

HOUSE BILL 520

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC WORKS CONTRACTS; CLARIFYING EVIDENTIARY
STANDARDS FOR CLAIMS AGAINST A BOND FOR FURNISHING LABOR AND
MATERIALS FOR PUBLIC WORKS PROJECTS.

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

SECTION 1. Section 13-4-19 NMSA 1978 (being Laws 1923,
Chapter 136, Section 2, as amended) is amended to read:

"13-4-19. RIGHTS OF PERSON FURNISHING LABOR OR ~~[MATERIAL]~~
MATERIALS AND RIGHT OF STATE WITH RESPECT TO TAXES DUE.--

A. Every person, firm or corporation ~~[who]~~ that has
furnished labor or ~~[material]~~ materials in the prosecution of
work provided for in ~~[such]~~ a contract, in respect of which a
payment bond is furnished under Section ~~[6-6-11 NMSA 1953]~~
13-4-18 NMSA 1978, and ~~[who]~~ that has not been paid in full
~~[therefor]~~ for the labor or materials before the expiration of

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1 a period of ninety days after the day on which the last of the
2 labor was done or performed [~~by him~~] or [~~material was~~]
3 materials were furnished or supplied [~~by him~~] for which [~~such~~]
4 claim is made, and the state, in respect of which a payment
5 bond is furnished under Section [~~6-6-11 NMSA 1953~~] 13-4-18 NMSA
6 1978, by a contractor [~~who~~] that does not have its principal
7 place of business in New Mexico, for all taxes due arising out
8 of construction services rendered under the contract shall have
9 the right to sue on [~~such~~] the payment bond for the amount of
10 the balance [~~thereof~~] unpaid at the time of the institution of
11 [~~such~~] the suit and to prosecute such action to final execution
12 and judgment for the sum [~~or sums justly~~] due [~~him~~] only for
13 the labor performed on, or materials actually delivered to and
14 actually incorporated into, the project; provided, however,
15 that [~~any~~] a person having a direct contractual relationship
16 with a subcontractor but no contractual relationship, express
17 or implied, with the contractor furnishing [~~such~~] the payment
18 bond shall have a right of action upon [~~said~~] the payment bond
19 upon giving written notice to [~~said~~] the contractor, within
20 ninety days from the date on which [~~such~~] the person did or
21 performed the last of the labor or furnished or supplied the
22 last of the [~~material~~] materials for which [~~such~~] the claim is
23 made, stating with substantial accuracy the amount claimed and
24 the name of the party to whom the [~~material was~~] materials were
25 furnished or supplied or for whom the labor was done or

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1 performed. [~~Such~~] Notice shall be served by mailing the [~~same~~]
2 notice by registered mail, postage prepaid, in an envelope
3 addressed to the contractor at any place [~~he~~] the contractor
4 maintains an office or conducts [~~his~~] business or [~~his~~] at the
5 contractor's residence or in any manner in which the service of
6 summons in civil process is authorized by law.

7 B. Claimant in [~~such~~] the suit shall notify the
8 obligee named in the bond of the beginning of such action,
9 stating the amount claimed, and no judgment shall be entered in
10 [~~such~~] the action within thirty days after giving [~~such~~]
11 notice. The obligee and any person, firm, corporation or the
12 state having a cause of action on [~~such~~] the performance bond
13 may be admitted on motion as a party to [~~such~~] the action, and
14 the court shall determine the rights of all parties thereto.
15 If the amount realized on [~~such~~] the bond [~~be~~] is insufficient
16 to discharge all claims in full, [~~such~~] the amount shall be
17 distributed among the parties entitled thereto pro rata.

18 C. Except for suits by the state with respect to
19 taxes [~~which~~] that shall be brought in the name of the [~~bureau~~
20 ~~of~~] revenue processing division of the taxation and revenue
21 department, every suit instituted under this section shall be
22 brought in the name of the state [~~of New Mexico~~] for the use of
23 the person suing in the district court in any judicial district
24 in which the contract was to be performed and executed or where
25 the claimant resides, but no such suit, including one brought

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1 by the ~~[bureau of]~~ revenue processing division, shall be
2 commenced after the expiration of one year after the date of
3 final settlement of ~~[such]~~ the contract. The date of final
4 settlement, ~~[herein shall be]~~ for purposes of this section, is
5 that date set by the obligee in the final closing and
6 settlement of payment, if any, due the contractor. The state
7 ~~[of New Mexico]~~ shall not be liable for the payment of any
8 costs or expenses of any such suit.

9 D. The obligee named in ~~[said]~~ the performance bond
10 is authorized and directed to furnish to any person, firm or
11 corporation making application therefor ~~[who]~~ that submits an
12 affidavit that ~~[he or it]~~ the person, firm or corporation has
13 supplied labor or materials for such work and payment
14 ~~[therefor]~~ has not been made or that ~~[he or it]~~ the person,
15 firm or corporation is being sued on any such bond or to
16 furnish to the ~~[bureau of]~~ revenue processing division of the
17 taxation and revenue department a certified copy of ~~[such]~~ the
18 bond and the contract for which it was given, which copy shall
19 be prima facie evidence of the contents, execution and delivery
20 of the original, and, in case final settlement of ~~[such]~~ the
21 contract has been made, a certified statement of the date of
22 such settlement, which shall be conclusive as to such demand
23 upon it. Applicants shall pay for ~~[such]~~ the certified copies
24 and certified statements such fees as the obligee fixes to
25 cover the cost of preparation ~~[thereof]."~~

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