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SENATE BILL 486

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Linda M Lopez

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) twenty-five or more employees, excluding

1 part-time employees; or

2 (2) twenty-five or more employees who in the  
3 aggregate work at least one thousand hours per week;

4 C. "employment loss" means:

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

7 (2) a layoff exceeding six months;

8 (3) a reduction in hours of work of more than  
9 fifty percent during each month of any six-month period; or

10 (4) a reduction in salary of more than  
11 thirty-three and one-third percent during each month of a six-  
12 month period;

13 D. "group health plan" means an employee welfare  
14 benefit plan providing medical care, as defined in Section  
15 213(d) of the Internal Revenue Code of 1986, to participants,  
16 beneficiaries or dependents, directly or through insurance,  
17 reimbursement or otherwise;

18 E. "location assistance" includes any subsidy,  
19 infrastructure development or improvement, tax relief, site  
20 preparation assistance, hiring and training assistance or  
21 other economic benefit offered by this state or any political  
22 subdivision of this state to induce an employer to locate at,  
23 remain at or expand its operations at a site of employment  
24 within the jurisdiction of this state or any political  
25 subdivision of this state;

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

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

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

16                   Section 3. LIMITATION ON WORK TRANSFER TO LOW-WAGE  
17 FOREIGN COUNTRIES-- DEFINITION. --

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

25                   B. Except as provided in Subsection C of this

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1 section, work is considered to be transferred to a low-wage  
2 foreign country for purposes of Subsection A of this section  
3 if the employer:

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

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

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

25 D. If an increase described in Paragraph (1) of

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1 Subsection B of this section is carried out by a person that  
2 owns at least ten percent of an employer described in  
3 Subsection A of this section or by any person, ten percent of  
4 which is owned by the employer, that employer shall be  
5 considered to have carried out the increase.

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

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

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

20 Section 4. NOTICE REQUIREMENTS. --

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

24 (1) each representative of the affected  
25 employees as of the time of the notice or, if there is no such

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1 representative at that time, to each affected employee;

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

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

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

16 (1) the nature of the site of employment at  
17 which the plant closing or mass layoff is to be undertaken;

18 (2) the reasons for undertaking the plant  
19 closing or mass layoff;

20 (3) any alternative to undertaking the plant  
21 closing or mass layoff;

22 (4) any request made by the employer to this  
23 state or the unit of general local government for location  
24 assistance to avoid the plant closing or mass layoff with  
25 respect to such site of employment;

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1 (5) the estimated extent of the employment  
2 loss within the employer that will result from the plant  
3 closing or mass layoff;

4 (6) any plan to minimize the effects of the  
5 plant closing or mass layoff on employees at the site of  
6 employment and on any unit of local government having  
7 jurisdiction over the geographical area in which the site of  
8 employment is located;

9 (7) the economic circumstances of the site of  
10 employment, including the level of profitability of operations  
11 at the site of employment, and any plans for future  
12 investment, employment and production at the site of  
13 employment;

14 (8) the economic circumstances of the  
15 employer and the feasibility of transferring employees  
16 affected by the plant closing or mass layoff to other sites of  
17 employment of the employer; and

18 (9) the names and addresses of all employees  
19 who will suffer an employment loss as a result of the plant  
20 closing or mass layoff.

21 Section 5. EMPLOYEE BENEFITS. --

22 A. An employer shall provide the following  
23 benefits to an employee who suffers an employment loss due to  
24 a plant closing or mass layoff subject to the requirements of  
25 Section 3 of the Job Protection Act:

