

1 SENATE BILL 98

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC WORKS PROJECTS; PROVIDING A PROCESS TO
12 RESOLVE PREVAILING WAGE COMPLAINTS; INCREASING PENALTIES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--
18 MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY
19 PAYMENT--WITHHOLDING FUNDS.--

20 A. Every contract or project in excess of sixty
21 thousand dollars (\$60,000) that the state or any political
22 subdivision thereof is a party to for construction, alteration,
23 demolition or repair or any combination of these, including
24 painting and decorating, of public buildings, public works or
25 public roads of the state and that requires or involves the

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

18 B. Annually, the director shall determine
19 prevailing wage rates and prevailing fringe benefit rates for
20 respective [~~classes~~] classifications of laborers and mechanics
21 employed on public works projects at the same wage rates and
22 fringe benefit rates used in collective bargaining agreements
23 between labor organizations and their signatory employers that
24 govern predominantly similar [~~classes or~~] classifications of
25 laborers and mechanics for the locality of the public works

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1 project and the crafts involved; provided that:

2 (1) if the prevailing wage rates and
3 prevailing fringe benefit rates cannot reasonably and fairly be
4 determined in a locality because no collective bargaining
5 agreements exist, the director shall determine the prevailing
6 wage rates and prevailing fringe benefit rates for the same or
7 most similar ~~[class or]~~ classification of laborer or mechanic
8 in the nearest and most similar neighboring locality in which
9 collective bargaining agreements exist;

10 (2) the director shall give due regard to
11 information obtained during the director's determination of the
12 prevailing wage rates and the prevailing fringe benefit rates
13 made pursuant to this subsection;

14 (3) any interested person shall have the right
15 to submit to the director written data, personal opinions and
16 arguments supporting changes to the prevailing wage rate and
17 prevailing fringe benefit rate determination; and

18 (4) prevailing wage rates and prevailing
19 fringe benefit rates determined pursuant to the provisions of
20 this section shall be compiled as official records and kept on
21 file in the director's office, and the records shall be updated
22 in accordance with the applicable rates used in subsequent
23 collective bargaining agreements.

24 C. The prevailing wage rates and prevailing fringe
25 benefit rates to be paid shall be posted by the contractor or

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

16 D. Upon request by a person, a contracting agency
17 shall, within twenty days of such request, provide copies of
18 certified weekly payroll records to the requesting person.

19 [~~D-~~] E. Notwithstanding any other provision of law
20 applicable to public works contracts or agreements, the
21 director may, with cause:

22 (1) issue investigative or hearing subpoenas
23 for the production of documents or witnesses pertaining to
24 public works prevailing wage projects; and

25 (2) attach and prohibit the release of any

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

7 F. A person may file with the director a complaint
8 that a contractor, subcontractor, employer or person acting as
9 a contractor on the project has failed to pay wages or fringe
10 benefits at the rates required by the Public Works Minimum Wage
11 Act. The director shall, within thirty days of the filing of
12 the complaint, commence an investigation of the allegations
13 contained in the complaint. The director shall, within
14 seventy-five days of the filing of the complaint, make a
15 determination supported by findings of fact and conclusions of
16 law whether there has been an underpayment of wages or fringe
17 benefits or other violation of the Public Works Minimum Wage
18 Act; provided that if the complaint is of a continuing or
19 significantly complex nature or involves multiple projects or
20 job sites, the director may extend the time in which to make a
21 determination by up to six months by providing written notice
22 and an explanation to all parties of the need to extend the
23 time.

24 G. If the director determines that there has been
25 an underpayment of wages or fringe benefits or a violation of

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1 the Public Works Minimum Wage Act, the director shall, in the
2 absence of a voluntary resolution by the parties and within
3 thirty days of making that determination, order the withholding
4 of accrued payments as provided in Subsection C of this
5 section.

6 [E-] H. The director shall issue rules necessary to
7 administer and accomplish the purposes of the Public Works
8 Minimum Wage Act."

