

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 98

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

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
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

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underscored material = new
~~[bracketed material] = delete~~

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

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

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1 project and the crafts involved; provided that:

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

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

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

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

24 C. The prevailing wage rates and prevailing fringe
25 benefit rates to be paid shall be posted by the contractor or

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1 person acting as a contractor in a prominent and easily
2 accessible place at the site of the work; [~~and it is further~~]
3 provided that there [~~may~~] shall be withheld from the
4 contractor, subcontractor, employer or a person acting as a
5 contractor so much of accrued payments as may be considered
6 necessary by the director or contracting officer of the state
7 or political subdivision to pay to laborers and mechanics
8 employed on the project the difference between the prevailing
9 wage rates and prevailing fringe benefit rates required by the
10 director to be paid to laborers and mechanics on the work and
11 the wage rates and fringe benefit rates received by the
12 laborers and mechanics and not refunded to the contractor,
13 subcontractor, employer or a person acting as a contractor or
14 the contractor's, [~~subcontractor's~~] subcontractor's,
15 employer's or person's agents.

16 D. Certified weekly payroll records of a
17 contracting agency are subject to inspection pursuant to the
18 Inspection of Public Records Act; provided that the request
19 shall be fulfilled within twenty days of receipt of the written
20 request. Certified weekly payroll records are subject to
21 record retention requirements applicable to payroll records of
22 a state agency.

23 [~~D.~~] E. Notwithstanding any other provision of law
24 applicable to public works contracts or agreements, the
25 director may, with cause:

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

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

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

18 G. The director shall, within thirty days of the
19 filing of the complaint, commence an investigation of the
20 allegations contained in the complaint. The director shall,
21 within seventy-five days after the completion of mediation or
22 if no mediation is requested, within seventy-five days after
23 the filing of the complaint, make a determination supported by
24 findings of fact and conclusions of law whether there has been
25 an underpayment of wages or fringe benefits or other violation

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1 of the Public Works Minimum Wage Act; provided that if the
2 complaint is of a continuing or significantly complex nature or
3 involves multiple projects or job sites, the director may
4 extend the time in which to make a determination by up to six
5 months by providing written notice and an explanation to all
6 parties of the need to extend the time. Prior to issuing a
7 determination, the director shall provide the contractor,
8 subcontractor, employer or other person against whom the
9 complaint has been filed with an opportunity to respond to the
10 complaint and provide any exculpatory evidence.

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

18 ~~[E.]~~ I. The director shall issue rules necessary to
19 administer and accomplish the purposes of the Public Works
20 Minimum Wage Act."

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

23 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
24 CONTRACT.--Every contract within the scope of the Public Works
25 Minimum Wage Act shall contain further provision that in the

1 event it is [~~found~~] determined by the director that any laborer
 2 or mechanic employed on the site of the project has been or is
 3 being paid [~~as a result of a willful violation~~] a wage rate or
 4 fringe benefit rate less than the rates required, and in the
 5 absence of a voluntary resolution by the parties, the
 6 contracting agency [~~may~~] shall, within thirty days of the
 7 director's determination, by written notice to the contractor,
 8 subcontractor, employer or person acting as a contractor,
 9 terminate the right to proceed with the work or the part of the
 10 work as to which there has been a [~~willful~~] failure to pay the
 11 required wages or fringe benefits, and the contracting agency
 12 [~~may~~] shall prosecute the work to completion by contract or
 13 otherwise, and the contractor or person acting as a contractor
 14 and the contractor's or person's sureties shall be liable to
 15 the state for any excess costs occasioned thereby. Any party
 16 receiving notice of termination of a project or subcontract
 17 pursuant to the provisions of this section may appeal the
 18 finding of the director as provided in the Public Works Minimum
 19 Wage Act."

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

22 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
 23 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

24 A. The director shall certify to the contracting
 25 agency the names of persons or firms the director has found to

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

20 B. If the accrued payments withheld under the terms
21 of the contract, as mentioned in Subsection A of this section,
22 are insufficient to reimburse all the laborers and mechanics
23 with respect to whom there has been a failure to pay the wages
24 or fringe benefits required pursuant to the Public Works
25 Minimum Wage Act, the laborers and mechanics shall have the

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1 right of action or intervention or both against the contractor
 2 or person acting as a contractor and the contractor's or
 3 person's sureties, conferred by law upon the persons furnishing
 4 labor and materials, and, in such proceeding, it shall be no
 5 defense that the laborers and mechanics accepted or agreed to
 6 less than the required rate of wages or voluntarily made
 7 refunds. The director shall refer such matters to the district
 8 attorney in the appropriate county, and it is the duty and
 9 responsibility of the district attorney to bring civil suit for
 10 wages and fringe benefits due and ~~liquidated~~ other damages
 11 provided for in Subsection C of this section.

12 C. In the event of ~~any violation of~~ an aggregate
 13 underpayment of wages or fringe benefits greater than five
 14 hundred dollars (\$500) to an employee subject to the Public
 15 Works Minimum Wage Act or implementing rules, the contractor,
 16 subcontractor, employer or a person acting as a contractor
 17 responsible for the ~~violation~~ underpayment shall be liable to
 18 any affected employee for three times the amount of the
 19 employee's unpaid wages or fringe benefits. In addition, the
 20 contractor, subcontractor, employer or person acting as a
 21 contractor shall be liable to any affected employee for
 22 ~~liquidated damages beginning with the first day of covered~~
 23 ~~employment in the sum of~~ one hundred dollars (\$100) for each
 24 calendar day on which a contractor, subcontractor, employer or
 25 person acting as a contractor has willfully required or

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1 permitted [~~an individual laborer or mechanic~~] the employee to
2 work in violation of the provisions of the Public Works Minimum
3 Wage Act.

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