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SENATE BILL 559

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

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

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

16 A. For the purpose of making wage determinations,
17 the director of the labor and industrial division of the labor
18 department shall conduct a continuing program for the obtaining
19 and compiling of wage-rate information and shall encourage the
20 voluntary submission of wage-rate data by contractors,
21 contractors' associations, labor organizations, interested
22 persons and public officers. Before making a determination of
23 wage rates for any project, [~~he~~] the director shall give due
24 regard to the information thus obtained. Whenever the director
25 deems that the data at hand are insufficient to make a wage

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1 determination, he may have a field survey conducted for the
2 purpose of obtaining sufficient information upon which to make
3 determination of wage rates. Any interested person shall have
4 the right to submit to the director written data, views and
5 arguments why the wage determination should be changed.

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

19 C. The director of the labor and industrial division
20 of the labor department shall have authority to issue rules and
21 regulations necessary to administer and accomplish the purposes
22 of the Public Works Minimum Wage Act. "

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

25 "13-4-12. DEFINITION OF THE TERM "WAGES". --

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

4 (1) the basic hourly rate of pay, including
5 payments made directly to an employee to enable the employee to
6 purchase health insurance; and

7 (2) the amount of:

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

12 (b) the rate of costs to a contractor,
13 subcontractor, employer or any person acting as a contractor
14 which reasonably may be anticipated in providing benefits to
15 laborers and mechanics pursuant to an enforceable commitment to
16 carry out a financially responsible plan or program which was
17 communicated in writing to the laborers and mechanics affected
18 for: 1) medical or hospital care; 2) pensions on retirement or
19 death; 3) compensation for injuries or illness resulting from
20 occupational activity; or 4) insurance to provide for any of the
21 foregoing; and for: 5) unemployment benefits; 6) life insurance;
22 7) disability and sickness insurance; 8) accident insurance; 9)
23 vacation and holiday pay; 10) costs of apprenticeship or other
24 similar programs; or for 11) other bona fide fringe benefits;
25 but only where the contractor, subcontractor, employer or any

1 person acting as a contractor is not required by other federal,
2 state or local law to provide any of the foregoing or similar
3 benefits.

4 B. The obligation of a contractor, subcontractor,
5 employer or person acting as a contractor to make payment in
6 accordance with the prevailing wage determinations of the
7 director of the labor and industrial division of the labor
8 department, insofar as Section 13-4-11 NMSA 1978 or other
9 sections of legislative acts incorporating Section 13-4-11 NMSA
10 1978 are concerned, may be discharged by:

11 (1) the making of payments in cash;

12 (2) the making of contributions of a type
13 referred to in Subparagraph (a) of Paragraph (2) of Subsection A
14 of this section; or

15 (3) the assumption of an enforceable commitment
16 to bear the costs of a plan or program of a type referred to in
17 Subparagraph (b) of Paragraph (2) of Subsection A of this
18 section or any combination thereof where the aggregate of any
19 payments or contributions and costs therefor is not less than
20 the rate of pay described in Section 13-4-11 NMSA 1978 plus the
21 amount referred to in this section.

22 C. The provisions of this section shall not affect
23 existing contracts or contracts resulting from bids outstanding
24 on July 15, 1965. "

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3 SB 559/a

4
5
6 February 26, 1997

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9 Mr. President:

10
11 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
12 whom has been referred

13
14 SENATE BILL 559

15
16 has had it under consideration and reports same with
17 recommendation that it DO PASS, amended as follows:

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20 1. On page 1, line 13, strike "TWICE-MONTHLY" and insert in
21 lieu thereof "BIWEEKLY", and before the semicolon insert "UNDER
22 CERTAIN PUBLIC WORKS CONTRACTS OR PROJECTS".

23
24 2. On page 1, line 19, strike the underscored "TWICE-
25 MONTHLY".

3. On page 2, line 11, remove the brackets and line-through

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FIRST SESSION, 1997

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and on line 12, strike the underscored "twice a month" and insert
in lieu thereof "for contracts and projects of two hundred fifty
thousand dollars (\$250,000) or more or biweekly for contracts or
projects of less than that amount".

4. On page 4, line 4, strike the comma and the underscored
word, strike all of line 5 and strike line 6 up to the semicolon.

5. On page 5, line 3, after the period, insert "For purposes
of this section, a written agreement between a contractor,
subcontractor, employer or person acting as a contractor and his
employee providing for a direct payment to the employee for any of
the benefits listed in this subparagraph shall be deemed to be an
enforceable commitment to carry out a financially responsible plan
or program pursuant to this subparagraph.".,

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and thence referred to the PUBLIC AFFAIRS COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 1 Against

Yes: 9

No: Griego

Excused: None

. 116296. 1

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Absent: None

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