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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
MATERIALS AND RIGHT OF STATE WITH RESPECT TO TAXES DUE.--

A. The state shall have the right to sue on the
payment bond for all taxes due arising out of construction
services rendered under a contract, in respect of which a
payment bond is furnished under Section 13-4-18 NMSA 1978 by
a contractor that does not have its principal place of
business in New Mexico, and to prosecute such action to final
execution and judgment for the sum due. The court may allow,
as part of the costs, interest and reasonable attorney fees.

B. Every person, firm or corporation that has
furnished labor or materials in the prosecution of work
provided for in a contract, in respect of which a payment
bond is furnished under Section 13-4-18 NMSA 1978, and that
has not been paid in full for the labor or materials before
the expiration of a period of ninety days after the day on
which the last of the labor was done or performed or

1 materials were furnished or supplied for which claim is made,
2 shall have the right to sue on the payment bond for the
3 amount of the balance unpaid at the time of the institution
4 of the suit and to prosecute such action to final execution
5 and judgment for the sum or sums justly due for the labor
6 done or performed or materials furnished to be used in the
7 construction of the project; provided, however, that sums
8 justly due shall be determined according to the subcontract
9 or other contractual relationship directly with the
10 contractor furnishing the payment bond. A person having a
11 direct contractual relationship with a subcontractor but no
12 contractual relationship, express or implied, with the
13 contractor furnishing the payment bond shall have a right of
14 action upon the payment bond upon giving written notice to
15 the contractor, within ninety days from the date on which the
16 person did or performed the last of the labor or furnished or
17 supplied the last of the materials for which the claim is
18 made, stating with substantial accuracy the amount claimed
19 and the name of the party to whom the materials were
20 furnished or supplied or for whom the labor was done or
21 performed. Notice shall be served by mailing the notice by
22 registered mail, postage prepaid, in an envelope addressed to
23 the contractor at any place the contractor maintains an
24 office or conducts business or at the contractor's residence
25 or in any manner in which the service of summons in civil

1 process is authorized by law.

2 C. The claimant in the suit shall notify the
3 obligee named in the bond of the beginning of such action,
4 stating the amount claimed, and no judgment shall be entered
5 in the action within thirty days after giving notice. The
6 obligee and any person, firm, corporation or the state having
7 a cause of action on the bond may be admitted on motion as a
8 party to the action, and the court shall determine the rights
9 of all parties thereto. If the amount realized on the bond
10 is insufficient to discharge all claims in full, the amount
11 shall be distributed among the parties entitled thereto pro
12 rata.

13 D. Except for suits by the state with respect to
14 taxes that shall be brought in the name of the revenue
15 processing division of the taxation and revenue department,
16 every suit instituted under this section shall be brought in
17 the name of the state for the use of the person suing in the
18 district court in any judicial district in which the contract
19 was to be performed and executed or where the claimant
20 resides, but no such suit, including one brought by the
21 revenue processing division, shall be commenced after the
22 expiration of one year after the date of final settlement of
23 the contract. The date of final settlement, for purposes of
24 this section, is that date set by the obligee in the final
25 closing and settlement of payment, if any, due the

1 contractor. The state shall not be liable for the payment of
2 any costs or expenses of any such suit.

3 E. The obligee named in the bond is authorized and
4 directed to furnish to any person, firm or corporation making
5 application therefor that submits an affidavit that the
6 person, firm or corporation has supplied labor or materials
7 for such work and payment has not been made or that the
8 person, firm or corporation is being sued on any such bond or
9 to furnish to the revenue processing division of the taxation
10 and revenue department a certified copy of the bond and the
11 contract for which it was given, which copy shall be prima
12 facie evidence of the contents, execution and delivery of the
13 original, and, in case final settlement of the contract has
14 been made, a certified statement of the date of such
15 settlement, which shall be conclusive as to such demand upon
16 it. Applicants shall pay for the certified copies and
17 certified statements such fees as the obligee fixes to cover
18 the cost of preparation."

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