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HOUSE BILL 882

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Sheryl Williams Stapleton

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR THE DETERMINATION OF
PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES;
REQUIRING PAYMENT OF THE PREVAILING RATES ON PUBLIC WORKS
PROJECTS.

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

Section 1. Section 13-4-10 NMSA 1978 (being Laws 1963,
Chapter 304, Section 1) is amended to read:

"13-4-10. SHORT TITLE.--Sections [~~6-6-6 through 6-6-10~~
~~New Mexico Statutes Annotated, 1953 Compilation]~~ 13-4-10
through 13-4-17 NMSA 1978 may be cited as the "Public Works
Minimum Wage Act"."

Section 2. Section 13-4-11 NMSA 1978 (being Laws 1965,
Chapter 35, Section 1, as amended) is amended to read:

"13-4-11. MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC

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1 WORKS--WEEKLY PAYMENT--~~[POSTING WAGE SCALE]~~ DETERMINATION OF
2 PREVAILING RATES--WITHHOLDING FUNDS.--

3 A. Every contract or project in excess of sixty
4 thousand dollars (\$60,000) that the state or any political
5 subdivision thereof is a party to for construction, alteration,
6 demolition or repair or any combination of these, including
7 painting and decorating, of public buildings, public works or
8 public roads of the state and that requires or involves the
9 employment of mechanics, laborers or both shall contain a
10 provision stating the minimum wages and fringe benefits to be
11 paid to various classes of laborers and mechanics, which shall
12 be based upon the wages and fringe benefits that will be
13 determined by the director of the labor and industrial division
14 of the labor department to be prevailing for the corresponding
15 classes of laborers and mechanics employed on contract work of
16 a similar nature in the state or locality, and every contract
17 or project shall contain a stipulation that the contractor,
18 subcontractor, employer or a person acting as a contractor
19 shall pay all mechanics and laborers employed on the site of
20 the project, unconditionally and not less often than once a
21 week and without subsequent unlawful deduction or rebate on any
22 account, the full amounts accrued at time of payment computed
23 at wage rates and fringe benefit rates not less than those
24 ~~[stated in the minimum wage rates]~~ determined pursuant to
25 Subsection B of this section to be the prevailing wage rates

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1 and fringe benefit rates issued for the project.

2 ~~[B. For the purpose of making wage determinations,~~
3 ~~the director of the labor and industrial division of the labor~~
4 ~~department shall conduct a continuing program for the obtaining~~
5 ~~and compiling of wage-rate information and shall encourage the~~
6 ~~voluntary submission of wage-rate data by contractors,~~
7 ~~contractors' associations, labor organizations, interested~~
8 ~~persons and public officers. Before making a determination of~~
9 ~~wage rates for any project, the director shall give due regard~~
10 ~~to the information thus obtained. Whenever the director deems~~
11 ~~that the data at hand are insufficient to make a wage~~
12 ~~determination, the director may have a field survey conducted~~
13 ~~for the purpose of obtaining sufficient information upon which~~
14 ~~to make determination of wage rates. Any interested person~~
15 ~~shall have the right to submit to the director written data,~~
16 ~~views and arguments why the wage determination should be~~
17 ~~changed.]~~

18 B. The director shall determine prevailing wage
19 rates and fringe benefit rates for respective classes of
20 laborers and mechanics employed on public works projects at the
21 same wage rates and fringe benefit rates used in collective
22 bargaining agreements between labor organizations and their
23 signatory employers that govern predominantly similar classes
24 or classifications of laborers and mechanics for the locality
25 of the public works project and the crafts involved; provided

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1 that:

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

10 (2) prevailing wage rates and fringe benefit
11 rates determined under this section shall be compiled as
12 official records and kept on file in the director's office.
13 The records shall be updated in accordance with the applicable
14 rates used in subsequent collective bargaining agreements.

