

SENATE BILL 4

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC WORKS; SPECIFYING THAT PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES ARE TO BE DETERMINED ANNUALLY BY OCTOBER 1 TO TAKE EFFECT THE NEXT JANUARY 1; PROVIDING THAT AN APPEAL OF A DETERMINED PREVAILING WAGE RATE OR PREVAILING FRINGE BENEFIT RATE DOES NOT STAY IMPLEMENTATION OF THE RATE UNLESS MODIFIED BY A FINAL DECISION OR JUDGMENT OR UPON ORDER OF THE COURT.

.221328.1AIC January 31, 2022 (5:22pm)

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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. PREVAILING WAGE AND BENEFIT RATES DETERMINED-- MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY PAYMENT--WITHHOLDING FUNDS.--

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political subdivision thereof is a party to 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 that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classifications of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classifications of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe

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benefit rates not less than those determined pursuant to Subsection B of this section to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. Annually, no later than October 1, the director shall determine prevailing wage rates and prevailing fringe benefit rates to take effect the next January 1 for respective classifications of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classifications of laborers and mechanics for the locality of the public works project and the crafts involved; provided that:

(1) if the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist;

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

(3) any interested person shall have the right

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to submit to the director written data, personal opinions and arguments supporting changes to the prevailing wage rate and prevailing fringe benefit rate determination; [and]

(4) prevailing wage rates and prevailing fringe benefit rates determined pursuant to the provisions of this section shall be compiled as official records and kept on file in the director's office, and the records shall be updated in accordance with the applicable rates used in subsequent collective bargaining agreements; SJC→~~and~~←SJC

SJC→~~(5) an appeal of a prevailing wage rate or prevailing fringe benefit rate determined pursuant to the provisions of this section shall not stay the implementation of the rate unless the rate is modified by a final written decision of the labor and industrial commission or by a final judgment of a district court; and provided further that during the pendency of an appeal, an interested party may request and a district court may grant, upon good cause shown, a stay of the implementation of a rate.~~←SJC SJC→(5) an appeal of the prevailing wage determination pursuant to the provisions of this section shall not have the effect of creating a stay of the implementation of the rate; and

(6) during the pendency of an appeal, whether before the labor and industrial commission or in a court, a court of competent jurisdiction may grant a stay of the implementation of the wage rate based on a motion made by a

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party or an interested person, provided the court gives an opportunity for any interested person to be heard on the matter. ←SJC

C. The prevailing wage rates and prevailing fringe benefit rates to be paid shall be posted by the contractor or person acting as a contractor in a prominent and easily accessible place at the site of the work; provided that there shall be withheld from the contractor, subcontractor, employer or a person acting as a contractor so much of accrued payments as may be considered necessary by the director or contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the prevailing wage rates and prevailing fringe benefit rates required by the director to be paid to laborers and mechanics on the work and the wage rates and fringe benefit rates received by the laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person acting as a contractor or the contractor's, subcontractor's, employer's or person's agents.

D. Certified weekly payroll records of a contracting agency are subject to inspection pursuant to the Inspection of Public Records Act; provided that the request shall be fulfilled within twenty days of receipt of the written request. Certified weekly payroll records are subject to record retention requirements applicable to payroll records of a state agency.

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E. Notwithstanding any other provision of law applicable to public works contracts or agreements, the director may, with cause:

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

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

F. A person may file with the director a complaint that a contractor, subcontractor, employer or person acting as a contractor on the project has failed to pay the person wages or fringe benefits at the rates required by the Public Works Minimum Wage Act. Within thirty days after the filing of the complaint, either party may request in writing a mediation to resolve the complaint.

G. The director shall, within thirty days of the filing of the complaint, commence an investigation of the allegations contained in the complaint. The director shall, within seventy-five days after the completion of mediation or if no mediation is requested, within seventy-five days after the filing of the complaint, make a determination supported by

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findings of fact and conclusions of law whether there has been an underpayment of wages or fringe benefits or other violation of the Public Works Minimum Wage Act; provided that if the complaint is of a continuing or significantly complex nature or involves multiple projects or job sites, the director may extend the time in which to make a determination by up to six months by providing written notice and an explanation to all parties of the need to extend the time. Prior to issuing a determination, the director shall provide the contractor, subcontractor, employer or other person against whom the complaint has been filed with an opportunity to respond to the complaint and provide any exculpatory evidence.

H. If the director determines that there has been an underpayment of wages or fringe benefits or a violation of the Public Works Minimum Wage Act, the director shall, in the absence of a voluntary resolution by the parties and within thirty days of making that determination, order the withholding of accrued payments as provided in Subsection C of this section.

I. The director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act."