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SENATE BILL 59

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

INTRODUCED BY

Michael Padilla and Eleanor Chávez

AN ACT

RELATING TO PUBLIC WORKS; ADDING OFF-SITE FABRICATORS TO THE
PUBLIC WORKS MINIMUM WAGE ACT.

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

SECTION 1. Section 13-4-10.1 NMSA 1978 (being Laws 2009,
Chapter 206, Section 2) is amended to read:

"13-4-10.1. DEFINITIONS.--As used in the Public Works
Minimum Wage Act:

A. "director" means the director of the division;

B. "division" means the labor relations division of
the workforce solutions department;

C. "fringe benefit" means payments made by a
contractor, subcontractor, employer or person acting as a
contractor, if the payment has been authorized through a
negotiated process or by a collective bargaining agreement,

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1 for:

- 2 (1) holidays;
- 3 (2) time off for sickness or injury;
- 4 (3) time off for personal reasons or vacation;
- 5 (4) bonuses;
- 6 (5) authorized expenses incurred during the
- 7 course of employment;
- 8 (6) health, life and accident or disability
- 9 insurance;
- 10 (7) profit-sharing plans;
- 11 (8) contributions made on behalf of an
- 12 employee to a retirement or other pension plan; and
- 13 (9) any other compensation paid to an employee
- 14 other than wages;

15 D. "labor organization" means an organization of

16 any kind, or an agency or employee representation committee or

17 plan, in which employees participate and that exists for the

18 purpose, in whole or in part, of dealing with employers

19 concerning grievances, labor disputes, wages, rates of pay,

20 hours of employment or conditions of work; [~~and~~]

21 E. "off-site fabricator" means a person who earns a

22 wage to fabricate heating, cooling, ventilation or exhaust duct

23 systems that are part of a public works project or any other

24 fabrication that is either a component or structure that is

25 prefabricated to specifications for use in or on a public works

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1 project; and

2 [~~E-~~] F. "wage" means the basic hourly rate of pay."

3 SECTION 2. Section 13-4-11 NMSA 1978 (being Laws 1965,
4 Chapter 35, Section 1, as amended) is amended to read:

5 "13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--
6 MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY
7 PAYMENT--WITHHOLDING FUNDS.--

8 A. Every contract or project in excess of sixty
9 thousand dollars (\$60,000) that the state or [~~any~~] a political
10 subdivision [~~thereof~~] of the state is a party to for
11 construction, alteration, demolition or repair or any
12 combination of these, including painting and decorating, of
13 public buildings, public works or public roads of the state and
14 that requires or involves the employment of [~~mechanics~~]
15 laborers, [~~or both~~] mechanics and off-site fabricators or any
16 combination of those shall contain a provision stating the
17 minimum wages and fringe benefits to be paid to various
18 classifications of laborers, [~~and~~] mechanics and off-site
19 fabricators, which shall be based [~~upon~~] on the wages and
20 benefits that will be determined by the director to be
21 prevailing for the corresponding classifications of laborers,
22 [~~and~~] mechanics and off-site fabricators employed on contract
23 work of a similar nature in the state or locality, and every
24 contract or project shall contain a stipulation that the
25 contractor, subcontractor, employer or a person acting as a

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1 contractor shall pay all [~~mechanics, and~~] laborers, mechanics
2 and off-site fabricators employed on the site of the project,
3 unconditionally and not less often than once a week and without
4 subsequent unlawful deduction or rebate on any account, the
5 full amounts accrued at time of payment computed at wage rates
6 and fringe benefit rates not less than those determined
7 pursuant to Subsection B of this section to be the prevailing
8 wage rates and prevailing fringe benefit rates issued for the
9 project.

10 B. Annually, no later than October 1, the director
11 shall determine prevailing wage rates and prevailing fringe
12 benefit rates to take effect the next January 1 for respective
13 classifications of laborers, [~~and~~] mechanics and off-site
14 fabricators employed on public works projects at the same wage
15 rates and fringe benefit rates used in collective bargaining
16 agreements between labor organizations and their signatory
17 employers that govern predominantly similar classifications of
18 laborers, [~~and~~] mechanics and off-site fabricators for the
19 locality of the public works project and the crafts involved;
20 provided that:

21 (1) if the prevailing wage rates and
22 prevailing fringe benefit rates cannot reasonably and fairly be
23 determined in a locality because no collective bargaining
24 agreements exist, the director shall determine the prevailing
25 wage rates and prevailing fringe benefit rates for the same or

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1 most similar classification of laborer, ~~[or]~~ mechanic or off-
2 site fabricator in the nearest and most similar neighboring
3 locality in which collective bargaining agreements exist;

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

8 (3) any interested person shall have the right
9 to submit to the director written data, personal opinions and
10 arguments supporting changes to the prevailing wage rate and
11 prevailing fringe benefit rate determination;

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

18 (5) an appeal of the prevailing wage
19 determination pursuant to the provisions of this section shall
20 not have the effect of creating a stay of the implementation of
21 the rate; and

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

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1 party or an interested person, provided the court gives an
2 opportunity for any interested person to be heard on the
3 matter.

