

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 156

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO GOVERNMENT TRANSPARENCY; ENACTING THE BUDGET AND
CORPORATE TRANSPARENCY ACT; REQUIRING CORPORATIONS TO PUBLICLY
DISCLOSE THEIR AMOUNT OF CORPORATE INCOME TAX LIABILITY,
ECONOMIC DEVELOPMENT TAX INCENTIVES, EMPLOYEES IN NEW MEXICO
AND CERTAIN TAX RETURN INFORMATION; REQUIRING PUBLIC NOTICE AND
HEARING FOR PUBLIC DEVELOPMENT SUBSIDIES AND GOVERNMENT
CONTRACTS OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000) OR MORE;
REQUIRING UNIFORM REPORTS ON DEVELOPMENT SUBSIDIES, GOVERNMENT
CONTRACTS, TAX EXPENDITURES AND PROPERTY TAX REDUCTIONS AND
ABATEMENTS; PROVIDING FOR PUBLIC ACCESS TO UNIFORM REPORTS;
PROVIDING FOR A CIVIL PRIVATE RIGHT OF ACTION TO ENFORCE
TRANSPARENCY.

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

SECTION 1. SHORT TITLE.--This act may be cited as the

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 "Budget and Corporate Transparency Act".

2 SECTION 2. DEFINITIONS.--As used in the Budget and
3 Corporate Transparency Act:

4 A. "consulting services" means work that a person,
5 other than an employee of a contracting agency, does for or on
6 behalf of a state or local agency in return for compensation
7 pursuant to the terms of a contract and includes:

8 (1) performing or providing research,
9 analysis, assessments, data processing or computer programming,
10 training or education, accounting, audits or evaluations,
11 treatment or security;

12 (2) giving professional advice or
13 recommendations;

14 (3) designing business or communications
15 processes, procedures, methods or strategies; or

16 (4) work related to the functions of the
17 contracting agency;

18 B. "contract" means an agreement outlining a
19 transaction between an entity and the state or a political
20 subdivision of the state to perform a specific service for
21 compensation with an expenditure of public funds of at least
22 twenty-five thousand dollars (\$25,000);

23 C. "contracting agency" means an agency of the
24 state or a local government unit that awards a contract;

25 D. "contractor" means a person other than a regular

underscoring material = new
~~[bracketed material] = delete~~

1 employee of a contracting agency who performs work for or on
2 behalf of the contracting agency in return for compensation
3 provided under the terms of a contract;

4 E. "corporate parent" means a person, association,
5 corporation, joint venture, partnership or other entity that
6 owns or controls fifty percent or more of a corporation;

7 F. "corporation" means corporations, joint stock
8 companies, real estate trusts organized and operated under the
9 Real Estate Trust Act, banks, financial corporations and other
10 business associations, partnerships and limited liability
11 companies taxed as corporations under the federal Internal
12 Revenue Code of 1986;

13 G. "date of subsidy" means the date that a granting
14 body provides the initial monetary value of a development
15 subsidy to a recipient corporation. When the subsidy is for
16 the installation of new equipment, the date of subsidy shall be
17 the date the equipment is in service. When the subsidy is for
18 improvements to property, the date of subsidy shall be the date
19 the improvements are completed, or the date the corporation
20 occupies the property, whichever date is earlier;

21 H. "development subsidy" means any expenditure of
22 public funds with a value of at least twenty-five thousand
23 dollars (\$25,000) for the purpose of stimulating economic
24 development within New Mexico, including bonds, grants, loans,
25 loan guarantees, enterprise zones, empowerment zones, tax

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 increment financing, fee waivers, land price subsidies,
2 matching funds, tax abatements, tax exemptions and tax credits;

3 I. "doing business" means:

4 (1) owning or renting real or tangible
5 personal property physically located in New Mexico;

6 (2) having employees, agents or
7 representatives acting on the corporation's behalf in New
8 Mexico;

9 (3) making sales of tangible personal property
10 to purchasers that take possession of that property in New
11 Mexico;

12 (4) performing services for customers located
13 in New Mexico;

14 (5) performing services in New Mexico;

