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AN ACT

RELATING TO PUBLIC WORKS; SPECIFYING THAT PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES ARE TO BE DETERMINED ANNUALLY BY OCTOBER 1 TO TAKE EFFECT THE NEXT JANUARY 1; PROVIDING THAT AN APPEAL OF A DETERMINED PREVAILING WAGE RATE OR PREVAILING FRINGE BENEFIT RATE DOES NOT STAY IMPLEMENTATION OF THE RATE UNLESS MODIFIED BY A FINAL DECISION OR JUDGMENT OR UPON ORDER OF THE COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-4-11 NMSA 1978 (being Laws 1965, Chapter 35, Section 1, as amended) is amended to read:

"13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY PAYMENT--WITHHOLDING FUNDS.--

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classifications of laborers and mechanics, which shall be based upon the wages

1 and benefits that will be determined by the director to be
2 prevailing for the corresponding classifications of laborers
3 and mechanics employed on contract work of a similar nature
4 in the state or locality, and every contract or project shall
5 contain a stipulation that the contractor, subcontractor,
6 employer or a person acting as a contractor shall pay all
7 mechanics and laborers employed on the site of the project,
8 unconditionally and not less often than once a week and
9 without subsequent unlawful deduction or rebate on any
10 account, the full amounts accrued at time of payment computed
11 at wage rates and fringe benefit rates not less than those
12 determined pursuant to Subsection B of this section to be the
13 prevailing wage rates and prevailing fringe benefit rates
14 issued for the project.

15 B. Annually, no later than October 1, the director
16 shall determine prevailing wage rates and prevailing fringe
17 benefit rates to take effect the next January 1 for
18 respective classifications of laborers and mechanics employed
19 on public works projects at the same wage rates and fringe
20 benefit rates used in collective bargaining agreements
21 between labor organizations and their signatory employers
22 that govern predominantly similar classifications of laborers
23 and mechanics for the locality of the public works project
24 and the crafts involved; provided that:

25 (1) if the prevailing wage rates and

1 prevailing fringe benefit rates cannot reasonably and fairly
2 be determined in a locality because no collective bargaining
3 agreements exist, the director shall determine the prevailing
4 wage rates and prevailing fringe benefit rates for the same
5 or most similar classification of laborer or mechanic in the
6 nearest and most similar neighboring locality in which
7 collective bargaining agreements exist;

8 (2) the director shall give due regard to
9 information obtained during the director's determination of
10 the prevailing wage rates and the prevailing fringe benefit
11 rates made pursuant to this subsection;

12 (3) any interested person shall have the
13 right to submit to the director written data, personal
14 opinions and arguments supporting changes to the prevailing
15 wage rate and prevailing fringe benefit rate determination;

16 (4) prevailing wage rates and prevailing
17 fringe benefit rates determined pursuant to the provisions of
18 this section shall be compiled as official records and kept
19 on file in the director's office, and the records shall be
20 updated in accordance with the applicable rates used in
21 subsequent collective bargaining agreements;

22 (5) an appeal of the prevailing wage
23 determination pursuant to the provisions of this section
24 shall not have the effect of creating a stay of the
25 implementation of the rate; and

1 (6) during the pendency of an appeal,
2 whether before the labor and industrial commission or in a
3 court, a court of competent jurisdiction may grant a stay of
4 the implementation of the wage rate based on a motion made by
5 a party or an interested person, provided the court gives an
6 opportunity for any interested person to be heard on the
7 matter.

8 C. The prevailing wage rates and prevailing fringe
9 benefit rates to be paid shall be posted by the contractor or
10 person acting as a contractor in a prominent and easily
11 accessible place at the site of the work; provided that there
12 shall be withheld from the contractor, subcontractor,
13 employer or a person acting as a contractor so much of
14 accrued payments as may be considered necessary by the
15 director or contracting officer of the state or political
16 subdivision to pay to laborers and mechanics employed on the
17 project the difference between the prevailing wage rates and
18 prevailing fringe benefit rates required by the director to
19 be paid to laborers and mechanics on the work and the wage
20 rates and fringe benefit rates received by the laborers and
21 mechanics and not refunded to the contractor, subcontractor,
22 employer or a person acting as a contractor or the
23 contractor's, subcontractor's, employer's or person's agents.

24 D. Certified weekly payroll records of a
25 contracting agency are subject to inspection pursuant to the

1 Inspection of Public Records Act; provided that the request
2 shall be fulfilled within twenty days of receipt of the
3 written request. Certified weekly payroll records are
4 subject to record retention requirements applicable to
5 payroll records of a state agency.

6 E. Notwithstanding any other provision of law
7 applicable to public works contracts or agreements, the
8 director may, with cause:

9 (1) issue investigative or hearing subpoenas
10 for the production of documents or witnesses pertaining to
11 public works prevailing wage projects; and

12 (2) attach and prohibit the release of any
13 assurance of payment required under Section 13-4-18 NMSA 1978
14 for a reasonable period of time beyond the time limits
15 specified in that section until the director satisfactorily
16 resolves any probable cause to believe a violation of the
17 Public Works Minimum Wage Act or its implementing rules has
18 taken place.

19 F. A person may file with the director a complaint
20 that a contractor, subcontractor, employer or person acting
21 as a contractor on the project has failed to pay the person
22 wages or fringe benefits at the rates required by the Public
23 Works Minimum Wage Act. Within thirty days after the filing
24 of the complaint, either party may request in writing a
25 mediation to resolve the complaint.

1 G. The director shall, within thirty days of the
2 filing of the complaint, commence an investigation of the
3 allegations contained in the complaint. The director shall,
4 within seventy-five days after the completion of mediation or
5 if no mediation is requested, within seventy-five days after
6 the filing of the complaint, make a determination supported
7 by findings of fact and conclusions of law whether there has
8 been an underpayment of wages or fringe benefits or other
9 violation of the Public Works Minimum Wage Act; provided that
10 if the complaint is of a continuing or significantly complex
11 nature or involves multiple projects or job sites, the
12 director may extend the time in which to make a determination
13 by up to six months by providing written notice and an
14 explanation to all parties of the need to extend the time.
15 Prior to issuing a determination, the director shall provide
16 the contractor, subcontractor, employer or other person
17 against whom the complaint has been filed with an opportunity
18 to respond to the complaint and provide any exculpatory
19 evidence.

20 H. If the director determines that there has been
21 an underpayment of wages or fringe benefits or a violation of
22 the Public Works Minimum Wage Act, the director shall, in the
23 absence of a voluntary resolution by the parties and within
24 thirty days of making that determination, order the
25 withholding of accrued payments as provided in Subsection C

1 of this section.

2 I. The director shall issue rules necessary to
3 administer and accomplish the purposes of the Public Works
4 Minimum Wage Act." _____

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