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HOUSE MEMORIAL 16

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Joanne J. Ferrary and Angelica Rubio
and Elizabeth "Liz" Thomson

A MEMORIAL

REQUESTING THE DEVELOPMENTAL DISABILITIES PLANNING COUNCIL TO
CONVENE A TASK FORCE TO MAKE RECOMMENDATIONS THAT FACILITATE
TRANSITION TO COMPLIANCE WITH MINIMUM WAGE REQUIREMENTS FOR
EMPLOYEES WITH DISABILITIES AND THAT IDENTIFY ANY DISABILITY
POPULATION GROUP THAT SHOULD BE EXEMPTED FROM A MINIMUM WAGE
REQUIREMENT.

WHEREAS, pursuant to the provisions of 29 U.S.C. 214(c),
commonly referred to as 14(c), certain nonprofit agencies in
New Mexico have obtained federal certificates allowing the
agencies to pay some of their employees with significant
disabilities less than a minimum wage, based on an
individualized determination that the employee is less
productive than employees without disabilities; and

WHEREAS, some provider agencies, family members and others

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1 believe that such subminimum wage arrangements are the only
2 practical employment options for individuals with certain
3 levels of disability, while other agencies, organizations and
4 individuals believe that all employees with disabilities should
5 be paid at least the applicable minimum wage for gainful work
6 performed; and

7 WHEREAS, there are currently only three nonprofit agencies
8 in New Mexico that continue to use these federal certificates;
9 and

10 WHEREAS, the department of health, which operates New
11 Mexico's developmental disabilities service programs, has
12 adopted an employment first policy, which provides that
13 publicly supported disability service provider agencies should
14 make every effort to identify or develop employment
15 opportunities that involve inclusive settings and wages at or
16 above a minimum wage for all persons with disabilities who want
17 to work; and

18 WHEREAS, the federal Workforce Innovation and Opportunity
19 Act restricts the transition of graduating students with
20 disabilities from schools to subminimum wage arrangements and
21 requires independent career counseling and information about
22 alternative employment or training opportunities for older
23 adults with disabilities who are currently earning less than a
24 minimum wage; and

25 WHEREAS, recent guidance from the United States department

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1 of labor clarifies that federal subminimum wage certificates do
2 not exempt employers from minimum wage requirements if state
3 law prohibits subminimum wages or does not exempt employers of
4 persons with disabilities from minimum wage requirements; and

5 WHEREAS, the workforce solutions department has not
6 granted authority to any employer in New Mexico to pay less
7 than a minimum wage based on the disabilities of its employees;
8 and

9 WHEREAS, the developmental disabilities planning council
10 is charged by law, among other duties, to act as a planning and
11 coordinating body for persons with developmental disabilities;

12 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
13 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the
14 developmental disabilities planning council be requested to
15 convene a task force to review the issues associated with
16 minimum wages for all employees with disabilities; and

17 BE IT FURTHER RESOLVED that, besides the developmental
18 disabilities planning council, the task force include a
19 representative from the national federation of the blind of New
20 Mexico, a representative from a nonprofit agency currently
21 using a federal 14(c) certificate, a representative from
22 disability rights New Mexico, one or more individuals with
23 disabilities who are currently or were previously paid less
24 than a minimum wage, or the family member or guardian of such
25 individuals, a representative from a nonprofit agency employing

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1 persons with disabilities not using a federal 14(c)
2 certificate, a representative with disabilities who has never
3 worked for subminimum wage, representatives from other
4 developmental disabilities organizations and others with
5 interest and expertise in the employment of persons with
6 disabilities; and

7 BE IT FURTHER RESOLVED that the task force review state
8 and federal laws, regulations and policies with respect to the
9 provision of minimum or subminimum wages for persons with
10 disabilities; review relevant information from other states;
11 identify data that would be important to track and review with
12 respect to implementation of a requirement that all employees
13 with disabilities be paid at least the applicable minimum wage;
14 and consider how best to meet the employment needs of persons
15 with severe disabilities; and

16 BE IT FURTHER RESOLVED that the task force make
17 recommendations that would facilitate the transition to full
18 compliance with minimum wage requirements and mitigate
19 potential negative impacts of such requirements, which may
20 include proposed amendments to state law that would provide
21 exceptions to minimum wage requirements for certain categories
22 of people with disabilities and whether any such exceptions
23 should be time-limited or not; and

24 BE IT FURTHER RESOLVED that the task force present its
25 report and recommendations to the legislative health and human

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1 services committee by October 1, 2018; and

2 BE IT FURTHER RESOLVED that copies of this memorial be
3 transmitted to the secretary of health, the secretary of human
4 services, the secretary of children, youth and families, the
5 secretary of aging and long-term services, the secretary of
6 public education, the secretary of higher education, the
7 president of the board of directors of disability rights New
8 Mexico and the president of the national federation of the
9 blind of New Mexico.