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AN ACT

RELATING TO TRADE PRACTICES; CHANGING THE NAME OF THE
RETAINAGE ACT TO THE PROMPT PAYMENT ACT; ELIMINATING
PROVISIONS OF CHAPTER 57, ARTICLE 28 NMSA 1978 CONCERNING
RETAINAGE; PROHIBITING THE WITHHOLDING OF AMOUNTS DUE FOR
WORK PERFORMED; AMENDING AND REPEALING SECTIONS OF THE NMSA
1978.

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

Section 1. Section 57-28-1 NMSA 1978 (being Laws 2001,
Chapter 68, Section 1) is amended to read:

"57-28-1. SHORT TITLE.--Chapter 57, Article 28 NMSA
1978 may be cited as the "Prompt Payment Act"."

Section 2. Section 57-28-2 NMSA 1978 (being Laws 2001,
Chapter 68, Section 2) is amended to read:

"57-28-2. DEFINITIONS.--As used in the Prompt Payment
Act:

A. "construction" means building, altering,
repairing, installing or demolishing in the ordinary course
of business any:

(1) road, highway, bridge, parking area or
related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course

1 or similar facility;

2 (5) dam, reservoir, canal, ditch or similar
3 facility;

4 (6) sewage or water treatment facility,
5 power generating plant, pump station, natural gas compression
6 station or similar facility;

7 (7) sewage, water, gas or other pipeline;

8 (8) transmission line;

9 (9) radio, television or other tower;

10 (10) water, oil or other storage tank;

11 (11) shaft, tunnel or other mining

12 appurtenance;

13 (12) electrical wiring, plumbing or plumbing
14 fixture, gas piping, gas appliances or water conditions;

15 (13) air conditioning conduit, heating or
16 other similar mechanical work;

17 (14) leveling or clearing land;

18 (15) excavating earth;

19 (16) drilling wells of any type, including
20 seismographic shot holes or core drilling; and

21 (17) similar work, structures or
22 installations;

23 B. "contractor" means a person performing
24 construction through a contract with an owner;

25 C. "owner" means a person, local public body or

1 state agency other than the department of transportation;

2 D. "person" means an individual, corporation,
3 business trust, estate, trust, partnership, limited liability
4 company, association, joint venture or similar legal entity;
5 and

6 E. "subcontractor" means a person performing
7 construction for the owner not through a contract with the
8 owner."

9 Section 3. Section 57-28-3 NMSA 1978 (being Laws 2001,
10 Chapter 68, Section 3) is amended to read:

11 "57-28-3. APPLICABILITY OF ACT.--The provisions of the
12 Prompt Payment Act do not apply to construction contracts for
13 residential property containing four or fewer dwelling
14 units."

15 Section 4. Section 57-28-5 NMSA 1978 (being Laws 2001,
16 Chapter 68, Section 5) is amended to read:

17 "57-28-5. PAYMENTS--PROMPT PAY REQUIRED--WITHHOLDING
18 PROHIBITED.--

19 A. Except as provided in Subsection B of this
20 section, all construction contracts shall provide that
21 payment for amounts due shall be paid within twenty-one days
22 after the owner receives an undisputed request for payment.
23 Payment by the owner to the contractor may be made by
24 first-class mailing, electronic funds transfer or by hand
25 delivery of the undisputed amount of a pay request based on

1 work completed or service provided under the contract. If the
2 owner fails to pay the contractor within twenty-one days
3 after receipt of an undisputed request for payment, the owner
4 shall pay interest to the contractor beginning on the
5 twenty-second day after payment was due, computed at one and
6 one-half percent of the undisputed amount per month or
7 fraction of a month until the payment is issued. If an owner
8 receives an improperly completed invoice, the owner shall
9 notify the sender of the invoice within seven days of receipt
10 in what way the invoice is improperly completed, and the
11 owner has no further duty to pay on the improperly completed
12 invoice until it is resubmitted as complete.

13 B. A local public body may make payment within
14 forty-five days after submission of an undisputed request for
15 payment when grant money is a source of funding, if:

16 (1) the construction contract specifically
17 provides in a clear and conspicuous manner for a payment
18 later than twenty-one days after submission of an undisputed
19 request for payment; and

20 (2) the following legend or substantially
21 similar language setting forth the specified number of days
22 appears in clear and conspicuous type on each page of the
23 plans, including bid plans and construction plans:

24 "Notice of Extended Payment Provision

25 This contract allows the owner to make payment within

1 _____ days after submission of an undisputed request
2 for payment.".

3 C. All construction contracts shall provide that
4 contractors and subcontractors make prompt payment to their
5 subcontractors and suppliers for amounts owed for work
6 performed on the construction project within seven days after
7 receipt of payment from the owner, contractor or
8 subcontractor. If the contractor or subcontractor fails to
9 pay the contractor's or subcontractor's subcontractor and
10 suppliers by first-class mail or hand delivery within seven
11 days of receipt of payment, the contractor or subcontractor
12 shall pay interest to the subcontractors and suppliers
13 beginning on the eighth day after payment was due, computed
14 at one and one-half percent of the undisputed amount per
15 month or fraction of a month until payment is issued. These
16 payment provisions apply to all tiers of contractors,
17 subcontractors and suppliers.

18 D. A creditor shall not collect, enforce a
19 security interest against, garnish or levy execution on those
20 progress payments or other payments that are owed by an
21 owner, contractor or subcontractor to a person, or the
22 owner's contractor's or subcontractor's surety, who has
23 furnished labor or material pursuant to a construction
24 contract.

25 E. When making payments, an owner, contractor or

1 subcontractor shall not retain, withhold, hold back or in any
2 other manner not pay amounts owed for work performed."

3 Section 5. Section 57-28-11 NMSA 1978 (being Laws 2001,
4 Chapter 68, Section 11) is amended to read:

5 "57-28-11. ATTORNEY FEES.--In an action to enforce the
6 provisions of the Prompt Payment Act, the court may award
7 court costs and reasonable attorney fees."

8 Section 6. REPEAL.--Sections 57-28-4, 57-28-6, 57-28-9
9 and 57-28-10 NMSA 1978 (being Laws 2001, Chapter 68, Sections
10 4, 6, 9 and 10) are repealed.

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