

1 HOUSE BILL 335

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC WORKS PROJECTS; REQUIRING PROMPT RESOLUTION
12 OF PREVAILING WAGE COMPLAINTS; INCREASING PENALTIES; PROVIDING
13 A PRIVATE RIGHT OF ACTION.
14

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

16 SECTION 1. Section 13-4-11 NMSA 1978 (being Laws 1965,
17 Chapter 35, Section 1, as amended) is amended to read:

18 "13-4-11. PREVAILING WAGE AND BENEFIT RATES
19 DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--
20 WEEKLY PAYMENT--WITHHOLDING FUNDS.--

21 A. Every contract or project in excess of sixty
22 thousand dollars (\$60,000) that the state or any political
23 subdivision thereof is a party to for construction, alteration,
24 demolition or repair or any combination of these, including
25 painting and decorating, of public buildings, public works or

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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 C. The prevailing wage rates and prevailing fringe

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

17 D. Upon request by a person, a contracting agency
18 shall, within fifteen days of such request, provide copies of
19 certified weekly payroll records to the requesting party,
20 subject to the Inspection of Public Records Act.

21 [~~D-~~] E. Notwithstanding any other provision of law
22 applicable to public works contracts or agreements, the
23 director may, with cause:

24 (1) issue investigative or hearing subpoenas
25 for the production of documents or witnesses pertaining to

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1 public works prevailing wage projects; and

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

9 F. A person may file with the director a complaint
10 that a contractor, subcontractor, employer or person acting as
11 a contractor on the project has failed to pay wages or fringe
12 benefits at the rates required by the Public Works Minimum Wage
13 Act. The director shall, within ten days of the filing of the
14 complaint, commence an investigation of the allegations
15 contained in the complaint. The director shall, within thirty
16 days of the filing of the complaint, make a determination
17 supported by findings of fact and conclusions of law whether
18 there has been a violation of the Public Works Minimum Wage
19 Act.

20 G. If the director determines that there has been a
21 violation of the Public Works Minimum Wage Act, the director
22 shall, within seven days of making that determination, make the
23 certifications required pursuant to Section 13-4-14 NMSA 1978.

24 [~~E.~~] H. The director shall issue rules necessary to
25 administer and accomplish the purposes of the Public Works

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1 Minimum Wage Act."

2 SECTION 2. Section 13-4-13 NMSA 1978 (being Laws 1965,
3 Chapter 35, Section 3, as amended) is amended to read:

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

25 SECTION 3. Section 13-4-14 NMSA 1978 (being Laws 1965,

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1 Chapter 35, Section 4, as amended) is amended to read:

2 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
3 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE
4 EARNERS.--

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

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

18 C. In the event of any violation of the Public
19 Works Minimum Wage Act or implementing rules, the contractor,
20 subcontractor, employer or a person acting as a contractor
21 responsible for the violation shall be liable to any affected
22 employee for three times the amount of the employee's unpaid
23 wages or fringe benefits. In addition, the contractor,
24 subcontractor, employer or person acting as a contractor shall
25 be liable to any affected employee for liquidated damages

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1 beginning with the first day of covered employment in the sum
2 of one hundred dollars (\$100) for each calendar day on which a
3 contractor, subcontractor, employer or person acting as a
4 contractor has ~~willfully~~ required or permitted an individual
5 laborer or mechanic to work in violation of the provisions of
6 the Public Works Minimum Wage Act.

7 D. In addition to all other remedies, an employee
8 adversely affected by a violation of the Public Works Minimum
9 Wage Act by a contractor, subcontractor, employer or person
10 acting as a contractor shall have a private right of action,
11 independent of any action brought by the director, to recover
12 damages in any court of competent jurisdiction by any one or
13 more employees for and on behalf of the employee or employees
14 and for other employees similarly situated, or such employee or
15 employees may designate an agent or representative to maintain
16 such action on behalf of all employees similarly situated.

17 ~~[D-]~~ E. In an action brought pursuant to
18 ~~[Subsection C]~~ Subsections C and D of this section, the court
19 ~~[may]~~ shall award, in addition to all other remedies, attorney
20 fees and costs ~~[to]~~ incurred on behalf of an employee adversely
21 affected by a violation of the Public Works Minimum Wage Act by
22 a contractor, subcontractor, employer or person acting as a
23 contractor."