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HOUSE BILL 120

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DANICE PICRAUX

AN ACT

RELATING TO GOVERNMENT PURCHASES; PROVIDING FOR PROMPT PAYMENT
OF BILLS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-158 NMSA 1978 (being Laws 1984,
Chapter 65, Section 131, as amended) is amended to read:

"13-1-158. PAYMENTS FOR PURCHASES. --

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

Underscored material = new
[bracketed material] = delete

1 B. Unless otherwise agreed upon by the parties or
2 unless otherwise specified in the invitation for bids, request
3 for proposals or other solicitation, within fifteen days from
4 the date the [state] central purchasing office or [state] using
5 agency receives written notice from the contractor that payment
6 is requested for services or construction completed or items of
7 tangible personal property delivered on site and received ~~by~~
8 ~~the state~~, the [state] central purchasing office or [state]
9 using agency shall issue a written certification of complete or
10 partial acceptance or rejection of the services, construction or
11 items of tangible personal property.

12 C. Upon certification by the [state] central
13 purchasing office or the [state] using agency that the services,
14 construction or items of tangible personal property have been
15 received and accepted, payment shall be tendered to the
16 contractor within [~~sixty~~] thirty days of the date of
17 certification. After the [~~sixtieth~~] thirtieth day from the date
18 that written certification of acceptance is issued, late payment
19 charges shall be paid on the unpaid balance due on the contract
20 to the contractor at the rate of one and one-half percent per
21 month.

22 D. Late payment charges that differ from the
23 provisions of Subsection C of this section may be assessed if
24 specifically provided for by contract or pursuant to tariffs
25 approved by the New Mexico public utility commission or the

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1 state corporation commission. "

2 Section 2. Section 13-1-170 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 143) is amended to read:

4 "13-1-170. UNIFORM CONTRACT CLAUSES. --

5 A. A state agency, local public body or central
6 purchasing office with the power to issue regulations may
7 require by regulation that contracts include uniform clauses
8 providing for termination of contracts, adjustments in prices,
9 adjustments in time of performance or other contract provisions
10 as appropriate, including but not limited to the following
11 subjects:

12 [~~A.-~~] (1) the unilateral right of a state agency
13 or a local public body to order in writing:

14 [~~(1)~~] (a) changes in the work within the
15 scope of the contract; and

16 [~~(2)~~] (b) temporary stoppage of the work
17 or the delay of performance;

18 [~~B.-~~] (2) variations occurring between estimated
19 quantities of work in a contract and actual quantities;

20 [~~C.-~~] (3) liquidated damages;

21 [~~D.-~~] (4) permissible excuses for delay or
22 nonperformance;

23 [~~E.-~~] (5) termination of the contract for
24 default;

25 [~~F.-~~] (6) termination of the contract in whole

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1 or in part for the convenience of the state agency or a local
2 public body;

3 [G-] (7) assignment clauses providing for the
4 assignment by the contractor to the state agency or a local
5 public body of causes of action for violation of state or
6 federal antitrust statutes;

7 [H-] (8) identification of subcontractors by
8 bidders in bids; and

9 [I-] (9) uniform subcontract clauses in
10 contracts.

11 B. A state agency, local public body or central
12 purchasing office with the power to issue regulations shall
13 require by regulation that contracts include a clause imposing
14 late payment charges against the state agency or local public
15 body in the amount and under the conditions stated in Subsection
16 C of Section 13-1-158 NMSA 1978."

17 Section 3. Section 74-6B-13 NMSA 1978 (being Laws 1992,
18 Chapter 64, Section 10, as amended) is amended to read:

19 "74-6B-13. PAYMENT PROGRAM --

20 A. Unless provided otherwise in this section, all
21 costs in excess of ten thousand dollars (\$10,000) that are
22 necessary to perform a minimum site assessment in accordance
23 with the regulations of the board shall be paid from the
24 corrective action fund. In the event that an owner or operator
25 has performed a minimum site assessment after March 7, 1990 but

1 prior to March 9, 1992 and has expended more than ten thousand
2 dollars (\$10,000), the owner or operator may apply to the
3 department for reimbursement of the costs of the minimum site
4 assessment in excess of ten thousand dollars (\$10,000) and shall
5 be entitled to reimbursement of those costs to the extent that
6 money is available.

7 B. An owner or operator who has performed or who has
8 made arrangements to perform corrective action after March 7,
9 1990 and in accordance with applicable environmental laws and
10 regulations may apply to the department for payment of the costs
11 of corrective action, other than a minimum site assessment, and
12 shall be entitled to payment of those costs from the corrective
13 action fund, if he has proven to the department that he has
14 complied with the requirements of Section 74-6B-8 NMSA 1978 and
15 if money is available in the fund.

