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HOUSE BILL 629

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO LABOR; ENACTING THE JOB PROTECTION ACT TO PROVIDE  
BENEFITS FOR EMPLOYEES WHO LOSE THEIR JOBS DUE TO PLANT CLOSINGS  
AND MASS LAYOFFS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Job Protection Act".

Section 2. DEFINITIONS.--As used in the Job Protection Act:

A. "affected employees" means employees who may reasonably be expected to  
experience an employment loss as a consequence of a proposed plant closing or mass layoff;

B. "employer" means a business enterprise that employs either:

(1) two hundred or more employees, excluding part-time employees; or

(2) two hundred or more employees who in the aggregate work at least

eight thousand hours per week;

C. "employment loss" means:

(1) an employment termination, other than a discharge for cause,  
voluntary departure or retirement;

- 1 (2) a layoff exceeding six months;
- 2 (3) a reduction in hours of work of more than fifty percent during each
- 3 month of any six-month period; or
- 4 (4) a reduction in salary of more than thirty-three and one-third
- 5 percent during each month of a six- month period;

6 D. "group health plan" means an employee welfare benefit plan providing  
7 medical care, as defined in Section 213(d) of the Internal Revenue Code of 1986, to  
8 participants, beneficiaries or dependents, directly or through insurance, reimbursement or  
9 otherwise;

10 E. "location assistance" includes any subsidy, infrastructure development or  
11 improvement, tax relief, site preparation assistance, hiring and training assistance or other  
12 economic benefit offered by this state or any political subdivision of this state to induce an  
13 employer to locate at, remain at or expand its operations at a site of employment within the  
14 jurisdiction of this state or any political subdivision of this state;

15 F. "mass layoff" means a reduction in force that:  
16 (1) is not the result of a plant closing; and  
17 (2) results in an employment loss at the single site of employment, or  
18 one or more facilities or operating units within a single site of employment, during any thirty-  
19 day period for at least twelve full-time employees;

20 G. "plant closing" means the permanent or temporary shutdown of a single site  
21 of employment, or operating units within a single site of employment, if the shutdown results in  
22 an employment loss at the single site of employment during any thirty-day period for twelve or  
23 more full-time employees; and

24 H. "site of employment" means any factory, mine, business office, facility or  
25 other operating unit, or its functional equivalent.

Section 3. LIMITATION ON WORK TRANSFER TO LOW-WAGE FOREIGN

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[bracketed material] = delete

1 COUNTRIES--DEFINITION.--

2 A. An employer may not implement a plant closing or mass layoff at a site of  
3 employment due to a transfer of work to a low-wage foreign country that occurs one year before  
4 or after the closing or mass layoff unless the employer provides notice at least one hundred  
5 eighty days before the closing or mass layoff in accordance with Section 4 of the Job Protection  
6 Act.

7 B. Except as provided in Subsection C of this section, work is considered to be  
8 transferred to a low-wage foreign country for purposes of Subsection A of this section if the  
9 employer:

10 (1) increases the amount of work performed at one or more sites of  
11 employment in one or more low-wage foreign countries, and this work is substantially similar to  
12 the work performed at the site of employment referred to in Subsection A of this section; or

13 (2) increases the amount of products or services that are imported  
14 from one or more low-wage foreign countries, and these products or services are substantially  
15 similar to the products or services produced or provided at the site of employment referred to in  
16 Subsection A of this section.

17 C. If an employer who orders a plant closing or mass layoff at a site of  
18 employment referred to in Subsection A of this section proves that the increase in work that is  
19 performed in a low-wage foreign country or the increase in products or services that are  
20 imported to this state from a low-wage foreign country is not related to the plant closing or mass  
21 layoff at such site of employment, the employer is not required to provide notice in accordance  
22 with Section 4 of the Job Protection Act or benefits to the employees in accordance with Section  
23 5 of that act.

24 D. If an increase described in Paragraph (1) of Subsection B of this section is  
25 carried out by a person that owns at least ten percent of an employer described in Subsection A  
of this section or by any person, ten percent of which is owned by the employer, that employer

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1 shall be considered to have carried out the increase.

