

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 158

3 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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10 AN ACT

11 RELATING TO PUBLIC WORKS CONTRACTS; CLARIFYING EVIDENTIARY
12 STANDARDS FOR CLAIMS AGAINST A BOND FOR FURNISHING LABOR AND
13 MATERIALS FOR PUBLIC WORKS PROJECTS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 13-4-19 NMSA 1978 (being Laws 1923,
17 Chapter 136, Section 2, as amended) is amended to read:

18 "13-4-19. RIGHTS OF PERSON FURNISHING LABOR OR [~~MATERIAL~~]
19 MATERIALS AND RIGHT OF STATE WITH RESPECT TO TAXES DUE.--

20 A. The state shall have the right to sue on the
21 payment bond for all taxes due arising out of construction
22 services rendered under a contract, in respect of which a
23 payment bond is furnished under Section 13-4-18 NMSA 1978 by a
24 contractor that does not have its principal place of business
25 in New Mexico, and to prosecute such action to final execution

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1 and judgment for the sum due. The court may allow, as part of
2 the costs, interest and reasonable attorney fees.

3 ~~[A.]~~ B. Every person, firm or corporation ~~[who]~~
4 that has furnished labor or ~~[material]~~ materials in the
5 prosecution of work provided for in ~~[such]~~ a contract, in
6 respect of which a payment bond is furnished under Section
7 ~~[6-6-11 NMSA 1953]~~ 13-4-18 NMSA 1978, and ~~[who]~~ that has not
8 been paid in full ~~[therefor]~~ for the labor or materials before
9 the expiration of a period of ninety days after the day on
10 which the last of the labor was done or performed ~~[by him]~~ or
11 ~~[material was]~~ materials were furnished or supplied ~~[by him]~~
12 for which ~~[such]~~ claim is made, ~~[and the state, in respect of~~
13 ~~which a payment bond is furnished under Section 6-6-11 NMSA~~
14 ~~1953, by a contractor who does not have its principal place of~~
15 ~~business in New Mexico, for all taxes due arising out of~~
16 ~~construction services rendered under the contract]~~ shall have
17 the right to sue on ~~[such]~~ the payment bond for the amount of
18 the balance ~~[thereof]~~ unpaid at the time of the institution of
19 ~~[such]~~ the suit and to prosecute such action to final execution
20 and judgment for the sum or sums justly due ~~[him; provided,~~
21 ~~however, that any]~~ for the labor done or performed or materials
22 furnished to be used in the construction of the project;
23 provided, however, that sums justly due shall be determined
24 according to the subcontract or other contractual relationship
25 directly with the contractor furnishing the payment bond. A

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1 person having a direct contractual relationship with a
 2 subcontractor but no contractual relationship, express or
 3 implied, with the contractor furnishing [~~such~~] the payment bond
 4 shall have a right of action upon [~~said~~] the payment bond upon
 5 giving written notice to [~~said~~] the contractor, within ninety
 6 days from the date on which [~~such~~] the person did or performed
 7 the last of the labor or furnished or supplied the last of the
 8 [~~material~~] materials for which [~~such~~] the claim is made,
 9 stating with substantial accuracy the amount claimed and the
 10 name of the party to whom the [~~material was~~] materials were
 11 furnished or supplied or for whom the labor was done or
 12 performed. [~~Such~~] Notice shall be served by mailing the [~~same~~]
 13 notice by registered mail, postage prepaid, in an envelope
 14 addressed to the contractor at any place [~~he~~] the contractor
 15 maintains an office or conducts [~~his~~] business or [~~his~~] at the
 16 contractor's residence or in any manner in which the service of
 17 summons in civil process is authorized by law.

18 [~~B.~~] C. The claimant in [~~such~~] the suit shall
 19 notify the obligee named in the bond of the beginning of such
 20 action, stating the amount claimed, and no judgment shall be
 21 entered in [~~such~~] the action within thirty days after giving
 22 [~~such~~] notice. The obligee and any person, firm, corporation
 23 or the state having a cause of action on [~~such~~] the bond may be
 24 admitted on motion as a party to [~~such~~] the action, and the
 25 court shall determine the rights of all parties thereto. If

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1 the amount realized on [~~such~~] the bond [~~be~~] is insufficient to
2 discharge all claims in full, [~~such~~] the amount shall be
3 distributed among the parties entitled thereto pro rata.

4 [~~G.~~] D. Except for suits by the state with respect
5 to taxes [~~which~~] that shall be brought in the name of the
6 [~~bureau of~~] revenue processing division of the taxation and
7 revenue department, every suit instituted under this section
8 shall be brought in the name of the state [~~of New Mexico~~] for
9 the use of the person suing in the district court in any
10 judicial district in which the contract was to be performed and
11 executed or where the claimant resides, but no such suit,
12 including one brought by the [~~bureau of~~] revenue processing
13 division, shall be commenced after the expiration of one year
14 after the date of final settlement of [~~such~~] the contract. The
15 date of final settlement, [~~herein shall be~~] for purposes of
16 this section, is that date set by the obligee in the final
17 closing and settlement of payment, if any, due the contractor.
18 The state [~~of New Mexico~~] shall not be liable for the payment
19 of any costs or expenses of any such suit.

20 [~~D.~~] E. The obligee named in [~~said~~] the bond is
21 authorized and directed to furnish to any person, firm or
22 corporation making application therefor [~~who~~] that submits an
23 affidavit that [~~he or it~~] the person, firm or corporation has
24 supplied labor or materials for such work and payment
25 [~~therefor~~] has not been made or that [~~he or it~~] the person,

1 firm or corporation is being sued on any such bond or to
2 furnish to the [~~bureau of~~] revenue processing division of the
3 taxation and revenue department a certified copy of [~~such~~] the
4 bond and the contract for which it was given, which copy shall
5 be prima facie evidence of the contents, execution and delivery
6 of the original, and, in case final settlement of [~~such~~] the
7 contract has been made, a certified statement of the date of
8 such settlement, which shall be conclusive as to such demand
9 upon it. Applicants shall pay for [~~such~~] the certified copies
10 and certified statements such fees as the obligee fixes to
11 cover the cost of preparation [~~thereof~~]."

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