

**FORTY-SEVENTH LEGISLATURE
SECOND SESSION, 2006**

February 15, 2006

Mr. Speaker:

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

SENATE BILL 449, as amended

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

1. Strike Senate Floor Amendment 1.

2. Strike all senate finance committee amendments.

3. On page 1, line 11, after "THE" strike the remainder of the line, strike lines 12 through 14 and insert in lieu thereof:

"STATE MINIMUM WAGE; EXPANDING EXEMPTIONS; PROVIDING FOR A TRAINING WAGE; PREEMPTING LOCAL INCREASES FOR FOUR YEARS; PRESERVING LOCAL ORDINANCES."

4. On page 1, between lines 16 and 17, insert the following new section:

"Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955, Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to any employee, but shall not include the United States [~~the state or any political subdivision thereof~~]; and

C. "employee" includes any individual employed by any employer, but shall not include:

(1) any individual employed in domestic service in or about a private home;

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(2) any individual employed in a bona fide executive, administrative or professional capacity and foremen, superintendents and supervisors;

(3) any individual employed by the United States [~~or by the state or any political subdivision thereof~~];

(4) any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to any individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;

(5) salesmen or employees compensated upon piecework, flat rate schedules or commission basis;

(6) students regularly enrolled in primary or secondary schools working after school hours or on vacation;

(7) registered apprentices and learners otherwise provided by law;

(8) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

(9) persons eighteen years of age or under who are not graduates of a secondary school;

(10) persons employed by ambulance services;

(11) G.I. bill trainees while under training;

(12) seasonal employees of any employer obtaining and holding a valid certificate issued annually by the [~~state labor commissioner~~] director of the labor and industrial division of the labor department. The certificate shall state the job designations and total number of employees to be exempted. In approving or disapproving an application for a certificate of exemption, the [~~commissioner~~] director shall consider the following:

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(a) whether such employment shall be at an educational, charitable or religious youth camp or retreat;

(b) that such employment will be of a temporary nature;

(c) that the individual will be furnished [~~his~~] room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;

(d) the purposes for which the camp or retreat is operated;

(e) the job classifications for the positions to be exempted; and

(f) any other factors that the [~~commissioner~~] director deems necessary to consider;

(13) any employee employed in agriculture:

(a) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;

(b) if such employee is the parent, spouse, child or other member of [~~his~~] the employer's immediate family; for the purpose of this subsection, employer shall include the principal stockholder of a family corporation;

(c) if such employee: 1) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation [~~which~~] that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) commutes daily from [~~his~~] the employee's permanent residence to the farm on which [~~he~~] the employee is so employed; and 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(d) if such employee, other than an employee described in Subparagraph (c) of this paragraph: 1) is sixteen

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years of age or under and is employed as a hand-harvest laborer, is paid on a piece-rate basis in an operation [~~which~~] that has been, and is generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as [~~his~~] the employee's parent or person standing in the place of [~~his~~] the parent; and 3) is paid at the same piece-rate as employees over age sixteen are paid on the same farm; [~~or~~]

(e) if such employee is principally engaged in the range production of livestock; or

(f) if such employee is employed by a food processor and the food processor has obtained a valid certificate of exemption issued annually by the director of the labor and industrial division of the labor department. A food processor is an employer that is engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state. The director shall adopt rules and procedures for issuing a certificate pursuant to this subparagraph. The director shall issue a certificate if the food processor: 1) obtains a resolution from the local governing body where the business is located that supports the exemption sought by the food processor; 2) demonstrates that economic hardship would result without the exemption; and 3) meets other requirements as established by rule; or

(14) employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations [~~for mentally retarded or emotionally or developmentally disabled persons~~]."".

5. On page 1, line 23, after "pay" strike the remainder of the line, strike lines 24 and 25 and on page 2, strike lines 1 through 5 and on line 6, strike "B. An" and insert in lieu thereof the following:

"an employee the minimum wage rate of six dollars seventy-five cents (\$6.75) an hour after December 31, 2006 and seven dollars fifty cents (\$7.50) an hour after December 31, 2007, except that an".

6. On page 2, line 10, remove the brackets and line through "B." and strike "C.".

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7. On page 2, strike line 21 and strike line 22 through "section" and insert in lieu thereof "C. An employee".

8. On page 3, line 8, strike the quotation mark and between lines 8 and 9, insert the following new subsection:

"D. On January 1, 2009 and on January 1 of each successive year, the minimum wage rate shall be increased by the increase in the cost of living. The increase in the cost of living shall be measured by the lesser of three percent or the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index for all urban consumers, United States city average for all items, or its successor index as published by the United States department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents (\$.05). The labor and industrial division of the labor department shall publish by November 1 of each year the adjusted minimum wage rates that shall take effect the following January 1."".

9. On page 3, between lines 8 and 9, insert the following new section:

"Section 3. A new section of the Minimum Wage Act is enacted to read:

"[NEW MATERIAL] TRAINING WAGE--DISQUALIFICATION.--

A. An employer may pay a training wage of not less than five dollars fifteen cents (\$5.15) an hour or the federal minimum wage, whichever is higher, to a new employee in the first sixty days of employment. A new employee is a person who has not previously been employed by that employer.

B. An employer shall not take any action to displace an employee for the purpose of hiring another employee at the training wage set forth in this section. Displacing an employee includes termination of employment, layoff and partial displacement such as reduction in hours, wages or employment benefits. The director of the labor and industrial division of the labor department or the director's designee shall study and assess on a biannual basis the effect of the training wage on employee turnover and report the findings to the legislative finance committee.

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C. If the director of the labor and industrial division of the labor department determines that an employer has violated the provisions of this section, the director shall disqualify the employer from paying a training wage to any employee.

D. The director may adopt rules and procedures governing disqualification of employers pursuant to this section."".

10. On page 3, line 18, strike "2011" and insert in lieu thereof "2010".

11. On page 3, line 19, after "ordinance" insert a comma and "whether advisory or self-executing,".

12. On page 3, line 22, after "and" insert "be given full".

13. On page 3, line 24, after "of" insert "Sections 1 through 3 of".

14. Renumber all sections to correspond with these amendments.

Respectfully submitted,

Miguel P. Garcia, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: Ezzell, Wilson
Absent: None

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