

1 SENATE BILL 1178

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO PUBLIC WORKS; REQUIRING EMPLOYERS TO PAY ALL FRINGE  
12 BENEFITS OR MAKE PAYMENTS TO THE PUBLIC WORKS HEALTH CARE  
13 COVERAGE FUND; CREATING A FUND; MAKING AN APPROPRIATION.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. Section 13-4-12 NMSA 1978 (being Laws 1965,  
17 Chapter 35, Section 2, as amended) is amended to read:

18 "13-4-12. DEFINITION OF THE TERM "WAGES".--

19 A. As used in Section 13-4-11 NMSA 1978, "wages",  
20 "scale of wages", "wage rates", "minimum wages", [~~and~~]  
21 "prevailing wages", "fringe benefits", "scale of fringe  
22 "benefits", "fringe benefit rates", "minimum fringe benefit  
23 "rates" and "prevailing fringe benefits" include:

24 (1) the basic hourly rate of pay for a class  
25 or classification of laborer or mechanic performing work under

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1 the Public Works Minimum Wage Act; and

2 (2) the amount of:

3 (a) the rate of contribution irrevocably  
4 made by a contractor, subcontractor, employer or any person  
5 acting as a contractor to a trustee or a third person pursuant  
6 to a financially responsible fund, plan or program for fringe  
7 benefits as described in Subparagraph (b) of this paragraph;  
8 and

9 (b) the rate of costs to a contractor,  
10 subcontractor, employer or a person acting as a contractor that  
11 reasonably may be anticipated in providing fringe benefits to  
12 laborers and mechanics pursuant to an enforceable commitment to  
13 carry out a financially responsible plan or program that was  
14 communicated in writing to the laborers and mechanics affected  
15 for: 1) medical [~~or hospital care~~] benefit plans; 2) pensions  
16 on retirement or death; 3) compensation for injuries or illness  
17 resulting from occupational activity; or 4) insurance to  
18 provide for any of the foregoing; and for: 5) unemployment  
19 benefits; 6) life insurance; 7) disability and sickness  
20 insurance; 8) accident insurance; 9) vacation and holiday pay;  
21 10) costs of apprenticeship or other similar programs; or for  
22 11) other bona fide fringe benefits; but only where the  
23 contractor, subcontractor, employer or a person acting as a  
24 contractor is not required by other federal, state or local law  
25 to provide any of the foregoing or similar benefits.

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1           B. The obligation of a contractor, subcontractor,  
2 employer or person acting as a contractor to make payment in  
3 accordance with the prevailing wage determinations of the  
4 director of the labor and industrial division of the labor  
5 department, insofar as Section 13-4-11 NMSA 1978 or other  
6 sections of legislative acts incorporating Section 13-4-11 NMSA  
7 1978 are concerned, [~~may~~] shall be discharged by the making of  
8 payments consistent with Subsection B of Section 50-4-2 NMSA  
9 1978, except that the frequency of payments shall comply with  
10 Subsection A of Section 13-4-11 NMSA 1978. The payments shall  
11 include:

12                   (1) payment of the base wage rate as the  
13 director of the labor and industrial division of the labor  
14 department has determined to be prevailing for the appropriate  
15 class of laborers or mechanics; and

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

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

23                   (4) any combination of Paragraphs (2) and (3)  
24 of this subsection where the aggregate of any payments or  
25 contributions and costs therefor is not less than the rate of

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1 pay described in Section 13-4-11 NMSA 1978 plus the amount  
2 referred to in this section; and

3 (5) fringe benefit contributions for medical  
4 benefit plans required under the Public Works Minimum Wage Act  
5 shall not be made in cash or other form except as provided by  
6 this section.

7 C. As an alternative to making required medical  
8 benefit plan fringe benefit contributions to a private bona  
9 fide financially responsible fund, plan or program, a  
10 contractor, subcontractor, employer or person acting as a  
11 contractor may submit payments for a medical benefit plan  
12 fringe benefit contribution required by this section to the  
13 director of the labor and industrial division of the labor  
14 department in appropriate amounts as required by the applicable  
15 prevailing wage determination. Such payments shall be accepted  
16 as required medical benefit plan fringe benefit contributions  
17 and shall be forwarded by the director to the public works  
18 health care coverage fund.

