

HOUSE TRANSPORTATION AND PUBLIC WORKS COMMITTEE SUBSTITUTE FOR
HOUSE BUSINESS AND EMPLOYMENT COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 55 & 80

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

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR THE DETERMINATION OF
WAGE RATES THROUGH A CONTINUING SURVEY PROGRAM RATHER THAN WAGE
RATES USED IN COLLECTIVE BARGAINING AGREEMENTS.

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
thousand dollars (\$60,000) that the state or any political
subdivision thereof is a party to for construction, alteration,
demolition or repair or any combination of these, including
painting and decorating, of public buildings, public works or

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underscored material = new
[bracketed material] = delete

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

19 ~~[B. The director shall determine prevailing wage~~
20 ~~rates and prevailing fringe benefit rates for respective~~
21 ~~classes of laborers and mechanics employed on public works~~
22 ~~projects at the same wage rates and fringe benefit rates used~~
23 ~~in collective bargaining agreements between labor organizations~~
24 ~~and their signatory employers that govern predominantly similar~~
25 ~~classes or classifications of laborers and mechanics for the~~

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1 ~~locality of the public works project and the crafts involved;~~
2 ~~provided that:~~

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

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

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

19 ~~(4) prevailing wage rates and prevailing~~
20 ~~fringe benefit rates determined pursuant to the provisions of~~
21 ~~this section shall be compiled as official records and kept on~~
22 ~~file in the director's office and the records shall be updated~~
23 ~~in accordance with the applicable rates used in subsequent~~
24 ~~collective bargaining agreements.]~~

25 B. For the purpose of determining prevailing wage

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1 rates and prevailing fringe benefit rates, the director shall
2 conduct a continuing program to obtain and compile wage rate
3 and fringe benefit rate information and shall encourage the
4 voluntary submission of wage rate and fringe benefit rate
5 information by contractors, contractors' associations, labor
6 organizations, interested persons and public officers. Before
7 making a determination of wage rates and fringe benefit rates
8 for any project, the director shall analyze information thus
9 obtained. Whenever the director does not receive the
10 information to make a wage rate and fringe benefit rate
11 determination, the director shall conduct a field survey to
12 obtain sufficient information upon which to make a
13 determination of wage rates and fringe benefit rates. Any
14 interested person shall have the right to submit to the
15 director written data, views and arguments why the wage rate
16 and fringe benefit rate determination should be changed.
17 Prevailing wage rates and prevailing fringe benefit rates
18 determined pursuant to the provisions of this section shall be
19 compiled as official records and kept on file in the director's
20 office.

21 C. The prevailing wage rates and prevailing fringe
22 benefit rates to be paid shall be posted by the contractor or
23 person acting as a contractor in a prominent and easily
24 accessible place at the site of the work; and it is further
25 provided that there may be withheld from the contractor,

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1 subcontractor, employer or a person acting as a contractor so
2 much of accrued payments as may be considered necessary by the
3 contracting officer of the state or political subdivision to
4 pay to laborers and mechanics employed on the project the
5 difference between the prevailing wage rates and prevailing
6 fringe benefit rates required by the director to be paid to
7 laborers and mechanics on the work and the wage rates and
8 fringe benefit rates received by the laborers and mechanics and
9 not refunded to the contractor, subcontractor, employer or a
10 person acting as a contractor or the contractor's,
11 [~~subcontractor's~~] subcontractor's, employer's or person's
12 agents.

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

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

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

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