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HOUSE BILL 6

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Reena Szczepanski

AN ACT

RELATING TO MINIMUM WAGE; REQUIRING THAT PROJECTS UNDERTAKEN BY
A MUNICIPALITY OR COUNTY THROUGH THE ISSUANCE OF INDUSTRIAL
REVENUE BONDS PAY THE PREVAILING WAGE AND COMPLY WITH THE
PROVISIONS OF SECTION 13-4-11 NMSA 1978 (BEING LAWS 1965,
CHAPTER 35, SECTION 1, AS AMENDED).

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--INDUSTRIAL REVENUE BOND PROJECTS.--

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,

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

21 B. Annually, no later than October 1, the director
22 shall determine prevailing wage rates and prevailing fringe
23 benefit rates to take effect the next January 1 for respective
24 classifications of laborers and mechanics employed on public
25 works projects at the same wage rates and fringe benefit rates

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1 used in collective bargaining agreements between labor
2 organizations and their signatory employers that govern
3 predominantly similar classifications of laborers and mechanics
4 for the locality of the public works project and the crafts
5 involved; provided that:

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

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

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

22 (4) prevailing wage rates and prevailing
23 fringe benefit rates determined pursuant to the provisions of
24 this section shall be compiled as official records and kept on
25 file in the director's office, and the records shall be updated

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1 in accordance with the applicable rates used in subsequent
2 collective bargaining agreements;

3 (5) an appeal of the prevailing wage
4 determination pursuant to the provisions of this section shall
5 not have the effect of creating a stay of the implementation of
6 the rate; and

7 (6) during the pendency of an appeal, whether
8 before the labor and industrial commission or in a court, a
9 court of competent jurisdiction may grant a stay of the
10 implementation of the wage rate based on a motion made by a
11 party or an interested person, provided the court gives an
12 opportunity for any interested person to be heard on the
13 matter.

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.

10 J. For projects undertaken under the auspices of a
11 municipality or county through the issuance of an industrial
12 revenue bond, the contractor, subcontractor, employer or person
13 acting as a contractor shall pay the prevailing wage and comply
14 with the provisions of this section."

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