

1 HOUSE BILL 545

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 James R.J. Strickler

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10 AN ACT

11 RELATING TO PUBLIC WORKS; PROVIDING FOR A TWO-YEAR PERIOD WHEN
12 WAGE RATES ARE DETERMINED THROUGH A CONTINUING SURVEY PROGRAM
13 RATHER THAN BY WAGE RATES USED IN COLLECTIVE BARGAINING
14 AGREEMENTS.

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

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

19 "13-4-11. PREVAILING WAGE AND BENEFIT RATES
20 DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--
21 WEEKLY PAYMENT--WITHHOLDING FUNDS.--

22 A. Every contract or project in excess of sixty
23 thousand dollars (\$60,000) that the state or any political
24 subdivision thereof is a party to for construction, alteration,
25 demolition or repair or any combination of these, including

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

20 B. For the purpose of determining prevailing wage
21 rates and prevailing fringe benefit rates from July 1, 2011
22 through June 30, 2013, the director shall conduct a continuing
23 program to obtain and compile wage rate and fringe benefit rate
24 information and shall encourage the voluntary submission of
25 wage rate and fringe benefit rate data by contractors,

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1 contractors' associations, labor organizations, interested
2 persons and public officers. Before making a determination of
3 wage rates and fringe benefit rates for any project, the
4 director shall give due regard to the information obtained.
5 Whenever the director deems that the data at hand are
6 insufficient to make a wage and fringe benefit determination,
7 the director may conduct a field survey to obtain sufficient
8 information upon which to make a determination of wage rates
9 and fringe benefit rates. Any interested person shall have the
10 right to submit to the director written data, views and
11 arguments why the wage and fringe benefit determination should
12 be changed.

13 [B-] C. After June 30, 2013, the director shall
14 determine prevailing wage rates and prevailing fringe benefit
15 rates for respective classes of laborers and mechanics employed
16 on public works projects at the same wage rates and fringe
17 benefit rates used in collective bargaining agreements between
18 labor organizations and their signatory employers that govern
19 predominantly similar classes or classifications of laborers
20 and mechanics for the locality of the public works project and
21 the crafts involved; provided that:

22 (1) if the prevailing wage rates and
23 prevailing fringe benefit rates cannot reasonably and fairly be
24 determined in a locality because no collective bargaining
25 agreements exist, the director shall determine the prevailing

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1 wage rates and prevailing fringe benefit rates for the same or
2 most similar class or classification of laborer or mechanic in
3 the nearest and most similar neighboring locality in which
4 collective bargaining agreements exist;

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

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

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

19 [~~G.~~] D. The prevailing wage rates and prevailing
20 fringe benefit rates to be paid shall be posted by the
21 contractor or person acting as a contractor in a prominent and
22 easily accessible place at the site of the work; and it is
23 further provided that there may be withheld from the
24 contractor, subcontractor, employer or a person acting as a
25 contractor so much of accrued payments as may be considered

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1 necessary by the contracting officer of the state or political
2 subdivision to pay to laborers and mechanics employed on the
3 project the difference between the prevailing wage rates and
4 prevailing fringe benefit rates required by the director to be
5 paid to laborers and mechanics on the work and the wage rates
6 and fringe benefit rates received by the laborers and mechanics
7 and not refunded to the contractor, subcontractor, employer or
8 a person acting as a contractor or the contractor's,
9 [~~subcontractor's~~] subcontractor's, employer's or person's
10 agents.

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

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

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

24 [~~E.~~] F. The director shall issue rules necessary to
25 administer and accomplish the purposes of the Public Works

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1 Minimum Wage Act."

2 SECTION 2. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2011.

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