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HOUSE BILL 442

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Harriet I. Ruiz

AN ACT

RELATING TO PUBLIC WORKS; INCREASING THE MINIMUM CONTRACT VALUE FOR THE MINIMUM WAGE ON PUBLIC WORKS; REVISING THE DUTIES AND AUTHORITY OF THE DIRECTOR OF THE LABOR AND INDUSTRIAL DIVISION OF THE LABOR DEPARTMENT; CLARIFYING THE DEFINITION OF WAGES; INCREASING LIABILITY AND REMEDIES; AMENDING SECTIONS OF THE NMSA 1978.

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. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--
POSTING WAGE SCALE--WITHHOLDING FUNDS.--

A. Every contract or project in excess of [~~twenty thousand dollars (\$20,000) to which~~] sixty thousand dollars (\$60,000) that the state or any political subdivision thereof

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

21 ~~[A.]~~ B. For the purpose of making wage
22 determinations, the director of the labor and industrial
23 division of the labor department shall conduct a continuing
24 program for the obtaining and compiling of wage-rate
25 information and shall encourage the voluntary submission of

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1 wage-rate data by contractors, contractors' associations, labor
2 organizations, interested persons and public officers. Before
3 making a determination of wage rates for any project, [~~he~~] the
4 director shall give due regard to the information thus
5 obtained. Whenever the director deems that the data at hand
6 are insufficient to make a wage determination, [~~he~~] the
7 director may have a field survey conducted for the purpose of
8 obtaining sufficient information upon which to make
9 determination of wage rates. Any interested person shall have
10 the right to submit to the director written data, views and
11 arguments why the wage determination should be changed.

12 [~~B-~~] C. The scale of wages to be paid shall be
13 posted by the contractor or person acting as a contractor in a
14 prominent and easily accessible place at the site of the work;
15 and it is further provided that there may be withheld from the
16 contractor, subcontractor, employer or [~~any~~] a person acting as
17 a contractor so much of accrued payments as may be considered
18 necessary by the contracting officer of the state or political
19 subdivision to pay to laborers and mechanics employed on the
20 project the difference between the rates of wages required by
21 the director of the labor and industrial division of the labor
22 department to be paid to laborers and mechanics on the work and
23 the rates of wages received by such laborers and mechanics and
24 not refunded to the contractor, subcontractor, employer or
25 [~~any~~] a person acting as a contractor or their agents.

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1 D. Notwithstanding any other provision of law
2 applicable to public works contracts or agreements, the
3 director of the labor and industrial division of the labor
4 department may:

5 (1) issue investigative or hearing subpoenas
6 for the production of documents or witnesses, or both; and

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

14 ~~[G.]~~ E. The director of the labor and industrial
15 division of the labor department shall ~~[have authority to]~~
16 issue rules ~~[and regulations]~~ necessary to administer and
17 accomplish the purposes of the Public Works Minimum Wage Act."

18 Section 2. Section 13-4-12 NMSA 1978 (being Laws 1965,
19 Chapter 35, Section 2, as amended) is amended to read:

20 "13-4-12. DEFINITION OF THE TERM "WAGES".--

21 A. As used in Section 13-4-11 NMSA 1978, "wages",
22 "scale of wages", "wage rates", "minimum wages" and "prevailing
23 wages" include:

- 24 (1) the basic hourly rate of pay; and
25 (2) the amount of:

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1 (a) the rate of contribution irrevocably
2 made by a contractor, subcontractor, employer or any person
3 acting as a contractor to a trustee or a third person pursuant
4 to a fund, plan or program; and

5 (b) the rate of costs to a contractor,
6 subcontractor, employer or ~~[any]~~ a person acting as a
7 contractor ~~[which]~~ that reasonably may be anticipated in
8 providing benefits to laborers and mechanics pursuant to an
9 enforceable commitment to carry out a financially responsible
10 plan or program ~~[which]~~ that was communicated in writing to the
11 laborers and mechanics affected for: 1) medical or hospital
12 care; 2) pensions on retirement or death; 3) compensation for
13 injuries or illness resulting from occupational activity; or 4)
14 insurance to provide for any of the foregoing; and for: 5)
15 unemployment benefits; 6) life insurance; 7) disability and
16 sickness insurance; 8) accident insurance; 9) vacation and
17 holiday pay; 10) costs of apprenticeship or other similar
18 programs; or for 11) other bona fide fringe benefits; but only
19 where the contractor, subcontractor, employer or ~~[any]~~ a person
20 acting as a contractor is not required by other federal, state
21 or local law to provide any of the foregoing or similar
22 benefits.