15 (6) earning income from intangible property
16 that has a business site in New Mexico;

17 (7) engaging in regular and systematic
18 solicitation of sales in New Mexico; or

19 (8) being a partner or member of a partnership
20 or limited liability company engaged in an activity described
21 in Paragraphs (1) through (7) of this subsection;

22 J. "full-time employment" means employing an
23 individual for at least thirty-five hours per week;

24 K. "granting body" means an agency, board, office,
25 public benefit corporation or authority of the state or a local

.183385.1

1 government unit that provides a development subsidy;

2 L. "local government unit" means an agency, board,
3 commission, office, public benefit corporation or public
4 authority of a political subdivision of the state;

5 M. "part-time employment" means employing an
6 individual for less than thirty-five hours per week;

7 N. "project site" means the site of a project for
8 which or location where a development subsidy is provided;

9 O. "property-taxing entity" means an entity that
10 levies taxes upon real or personal property;

11 P. "recipient contractor" means a person,
12 association, corporation, joint venture, partnership or other
13 entity that is awarded a contract bid by a contracting agency;

14 Q. "recipient corporation" means a person,
15 association, corporation, joint venture, partnership or other
16 entity that may receive a development subsidy;

17 R. "small business" means a corporation, including
18 subsidiaries, corporate parent and corporate parent
19 subsidiaries, whose:

20 (1) total full-time employment is twenty or
21 fewer employees; or

22 (2) total gross receipts are less than one
23 million dollars (\$1,000,000) during the preceding calendar
24 year;

25 S. "subsidy value" means the face value of a

underscoring material = new
~~[bracketed material] = delete~~

1 development subsidy provided to a recipient corporation;

2 T. "tax expenditure" means a statutory provision,
3 however denominated, that exempts certain persons, property,
4 goods or services, in whole or in part, from the operation of a
5 tax;

6 U. "tax expenditure budget" means a compilation of
7 information and cost versus benefit analysis of the state's tax
8 expenditures that includes the preceding, current and upcoming
9 fiscal year; and

10 V. "temporary employment" means employing an
11 individual for a season or for a limited period of time.

12 SECTION 3. APPLICATION FOR DEVELOPMENT SUBSIDIES.--

13 A. To be eligible for a development subsidy, a
14 corporation shall submit to the granting body the information
15 required by the economic development department to carry out
16 the provisions of the Budget and Corporate Transparency Act.

17 The economic development department shall prescribe the form on
18 which a recipient corporation shall submit the information.

19 The form shall at least include:

20 (1) a tracking number for the granting body
21 and the project;

22 (2) the name, street and mailing address and
23 phone number of the chief officer of the granting body;

24 (3) the name, street and mailing address and
25 phone number of the chief officer of the recipient corporation;

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 (4) the name, street and mailing address and
2 phone number of the chief officer of the corporate parent, if
3 applicable;

4 (5) the name, street and mailing address and
5 phone number of the official within the granting body
6 responsible for monitoring the subsidy;

7 (6) the street address of the project site;

8 (7) the name, type, subsidy value and
9 description of the development subsidy requested;

10 (8) the name of any other granting body from
11 which a development subsidy is requested or obtained, the name,
12 type and description of any other development subsidy requested
13 or obtained and the aggregate subsidy value of all development
14 subsidies requested or obtained from all sources;

15 (9) the three-digit North American industry
16 classification system number of the project site;

17 (10) the total number of individuals employed
18 by the recipient corporation at the project site on the date of
19 submission, broken down by full-time, part-time and temporary
20 employment;

21 (11) the total number of individuals employed
22 in New Mexico by the recipient corporation, including
23 subsidiaries, corporate parent and corporate parent
24 subsidiaries, as of December 31 of the preceding fiscal year,
25 broken down by full-time, part-time and temporary employment;

.183385.1

underscoring material = new
[bracketed material] = delete

1 (12) the number of new jobs to be created by
2 the recipient corporation at the project site, broken down by
3 full-time, part-time and temporary employment;