15 C. The ~~[scale of wages]~~ prevailing wage rates and
16 fringe benefit rates to be paid shall be posted by the
17 contractor or person acting as a contractor in a prominent and
18 easily accessible place at the site of the work; and it is
19 further provided that there may be withheld from the
20 contractor, subcontractor, employer or a person acting as a
21 contractor so much of accrued payments as may be considered
22 necessary by the contracting officer of the state or political
23 subdivision to pay to laborers and mechanics employed on the
24 project the difference between the ~~[rates of wages]~~ wage rates
25 and fringe benefit rates required by the director ~~[of the labor~~

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1 ~~and industrial division of the labor department]~~ to be paid to
2 laborers and mechanics on the work and the ~~[rates of wages]~~
3 wage rates and fringe benefit rates received by such laborers
4 and mechanics and not refunded to the contractor,
5 subcontractor, employer or a person acting as a contractor or
6 their agents.

7 D. Notwithstanding any other provision of law
8 applicable to public works contracts or agreements, the
9 director ~~[of the labor and industrial division of the labor~~
10 ~~department]~~ may, with cause:

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

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

21 E. The director ~~[of the labor and industrial~~
22 ~~division of the labor department]~~ shall issue rules necessary
23 to administer and accomplish the purposes of the Public Works
24 Minimum Wage Act."

25 Section 3. Section 13-4-13 NMSA 1978 (being Laws 1965,

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1 Chapter 35, Section 3, as amended) is amended to read:

2 "13-4-13. FAILURE TO PAY MINIMUM WAGE OR MINIMUM FRINGE
3 BENEFIT--TERMINATION OF CONTRACT.--Every contract within the
4 scope of the Public Works Minimum Wage Act shall contain
5 further provision that in the event it is found by the director
6 [~~of the labor and industrial division of the labor department~~]
7 that any laborer or mechanic employed on the site of the
8 project has been or is being paid as a result of a willful
9 violation a [~~rate of wages~~] wage rate or fringe benefit rate
10 less than the [~~rate of wages~~] rates required, the contracting
11 agency may, by written notice to the contractor, subcontractor,
12 employer or person acting as a contractor, terminate [~~their~~]
13 the right to proceed with the work or such part of the work as
14 to which there has been a willful failure to pay the required
15 wages or fringe benefits, and the contracting agency may
16 prosecute the work to completion by contract or otherwise, and
17 the contractor or person acting as a contractor and [~~his~~] the
18 contractor's or person's sureties shall be liable to the state
19 for any excess costs occasioned thereby. Any party receiving
20 notice of termination of [~~his~~] a project or subcontract under
21 the provisions of this section may appeal the finding of the
22 director as provided in the Public Works Minimum Wage Act."

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

25 "13-4-14. PAYMENT OF WAGES AND FRINGE BENEFITS FROM FUNDS

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1 WITHHELD--LIST OF CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT
2 OF WAGE EARNERS.--

3 A. The director [~~of the labor and industrial~~
4 ~~division of the labor department~~] shall certify to the
5 contracting agency the names of persons or firms the director
6 has found to have disregarded their obligations to employees
7 under the Public Works Minimum Wage Act and the amount of
8 arrears. The contracting agency shall pay or cause to be paid
9 to the affected laborers and mechanics, from any accrued
10 payments withheld under the terms of the contract or designated
11 for the project, any wages or fringe benefits found due such
12 workers pursuant to the Public Works Minimum Wage Act. The
13 director shall, after notice to the affected persons,
14 distribute a list to all departments of the state giving the
15 names of persons or firms the director has found to have
16 willfully violated the Public Works Minimum Wage Act. No
17 contract or project shall be awarded to the persons or firms
18 appearing on this list or to any firm, corporation, partnership
19 or association in which the persons or firms have an interest
20 until three years have elapsed from the date of publication of
21 the list containing the names of the persons or firms. A
22 person to be included on the list to be distributed may appeal
23 the finding of the director as provided in the Public Works
24 Minimum Wage Act.

