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HOUSE BILL 110

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

James G. Townsend and Larry R. Scott

AN ACT

RELATING TO PUBLIC WORKS; AMENDING A SECTION OF THE PUBLIC WORKS MINIMUM WAGE ACT TO LIMIT THE APPLICATION OF THE ACT TO CLASS A COUNTIES.

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. Within class A counties only, 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

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1 public buildings, public works or public roads of the state and
2 that requires or involves the employment of mechanics, laborers
3 or both shall contain a provision stating the minimum wages and
4 fringe benefits to be paid to various classes of laborers and
5 mechanics, which shall be based upon the wages and benefits
6 that will be determined by the director to be prevailing for
7 the corresponding classes of laborers and mechanics employed on
8 contract work of a similar nature in the [~~state or locality~~]
9 class A county, and every contract or project shall contain a
10 stipulation that the contractor, subcontractor, employer or a
11 person acting as a contractor shall pay all mechanics and
12 laborers employed on the site of the project, unconditionally
13 and not less often than once a week and without subsequent
14 unlawful deduction or rebate on any account, the full amounts
15 accrued at time of payment computed at wage rates and fringe
16 benefit rates not less than those determined pursuant to
17 Subsection B of this section to be the prevailing wage rates
18 and prevailing fringe benefit rates issued for the 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]~~ class A county of the public works project and the
2 crafts involved; 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]~~ the class A county because no
6 collective bargaining agreements exist, the director shall
7 determine the prevailing wage rates and prevailing fringe
8 benefit rates for the same or most similar class or
9 classification of laborer or mechanic in the nearest and most
10 similar ~~[neighboring locality]~~ class A county in which
11 collective bargaining agreements exist;

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

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

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

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

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

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

24 (2) attach and prohibit the release of any
25 assurance of payment required under Section 13-4-18 NMSA 1978

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1 for a reasonable period of time beyond the time limits
2 specified in that section until the director satisfactorily
3 resolves any probable cause to believe a violation of the
4 Public Works Minimum Wage Act or its implementing rules has
5 taken place.

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

9 SECTION 2. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2016.

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