19 D. The director shall develop appropriate criteria  
20 and guidelines for determining whether a plan, fund or program  
21 is bona fide for the purposes of this section.

22 [~~C.~~] E. The provisions of this section shall not  
23 affect existing contracts or contracts resulting from bids  
24 outstanding on July 15, 1965."

25 Section 2. 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 FRINGE  
3 BENEFITS--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 or fringe benefits less than the rate  
10 of wages or fringe benefits required, the contracting agency  
11 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~~] wage rates or fringe benefits, and the contracting  
16 agency may prosecute the work to completion by contract or  
17 otherwise, and the contractor or person acting as a contractor  
18 and [~~his~~] the contractor's or person's sureties shall be liable  
19 to the state for any excess costs occasioned thereby. Any  
20 party receiving notice of termination of [~~his~~] a project or  
21 subcontract under the provisions of this section may appeal the  
22 finding of the director as provided in the Public Works Minimum  
23 Wage Act."

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

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1           "13-4-14.   PAYMENT OF WAGES AND FRINGE BENEFITS FROM FUNDS  
2 WITHHELD--LIST OF CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT  
3 OF WAGE EARNERS.--

4           A.   The director of the labor and industrial  
5 division of the labor department shall certify to the  
6 contracting agency the names of persons or firms the director  
7 has found to have disregarded their obligations to employees  
8 under the Public Works Minimum Wage Act and the amount of  
9 arrears.   The contracting agency shall pay or cause to be paid  
10 to the affected laborers and mechanics, from any accrued  
11 payments withheld under the terms of the contract or designated  
12 for the project, any wages found due such workers pursuant to  
13 the Public Works Minimum Wage Act.   The director shall, after  
14 notice to the affected persons, distribute a list to all  
15 departments of the state giving the names of persons or firms  
16 the director has found to have [~~willfully~~] violated the Public  
17 Works Minimum Wage Act.   No contract or project shall be  
18 awarded to the persons or firms appearing on this list or to  
19 any firm, corporation, partnership or association in which the  
20 persons or firms have an interest until three years have  
21 elapsed from the date of publication of the list containing the  
22 names of the persons or firms.   A person to be included on the  
23 list to be distributed may appeal the finding of the director  
24 as provided in the Public Works 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 required pursuant to the Public Works Minimum Wage Act, the  
5 laborers and mechanics shall have the right of action or  
6 intervention or both against the contractor or person acting as  
7 a contractor and ~~his~~ the contractor's or person's sureties,  
8 conferred by law upon such persons furnishing labor and  
9 materials, and, in such proceeding, it shall be no defense that  
10 the laborers and mechanics accepted or agreed to less than the  
11 required rate of wages, fringe benefits or voluntarily made  
12 refunds. The director of the labor and industrial division of  
13 the labor department shall refer such matters to the district  
14 attorney in the appropriate county, and it is the duty and  
15 responsibility of the district attorney to bring civil suit for  
16 wages or fringe benefits due and liquidated damages provided  
17 for in Subsection C of this section.

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

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

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

13 Section 4. [NEW MATERIAL] PUBLIC WORKS HEALTH CARE  
14 COVERAGE FUND ESTABLISHED.--The "public works health care  
15 coverage fund" is created in the state treasury. The fund  
16 consists of money received by the human services department  
17 through legislative appropriations to the fund, gifts, grants,  
18 donations and bequests. Money in the fund shall not revert to  
19 any other fund at the end of a fiscal year. The fund shall be  
20 administered by the human services department, and money in the  
21 fund is appropriated to the human services department to  
22 provide health insurance to residents of the state. Money in  
23 the fund shall be disbursed on warrants signed by the secretary  
24 of finance and administration pursuant to vouchers signed by  
25 the secretary of human services or the secretary's authorized

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representative.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.