

1 AN ACT
2 RELATING TO MINIMUM WAGE; REQUIRING THAT PROJECTS UNDERTAKEN
3 BY A MUNICIPALITY OR COUNTY THROUGH THE ISSUANCE OF
4 INDUSTRIAL REVENUE BONDS PAY THE PREVAILING WAGE AND COMPLY
5 WITH THE PROVISIONS OF SECTION 13-4-11 NMSA 1978 (BEING LAWS
6 1965, CHAPTER 35, SECTION 1, AS AMENDED).

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

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

11 "13-4-11. PREVAILING WAGE AND BENEFIT RATES
12 DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC
13 WORKS--WEEKLY PAYMENT--WITHHOLDING FUNDS--INDUSTRIAL REVENUE
14 BOND PROJECTS.--

15 A. Every contract or project in excess of sixty
16 thousand dollars (\$60,000) that the state or any political
17 subdivision thereof is a party to for construction,
18 alteration, demolition or repair or any combination of these,
19 including painting and decorating, of public buildings,
20 public works or public roads of the state and that requires
21 or involves the employment of mechanics, laborers or both
22 shall contain a provision stating the minimum wages and
23 fringe benefits to be paid to various classifications of
24 laborers and mechanics, which shall be based upon the wages
25 and benefits that will be determined by the director to be

1 prevailing for the corresponding classifications of laborers
2 and mechanics employed on contract work of a similar nature
3 in the state or locality, and every contract or project shall
4 contain a stipulation that the contractor, subcontractor,
5 employer or a person acting as a contractor shall pay all
6 mechanics and laborers employed on the site of the project,
7 unconditionally and not less often than once a week and
8 without subsequent unlawful deduction or rebate on any
9 account, the full amounts accrued at time of payment computed
10 at wage rates and fringe benefit rates not less than those
11 determined pursuant to Subsection B of this section to be the
12 prevailing wage rates and prevailing fringe benefit rates
13 issued for the project.

14 B. Annually, no later than October 1, the director
15 shall determine prevailing wage rates and prevailing fringe
16 benefit rates to take effect the next January 1 for
17 respective classifications of laborers and mechanics employed
18 on public works projects at the same wage rates and fringe
19 benefit rates used in collective bargaining agreements
20 between labor organizations and their signatory employers
21 that govern predominantly similar classifications of laborers
22 and mechanics for the locality of the public works project
23 and the crafts involved; provided that:

24 (1) if the prevailing wage rates and
25 prevailing fringe benefit rates cannot reasonably and fairly

1 be determined in a locality because no collective bargaining
2 agreements exist, the director shall determine the prevailing
3 wage rates and prevailing fringe benefit rates for the same
4 or most similar classification of laborer or mechanic in the
5 nearest and most similar neighboring locality in which
6 collective bargaining agreements exist;

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

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

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

21 (5) an appeal of the prevailing wage
22 determination pursuant to the provisions of this section
23 shall not have the effect of creating a stay of the
24 implementation of the rate; and

25 (6) during the pendency of an appeal,

1 whether before the labor and industrial commission or in a
2 court, a court of competent jurisdiction may grant a stay of
3 the implementation of the wage rate based on a motion made by
4 a party or an interested person, provided the court gives an
5 opportunity for any interested person to be heard on the
6 matter.

7 C. The prevailing wage rates and prevailing fringe
8 benefit rates to be paid shall be posted by the contractor or
9 person acting as a contractor in a prominent and easily
10 accessible place at the site of the work; provided that there
11 shall be withheld from the contractor, subcontractor,
12 employer or a person acting as a contractor so much of
13 accrued payments as may be considered necessary by the
14 director or contracting officer of the state or political
15 subdivision to pay to laborers and mechanics employed on the
16 project the difference between the prevailing wage rates and
17 prevailing fringe benefit rates required by the director to
18 be paid to laborers and mechanics on the work and the wage
19 rates and fringe benefit rates received by the laborers and
20 mechanics and not refunded to the contractor, subcontractor,
21 employer or a person acting as a contractor or the
22 contractor's, subcontractor's, employer's or person's agents.

23 D. Certified weekly payroll records of a
24 contracting agency are subject to inspection pursuant to the
25 Inspection of Public Records Act; provided that the request

1 shall be fulfilled within twenty days of receipt of the
2 written request. Certified weekly payroll records are
3 subject to record retention requirements applicable to
4 payroll records of a state agency.

5 E. Notwithstanding any other provision of law
6 applicable to public works contracts or agreements, the
7 director may, with cause:

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

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

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

25 G. The director shall, within thirty days of the

1 filing of the complaint, commence an investigation of the
2 allegations contained in the complaint. The director shall,
3 within seventy-five days after the completion of mediation or
4 if no mediation is requested, within seventy-five days after
5 the filing of the complaint, make a determination supported
6 by findings of fact and conclusions of law whether there has
7 been an underpayment of wages or fringe benefits or other
8 violation of the Public Works Minimum Wage Act; provided that
9 if the complaint is of a continuing or significantly complex
10 nature or involves multiple projects or job sites, the
11 director may extend the time in which to make a determination
12 by up to six months by providing written notice and an
13 explanation to all parties of the need to extend the time.
14 Prior to issuing a determination, the director shall provide
15 the contractor, subcontractor, employer or other person
16 against whom the complaint has been filed with an opportunity
17 to respond to the complaint and provide any exculpatory
18 evidence.

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

1 I. The director shall issue rules necessary to
2 administer and accomplish the purposes of the Public Works
3 Minimum Wage Act.

4 J. For projects undertaken under the auspices of a
5 municipality or county through the issuance of an industrial
6 revenue bond, the contractor, subcontractor, employer or
7 person acting as a contractor shall pay the prevailing wage
8 and comply with the provisions of this section."=====

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