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SENATE BILL 4

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Katy M. Duhigg and Christine Chandler

AN ACT

RELATING TO PUBLIC WORKS; SPECIFYING THAT PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES ARE TO BE DETERMINED ANNUALLY BY OCTOBER 1 TO TAKE EFFECT THE NEXT JANUARY 1; PROVIDING THAT AN APPEAL OF A DETERMINED PREVAILING WAGE RATE OR PREVAILING FRINGE BENEFIT RATE DOES NOT STAY IMPLEMENTATION OF THE RATE UNLESS MODIFIED BY A FINAL DECISION OR JUDGMENT OR UPON ORDER OF THE COURT.

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

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1 thousand dollars (\$60,000) that the state or any political
2 subdivision thereof is a party to for construction, alteration,
3 demolition or repair or any combination of these, including
4 painting and decorating, of public buildings, public works or
5 public roads of the state and that requires or involves the
6 employment of mechanics, laborers or both shall contain a
7 provision stating the minimum wages and fringe benefits to be
8 paid to various classifications of laborers and mechanics,
9 which shall be based upon the wages and benefits that will be
10 determined by the director to be prevailing for the
11 corresponding classifications of laborers and mechanics
12 employed on contract work of a similar nature in the state or
13 locality, and every contract or project shall contain a
14 stipulation that the contractor, subcontractor, employer or a
15 person acting as a contractor shall pay all mechanics and
16 laborers employed on the site of the project, unconditionally
17 and not less often than once a week and without subsequent
18 unlawful deduction or rebate on any account, the full amounts
19 accrued at time of payment computed at wage rates and fringe
20 benefit rates not less than those determined pursuant to
21 Subsection B of this section to be the prevailing wage rates
22 and prevailing fringe benefit rates issued for the project.

23 B. Annually, no later than October 1, the director
24 shall determine prevailing wage rates and prevailing fringe
25 benefit rates to take effect the next January 1 for respective

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1 classifications of laborers and mechanics employed on public
2 works projects at the same wage rates and fringe benefit rates
3 used in collective bargaining agreements between labor
4 organizations and their signatory employers that govern
5 predominantly similar classifications of laborers and mechanics
6 for the locality of the public works project and the crafts
7 involved; provided that:

8 (1) if the prevailing wage rates and
9 prevailing fringe benefit rates cannot reasonably and fairly be
10 determined in a locality because no collective bargaining
11 agreements exist, the director shall determine the prevailing
12 wage rates and prevailing fringe benefit rates for the same or
13 most similar classification of laborer or mechanic in the
14 nearest and most similar neighboring locality in which
15 collective bargaining agreements exist;

16 (2) the director shall give due regard to
17 information obtained during the director's determination of the
18 prevailing wage rates and the prevailing fringe benefit rates
19 made pursuant to this subsection;

20 (3) any interested person shall have the right
21 to submit to the director written data, personal opinions and
22 arguments supporting changes to the prevailing wage rate and
23 prevailing fringe benefit rate determination; ~~and~~

24 (4) prevailing wage rates and prevailing
25 fringe benefit rates determined pursuant to the provisions of

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1 this section shall be compiled as official records and kept on
2 file in the director's office, and the records shall be updated
3 in accordance with the applicable rates used in subsequent
4 collective bargaining agreements; and

5 (5) an appeal of a prevailing wage rate or
6 prevailing fringe benefit rate determined pursuant to the
7 provisions of this section shall not stay the implementation of
8 the rate unless the rate is modified by a final written
9 decision of the labor and industrial commission or by a final
10 judgment of a district court; and provided further that during
11 the pendency of an appeal, an interested party may request and
12 a district court may grant, upon good cause shown, a stay of
13 the implementation of a rate.

14 C. The prevailing wage rates and prevailing fringe
15 benefit rates to be paid shall be posted by the contractor or
16 person acting as a contractor in a prominent and easily
17 accessible place at the site of the work; provided that there
18 shall be withheld from the contractor, subcontractor, employer
19 or a person acting as a contractor so much of accrued payments
20 as may be considered necessary by the director or contracting
21 officer of the state or political subdivision to pay to
22 laborers and mechanics employed on the project the difference
23 between the prevailing wage rates and prevailing fringe benefit
24 rates required by the director to be paid to laborers and
25 mechanics on the work and the wage rates and fringe benefit

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1 rates received by the laborers and mechanics and not refunded
2 to the contractor, subcontractor, employer or a person acting
3 as a contractor or the contractor's, subcontractor's,
4 employer's or person's agents.

5 D. Certified weekly payroll records of a
6 contracting agency are subject to inspection pursuant to the
7 Inspection of Public Records Act; provided that the request
8 shall be fulfilled within twenty days of receipt of the written
9 request. Certified weekly payroll records are subject to
10 record retention requirements applicable to payroll records of
11 a state agency.

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

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

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

25 F. A person may file with the director a complaint

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1 that a contractor, subcontractor, employer or person acting as
2 a contractor on the project has failed to pay the person wages
3 or fringe benefits at the rates required by the Public Works
4 Minimum Wage Act. Within thirty days after the filing of the
5 complaint, either party may request in writing a mediation to
6 resolve the complaint.

7 G. The director shall, within thirty days of the
8 filing of the complaint, commence an investigation of the
9 allegations contained in the complaint. The director shall,
10 within seventy-five days after the completion of mediation or
11 if no mediation is requested, within seventy-five days after
12 the filing of the complaint, make a determination supported by
13 findings of fact and conclusions of law whether there has been
14 an underpayment of wages or fringe benefits or other violation
15 of the Public Works Minimum Wage Act; provided that if the
16 complaint is of a continuing or significantly complex nature or
17 involves multiple projects or job sites, the director may
18 extend the time in which to make a determination by up to six
19 months by providing written notice and an explanation to all
20 parties of the need to extend the time. Prior to issuing a
21 determination, the director shall provide the contractor,
22 subcontractor, employer or other person against whom the
23 complaint has been filed with an opportunity to respond to the
24 complaint and provide any exculpatory evidence.

25 H. If the director determines that there has been

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1 an underpayment of wages or fringe benefits or a violation of
2 the Public Works Minimum Wage Act, the director shall, in the
3 absence of a voluntary resolution by the parties and within
4 thirty days of making that determination, order the withholding
5 of accrued payments as provided in Subsection C of this
6 section.

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