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AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR THE DETERMINATION OF  
PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES;  
REQUIRING PAYMENT OF THE PREVAILING RATES ON PUBLIC WORKS  
PROJECTS.

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

Section 1. Section 13-4-10 NMSA 1978 (being Laws 1963,  
Chapter 304, Section 1) is amended to read:

"13-4-10. SHORT TITLE.--Sections 13-4-10 through  
13-4-17 NMSA 1978 may be cited as the "Public Works Minimum  
Wage Act"."

Section 2. A new section of the Public Works Minimum  
Wage Act, Section 13-4-10.1 NMSA 1978, is enacted to read:

"13-4-10.1. DEFINITIONS.--As used in the Public Works  
Minimum Wage Act:

A. "director" means the director of the division;

B. "division" means the labor relations division  
of the workforce solutions department;

C. "fringe benefit" means payments made by a  
contractor, subcontractor, employer or person acting as a  
contractor, if the payment has been authorized through a  
negotiated process or by a collective bargaining agreement,  
for:

(1) holidays;

- 1 (2) time off for sickness or injury;
- 2 (3) time off for personal reasons or
- 3 vacation;
- 4 (4) bonuses;
- 5 (5) authorized expenses incurred during the
- 6 course of employment;
- 7 (6) health, life and accident or disability
- 8 insurance;
- 9 (7) profit-sharing plans;
- 10 (8) contributions made on behalf of an
- 11 employee to a retirement or other pension plan; and
- 12 (9) any other compensation paid to an
- 13 employee other than wages;

14 D. "labor organization" means an organization of  
15 any kind, or an agency or employee representation committee  
16 or plan, in which employees participate and that exists for  
17 the purpose, in whole or in part, of dealing with employers  
18 concerning grievances, labor disputes, wages, rates of pay,  
19 hours of employment or conditions of work; and

20 E. "wage" means the basic hourly rate of pay."

21 Section 3. Section 13-4-11 NMSA 1978 (being Laws 1965,  
22 Chapter 35, Section 1, as amended) is amended to read:

23 "13-4-11. PREVAILING WAGE AND BENEFIT RATES  
24 DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC  
25 WORKS--WEEKLY PAYMENT--WITHHOLDING FUNDS.--

1           A. Every contract or project in excess of sixty  
2 thousand dollars (\$60,000) that the state or any political  
3 subdivision thereof is a party to for construction,  
4 alteration, demolition or repair or any combination of these,  
5 including painting and decorating, of public buildings,  
6 public works or public roads of the state and that requires  
7 or involves the employment of mechanics, laborers or both  
8 shall contain a provision stating the minimum wages and  
9 fringe benefits to be paid to various classes of laborers and  
10 mechanics, which shall be based upon the wages and benefits  
11 that will be determined by the director to be prevailing for  
12 the corresponding classes of laborers and mechanics employed  
13 on contract work of a similar nature in the state or  
14 locality, and every contract or project shall contain a  
15 stipulation that the contractor, subcontractor, employer or a  
16 person acting as a contractor shall pay all mechanics and  
17 laborers employed on the site of the project, unconditionally  
18 and not less often than once a week and without subsequent  
19 unlawful deduction or rebate on any account, the full amounts  
20 accrued at time of payment computed at wage rates and fringe  
21 benefit rates not less than those determined pursuant to  
22 Subsection B of this section to be the prevailing wage rates  
23 and prevailing fringe benefit rates issued for the project.

24           B. The director shall determine prevailing wage  
25 rates and prevailing fringe benefit rates for respective

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

8 (1) if the prevailing wage rates and  
9 prevailing fringe benefit rates cannot reasonably and fairly  
10 be determined in a locality because no collective bargaining  
11 agreements exist, the director shall determine the prevailing  
12 wage rates and prevailing fringe benefit rates for the same  
13 or most similar class or classification of laborer or  
14 mechanic in the nearest and most similar neighboring locality  
15 in which collective bargaining agreements exist;

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

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

25 (4) prevailing wage rates and prevailing

1 fringe benefit rates determined pursuant to the provisions of  
2 this section shall be compiled as official records and kept  
3 on file in the director's office and the records shall be  
4 updated in accordance with the applicable rates used in  
5 subsequent collective bargaining agreements.

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

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

25 (1) issue investigative or hearing subpoenas

1 for the production of documents or witnesses pertaining to  
2 public works prevailing wage projects; and

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

10 E. The director shall issue rules necessary to  
11 administer and accomplish the purposes of the Public Works  
12 Minimum Wage Act."

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

15 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF  
16 CONTRACT.--Every contract within the scope of the Public  
17 Works Minimum Wage Act shall contain further provision that  
18 in the event it is found by the director that any laborer or  
19 mechanic employed on the site of the project has been or is  
20 being paid as a result of a willful violation a wage rate or  
21 fringe benefit rate less than the rates required, the  
22 contracting agency may, by written notice to the contractor,  
23 subcontractor, employer or person acting as a contractor,  
24 terminate the right to proceed with the work or the part of  
25 the work as to which there has been a willful failure to pay

1 the required wages or fringe benefits, and the contracting  
2 agency may prosecute the work to completion by contract or  
3 otherwise, and the contractor or person acting as a  
4 contractor and the contractor's or person's sureties shall be  
5 liable to the state for any excess costs occasioned thereby.  
6 Any party receiving notice of termination of a project or  
7 subcontract pursuant to the provisions of this section may  
8 appeal the finding of the director as provided in the Public  
9 Works Minimum Wage Act."