25 B. If the accrued payments withheld under the terms

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1 of the contract, as mentioned in Subsection A of this section,
2 are insufficient to reimburse all the laborers and mechanics
3 with respect to whom there has been a failure to pay the wages
4 or fringe benefits required pursuant to the Public Works
5 Minimum Wage Act, the laborers and mechanics shall have the
6 right of action or intervention or both against the contractor
7 or person acting as a contractor and ~~[his]~~ the contractor's or
8 person's sureties, conferred by law upon such persons
9 furnishing labor and materials, and, in such proceeding, it
10 shall be no defense that the laborers and mechanics accepted or
11 agreed to less than the required rate of wages or fringe
12 benefits or voluntarily made refunds. The director ~~[of the~~
13 ~~labor and industrial division of the labor department]~~ shall
14 refer such matters to the district attorney in the appropriate
15 county, and it is the duty and responsibility of the district
16 attorney to bring civil suit for wages and fringe benefits due
17 and liquidated damages provided for in Subsection C of this
18 section.

19 C. In the event of any violation of the Public
20 Works Minimum Wage Act or implementing rules, the contractor,
21 subcontractor, employer or a person acting as a contractor
22 responsible for the violation shall be liable to any affected
23 employee for the employee's unpaid wages or fringe benefits.
24 In addition, the contractor, subcontractor, employer or a
25 person acting as a contractor shall be liable to any affected

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1 employee for liquidated damages beginning with the first day of
2 covered employment in the sum of one hundred dollars
3 [~~(\$100.00)~~] (\$100) for each calendar day on which a contractor,
4 subcontractor, employer or person acting as a contractor has
5 willfully required or permitted an individual laborer or
6 mechanic to work in violation of the provisions of the Public
7 Works Minimum Wage Act.

8 D. In an action brought pursuant to Subsection C of
9 this section, the court may award, in addition to all other
10 remedies, attorney fees and costs to an employee adversely
11 affected by a violation of the Public Works Minimum Wage Act by
12 a contractor, subcontractor, employee or a person acting as a
13 contractor."

14 Section 5. A new section of the Public Works Minimum Wage
15 Act is enacted to read:

16 "[NEW MATERIAL] DEFINITIONS.--As used in the Public Works
17 Minimum Wage Act:

18 A. "director" means the director of the labor and
19 industrial division of the labor department;

20 B. "fringe benefits" means payments made by a
21 contractor, subcontractor, employer or person acting as a
22 contractor for holidays; time off for sickness or injury; time
23 off for personal reasons or vacation; bonuses; authorized
24 expenses incurred during the course of employment; health,
25 life, accident or disability insurance; profit-sharing plans;

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1 contributions made on behalf of an employee to a retirement or
2 other pension plan; and any other compensation paid to an
3 employee other than wages;

4 C. "labor organization" means any organization of
5 any kind, or any agency or employee representation committee or
6 plan, in which employees participate and that exists for the
7 purpose, in whole or in part, of dealing with employers
8 concerning grievances, labor disputes, wages, rates of pay,
9 hours of employment or conditions of work; and

10 D. "wages" means the basic hourly rate of pay."

11 Section 6. A new section of the Public Works Minimum Wage
12 Act is enacted to read:

13 "[NEW MATERIAL] PREVAILING WAGE RATES AND FRINGE BENEFIT
14 RATES--PAYMENT OBLIGATION.--The obligation of a contractor,
15 subcontractor, employer or person acting as a contractor to
16 make payment in accordance with the prevailing wage rates and
17 fringe benefits rates as determined by the director, insofar as
18 Section 13-4-11 NMSA 1978 is concerned, may be discharged by
19 the making of payments consistent with Subsection B of Section
20 50-4-2 NMSA 1978, except that the frequency of payments shall
21 comply with Subsection A of Section 13-4-11 NMSA 1978. The
22 payments shall include:

23 A. payment of the required wage rate to laborers
24 and mechanics employed in the performance of the contract work
25 in the amount established by and specified in the prevailing

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1 wage rate determination applicable to the contract work for
2 each appropriate class of laborers or mechanics; and

3 B. payments of fringe benefits, either to or on
4 behalf of the laborers and mechanics employed in the
5 performance of the contract work. The types of fringe benefits
6 and required payments and contributions for the fringe benefits
7 shall be made in accordance with the applicable prevailing
8 fringe benefits rate determination applicable to the contract
9 work for each appropriate class of laborers or mechanics."

10 Section 7. REPEAL.--Section 13-4-12 NMSA 1978 (being Laws
11 1965, Chapter 35, Section 2, as amended) is repealed.

12 Section 8. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2007.

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