4 (13) the average hourly wage to be paid to all
5 current and new employees at the project site, broken down by
6 full-time, part-time and temporary employment and further
7 broken down by hourly wage in groups as follows: eight dollars
8 (\$8.00) or less per hour, eight dollars one cent (\$8.01) to
9 nine dollars (\$9.00) per hour, nine dollars one cent (\$9.01) to
10 ten dollars (\$10.00) per hour, ten dollars one cent (\$10.01) to
11 eleven dollars (\$11.00) per hour, eleven dollars one cent
12 (\$11.01) to twelve dollars (\$12.00) per hour, twelve dollars
13 one cent (\$12.01) to thirteen dollars (\$13.00) per hour,
14 thirteen dollars one cent (\$13.01) to fourteen dollars (\$14.00)
15 per hour and fourteen dollars one cent (\$14.01) or more per
16 hour;

17 (14) the type and amount of health care
18 coverage to be provided by the recipient corporation within
19 ninety days of commencement of employment at the project site,
20 including costs to be borne by the employee;

21 (15) the number of current employees provided
22 health benefits;

23 (16) the number of current employees and
24 anticipated new employees represented by collective bargaining;

25 (17) for project sites located in a

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 metropolitan statistical area, as defined by the federal office
2 of management and budget, the average hourly wage paid to
3 nonmanagerial employees in New Mexico for the industries
4 involved at the project, as established by the United States
5 bureau of labor statistics;

6 (18) for project sites located outside of a
7 metropolitan statistical area, as defined by the federal office
8 of management and budget, the average weekly wage paid to
9 nonmanagerial employees in the county for industries involved
10 at the project, as established by the United States department
11 of commerce;

12 (19) the rating of a certification that the
13 project meets the green building and performance measures by an
14 independent third party, if applicable;

15 (20) the start and end dates for the
16 development subsidy;

17 (21) the project site's proximity to mass
18 transit, a regional rail line or a major highway off-ramp;

19 (22) a statement indicating whether the
20 development subsidy may reduce employment at any other site
21 controlled by the recipient corporation, including
22 subsidiaries, corporate parent and corporate parent
23 subsidiaries resulting from automation, merger, acquisition,
24 corporate restructuring or other business activity;

25 (23) a statement confirming the compliance

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 with employment laws, including minimum wage, employee rights
2 and affirmative action laws;

3 (24) a statement indicating whether the
4 project involves the relocation of work from another address,
5 the number of jobs to be relocated and the address from which
6 the jobs are relocated;

7 (25) the projected net tax revenue accruing to
8 the state and political subdivisions of the state as a result
9 of the development subsidy;

10 (26) inclusion of any material documents
11 necessary to ensure that the development subsidy is reasonably
12 crafted and geared toward its public interest within a
13 cofinanced or leveraged project, including insurance policies
14 and rating agency reports; and

15 (27) an affidavit by the chief officer of the
16 recipient corporation attesting to the accuracy of the
17 information provided.

18 B. If the request for a development subsidy is
19 approved, the granting body shall send a copy of the form to
20 the economic development department within fifteen days of the
21 approval. If the request for a development subsidy is not
22 approved, the granting body shall retain the form in its
23 records.

24 C. Before granting a development subsidy, a
25 granting body shall provide public notice and a hearing

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 regarding the development subsidy. A public hearing and notice
2 pursuant to this subsection is not required if a hearing and
3 notice regarding the development subsidy is otherwise required
4 by law.

5 SECTION 4. APPLICATION FOR CONTRACT BID.--

6 A. To be eligible for a contract, a corporation
7 shall submit to the contracting agency the information required
8 by the department of finance and administration to carry out
9 the provisions of the Budget and Corporate Transparency Act.
10 The department of finance and administration shall prescribe
11 the form on which a corporation shall submit the information.
12 The form shall at least include:

13 (1) an application tracking number for the
14 contracting agency and the contract;

15 (2) the name, street and mailing address and
16 phone number of the chief officer of the contracting agency;

17 (3) the name, street and mailing address and
18 phone number of the chief officer of the corporate parent, if
19 applicable;

20 (4) the name, street and mailing address and
21 phone number of the chief officer of the corporation seeking
22 the contract;

