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HOUSE BILL 666

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

DANICE R. 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.

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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 the
8 state, the [state] central purchasing office or [state] using
9 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

Underscored material = new
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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

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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**

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 1, 1996

Mr. Speaker:

Your RULES AND ORDER OF BUSINESS COMMITTEE, to
whom has been referred

HOUSE BILL 666

has had it under consideration and finds same to be
GERMANE in accordance with constitutional provisions.

Respectfully submitted,

Barbara A. Perea Casey,

Chairperson

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

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4 The roll call vote was 10 For 0 Against

5 Yes: 10

6 Excused: Lujan, Olguin, Rodella, R. G. Sanchez, S. M Williams

7 Absent: None

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 666

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

Respectfully submitted,

Lynda M. Lovejoy, Chairwoman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: None

Absent: None

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State of New Mexico House of Representatives

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 11, 1996

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 666

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HB 666

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 15 For 0 Against

Yes: 15

Excused: Gentry, Martinez, Varela

Absent: none

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FORTY-SECOND LEGISLATURE

SECOND SESSION

February 12, 1996

HOUSE FLOOR AMENDMENT number _____ to HOUSE BILL 666

Amendment sponsored by Representative Robert S. Light

1. On page 2, line 17, after "certification." insert "If payment is made by mail, the payment shall be deemed tendered on the date it is mailed.".

Robert S. Light

FORTY-FIRST LEGISLATURE
SECOND SESSION

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HF/HB 666

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

Date _____

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FORTY-FIRST LEGISLATURE
SECOND SESSION

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FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996

February 13, 1996

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
has been referred

HOUSE BILL 666, as amended

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

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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FORTY-FIRST LEGISLATURE
SECOND SESSION

1 HF/HB 666

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The roll call vote was 5 For 0 Against

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Yes: 5

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No: 0

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Excused: Fidel, Maloof, McKibben, Robinson

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Absent: None

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FORTY-FIRST LEGISLATURE
SECOND SESSION

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FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996

February 14, 1996

Mr. President:

Your FINANCE COMMI TTEE, to whom has been referred

HOUSE BILL 666, as amended

has had it under consideration and reports same with recommendation that
it DO PASS.

Respectfully submitted,

Ben D. Altami rano, Chair man

Adopted _____
(Chi ef Clerk)

Not Adopted _____
(Chi ef Clerk)

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FORTY-FIRST LEGISLATURE
SECOND SESSION

1 HF/HB 666

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The roll call vote was 8 For 0 Against

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Yes: 8

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No: 0

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Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar

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Absent: None

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