

SENATE BILL 98

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC WORKS PROJECTS; PROVIDING A PROCESS TO RESOLVE PREVAILING WAGE COMPLAINTS; INCREASING PENALTIES.

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

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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 [~~classes~~] classifications of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding [~~classes~~] classifications 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 and fringe benefit rates not less than those determined pursuant to Subsection B of this section to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. Annually, the director shall determine prevailing wage rates and prevailing fringe benefit rates for respective [~~classes~~] classifications of laborers and mechanics

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employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar [~~classes or~~] classifications of laborers and mechanics for the locality of the public works project and the crafts involved; provided that:

(1) if the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar [~~class or~~] classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist;

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

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

(4) prevailing wage rates and prevailing fringe benefit rates determined pursuant to the provisions of this section shall be compiled as official records and kept on

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file in the director's office, and the records shall be updated in accordance with the applicable rates used in subsequent collective bargaining agreements.

C. The prevailing wage rates and prevailing fringe benefit rates 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]~~ shall 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 director or contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the prevailing wage rates and prevailing fringe benefit rates required by the director to be paid to laborers and mechanics on the work and the wage rates and fringe benefit rates received by the laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or the contractor's, ~~[subcontractor's]~~ subcontractor's, employer's or person's agents.

D. Upon request by a person, a contracting agency shall, within twenty days of such request, provide copies of certified weekly payroll records to the requesting person.

~~[D.]~~ E. Notwithstanding any other provision of law applicable to public works contracts or agreements, the

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director 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.

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

G.←SPAC The director shall, within thirty days of the filing of the complaint, commence an investigation of the allegations contained in the complaint. The director shall, within seventy-five days SPAC→**of**←SPAC SPAC→**after the completion of mediation or, if no mediation is requested, within seventy-five days after**←SPAC the filing of the complaint, make a determination supported by findings of fact

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and conclusions of law whether there has been an underpayment of wages or fringe benefits or other violation of the Public Works Minimum Wage Act; provided that if the complaint is of a continuing or significantly complex nature or involves multiple projects or job sites, the director may extend the time in which to make a determination by up to six months by providing written notice and an explanation to all parties of the need to extend the time. SPAC→Prior to issuing a determination, the director shall provide the contractor, subcontractor, employer or other person against whom the complaint has been filed with an opportunity to respond to the complaint and provide any exculpatory evidence.←SPAC

SPAC→G.←SPAC SPAC→H.←SPAC If the director determines that there has been an underpayment of wages or fringe benefits or a violation of the Public Works Minimum Wage Act, the director shall, in the absence of a voluntary resolution by the parties and within thirty days of making that determination, order the withholding of accrued payments as provided in Subsection C of this section.

[E-] SPAC→H.←SPAC SPAC→I.←SPAC The director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act."

SECTION 2. Section 13-4-13 NMSA 1978 (being Laws 1965, Chapter 35, Section 3, as amended) is amended to read:

"13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF

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CONTRACT.--Every contract within the scope of the Public Works Minimum Wage Act shall contain further provision that in the event it is [~~found~~] determined by the director that any laborer or mechanic employed on the site of the project has been or is being paid [~~as a result of a willful violation~~] a wage rate or fringe benefit rate less than the rates required SPAC→, and in the absence of a voluntary resolution by the parties←SPAC, the contracting agency [~~may~~] shall, within thirty days of the director's determination, by written notice to the contractor, subcontractor, employer or person acting as a contractor, terminate the right to proceed with the work or the part of the work as to which there has been a [~~willful~~] failure to pay the required wages or fringe benefits, and the contracting agency [~~may~~] shall prosecute the work to completion by contract or otherwise, and the contractor or person acting as a contractor and the contractor's or person's sureties shall be liable to the state for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract pursuant to the provisions of this section may appeal the finding of the director as provided in the Public Works Minimum Wage Act."

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.--

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A. The director shall certify to the contracting agency the names of persons or firms the director has found to have ~~[disregarded their obligations to]~~ failed to pay wages or fringe benefits due 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, three times the amount of any wages or fringe benefits found due to the 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

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or fringe benefits 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 the contractor's or person's sureties, conferred by law upon the 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 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 and fringe benefits due and ~~liquidated~~ other damages provided for in Subsection C of this section.

C. In the event of ~~[any violation of]~~ an aggregate underpayment of wages or fringe benefits greater than five hundred dollars (\$500) to an employee subject to the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or a person acting as a contractor responsible for the ~~[violation]~~ underpayment shall be liable to any affected employee for three times the amount of the employee's unpaid wages or fringe benefits. In addition, the contractor, subcontractor, employer or 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) for each

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calendar day on which a contractor, subcontractor, employer or person acting as a contractor has willfully required or permitted [~~an individual laborer or mechanic~~] the employee 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~~] shall award, in addition to all other remedies, attorney fees and costs [~~to~~] incurred on behalf of an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employer or person acting as a contractor."