

AN ACT

RELATING TO PUBLIC WORKS; INCREASING THE MINIMUM CONTRACT VALUE FOR THE MINIMUM WAGE ON PUBLIC WORKS; REVISING THE DUTIES AND AUTHORITY OF THE DIRECTOR OF THE LABOR AND INDUSTRIAL DIVISION OF THE LABOR DEPARTMENT; CLARIFYING THE DEFINITION OF WAGES; INCREASING LIABILITY AND REMEDIES; AMENDING SECTIONS OF THE NMSA 1978.

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. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--POSTING WAGE SCALE--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 to be paid to various classes of laborers and mechanics, which shall be based upon the wages that will be determined by the director of the labor and industrial division of the labor department to be prevailing for the corresponding classes of laborers and

mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the minimum wage rates issued for the project.

B. For the purpose of making wage determinations, the director of the labor and industrial division of the labor department shall conduct a continuing program for the obtaining and compiling of wage-rate information and shall encourage the voluntary submission of wage-rate data by contractors, contractors' associations, labor organizations, interested persons and public officers. Before making a determination of wage rates for any project, the director shall give due regard to the information thus obtained. Whenever the director deems that the data at hand are insufficient to make a wage determination, the director may have a field survey conducted for the purpose of obtaining sufficient information upon which to make determination of wage rates. Any interested person shall have the right to submit to the director written data, views and arguments why

the wage determination should be changed.

C. The scale of wages to be paid shall be posted by the contractor or person acting as a contractor in a prominent and easily accessible place at the site of the work; and it is further provided that there may be withheld from the contractor, subcontractor, employer or a person acting as a contractor so much of accrued payments as may be considered necessary by the contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the rates of wages required by the director of the labor and industrial division of the labor department to be paid to laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or their agents.

D. Notwithstanding any other provision of law applicable to public works contracts or agreements, the director of the labor and industrial division of the labor department may, with cause:

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

(2) attach and prohibit the release of any assurance of payment required under Section 13-4-18 NMSA 1978 for a reasonable period of time beyond the time limits

specified in that section until the director satisfactorily resolves any probable cause to believe a violation of the Public Works Minimum Wage Act or its implementing rules has taken place.

E. The director of the labor and industrial division of the labor department shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act."

Section 2. Section 13-4-12 NMSA 1978 (being Laws 1965, Chapter 35, Section 2, as amended) is amended to read:

"13-4-12. DEFINITION OF THE TERM "WAGES".--

A. As used in Section 13-4-11 NMSA 1978, "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages" include:

(1) the basic hourly rate of pay; and

(2) the amount of:

(a) the rate of contribution irrevocably made by a contractor, subcontractor, employer or any person acting as a contractor to a trustee or a third person pursuant to a fund, plan or program; and

(b) the rate of costs to a contractor, subcontractor, employer or a person acting as a contractor that reasonably may be anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program that

was communicated in writing to the laborers and mechanics affected for: 1) medical or hospital care; 2) pensions on retirement or death; 3) compensation for injuries or illness resulting from occupational activity; or 4) insurance to provide for any of the foregoing; and for: 5) unemployment benefits; 6) life insurance; 7) disability and sickness insurance; 8) accident insurance; 9) vacation and holiday pay; 10) costs of apprenticeship or other similar programs; or for 11) other bona fide fringe benefits; but only where the contractor, subcontractor, employer or a person acting as a contractor is not required by other federal, state or local law to provide any of the foregoing or similar benefits.

B. The obligation of a contractor, subcontractor, employer or person acting as a contractor to make payment in accordance with the prevailing wage determinations of the director of the labor and industrial division of the labor department, insofar as Section 13-4-11 NMSA 1978 or other sections of legislative acts incorporating Section 13-4-11 NMSA 1978 are concerned, may be discharged by the making of payments consistent with Subsection B of Section 50-4-2 NMSA 1978, except that the frequency of payments shall comply with Subsection A of Section 13-4-11 NMSA 1978. The payments shall include:

(1) payment of the base wage rate as the director of the labor and industrial division of the labor

department has determined to be prevailing for the appropriate class of laborers or mechanics; and

(2) the making of contributions of a type referred to in Subparagraph (a) of Paragraph (2) of Subsection A of this section; or

(3) the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in Subparagraph (b) of Paragraph (2) of Subsection A of this section; or

(4) any combination of Paragraphs (2) and (3) of this subsection where the aggregate of any payments or contributions and costs therefor is not less than the rate of pay described in Section 13-4-11 NMSA 1978 plus the amount referred to in this section.

C. The provisions of this section shall not affect existing contracts or contracts resulting from bids outstanding on July 15, 1965."

Section 3. Section 13-4-14 NMSA 1978 (being Laws 1965, Chapter 35, Section 4, as amended) is amended to read:

"13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

A. The director of the labor and industrial division of the labor department shall certify to the contracting agency the names of persons or firms the director has found to have disregarded their obligations to employees

under the Public Works Minimum Wage Act and the amount of arrears. The contracting agency shall pay or cause to be paid to the affected laborers and mechanics, from any accrued payments withheld under the terms of the contract or designated for the project, any wages found due such workers pursuant to the Public Works Minimum Wage Act. The director shall, after notice to the affected persons, distribute a list to all departments of the state giving the names of persons or firms the director has found to have willfully violated the Public Works Minimum Wage Act. No contract or project shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership or association in which the persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of the persons or firms. A person to be included on the list to be distributed may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

B. If the accrued payments withheld under the terms of the contract, as mentioned in Subsection A of this section, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to the Public Works Minimum Wage Act, the laborers and mechanics shall have the right of action or intervention or both against the contractor or person acting as a contractor and his sureties, conferred by law upon

such persons furnishing labor and materials, and, in such proceeding, it shall be no defense that the laborers and mechanics accepted or agreed to less than the required rate of wages or voluntarily made refunds. The director of the labor and industrial division of the labor department shall refer such matters to the district attorney in the appropriate county, and it is the duty and responsibility of the district attorney to bring civil suit for wages due and liquidated damages provided for in Subsection C of this section.

C. In the event of any violation of the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or a person acting as a contractor responsible for the violation shall be liable to any affected employee for the employee's unpaid wages. In addition, the contractor, subcontractor, employer or a person acting as a contractor shall be liable to any affected employee for liquidated damages beginning with the first day of covered employment in the sum of one hundred dollars (\$100.00) for each calendar day on which a contractor, subcontractor, employer or person 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.

D. In an action brought pursuant to Subsection C of this section, the court may award, in addition to all other

remedies, attorney fees and costs to 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."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005._____