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

21 D. Certified weekly payroll records of a
22 contracting agency are subject to inspection pursuant to the
23 Inspection of Public Records Act; provided that the request
24 shall be fulfilled within twenty days of receipt of the written
25 request. Certified weekly payroll records are subject to

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1 record retention requirements applicable to payroll records of
2 a state agency.

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

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

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

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

23 G. The director shall, within thirty days of the
24 filing of the complaint, commence an investigation of the
25 allegations contained in the complaint. The director shall,

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

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

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

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

3 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
4 CONTRACT.--Every contract within the scope of the Public Works
5 Minimum Wage Act shall contain further provision that in the
6 event it is determined by the director that any laborer or
7 mechanic employed on the site of the project or off-site
8 fabricator has been or is being paid a wage rate or fringe
9 benefit rate less than the rates required, and in the absence
10 of a voluntary resolution by the parties, the contracting
11 agency shall, within thirty days of the director's
12 determination, by written notice to the contractor,
13 subcontractor, employer or person acting as a contractor,
14 terminate the right to proceed with the work or the part of the
15 work as to which there has been a failure to pay the required
16 wages or fringe benefits, and the contracting agency shall
17 prosecute the work to completion by contract or otherwise, and
18 the contractor or person acting as a contractor and the
19 contractor's or person's sureties shall be liable to the state
20 for any excess costs occasioned [~~thereby. Any~~] by that
21 failure. A party receiving notice of termination of a project
22 or subcontract pursuant to the provisions of this section may
23 appeal the finding of the director as provided in the Public
24 Works Minimum Wage Act."

25 SECTION 4. Section 13-4-14 NMSA 1978 (being Laws 1965,

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1 Chapter 35, Section 4, as amended) is amended to read:

2 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
3 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

4 A. The director shall certify to the contracting
5 agency the names of persons or firms the director has found to
6 have failed to pay wages or fringe benefits due employees under
7 the Public Works Minimum Wage Act and the amount of arrears.
8 The contracting agency shall pay or cause to be paid to the
9 affected laborers, ~~[and]~~ mechanics and off-site fabricators,
10 from any accrued payments withheld under the terms of the
11 contract or designated for the project, three times the amount
12 of any wages or fringe benefits found due to the workers
13 pursuant to the Public Works Minimum Wage Act. The director
14 shall, after notice to the affected persons, distribute a list
15 to all departments of the state giving the names of persons or
16 firms the director has found to have willfully violated the
17 Public Works Minimum Wage Act. No contract or project shall be
18 awarded to the persons or firms appearing on this list or to
19 any firm, corporation, partnership or association in which the
20 persons or firms have an interest until three years have
21 elapsed from the date of publication of the list containing the
22 names of the persons or firms. A person to be included on the
23 list to be distributed may appeal the finding of the director
24 as provided in the Public Works Minimum Wage Act.

25 B. If the accrued payments withheld under the terms

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1 of the contract, as mentioned in Subsection A of this section,
2 are insufficient to reimburse all the laborers, ~~[and]~~ mechanics
3 and off-site fabricators with respect to whom there has been a
4 failure to pay the wages or fringe benefits required pursuant
5 to the Public Works Minimum Wage Act, the laborers, ~~[and]~~
6 mechanics and off-site fabricators shall have the right of
7 action or intervention or both against the contractor or person
8 acting as a contractor and the contractor's or person's
9 sureties, conferred by law upon the persons furnishing labor
10 and materials, and, in such proceeding, it shall be no defense
11 that the laborers, ~~[and]~~ mechanics and off-site fabricators
12 accepted or agreed to less than the required rate of wages or
13 voluntarily made refunds. The director shall refer such
14 matters to the district attorney in the appropriate county, and
15 it is the duty and responsibility of the district attorney to
16 bring civil suit for wages and fringe benefits due and other
17 damages provided for in Subsection C of this section.

18 C. In the event of an aggregate underpayment of
19 wages or fringe benefits greater than five hundred dollars
20 (\$500) to an employee subject to the Public Works Minimum Wage
21 Act or implementing rules, the contractor, subcontractor,
22 employer or ~~[a]~~ person acting as a contractor responsible for
23 the underpayment shall be liable to ~~[any]~~ an affected employee
24 for three times the amount of the employee's unpaid wages or
25 fringe benefits. In addition, the contractor, subcontractor,

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1 employer or person acting as a contractor shall be liable to
2 [~~any~~] an affected employee for one hundred dollars (\$100) for
3 each calendar day on which a contractor, subcontractor,
4 employer or person acting as a contractor has willfully
5 required or permitted the employee to work in violation of the
6 provisions of the Public Works Minimum Wage Act.

7 D. In an action brought pursuant to Subsection C of
8 this section, the court shall award, in addition to all other
9 remedies, attorney fees and costs incurred on behalf of an
10 employee adversely affected by a violation of the Public Works
11 Minimum Wage Act by a contractor, subcontractor, employer or
12 person acting as a contractor."

13 SECTION 5. APPLICABILITY.--This act applies to requests
14 for proposals, invitations for bid or other procurement for
15 public works projects issued on or after July 1, 2025.