9 SECTION 2. Section 13-4-13 NMSA 1978 (being Laws 1965,
10 Chapter 35, Section 3, as amended) is amended to read:

11 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
12 CONTRACT.--Every contract within the scope of the Public Works
13 Minimum Wage Act shall contain further provision that in the
14 event it is [~~found~~] determined by the director that any laborer
15 or mechanic employed on the site of the project has been or is
16 being paid [~~as a result of a willful violation~~] a wage rate or
17 fringe benefit rate less than the rates required, and in the
18 absence of a voluntary resolution by the parties, the
19 contracting agency [may] shall, within thirty days of the
20 director's determination, by written notice to the contractor,
21 subcontractor, employer or person acting as a contractor,
22 terminate the right to proceed with the work or the part of the
23 work as to which there has been a [willful] failure to pay the
24 required wages or fringe benefits, and the contracting agency
25 [may] shall prosecute the work to completion by contract or

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

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

10 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
11 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

12 A. The director shall certify to the contracting
13 agency the names of persons or firms the director has found to
14 have ~~[disregarded their obligations to]~~ failed to pay wages or
15 fringe benefits due employees under the Public Works Minimum
16 Wage Act and the amount of arrears. The contracting agency
17 shall pay or cause to be paid to the affected laborers and
18 mechanics, from any accrued payments withheld under the terms
19 of the contract or designated for the project, three times the
20 amount of any wages or fringe benefits found due to the workers
21 pursuant to the Public Works Minimum Wage Act. The director
22 shall, after notice to the affected persons, distribute a list
23 to all departments of the state giving the names of persons or
24 firms the director has found to have willfully violated the
25 Public Works Minimum Wage Act. No contract or project shall be

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1 awarded to the persons or firms appearing on this list or to
2 any firm, corporation, partnership or association in which the
3 persons or firms have an interest until three years have
4 elapsed from the date of publication of the list containing the
5 names of the persons or firms. A person to be included on the
6 list to be distributed may appeal the finding of the director
7 as provided in the Public Works Minimum Wage Act.

8 B. If the accrued payments withheld under the terms
9 of the contract, as mentioned in Subsection A of this section,
10 are insufficient to reimburse all the laborers and mechanics
11 with respect to whom there has been a failure to pay the wages
12 or fringe benefits required pursuant to the Public Works
13 Minimum Wage Act, the laborers and mechanics shall have the
14 right of action or intervention or both against the contractor
15 or person acting as a contractor and the contractor's or
16 person's sureties, conferred by law upon the persons furnishing
17 labor and materials, and, in such proceeding, it shall be no
18 defense that the laborers and mechanics accepted or agreed to
19 less than the required rate of wages or voluntarily made
20 refunds. The director shall refer such matters to the district
21 attorney in the appropriate county, and it is the duty and
22 responsibility of the district attorney to bring civil suit for
23 wages and fringe benefits due and ~~liquidated~~ other damages
24 provided for in Subsection C of this section.

25 C. In the event of ~~any violation of~~ an aggregate

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1 underpayment of wages or fringe benefits greater than five
2 hundred dollars (\$500) to an employee subject to the Public
3 Works Minimum Wage Act or implementing rules, the contractor,
4 subcontractor, employer or a person acting as a contractor
5 responsible for the ~~[violation]~~ underpayment shall be liable to
6 any affected employee for three times the amount of the
7 employee's unpaid wages or fringe benefits. In addition, the
8 contractor, subcontractor, employer or person acting as a
9 contractor shall be liable to any affected employee for
10 ~~[liquidated damages beginning with the first day of covered~~
11 ~~employment in the sum of]~~ one hundred dollars (\$100) for each
12 calendar day on which a contractor, subcontractor, employer or
13 person acting as a contractor has willfully required or
14 permitted ~~[an individual laborer or mechanic]~~ the employee to
15 work in violation of the provisions of the Public Works Minimum
16 Wage Act.

17 D. In an action brought pursuant to Subsection C of
18 this section, the court ~~[may]~~ shall award, in addition to all
19 other remedies, attorney fees and costs ~~[to]~~ incurred on behalf
20 of an employee adversely affected by a violation of the Public
21 Works Minimum Wage Act by a contractor, subcontractor, employer
22 or person acting as a contractor."