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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/19

SPONSOR Padilla LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Resident Business Set-Aside Act SB 29

ANALYST Jorgensen

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Department of Information Technology (DoIT)  
 General Services Department (GSD)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 29 (SB29) enacts the Resident Business Set-Aside Act which would require state agencies to award at least 33 percent of contracts to a resident business. The bill includes language requiring contracting agencies to designate contracts as resident business set-aside prior to solicitation of bids or proposals. Agencies should only designate contracts for a resident business set-aside if there is a reasonable expectation that bids or proposals may be obtained from at least three qualified resident businesses. The bill requires the General Services Department (GSD) to work with the contracting agency to make the determination as to the designation of a resident business set-aside. Should GSD and the contracting agency not agree on the designation, the bill requires final determination to be made by the Office of the State Auditor (OSA).

Agencies may decline to participate in the resident business set-aside if it would jeopardize the state's participation in a program from which the state receives federal funds or other benefits.

SB29 requires all contracting agencies to report the number, dollar value, and percent of contracts awarded to resident businesses to GSD on an annual basis. GSD is then required to

produce a statewide contracting report for the Governor and Legislature. Finally, the bill provides GSD authority to promulgate rules necessary to implement the Act and adds new language to include businesses owned by “an Indian nation, tribe or pueblo, owned wholly or partially in New Mexico” as eligible for a resident business certificate.

### **FISCAL IMPLICATIONS**

Agency costs may increase as a result of limiting contract participants to in-state businesses should the requirement limit competition in the bidding process. However, because the bill limits the resident business set-aside to contracts that the agency reasonably expects to draw at least three qualified, cost-competitive bidders, it is also possible the state faces no increases in contract costs as a result of enactment of SB29.

The Department of Information Technology (DoIT) reports it will need to make updates to the state’s accounting system, SHARE, in order to comply with the provisions of SB29. In addition, minor alterations will need to be made to the sunshine portal website. DoIT estimates SHARE updates will cost \$150 thousand and \$25 thousand to update the sunshine portal.

### **SIGNIFICANT ISSUES**

SB29 speaks to allocating a “portion” of a contract to the resident business set-aside, but does not clarify how less-than-whole portioned contracts would count for the purposes of meeting the 33 percent threshold.

### **PERFORMANCE IMPLICATIONS**

The provisions of SB29 apply to all state agencies. Because many small agencies have a limited number of contracts, it is possible those agencies will not be able to meet the threshold of 33 percent of contracts going to a resident business.

### **ADMINISTRATIVE IMPLICATIONS**

State agencies will be required to collect and report on additional contract award information not currently reported.

### **OTHER SUBSTANTIVE ISSUES**

TRD notes the following:

To strengthen the current statute and the effectiveness of the new Resident Business Set-Aside Act, the requirement under Section 7(B)(1), page 6, Section 7(D)(1), page 9 and Section 8(B)(1), page 14, that the business pay “at least one other tax administered by the state” should be clarified. This is very broad as the state administers numerous tax programs and taxes. Identifying the tax programs and requiring a minimum amount of taxes paid would help strengthen and clarify the requirement of a resident business.

NMAG reports:

As currently drafted, SB29 does not provide specificity in several important respects.

First, the Bill does not specify what consequences or penalties, if any, would apply to state agencies that fail to satisfy the requirements of the Resident Business Set-Aside Act. It also does not specify the “industries affected by the Resident Business Set-Aside Act” with whom the General Services Department would need to consult. Finally, the Bill does not provide a minimum dollar value for the contracts to which the Resident Business Set-Aside Act would apply.

CJ/sb/al