23 B. The obligation of a contractor, subcontractor,
24 employer or person acting as a contractor to make payment in
25 accordance with the prevailing wage determinations of the

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1 director of the labor and industrial division of the labor
2 department, insofar as Section 13-4-11 NMSA 1978 or other
3 sections of legislative acts incorporating Section 13-4-11 NMSA
4 1978 are concerned, may be discharged by ~~(1) the making of~~
5 ~~payments in cash~~ the making of payments consistent with
6 Subsection B of Section 50-4-2 NMSA 1978, except that the
7 frequency of payments shall comply with Subsection A of Section
8 13-4-11 NMSA 1978. The payments shall include:

9 (1) payment of the base wage rate as the
10 director of the labor and industrial division of the labor
11 department has determined to be prevailing for the appropriate
12 class of laborers or mechanics; and

13 (2) the making of contributions of a type
14 referred to in Subparagraph (a) of Paragraph (2) of Subsection
15 A of this section; or

16 (3) the assumption of an enforceable
17 commitment to bear the costs of a plan or program of a type
18 referred to in Subparagraph (b) of Paragraph (2) of Subsection
19 A of this section; or

20 (4) any combination ~~[thereof]~~ of Paragraphs
21 (2) and (3) of this subsection where the aggregate of any
22 payments or contributions and costs therefor is not less than
23 the rate of pay described in Section 13-4-11 NMSA 1978 plus the
24 amount referred to in this section.

25 C. The provisions of this section shall not affect

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1 existing contracts or contracts resulting from bids outstanding
2 on July 15, 1965."

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

5 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
6 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

7 A. The director of the labor and industrial
8 division of the labor department shall certify to the
9 contracting agency the names of persons or firms [~~he~~] the
10 director has found to have disregarded their obligations to
11 employees under the Public Works Minimum Wage Act and the
12 amount of arrears. The contracting agency [~~is authorized and~~
13 ~~directed to~~] shall pay or cause to be paid to the affected
14 laborers and mechanics, from any accrued payments withheld
15 under the terms of the contract or designated for the project,
16 any wages found due such [~~workmen~~] workers pursuant to the
17 Public Works Minimum Wage Act. The director shall, after
18 notice to the affected persons, distribute a list to all
19 departments of the state giving the names of persons or firms
20 [~~he~~] the director has found to have [~~willfully~~] violated the
21 Public Works Minimum Wage Act. No contract or project shall be
22 awarded to the persons or firms appearing on this list or to
23 any firm, corporation, partnership or association in which the
24 persons or firms have an interest until three years have
25 elapsed from the date of publication of the list containing the

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1 names of the persons or firms. [~~Any~~] A person to be included
2 on the list to be distributed may appeal the finding of the
3 director as provided in the Public Works Minimum Wage Act.

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

21 C. In the event of any violation of the Public
22 Works Minimum Wage Act or implementing rules, the contractor,
23 subcontractor, employer or [~~any~~] a person acting as a
24 contractor responsible for the violation shall be liable to any
25 affected employee for [~~his~~] the employee's unpaid wages. In

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1 addition, the contractor, subcontractor, employer or ~~[any]~~ a
2 person acting as a contractor shall be liable to any affected
3 employee for liquidated damages ~~[in the sum of ten dollars~~
4 ~~(\$10.00) for each calendar day on which a]~~ up to three times
5 the actual amount of underpaid wages when the contractor,
6 subcontractor, employer or ~~[any]~~ a person acting as a
7 contractor has ~~[willfully]~~ required or permitted an individual
8 laborer or mechanic to work in violation of the provisions of
9 the Public Works Minimum Wage Act.

10 D. In addition to all other remedies, an employee
11 adversely affected by a violation of the Public Works Minimum
12 Wage Act by a contractor, subcontractor, employee or a person
13 acting as a contractor shall have a private right of action for
14 damages, attorney fees and reasonable costs."

15 Section 4. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2005.