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HOUSE BILL 246

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Christine Chandler

AN ACT

RELATING TO PUBLIC WORKS PROJECTS; PROVIDING A PROCESS TO  
RESOLVE 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

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

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1 project and the crafts involved; 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  
8 in 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

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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

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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 fringe benefits or  
17 other violation of the Public Works Minimum Wage Act.

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

25 [~~E-~~] H. The director shall issue rules necessary to

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1 administer and accomplish the purposes of the Public Works  
2 Minimum Wage Act."

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

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

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1 Wage Act."

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

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

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

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1 list to be distributed may appeal the finding of the director  
2 as provided in the Public Works Minimum Wage Act.

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

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

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

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