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HOUSE BILL 55

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Nora Espinoza and Cliff R. Pirtle

AN ACT

RELATING TO PUBLIC WORKS; ELIMINATING COLLECTIVE BARGAINING
AGREEMENTS FROM THE COMPUTATION OF MINIMUM WAGES ON PUBLIC
WORKS PROJECTS; PROVIDING A DEFINITION OF "WAGES" AND RELATED
TERMS.

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;

and

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

~~[C. "fringe benefit" means payments made by a~~

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1 ~~contractor, subcontractor, employer or person acting as a~~
2 ~~contractor, if the payment has been authorized through a~~
3 ~~negotiated process or by a collective bargaining agreement,~~
4 ~~for:~~

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

18 D. ~~"labor organization" means an organization of~~
19 ~~any kind, or an agency or employee representation committee or~~
20 ~~plan, in which employees participate and that exists for the~~
21 ~~purpose, in whole or in part, of dealing with employers~~
22 ~~concerning grievances, labor disputes, wages, rates of pay,~~
23 ~~hours of employment or conditions of work; and~~

24 E. ~~"wage" means the basic hourly rate of pay]."~~

25 SECTION 2. Section 13-4-11 NMSA 1978 (being Laws 1965,

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

2 "13-4-11. [~~PREVAILING WAGE AND BENEFIT RATES~~
3 ~~DETERMINED~~] MINIMUM WAGES [~~AND FRINGE BENEFITS~~] ON PUBLIC
4 WORKS--WEEKLY PAYMENT--POSTING WAGE SCALE--WITHHOLDING FUNDS.--

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

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1 ~~prevailing wage rates and prevailing fringe benefit rates]~~
2 ~~stated in the minimum wage rates issued for the project.~~

3 ~~[B. The director shall determine prevailing wage~~
4 ~~rates and prevailing fringe benefit rates for respective~~
5 ~~classes of laborers and mechanics employed on public works~~
6 ~~projects at the same wage rates and fringe benefit rates used~~
7 ~~in collective bargaining agreements between labor organizations~~
8 ~~and their signatory employers that govern predominantly similar~~
9 ~~classes or classifications of laborers and mechanics for the~~
10 ~~locality of the public works project and the crafts involved;~~
11 ~~provided that:~~

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

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

24 ~~(3) any interested person shall have the right~~
25 ~~to submit to the director written data, personal opinions and~~

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1 ~~arguments supporting changes to the prevailing wage rate and~~
2 ~~prevailing fringe benefit rate determination; and~~

3 ~~(4) prevailing wage rates and prevailing~~
4 ~~fringe benefit rates determined pursuant to the provisions of~~
5 ~~this section shall be compiled as official records and kept on~~
6 ~~file in the director's office and the records shall be updated~~
7 ~~in accordance with the applicable rates used in subsequent~~
8 ~~collective bargaining agreements.]~~

9 B. For the purpose of making wage determinations,
10 the director shall conduct a continuing program for obtaining
11 and compiling wage-rate information and shall encourage the
12 voluntary submission of wage-rate data by contractors,
13 contractors' associations, labor organizations, interested
14 persons and public officers. Before making a determination of
15 wage rates for a project, the director shall give due regard to
16 the information obtained pursuant to this subsection. Whenever
17 the director deems that the data are insufficient to make a
18 wage determination, the director may have a field survey
19 conducted for the purpose of obtaining sufficient information
20 upon which to make a determination of wage rates. Any
21 interested person shall have the right to submit to the
22 director written data, views and arguments why the wage
23 determination should be changed.

