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HOUSE BILL 200

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Nora Espinoza

AN ACT

RELATING TO PUBLIC WORKS; REMOVING PROJECTS FOR PUBLIC ROADS AND EDUCATIONAL INSTITUTIONS FROM THE APPLICATION OF THE PUBLIC WORKS MINIMUM WAGE ACT; ELIMINATING COLLECTIVE BARGAINING AGREEMENTS AS THE BASIS FOR COMPUTING MINIMUM WAGES ON PUBLIC WORKS PROJECTS; PLACING A CAP ON PREVAILING WAGES AND FRINGE BENEFITS.

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

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

22 ~~[B. The director shall determine prevailing wage~~  
23 ~~rates and prevailing fringe benefit rates for respective~~  
24 ~~classes of laborers and mechanics employed on public works~~  
25 ~~projects at the same wage rates and fringe benefit rates used~~

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1 ~~in collective bargaining agreements between labor organizations~~  
2 ~~and their signatory employers that govern predominantly similar~~  
3 ~~classes or classifications of laborers and mechanics for the~~  
4 ~~locality of the public works project and the crafts involved;~~  
5 ~~provided that:~~

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

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

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

22 ~~(4) prevailing wage rates and prevailing~~  
23 ~~fringe benefit rates determined pursuant to the provisions of~~  
24 ~~this section shall be compiled as official records and kept on~~  
25 ~~file in the director's office and the records shall be updated~~

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1 ~~in accordance with the applicable rates used in subsequent~~  
2 ~~collective bargaining agreements.]~~

3 B. The provisions of the Public Works Minimum Wage  
4 Act shall not apply to contracts and projects for public roads  
5 and educational institutions.

6 C. For the purpose of determining prevailing wage  
7 rates and prevailing fringe benefit rates, the director shall  
8 conduct a continuing statewide field survey to obtain and  
9 compile wage rate and fringe benefit rate information and shall  
10 encourage the voluntary submission of wage rate and fringe  
11 benefit rate information by contractors, contractors'  
12 associations, labor organizations, interested persons and  
13 public officers. Any interested person shall have the right to  
14 submit to the director written data, views and arguments why  
15 the wage rate and fringe benefit rate determination should be  
16 changed. Based on the information obtained through the field  
17 survey and through voluntary submissions from interested  
18 parties, the director shall determine the prevailing wages on  
19 any public works project for each recognized class of worker to  
20 be the weighted average of the total hours worked in the  
21 recognized classification of workers who are employed on work  
22 similar to the proposed project. In no event, however, shall  
23 New Mexico's prevailing wage and fringe benefit rates be higher  
24 than the rates applicable to projects covered by the federal  
25 Davis-Bacon Act.

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

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

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

24                   (2) attach and prohibit the release of any  
25 assurance of payment required under Section 13-4-18 NMSA 1978

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1 for a reasonable period of time beyond the time limits  
2 specified in that section until the director satisfactorily  
3 resolves any probable cause to believe a violation of the  
4 Public Works Minimum Wage Act or its implementing rules has  
5 taken place.

6 ~~[E.]~~ F. The director shall issue rules necessary to  
7 administer and accomplish the purposes of the Public Works  
8 Minimum Wage Act."

9 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
10 provisions of this act is July 1, 2016.