16 C. Payment of the cost of corrective action,
17 including the cost of a minimum site assessment, shall be made
18 by the department following application and proper documentation
19 of the costs and in accordance with regulations adopted by the
20 secretary establishing eligible and ineligible costs. Eligible
21 costs for payment are those reasonable and necessary costs
22 actually incurred after March 7, 1990 in the performance of a
23 site assessment and for corrective action that are consistent
24 with the department's fee schedule. Ineligible costs include
25 attorneys' fees, repair or upgrade of tanks, loss of revenue and

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1 costs of monitoring a contractor.

2 D. The department shall adopt regulations to provide
3 for payments from the corrective action fund, to the extent that
4 money is available in the fund, to persons who cannot afford to
5 pay all or a portion of the initial ten thousand dollar
6 (\$10,000) cost of a minimum site assessment otherwise required
7 in this section. The department shall develop a financial
8 assistance means test, including a sliding scale of financial
9 relief as the department deems appropriate, that allows some or
10 all of the minimum site assessment costs to be paid from the
11 corrective action fund. This financial assistance relief shall
12 be available to owners or operators who performed or made
13 arrangements to perform corrective action after March 7, 1990.

14 E. All department determinations concerning the
15 manner of payment, compliance and cost eligibility shall be made
16 in accordance with department regulations.

17 F. If the owner or operator is in compliance with
18 the requirements of Subsection B of Section 74-6B-8 NMSA 1978,
19 payment of costs from the corrective action fund shall occur not
20 later than ~~[ninety]~~ thirty days after the submission of the
21 application and proper documentation of costs by the owner or
22 operator, except as provided in Section 74-6B-14 NMSA 1978.

23 G. The department shall reserve not less than
24 twenty-five percent of the unexpended, unencumbered balance of
25 the corrective action fund on July 1 of each year for the

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1 payment of claims made on the fund. "

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 6, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 120

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HB C/HB 120

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Varela

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 22, 1997

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7 Mr. Speaker:

8 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
9 whom has been referred

10
11 HOUSE BILL 120
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 1, line 11, strike "PURCHASES" and insert
16 "PAYMENTS".

17
18 2. On page 1, lines 11 and 12, strike "PAYMENT OF BILLS" and
19 insert "PAYMENTS FROM GOVERNMENT".

20
21 3. On page 2, line 17, after the period insert "If payment
22 is made by mail, the payment shall be deemed tendered on the date
23 it is postmarked."

24 4. On page 2, line 21, after the period insert "For
25 purchases funded by state or federal grants to local public

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FIRST SESSION, 1997

HAFC/HB120

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bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency. "

5. On page 4, lines 15 and 16, strike "Subsection C of".

6. On page 5, line 25, strike "attorneys' " and insert "attorney".

Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HAFC/HB120

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2 The roll call vote was 12 For 0 Against

3 Yes: 12

4 Excused: Abeyta, Garcia, M. H. , Pearce, Townsend, Watchman

5 Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HAF/ HB120

Page 13

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5 FORTY-THIRD LEGISLATURE
6 FIRST SESSION, 1997

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March 10, 1997

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10 Mr. President:

11

12 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to

13

whom has been referred

13

14

HOUSE BILL 120, as amended

15

16

has had it under consideration and reports same with

17

recommendation that it DO PASS, and thence referred to the

18

FINANCE COMMITTEE.

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Respectfully submitted,

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Roman M. Maes, III, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HAF/ HB120

Page 14

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3 Adopted _____ Not Adopted _____

4 (Chief Clerk)

(Chief Clerk)

5

6

Date _____

7

8

9 The roll call vote was 6 For 0 Against

10 Yes: 6

11 No: 0

12 Excused: Fidel, Kidd, McKibben, Robinson

13 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

HB 120/a

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4 March 15, 1997

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6 Mr. President:

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8 Your FINANCE COMMITTEE, to whom has been referred

9 HOUSE BILL 120, as amended

10
11 has had it under consideration and reports same with
12 recommendation that it DO PASS, amended as follows:

13
14 1. On page 2, line 12, strike "Upon" and insert in lieu
15 thereof "Except as provided in Subsection D of this section,
16 upon".

17
18 2. On page 2, between lines 21 and 22, insert the
19 following new subsection:

20 "D. If the central purchasing office or the using agency
21 finds that the services, construction or items of tangible
22 personal property are not acceptable, it shall, within thirty days
23 of the date of receipt of written notice from the contractor that
24 payment is requested for services or construction completed or
25 items of tangible personal property delivered on site, provide to
the contractor a letter of exception explaining the defect or
objection to the services, construction or delivered tangible

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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personal property along with details of how the contractor may proceed to provide remedial action."

3. Reletter succeeding subsections accordingly and adjust cross-references to correspond to these amendments.

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Page 17

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Ingle, Lyons, McKibben

Absent: None

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