24 C. The ~~[prevailing wage rates and prevailing fringe~~
25 ~~benefit rates]~~ scale of wages to be paid shall be posted by the

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1 contractor or person acting as a contractor in a prominent and
2 easily accessible place at the site of the work; and it is
3 further provided that there may be withheld from the
4 contractor, subcontractor, employer or a person acting as a
5 contractor so much of accrued payments as may be considered
6 necessary by the contracting officer of the state or political
7 subdivision to pay to laborers and mechanics employed on the
8 project the difference between the [~~prevailing wage rates and~~
9 ~~prevailing fringe benefit~~] rates of wages required by the
10 director to be paid to laborers and mechanics on the work and
11 the [~~wage~~] rates [~~and fringe benefit rates~~] of wages received
12 by the laborers and mechanics and not refunded to the
13 contractor, subcontractor, employer or a person acting as a
14 contractor or [~~the contractor's, subcontractor's, employer's~~
15 ~~or person's~~] their agents.

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

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

22 (2) attach and prohibit the release of any
23 assurance of payment required under Section 13-4-18 NMSA 1978
24 for a reasonable period of time beyond the time limits
25 specified in that section until the director satisfactorily

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1 resolves any probable cause to believe a violation of the
2 Public Works Minimum Wage Act or its implementing rules has
3 taken place.

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

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

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

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1 subcontract pursuant to the provisions of this section may
2 appeal the finding of the director as provided in the Public
3 Works Minimum Wage Act."

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

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

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

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

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

23 C. In the event of any violation of the Public
24 Works Minimum Wage Act or implementing rules, the contractor,
25 subcontractor, employer or a person acting as a contractor

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1 responsible for the violation shall be liable to any affected
2 employee for the employee's unpaid wages [~~or fringe benefits~~].
3 In addition, the contractor, subcontractor, employer or person
4 acting as a contractor shall be liable to any affected employee
5 for liquidated damages beginning with the first day of covered
6 employment in the sum of one hundred dollars (\$100) for each
7 calendar day on which a contractor, subcontractor, employer or
8 person acting as a contractor has willfully required or
9 permitted an individual laborer or mechanic to work in
10 violation of the provisions of the Public Works Minimum Wage
11 Act.

12 D. In an action brought pursuant to Subsection C of
13 this section, the court may award, in addition to all other
14 remedies, attorney fees and costs to an employee adversely
15 affected by a violation of the Public Works Minimum Wage Act by
16 a contractor, subcontractor, employer or person acting as a
17 contractor."

18 SECTION 5. A new section of the Public Works Minimum Wage
19 Act is enacted to read:

20 "[NEW MATERIAL] DEFINITION OF THE TERM "WAGES".--

21 A. As used in the Public Works Minimum Wage Act,
22 "wages", "scale of wages", "wage rates", "minimum wages" and
23 "prevailing wages" include:

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

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

5 (b) costs to a contractor,
6 subcontractor, employer or a person acting as a contractor that
7 reasonably may be anticipated in providing benefits to laborers
8 and mechanics pursuant to an enforceable commitment to carry
9 out a financially responsible plan or program that was
10 communicated in writing to the laborers and mechanics affected
11 for: 1) medical or hospital care; 2) pensions on retirement or
12 death; 3) compensation for injuries or illness resulting from
13 occupational activity; 4) insurance to provide for any of the
14 costs in Items 1) through 3) of this subparagraph; 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 11) other bona fide fringe benefits; but only
19 where the contractor, subcontractor, employer or 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 pursuant to Section 13-4-11 NMSA 1978 may be
2 discharged by the making of payments consistent with Subsection
3 B of Section 50-4-2 NMSA 1978, except that the frequency of
4 payments shall comply with Subsection A of Section 13-4-11 NMSA
5 1978. The payments shall include:

6 (1) payment of the base wage rate as the
7 director has determined to be prevailing for the appropriate
8 class of laborers or mechanics; and

9 (2) the making of contributions of a type
10 referred to in Subparagraph (a) of Paragraph (2) of Subsection
11 A of this section; or

12 (3) the assumption of an enforceable
13 commitment to bear the costs of a plan or program of a type
14 referred to in Subparagraph (b) of Paragraph (2) of Subsection
15 A of this section; or

16 (4) any combination of Paragraphs (2) and (3)
17 of this subsection where the aggregate of any payments or
18 contributions and costs therefore is not less than the rate of
19 pay described in Section 13-4-11 NMSA 1978 plus the amount
20 referred to in this section."

21 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2015.