2 E. For purposes of this section, "low-wage foreign country" means:

3 (1) a country in which the average wage is less than fifty percent of  
4 the average wage in the United States, as determined by the United States secretary of labor; or

5 (2) a country in which the employment standards relating to the  
6 payment of overtime compensation, child labor or employee safety and health that are in effect  
7 and enforced in the country are substantially less effective than the standards under the federal  
8 Fair Labor Standards Act of 1938, 29 U.S.C. Section 201 et seq., and the Occupational Safety  
9 and Health Act of 1970, 29 U.S.C. Section 651 et seq., as determined by the United States  
10 secretary of labor.

11 Section 4. NOTICE REQUIREMENTS.--

12 A. An employer who implements a plant closing or mass layoff subject to  
13 Section 3 of the Job Protection Act shall provide written notice of the closing or mass layoff to:

14 (1) each representative of the affected employees as of the time of the  
15 notice or, if there is no such representative at that time, to each affected employee;

16 (2) the state dislocated worker unit as designated or created under  
17 Title III of the federal Job Training Partnership Act, 29 U.S.C. Section 1651 et seq., and the  
18 chief elected official of the unit of local government having jurisdiction of the geographical area  
19 in which the affected site of employment is located; and

20 (3) if there is more than one unit of local government, as described in  
21 Paragraph (2) of this subsection, the unit of local government that the employer shall notify is  
22 the unit of local government to which the employer paid the greatest amount of gross receipts  
23 taxes for the year preceding the year for which the determination is made.

24 B. The notice required under Subsection A of this section shall include a  
25 statement of:

(1) the nature of the site of employment at which the plant closing or

- 1 mass layoff is to be undertaken;
- 2 (2) the reasons for undertaking the plant closing or mass layoff;
- 3 (3) any alternative to undertaking the plant closing or mass layoff;
- 4 (4) any request made by the employer to this state or the unit of
- 5 general local government for location assistance to avoid the plant closing or mass layoff with
- 6 respect to such site of employment;
- 7 (5) the estimated extent of the employment loss within the employer
- 8 that will result from the plant closing or mass layoff;
- 9 (6) any plan to minimize the effects of the plant closing or mass layoff
- 10 on employees at the site of employment and on any unit of local government having jurisdiction
- 11 over the geographical area in which the site of employment is located;
- 12 (7) the economic circumstances of the site of employment, including
- 13 the level of profitability of operations at the site of employment, and any plans for future
- 14 investment, employment and production at the site of employment;
- 15 (8) the economic circumstances of the employer and the feasibility of
- 16 transferring employees affected by the plant closing or mass layoff to other sites of employment
- 17 of the employer; and
- 18 (9) the names and addresses of all employees who will suffer an
- 19 employment loss as a result of the plant closing or mass layoff.

20 Section 5. EMPLOYEE BENEFITS.--

21 A. An employer shall provide the following benefits to an employee who

22 suffers an employment loss due to a plant closing or mass layoff subject to the requirements of

23 Section 3 of the Job Protection Act:

- 24 (1) severance pay equal to the product of:
- 25 (a) the amount equal to four weeks' wages of the employee,
- calculated at the average wage that the employee received in the final twenty-six weeks of

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1 employment with the employer; and

2 (b) the number of years the employee was employed by the  
3 employer;

4 (2) continuation of benefits under the same terms and conditions of a  
5 group health plan previously provided to the employee for the period ending eighteen months  
6 after the date of the plant closing or mass layoff;

7 (3) reimbursement, not to exceed ten thousand dollars (\$10,000), for  
8 retraining, job search and relocation expenses incurred during the period ending two years after  
9 the date of the notice of the plant closing or mass layoff;

10 (4) incentive payments equal to twenty-five percent of one week's  
11 wages of the employee for each week during which the employee participates in a job training  
12 program during the period ending two years after the date of the notice of the plant closing or  
13 mass layoff; and

14 (5) in any case in which, as of the date of the plant closing or mass  
15 layoff, the employee is a participant in an employee pension benefit plan, as defined in Section  
16 3(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1002(2), and  
17 has attained an age that is at or above five years before early or normal retirement age, as  
18 defined in Section 3(24) of the Employee Retirement Income Security Act, 29 U.S.C. Section  
19 1002(24) under the plan, benefits that are the actuarial equivalent or benefit accruals that would  
20 occur under the plan if the employee had continued in full-time service under the plan for five  
21 years after that date at the same rate of pay and had made all required contributions for that  
22 period.

