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SENATE BILL 724

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

RICHARD M. ROMERO

AN ACT

RELATING TO PUBLIC WORKS CONTRACTS; AMENDING A SECTION OF THE
PUBLIC WORKS MINIMUM WAGE ACT TO ALLOW PAYMENT OF WAGES ON A
TWICE-MONTHLY BASIS; AMENDING THE DEFINITION OF WAGES.

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. MINIMUM WAGES ON PUBLIC WORKS--~~[WEEKLY PAYMENT]~~
TWICE-MONTHLY PAYMENTS--POSTING WAGE SCALE--WITHHOLDING FUNDS.--

Every contract or project in excess of twenty thousand dollars (\$20,000) to which the state or any political subdivision thereof is a party 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 ~~[which]~~ that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics, which shall be based upon the wages that will be determined by the director of the labor and industrial division of the labor department to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar

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1 nature in the state or locality, and every contract or project shall contain a stipulation that the
2 contractor, subcontractor, employer or any person acting as a contractor shall pay all mechanics
3 and laborers employed on the site of the project, unconditionally and not less often than [~~once a~~
4 ~~week~~] twice a month and without subsequent unlawful deduction or rebate on any account, the
5 full amounts accrued at time of payment computed at wage rates not less than those stated in
6 the minimum wage rates issued for the project.

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

17 B. The scale of wages to be paid shall be posted by the contractor or person
18 acting as a contractor in a prominent and easily accessible place at the site of the work; and it is
19 further provided that there may be withheld from the contractor, subcontractor, employer or
20 any person acting as a contractor so much of accrued payments as may be considered necessary
21 by the contracting officer to pay to laborers and mechanics employed on the project the
22 difference between the rates of wages required by the director of the labor and industrial
23 division of the labor department to be paid to laborers and mechanics on the work and the rates
24 of wages received by such laborers and mechanics and not refunded to the contractor,
25 subcontractor, employer or any person acting as a contractor or their agents.

 C. The director of the labor and industrial division of the labor department
shall have authority to issue rules and regulations necessary to administer and accomplish the

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1 purposes of the Public Works Minimum Wage Act."

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

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

5 A. As used in Section 13-4-11 NMSA 1978, "wages", "scale of wages", "wage
6 rates", "minimum wages" and "prevailing wages" include:

7 (1) the basic hourly rate of pay including payments made directly to
8 an employee to enable the employee to purchase health insurance; and

9 (2) the amount of:

10 (a) the rate of contribution irrevocably made by a contractor,
11 subcontractor, employer or any person acting as a contractor to a trustee or a third person
12 pursuant to a fund, plan or program; and

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

25 B. The obligation of a contractor, subcontractor, employer or person acting as
a contractor to make payment in accordance with the prevailing wage determinations of the
director of the labor and industrial division of the labor department, insofar as Section 13-4-11

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1 NMSA 1978 or other sections of legislative acts incorporating Section 13-4-11 NMSA 1978
2 are concerned, may be discharged by:
3 (1) the making of payments in cash;
4 (2) the making of contributions of a type referred to in Subparagraph
5 (a) of Paragraph (2) of Subsection A of this section; or
6 (3) the assumption of an enforceable commitment to bear the costs of
7 a plan or program of a type referred to in Subparagraph (b) of Paragraph (2) of Subsection A of
8 this section or any combination thereof where the aggregate of any payments or contributions
9 and costs therefor is not less than the rate of pay described in Section 13-4-11 NMSA 1978 plus
10 the amount referred to in this section.
11 C. The provisions of this section shall not affect existing contracts or contracts
12 resulting from bids outstanding on July 15, 1965."

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1 **FORTY-SECOND LEGISLATURE**

2 **SECOND SESSION, 1996**

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6 FEBRUARY 1, 1996

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8 Mr. President:

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10 Your **COMMITTEES' COMMITTEE**, to whom has been referred

11
12 **SENATE BILL 724**

13
14 has had it under consideration and finds same to be **GERMANE**, PURSUANT TO
15 CONSTITUTIONAL PROVISIONS, and thence referred to the **PUBLIC AFFAIRS**
16 **COMMITTEE.**

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19 Respectfully submitted,

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25 **SENATOR MANNY M. ARAGON, Chairman**

Adopted _____ Not Adopted _____

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