10 Section 5. Section 13-4-13.1 NMSA 1978 (being Laws  
11 2004, Chapter 89, Section 1, as amended) is amended to read:

12 "13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF  
13 CONTRACTORS AND SUBCONTRACTORS.--

14 A. Except as otherwise provided in this  
15 subsection, in order to submit a bid valued at more than  
16 sixty thousand dollars (\$60,000) in order to respond to a  
17 request for proposals or to be considered for award of any  
18 portion of a public works project greater than sixty thousand  
19 dollars (\$60,000) for a public works project that is subject  
20 to the Public Works Minimum Wage Act, the contractor, serving  
21 as a prime contractor or not, shall be registered with the  
22 division. Bidding documents issued or released by a state  
23 agency or political subdivision of the state shall include a  
24 clear notification that each contractor, prime contractor or  
25 subcontractor is required to be registered pursuant to this

1 subsection. The provisions of this section do not apply to  
2 vocational classes in public schools or public post-secondary  
3 educational institutions.

4 B. The state or any political subdivision of the  
5 state shall not accept a bid on a public works project  
6 subject to the Public Works Minimum Wage Act from a prime  
7 contractor that does not provide proof of required  
8 registration for itself.

9 C. Contractors and subcontractors may register  
10 with the division on a form provided by the division and in  
11 accordance with workforce solutions department rules. The  
12 division shall charge an annual registration fee of two  
13 hundred dollars (\$200). The division shall issue to the  
14 applicant a certificate of registration within fifteen days  
15 after receiving from the applicant the completed registration  
16 form and the registration fee.

17 D. Registration fees collected by the division  
18 shall be deposited in the labor enforcement fund."

19 Section 6. Section 13-4-14 NMSA 1978 (being Laws 1965,  
20 Chapter 35, Section 4, as amended) is amended to read:

21 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF  
22 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE  
23 EARNERS.--

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

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

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

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

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

1 Works Minimum Wage Act.

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

8 Section 7. Section 13-4-14.1 NMSA 1978 (being Laws  
9 2004, Chapter 89, Section 2) is amended to read:

10 "13-4-14.1. LABOR ENFORCEMENT FUND--CREATION--USE.--The  
11 "labor enforcement fund" is created in the state treasury.  
12 The fund shall consist of contractor and subcontractor  
13 registration fees collected by the division and all  
14 investment and interest income from the fund. The fund shall  
15 be administered by the division, and money in the fund is  
16 appropriated to the division for administration and  
17 enforcement of the Public Works Minimum Wage Act. Money in  
18 the fund shall not revert to the general fund at the end of a  
19 fiscal year."

20 Section 8. Section 13-4-14.2 NMSA 1978 (being Laws  
21 2004, Chapter 89, Section 3) is amended to read:

22 "13-4-14.2. REGISTRATION CANCELLATION, REVOCATION,  
23 SUSPENSION--INJUNCTIVE RELIEF.--The director may:

24 A. cancel, revoke or suspend with conditions,  
25 including probation, the registration of any party required

1 to be registered pursuant to the Public Works Minimum Wage  
2 Act for failure to comply with the registration provisions or  
3 for good cause, subject to appeal pursuant to Section 13-4-15  
4 NMSA 1978; and

5 B. seek injunctive relief in district court for  
6 failure to comply with the registration provisions of the  
7 Public Works Minimum Wage Act."

8 Section 9. Section 13-4-15 NMSA 1978 (being Laws 1963,  
9 Chapter 304, Section 5, as amended) is amended to read:

10 "13-4-15. APPEALS.--

11 A. Any interested person may appeal any  
12 determination, finding or action of the director made  
13 pursuant to the Public Works Minimum Wage Act to the labor  
14 and industrial commission sitting as the appeals board by  
15 filing notice of the appeal with the director within fifteen  
16 days after the determination has been issued or notice of the  
17 finding or action has been given as provided in the Public  
18 Works Minimum Wage Act.

19 B. The labor and industrial commission, sitting as  
20 the appeals board, shall adopt rules as it deems necessary  
21 for the prompt disposition of appeals. A copy of the rules  
22 shall be filed with the librarian of the supreme court law  
23 library.

24 C. The appeals board, within ten days after the  
25 filing of the appeal, shall set the matter for an oral

1 hearing within thirty days and, following the hearing, shall  
2 enter a decision within ten days after the close of the  
3 hearing and promptly mail copies of the decision to the  
4 parties.

5 D. Decisions of the appeals board may be appealed  
6 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

7 Section 10. Section 13-4-17 NMSA 1978 (being Laws 1937,  
8 Chapter 179, Section 5) is amended to read:

9 "13-4-17. OUTSTANDING CONTRACTS AND INVITATIONS.-- The  
10 Public Works Minimum Wage Act shall not affect a contract  
11 existing or a contract that may be entered into pursuant to  
12 invitations for bids that are outstanding at the time of  
13 enactment of that act."

14 Section 11. REPEAL.--Section 13-4-12 NMSA 1978 (being  
15 Laws 1965, Chapter 35, Section 2, as amended) is repealed.

16 Section 12. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2009. \_\_\_\_\_

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