23 B. An employer who implements a plant closing or mass layoff subject to the  
24 requirements of Section 3 of the Job Protection Act shall establish an employee benefit account  
25 into which the employer shall make payments sufficient to fund the amount of the benefits to be  
provided under Subsection A of this section. The account established under this subsection

1 shall be managed by five individuals, consisting of:

- 2 (1) two individuals selected by the employer;
  - 3 (2) two individuals selected by the affected employees; and
  - 4 (3) one individual selected by the four individuals referred to in
- 5 Paragraphs (1) and (2) of this subsection.

6 C. The secretary of labor shall adopt rules with respect to the establishment  
7 and management of accounts under this section.

8 Section 6. RESTRICTION ON EMPLOYER CONTRACTS--FAILURE TO  
9 PROVIDE NOTICE OR BENEFITS.--An employer who implements a plant closing or mass  
10 layoff subject to the requirements of Section 3 of the Job Protection Act and who does not  
11 provide the notice or benefits in accordance with Sections 4 and 5 of that act may not enter into  
12 a contract with this state for the provision of products or services that were involved in the work  
13 transfer described in Section 3 of that act or that are substantially similar to those products or  
14 services.

15 Section 7. INVESTIGATIVE AUTHORITY.--

16 A. To ensure compliance with the Job Protection Act or any rule adopted  
17 under that act, the labor department may investigate any alleged or suspected violation of that  
18 act.

19 B. An employer shall keep and preserve records in accordance with rules  
20 adopted by the secretary of labor.

21 C. For the purposes of any investigation provided, the labor department may  
22 issue and enforce subpoenas.

23 Section 8. ENFORCEMENT OF ACT.--

24 A. An employer who implements a plant closing or mass layoff in violation of  
25 Section 3 of the Job Protection Act is liable to each employee who suffers an employment loss  
due to the closing or mass layoff for:

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(1) damages equal to the sum of:

(a) the amount of any wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation;

(b) the interest on the amount described in Subparagraph (a) of this paragraph calculated at the prevailing rate; and

(c) an additional amount as liquidated damages equal to the sum of the amount described in Subparagraph (a) of this paragraph and the interest described in Subparagraph (b) of this paragraph, except that if the employer proves to the satisfaction of the court that the act or omission that violates Section 3 of the Job Protection Act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of that section, the court may reduce the amount of the liability to the amount and interest determined under Subparagraphs (a) and (b) of this paragraph;

(2) damages equal to any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing health care; and

(3) equitable relief as may be appropriate, including employment, reinstatement and promotion.

B. An action to recover the damages or equitable relief described in Subsection A of this section may be maintained against an employer in any court of competent jurisdiction by one or more employees who suffer an employment loss due to the closing or mass layoff for and in behalf of either:

(1) those employees; or

(2) those employees and other similarly situated employees.

C. In addition to any judgment awarded to the plaintiff, the court in an action brought pursuant to Subsection A of this section shall allow reasonable attorney fees, reasonable expert witness fees and other costs of the action to be paid by the defendant.

D. An employer who implements a plant closing or mass layoff in violation of

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1 Section 3 of the Job Protection Act is liable to this state or the unit of local government in which  
2 the employer is located for damages equal to the difference between:

3 (1) the location assistance provided to the employer by this state or the  
4 unit of local government; and

5 (2) the amount of the benefit, if any, that this state or the unit of local  
6 government will continue to receive as a result of the provision of the assistance to the  
7 employer.

8 E. An action to recover the damages described in Subsection D of this section  
9 may be maintained against any employer in any court of competent jurisdiction by the state or  
10 the unit of local government.

11 F. In addition to any judgment awarded to the plaintiff, the court in an action  
12 brought pursuant to Subsection D of the section shall allow reasonable attorney fees, reasonable  
13 expert witness fees and other costs of the action to be paid by the defendant.

14 G. The labor department shall receive, investigate and attempt to resolve  
15 complaints of violations of Section 3 of the Job Protection Act.

16 H. The labor department may bring an action in any court of competent  
17 jurisdiction to recover the damages described in Paragraph (1) of Subsection A of this section  
18 on behalf of each employee who suffers an employment loss due to a plant closing or mass  
19 layoff in violation of Section 3 of the Job Protection Act.

