSA 1978 seeking a final decision on the Director's determination, while the other would be an action in District Court to stay the implementation of the rates while the administrative appeal proceeds below. This does not necessarily appear to represent a problem, but it does appear that the amendments to Section 13-4-11 NMSA 1978 could lead to an appellant simultaneously filing multiple legal actions against the Director.

WSD provided the following:

The bill amends statute and prohibits a stay of prevailing wage and fringe benefit rates upon an appeal, without specifying whether the appeal is to the Labor and Industrial Commission (LIC) or to district court after an LIC decision. SB4 includes two instances where the rates would be stayed; (1) if the rate is modified by a final written decision of the Labor and Industrial Commission ("LIC") or by final judgment of a district court, or (2) an interested party may request a stay which a district court may grant upon a showing of good cause.

The current proposed language only addresses whether a stay is proper in the cases of appeals related to the prevailing wage rates and fringe benefits, but is silent as to whether a stay is proper in any other appeals to LIC or district court as a result of a decision from the Labor and Industrial division of the Department of Workforce Solutions.

Under the current statute, the Director of the Labor Relations Division of the New Mexico Department of Workforce Solutions ("Director") is tasked with determining, implementing, and enforcing the prevailing wage rates and prevailing fringe benefit rates on public works projects. The Director is required to set these rates annually. Presently, according to Department regulations, interested parties are required to submit to the Director their Collective Bargaining Agreements ("CBA"), which will be in effect for the following year, no later than July 31 of each year. Pursuant to Section 13-4-11(B) NMSA

1978, the Director uses these submitted CBAs to determine the prevailing rates for the following year. The bill would require the director to determine all prevailing rates no later than October 1. The statute does not define what final product is due on October 1. The rates are set by the director and published through regulation. Implementing a deadline for a final determination of the prevailing wage rates in October would require the collection of CBAs as soon as late April or early May to allow for proper notice to all interested parties and a public comment period. Rates will not take effect until January 1 of the following year. Requiring a final draft on October 1 offers no benefits to any of the interested parties and instead causes potential harm if CBAs are not finalized or submitted with sufficient time for inclusion in a final draft.

TECHNICAL ISSUES

WSD said the current proposed bill allows for a stay in the rates upon an appeal to district court which may be granted upon the showing of good cause. The term “good cause” is not defined. Additionally, a “good cause” determination is not the appropriate standard. For the purposes of consistency, the standard already outlined in NMRA 1-074 should be adopted whereby the moving party would have to demonstrate the same criteria before a stay is implemented.

EC/al/acv