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- 1 (1) severance pay equal to the product of:  
2 (a) the amount equal to four weeks'  
3 wages of the employee, calculated at the average wage that the  
4 employee received in the final twenty-six weeks of employment  
5 with the employer; and  
6 (b) the number of years the employee  
7 was employed by the employer;  
8 (2) continuation of benefits under the same  
9 terms and conditions of a group health plan previously  
10 provided to the employee for the period ending eighteen months  
11 after the date of the plant closing or mass layoff;  
12 (3) reimbursement, not to exceed ten thousand  
13 dollars (\$10,000), for retraining, job search and relocation  
14 expenses incurred during the period ending two years after the  
15 date of the notice of the plant closing or mass layoff;  
16 (4) incentive payments equal to twenty-five  
17 percent of one week's wages of the employee for each week  
18 during which the employee participates in a job training  
19 program during the period ending two years after the date of  
20 the notice of the plant closing or mass layoff; and  
21 (5) in any case in which, as of the date of  
22 the plant closing or mass layoff, the employee is a  
23 participant in an employee pension benefit plan, as defined in  
24 Section 3(2) of the Employee Retirement Income Security Act of  
25 1974, 29 U.S.C. Section 1002(2), and has attained an age that



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1 is at or above five years before early or normal retirement  
2 age, as defined in Section 3(24) of the Employee Retirement  
3 Income Security Act, 29 U.S.C. Section 1002(24) under the  
4 plan, benefits that are the actuarial equivalent or benefit  
5 accruals that would occur under the plan if the employee had  
6 continued in full-time service under the plan for five years  
7 after that date at the same rate of pay and had made all  
8 required contributions for that period.

9 B. An employer who implements a plant closing or  
10 mass layoff subject to the requirements of Section 3 of the  
11 Job Protection Act shall establish an employee benefit account  
12 into which the employer shall make payments sufficient to fund  
13 the amount of the benefits to be provided under Subsection A  
14 of this section. The account established under this  
15 subsection shall be managed by five individuals, consisting  
16 of:

- 17 (1) two individuals selected by the employer;  
18 (2) two individuals selected by the affected  
19 employees; and  
20 (3) one individual selected by the four  
21 individuals referred to in Paragraphs (1) and (2) of this  
22 subsection.

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

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

10           Section 7.   INVESTIGATIVE AUTHORITY. --

11           A.   To ensure compliance with the Job Protection  
12 Act or any rule adopted under that act, the labor department  
13 may investigate any alleged or suspected violation of that  
14 act.

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

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

19           Section 8.   ENFORCEMENT OF ACT. --

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

24                   (1) damages equal to the sum of:

25                           (a) the amount of any wages, salary,

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1 employment benefits or other compensation denied or lost to  
2 the employee by reason of the violation;

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

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

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

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

22 B. An action to recover the damages or equitable  
23 relief described in Subsection A of this section may be  
24 maintained against an employer in any court of competent  
25 jurisdiction by one or more employees who suffer an employment

1 loss due to the closing or mass layoff for and in behalf of  
2 either:

- 3 (1) those employees; or  
4 (2) those employees and other similarly  
5 situated employees.

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

11 D. An employer who implements a plant closing or  
12 mass layoff in violation of Section 3 of the Job Protection  
13 Act is liable to this state or the unit of local government in  
14 which the employer is located for damages equal to the  
15 difference between:

- 16 (1) the location assistance provided to the  
17 employer by this state or the unit of local government; and  
18 (2) the amount of the benefit, if any, that  
19 this state or the unit of local government will continue to  
20 receive as a result of the provision of the assistance to the  
21 employer.

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

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

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

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

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

24 J. An action may be brought pursuant to this  
25 section not later than three years after the date of the last

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1 event constituting the alleged violation for which the action  
2 is brought. An action is commenced on the date a complaint is  
3 filed in court.

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

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

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

22 A. Each employer shall post and keep posted, in  
23 conspicuous places at the site of employment of the employer  
24 where notices to employees and applicants for employment are  
25 customarily posted, a notice that is prepared or approved by

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1 the labor department, setting forth excerpts from, or  
2 summaries of, the pertinent provisions of the Job Protection  
3 Act and information pertaining to the filing of a charge.

4 B. Any employer that knowingly violates the  
5 requirements prescribed in Subsection A of this section may be  
6 assessed a civil penalty by the labor department of not more  
7 than one hundred dollars (\$100) for each separate offense  
8 after an adjudicatory hearing on the violation. An employer  
9 may appeal the assessment of a civil penalty by the labor  
10 department to the court of appeals pursuant to Rule 12-601  
11 NMRA.