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HOUSE BILL 63

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR DETERMINATION OF WAGE RATES THROUGH A CONTINUING SURVEY PROGRAM RATHER THAN WAGE RATES USED IN COLLECTIVE BARGAINING AGREEMENTS.

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

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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 B. For the purpose of determining prevailing wage

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1 rates and prevailing fringe benefit rates, the director shall  
2 conduct a continuing program to obtain and compile wage rate  
3 and fringe benefit rate information and shall encourage the  
4 voluntary submission of wage rate and fringe benefit rate data  
5 by contractors, contractors' associations, labor organizations,  
6 interested persons and public officers. Before making a  
7 determination of wage rates and fringe benefit rates for any  
8 project, the director shall give due regard to the information  
9 obtained. Whenever the director deems that the data at hand  
10 are insufficient to make a wage and fringe benefit  
11 determination, the director may conduct a field survey to  
12 obtain sufficient information upon which to make a  
13 determination of wage rates and fringe benefit rates. Any  
14 interested person shall have the right to submit to the  
15 director written data, views and arguments why the wage and  
16 fringe benefit determination should be changed.

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

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1 difference between the prevailing wage rates and prevailing  
2 fringe benefit rates required by the director to be paid to  
3 laborers and mechanics on the work and the wage rates and  
4 fringe benefit rates received by the laborers and mechanics and  
5 not refunded to the contractor, subcontractor, employer or a  
6 person acting as a contractor or the contractor's,  
7 [~~subcontractor's~~] subcontractor's, employer's or person's  
8 agents.

9 D. Notwithstanding any other provision of law  
10 applicable to public works contracts or agreements, the  
11 director may, with cause:

12 (1) issue investigative or hearing subpoenas  
13 for the production of documents or witnesses pertaining to  
14 public works prevailing wage projects; and

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

22 E. The director shall issue rules necessary to  
23 administer and accomplish the purposes of the Public Works  
24 Minimum Wage Act."

25 SECTION 2. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is July 1, 2011.

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