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SENATE BILL

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

INTRODUCED BY

Katy Duhigg and Christine Chandler

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.

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

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1 thousand dollars (\$60,000) that the state or any political  
2 subdivision thereof is a party to for construction, alteration,  
3 demolition or repair or any combination of these, including  
4 painting and decorating, of public buildings, public works or  
5 public roads of the state and that requires or involves the  
6 employment of mechanics, laborers or both shall contain a  
7 provision stating the minimum wages and fringe benefits to be  
8 paid to various classifications of laborers and mechanics,  
9 which shall be based upon the wages and benefits that will be  
10 determined by the director to be prevailing for the  
11 corresponding classifications of laborers and mechanics  
12 employed on contract work of a similar nature in the state or  
13 locality, and every contract or project shall contain a  
14 stipulation that the contractor, subcontractor, employer or a  
15 person acting as a contractor shall pay all mechanics and  
16 laborers employed on the site of the project, unconditionally  
17 and not less often than once a week and without subsequent  
18 unlawful deduction or rebate on any account, the full amounts  
19 accrued at time of payment computed at wage rates and fringe  
20 benefit rates not less than those determined pursuant to  
21 Subsection B of this section to be the prevailing wage rates  
22 and prevailing fringe benefit rates issued for the project.

23 B. Annually, no later than October 1, the director  
24 shall determine prevailing wage rates and prevailing fringe  
25 benefit rates to take effect the next January 1 for respective

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1 classifications of laborers and mechanics employed on public  
2 works projects at the same wage rates and fringe benefit rates  
3 used in collective bargaining agreements between labor  
4 organizations and their signatory employers that govern  
5 predominantly similar classifications of laborers and mechanics  
6 for the locality of the public works project and the crafts  
7 involved; provided that:

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

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

20 (3) any interested person shall have the right  
21 to submit to the director written data, personal opinions and  
22 arguments supporting changes to the prevailing wage rate and  
23 prevailing fringe benefit rate determination; ~~[and]~~

24 (4) prevailing wage rates and prevailing  
25 fringe benefit rates determined pursuant to the provisions of

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1 this section shall be compiled as official records and kept on  
2 file in the director's office, and the records shall be updated  
3 in accordance with the applicable rates used in subsequent  
4 collective bargaining agreements; and

5 (5) an appeal of a prevailing wage rate or  
6 prevailing fringe benefit rate determined pursuant to the  
7 provisions of this section shall not stay the implementation of  
8 the rate unless the rate is modified by a final written  
9 decision of the labor and industrial commission or by a final  
10 judgment of a district court; and provided further that during  
11 the pendency of an appeal, an interested party may request and  
12 a district court may grant, upon good cause shown, a stay of  
13 the implementation of a rate.

14 C. The prevailing wage rates and prevailing fringe  
15 benefit rates to be paid shall be posted by the contractor or  
16 person acting as a contractor in a prominent and easily  
17 accessible place at the site of the work; provided that there  
18 shall be withheld from the contractor, subcontractor, employer  
19 or a person acting as a contractor so much of accrued payments  
20 as may be considered necessary by the director or contracting  
21 officer of the state or political subdivision to pay to  
22 laborers and mechanics employed on the project the difference  
23 between the prevailing wage rates and prevailing fringe benefit  
24 rates required by the director to be paid to laborers and  
25 mechanics on the work and the wage rates and fringe benefit

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1 rates received by the laborers and mechanics and not refunded  
2 to the contractor, subcontractor, employer or a person acting  
3 as a contractor or the contractor's, subcontractor's,  
4 employer's or person's agents.

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

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

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

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

25 F. A person may file with the director a complaint

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

7 G. The director shall, within thirty days of the  
8 filing of the complaint, commence an investigation of the  
9 allegations contained in the complaint. The director shall,  
10 within seventy-five days after the completion of mediation or  
11 if no mediation is requested, within seventy-five days after  
12 the filing of the complaint, make a determination supported by  
13 findings of fact and conclusions of law whether there has been  
14 an underpayment of wages or fringe benefits or other violation  
15 of the Public Works Minimum Wage Act; provided that if the  
16 complaint is of a continuing or significantly complex nature or  
17 involves multiple projects or job sites, the director may  
18 extend the time in which to make a determination by up to six  
19 months by providing written notice and an explanation to all  
20 parties of the need to extend the time. Prior to issuing a  
21 determination, the director shall provide the contractor,  
22 subcontractor, employer or other person against whom the  
23 complaint has been filed with an opportunity to respond to the  
24 complaint and provide any exculpatory evidence.

25 H. If the director determines that there has been

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

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

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