

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 335

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

AN ACT

RELATING TO PUBLIC WORKS PROJECTS; REQUIRING PROMPT RESOLUTION  
OF PREVAILING WAGE COMPLAINTS; INCREASING PENALTIES.

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  
public roads of the state and that requires or involves the

.208048.2

underscored material = new  
[bracketed material] = delete

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

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

.208048.2

1 provided that:

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

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

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

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

24 C. The prevailing wage rates and prevailing fringe  
25 benefit rates to be paid shall be posted by the contractor or

.208048.2

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

16 D. Upon request by a person, a contracting agency  
17 shall, within fifteen days of such request, provide copies of  
18 certified weekly payroll records to the requesting party.

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

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

25 (2) attach and prohibit the release of any

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

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

18 G. If the director determines that there has been  
19 an underpayment of wages or benefits, the director shall, in  
20 the absence of a voluntary resolution by the parties and within  
21 thirty days of making that determination, order the withholding  
22 of accrued payments as provided in Subsection C of this  
23 section.

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

.208048.2

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]~~ an uncorrected wage rate  
10 or fringe benefit rate less than the rates required, and in the  
11 absence of a voluntary resolution by the parties, the  
12 contracting agency ~~[may]~~ shall, within thirty days of the  
13 director's determination, by written notice to the contractor,  
14 subcontractor, employer or person acting as a contractor,  
15 terminate the right to proceed with the work or the part of the  
16 work as to which there has been a willful failure to pay the  
17 required wages or fringe benefits, and the contracting agency  
18 ~~[may]~~ shall prosecute the work to completion by contract or  
19 otherwise, and the contractor or person acting as a contractor  
20 and the contractor's or person's sureties shall be liable to  
21 the state for any excess costs occasioned thereby. Any party  
22 receiving notice of termination of a project or subcontract  
23 pursuant to the provisions of this section may appeal the  
24 finding of the director as provided in the Public Works Minimum  
25 Wage Act."

.208048.2

1           SECTION 3. Section 13-4-14 NMSA 1978 (being Laws 1965,  
2 Chapter 35, Section 4, as amended) is amended to read:

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

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

.208048.2

1 Minimum Wage Act.

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

19 C. In the event of [~~any violation of~~] an  
20 underpayment of wages or benefits greater than five hundred  
21 dollars (\$500) to an employee subject to the Public Works  
22 Minimum Wage Act or implementing rules, the contractor,  
23 subcontractor, employer or a person acting as a contractor  
24 responsible for the [~~violation~~] underpayment shall be liable to  
25 any affected employee for three times the amount of the



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

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

17 - 9 -  
18  
19  
20  
21  
22  
23  
24  
25

underscored material = new  
[bracketed material] = delete