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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 employment of mechanics, laborers or both
shall contain a provision stating the minimum wages and
fringe benefits to be paid to various classifications of
laborers and mechanics, which shall be based upon the wages
and benefits that will be determined by the director to be
prevailing for the corresponding classifications of laborers
and mechanics employed on contract work of a similar nature
in the state or locality, and every contract or project shall
contain a stipulation that the contractor, subcontractor,

1 employer or a person acting as a contractor shall pay all
2 mechanics and laborers employed on the site of the project,
3 unconditionally and not less often than once a week and
4 without subsequent unlawful deduction or rebate on any
5 account, the full amounts accrued at time of payment computed
6 at wage rates and fringe benefit rates not less than those
7 determined pursuant to Subsection B of this section to be the
8 prevailing wage rates and prevailing fringe benefit rates
9 issued for the project.

10 B. Annually, the director shall determine
11 prevailing wage rates and prevailing fringe benefit rates for
12 respective classifications of laborers and mechanics employed
13 on public works projects at the same wage rates and fringe
14 benefit rates used in collective bargaining agreements
15 between labor organizations and their signatory employers
16 that govern predominantly similar classifications of laborers
17 and mechanics for the locality of the public works project
18 and the crafts involved; provided that:

19 (1) if the prevailing wage rates and
20 prevailing fringe benefit rates cannot reasonably and fairly
21 be determined in a locality because no collective bargaining
22 agreements exist, the director shall determine the prevailing
23 wage rates and prevailing fringe benefit rates for the same
24 or most similar classification of laborer or mechanic in the
25 nearest and most similar neighboring locality in which

1 collective bargaining agreements exist;

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

6 (3) any interested person shall have the
7 right to submit to the director written data, personal
8 opinions and arguments supporting changes to the prevailing
9 wage rate and prevailing fringe benefit rate determination;
10 and

11 (4) prevailing wage rates and prevailing
12 fringe benefit rates determined pursuant to the provisions of
13 this section shall be compiled as official records and kept
14 on file in the director's office, and the records shall be
15 updated in accordance with the applicable rates used in
16 subsequent collective bargaining agreements.

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; provided that there
21 shall be withheld from the contractor, subcontractor,
22 employer or a person acting as a contractor so much of
23 accrued payments as may be considered necessary by the
24 director or contracting officer of the state or political
25 subdivision to pay to laborers and mechanics employed on the

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

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

15 E. Notwithstanding any other provision of law
16 applicable to public works contracts or agreements, the
17 director may, with cause:

18 (1) issue investigative or hearing subpoenas
19 for the production of documents or witnesses pertaining to
20 public works prevailing wage projects; and

21 (2) attach and prohibit the release of any
22 assurance of payment required under Section 13-4-18 NMSA 1978
23 for a reasonable period of time beyond the time limits
24 specified in that section until the director satisfactorily
25 resolves any probable cause to believe a violation of the

1 Public Works Minimum Wage Act or its implementing rules has
2 taken place.

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

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

1 against whom the complaint has been filed with an opportunity
2 to respond to the complaint and provide any exculpatory
3 evidence.

4 H. If the director determines that there has been
5 an underpayment of wages or fringe benefits or a violation of
6 the Public Works Minimum Wage Act, the director shall, in the
7 absence of a voluntary resolution by the parties and within
8 thirty days of making that determination, order the
9 withholding of accrued payments as provided in Subsection C
10 of this section.

11 I. The director shall issue rules necessary to
12 administer and accomplish the purposes of the Public Works
13 Minimum Wage Act."

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

16 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
17 CONTRACT.--Every contract within the scope of the Public
18 Works Minimum Wage Act shall contain further provision that
19 in the event it is determined by the director that any
20 laborer or mechanic employed on the site of the project has
21 been or is being paid a wage rate or fringe benefit rate less
22 than the rates required, and in the absence of a voluntary
23 resolution by the parties, the contracting agency shall,
24 within thirty days of the director's determination, by
25 written notice to the contractor, subcontractor, employer or

1 person acting as a contractor, terminate the right to proceed
2 with the work or the part of the work as to which there has
3 been a failure to pay the required wages or fringe benefits,
4 and the contracting agency shall prosecute the work to
5 completion by contract or otherwise, and the contractor or
6 person acting as a contractor and the contractor's or
7 person's sureties shall be liable to the state for any excess
8 costs occasioned thereby. Any party receiving notice of
9 termination of a project or subcontract pursuant to the
10 provisions of this section may appeal the finding of the
11 director as provided in the Public Works Minimum Wage Act."

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

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

17 A. The director shall certify to the contracting
18 agency the names of persons or firms the director has found
19 to have failed to pay wages or fringe benefits due employees
20 under the Public Works Minimum Wage Act and the amount of
21 arrears. The contracting agency shall pay or cause to be
22 paid to the affected laborers and mechanics, from any accrued
23 payments withheld under the terms of the contract or
24 designated for the project, three times the amount of any
25 wages or fringe benefits found due to the workers pursuant to

1 the Public Works Minimum Wage Act. The director shall, after
2 notice to the affected persons, distribute a list to all
3 departments of the state giving the names of persons or firms
4 the director has found to have willfully violated the Public
5 Works Minimum Wage Act. No contract or project shall be
6 awarded to the persons or firms appearing on this list or to
7 any firm, corporation, partnership or association in which
8 the persons or firms have an interest until three years have
9 elapsed from the date of publication of the list containing
10 the names of the persons or firms. A person to be included
11 on the list to be distributed may appeal the finding of the
12 director as provided in the Public Works Minimum Wage Act.

13 B. If the accrued payments withheld under the
14 terms of the contract, as mentioned in Subsection A of this
15 section, are insufficient to reimburse all the laborers and
16 mechanics with respect to whom there has been a failure to
17 pay the wages or fringe benefits required pursuant to the
18 Public Works Minimum Wage Act, the laborers and mechanics
19 shall have the right of action or intervention or both
20 against the contractor or person acting as a contractor and
21 the contractor's or person's sureties, conferred by law upon
22 the persons furnishing labor and materials, and, in such
23 proceeding, it shall be no defense that the laborers and
24 mechanics accepted or agreed to less than the required rate
25 of wages or voluntarily made refunds. The director shall

1 refer such matters to the district attorney in the
2 appropriate county, and it is the duty and responsibility of
3 the district attorney to bring civil suit for wages and
4 fringe benefits due and other damages provided for in
5 Subsection C of this section.

6 C. In the event of an aggregate underpayment of
7 wages or fringe benefits greater than five hundred dollars
8 (\$500) to an employee subject to the Public Works Minimum
9 Wage Act or implementing rules, the contractor,
10 subcontractor, employer or a person acting as a contractor
11 responsible for the underpayment shall be liable to any
12 affected employee for three times the amount of the
13 employee's unpaid wages or fringe benefits. In addition, the
14 contractor, subcontractor, employer or person acting as a
15 contractor shall be liable to any affected employee for one
16 hundred dollars (\$100) for each calendar day on which a
17 contractor, subcontractor, employer or person acting as a
18 contractor has willfully required or permitted the employee
19 to work in violation of the provisions of the Public Works
20 Minimum Wage Act.

21 D. In an action brought pursuant to Subsection C
22 of this section, the court shall award, in addition to all
23 other remedies, attorney fees and costs incurred on behalf of
24 an employee adversely affected by a violation of the Public
25 Works Minimum Wage Act by a contractor, subcontractor,