20 I. Any amounts recovered by the labor department on behalf of an employee  
21 pursuant to Subsection H of this section shall be held in a special deposit account and shall be  
22 paid, on order of the secretary of labor, directly to the employee. Any such amounts that are not  
23 paid to an employee because of inability to do so within a period of three years from the date of  
24 recovery by the labor department shall be transmitted to the state treasurer for deposit in the  
25 state general fund.

J. An action may be brought pursuant to this section not later than three years

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1 after the date of the last event constituting the alleged violation for which the action is brought.

2 An action is commenced on the date a complaint is filed in court.

3 K. The district court has jurisdiction of an action brought by the labor  
4 department to restrain violations of Section 3 of the Job Protection Act, including actions to  
5 restrain the withholding of the payment of wages, salary, employment benefits or other  
6 compensation, plus interest, found by the court to be due to employees who suffer an  
7 employment loss due to a plant closing or mass layoff in violation of that section.

8 Section 9. OTHER RIGHTS OF EMPLOYEES NOT AFFECTED.--The rights and  
9 remedies provided to employees pursuant to the Job Protection Act are in addition to, and not in  
10 lieu of, any other contractual or statutory rights and remedies of the employees and are not  
11 intended to alter or affect those rights and remedies, except that the period of notification  
12 required by Subsection A of Section 3 of the Job Protection Act runs concurrently with any  
13 period of notification required by contract or by any other law.

14 Section 10. NOTICE--POSTING AT THE SITE OF EMPLOYMENT.--

15 A. Each employer shall post and keep posted, in conspicuous places at the site  
16 of employment of the employer where notices to employees and applicants for employment are  
17 customarily posted, a notice that is prepared or approved by the labor department, setting forth  
18 excerpts from, or summaries of, the pertinent provisions of the Job Protection Act and  
19 information pertaining to the filing of a charge.

20 B. Any employer that knowingly violates the requirements prescribed in  
21 Subsection A of this section may be assessed a civil penalty by the labor department of not more  
22 than one hundred dollars (\$100) for each separate offense after an adjudicatory hearing on the  
23 violation.

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 March 2, 1999  
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9 Mr. Speaker:

10 Your **LABOR AND HUMAN RESOURCES COMMITTEE**, to  
11 whom has been referred  
12

13 **HOUSE BILL 629**  
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15 has had it under consideration and reports same with recommendation that it **DO PASS**,  
16 amended as follows:  
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18 1. On page 14, line 11, after the period insert “The department shall be represented by the  
19 office of the attorney general, it’s own in-house, council or outside council retained by contract.”  
20

21 2. On page 15, line 8 after “violation” insert “subject to a right of appeal by an aggrieved  
22 party to the district court pursuant to the statutory provision governing administrative agency  
23 appeals”.,  
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25 and thence referred to the **BUSINESS AND INDUSTRY COMMITTEE**.

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3 HLC/HB 629

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5 Respectfully submitted,

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10 **Sheryl Williams Stapleton,**  
11 **Chairwoman**

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13 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
14 (Chief Clerk) (Chief Clerk)

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16 Date \_\_\_\_\_

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18 The roll call vote was 5 For 4 Against  
19 Yes: 5  
20 No: Foley, Roberts, Thompson, Tripp  
21 Excused: None  
22 Absent: None

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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5 March 11, 1999  
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7 Mr. Speaker:  
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9 Your **BUSINESS AND INDUSTRY COMMITTEE**, to whom has been  
10 referred  
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12 **HOUSE BILL 629, as amended**  
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14 has had it under consideration and reports same with recommendation that it **DO PASS**.  
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16 Respectfully submitted,  
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21 **Debbie A. Rodella, Vice Chairwoman**  
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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3 HB C/ HB 629/a

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5 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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10 The roll call vote was 7 For 4 Against

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Yes: 7

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No: Hanosh, Hobbs, Kissner, Mohorovic

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Excused: Lutz

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Absent: None

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FORTY-FOURTH LEGISLATURE  
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March 3, 1999

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 629

Amendment sponsored by Representative R. David Pederson

1. On page 6, strike lines 22 through 25 and on page 7, strike lines 4 through 20.
2. Renumber the succeeding paragraph accordingly.

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION

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HF/HB 629

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\_\_\_\_\_  
R. David Pederson

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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