23 (5) the name, street and mailing address,
24 employer and employment category or job description of each
25 person that will provide consulting services under the

.183385.1

underscoring material = new
[bracketed material] = delete

1 contract, including subcontractors;

2 (6) the name, street and mailing address and
3 phone number of the official within the contracting agency
4 responsible for monitoring the contract;

5 (7) the three-digit North American industry
6 classification system number of the entity applying for a
7 contract;

8 (8) the type of service required by the
9 contract;

10 (9) the total number of individuals employed
11 by the corporation on the date of submission, broken down by
12 full-time, part-time and temporary employment;

13 (10) the total number of individuals employed
14 in New Mexico by the corporation, including subsidiaries,
15 corporate parent and corporate parent subsidiaries, as of
16 December 31 of the preceding fiscal year, broken down by
17 full-time, part-time and temporary employment;

18 (11) the contracts being applied for with the
19 contracting agency, the value of the contracts, the name of any
20 other contracting agencies being applied for or obtained and
21 the aggregate value of all contracts being applied for or
22 obtained from all sources;

23 (12) the number of contractors or
24 subcontractors needed to perform required services, broken down
25 by full-time, part-time and temporary employment;

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 (13) the types of services the contractor,
2 subcontractor and any contract employee provide;

3 (14) the average hourly wage to be paid to
4 each contractor, subcontractor and contract employee, broken
5 down by full-time, part-time and temporary employment and
6 further broken down by hourly wage groups as follows: eight
7 dollars (\$8.00) or less per hour, eight dollars one cent
8 (\$8.01) to nine dollars (\$9.00) per hour, nine dollars one cent
9 (\$9.01) to ten dollars (\$10.00) per hour, ten dollars one cent
10 (\$10.01) to eleven dollars (\$11.00) per hour, eleven dollars
11 one cent (\$11.01) to twelve dollars (\$12.00) per hour, twelve
12 dollars one cent (\$12.01) to thirteen dollars (\$13.00) per
13 hour, thirteen dollars one cent (\$13.01) to fourteen dollars
14 (\$14.00) per hour and fourteen dollars one cent (\$14.01) or
15 more per hour;

16 (15) the number of hours each person,
17 including each subcontractor and contract employee, is expected
18 to work in providing consulting services to the contracting
19 agency under the terms of the contract;

20 (16) the total compensation of each contractor
21 and subcontractor;

22 (17) the type and amount of health care
23 coverage to be provided by the corporation within ninety days
24 of commencement of the contract, including costs to be borne by
25 the employee;

.183385.1

underscoring material = new
[bracketed material] = delete

1 (18) the number of contractors or
2 subcontractors associated with the contract represented by
3 collective bargaining;

4 (19) for applicants based in a metropolitan
5 statistical area, as defined by the federal office of
6 management and budget, the average hourly wage paid to
7 nonmanagerial employees in New Mexico for the industries
8 involved at the project, as established by the United States
9 bureau of labor statistics;

10 (20) for applicants based outside of a
11 metropolitan statistical area, as defined by the federal office
12 of management and budget, the average weekly wage paid to
13 nonmanagerial employees in the county for industries involved
14 at the project, as established by the United States department
15 of commerce;

16 (21) the start and end dates for the contract;

17 (22) a statement confirming compliance with
18 labor laws, including minimum wage, employee rights and
19 affirmative action laws;

20 (23) projected savings accruing to the
21 contracting agency;

22 (24) projected total cost of the contract; and

23 (25) an affidavit by the chief officer of the
24 corporation applying for the contract attesting to the accuracy
25 of the information provided.

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 B. If the contracting agency awards the contract,
2 it shall send a copy of the form to the department of finance
3 and administration within fifteen days of awarding the
4 contract. If the contract is not awarded, the granting body
5 shall retain the form in its records.

6 C. Before approving a contract, each contracting
7 agency shall provide public notice and a hearing regarding the
8 contract. A public hearing and notice pursuant to this
9 subsection is not required if a hearing and notice regarding
10 the contract is otherwise required by law.

11 **SECTION 5. ESTABLISHMENT OF MEASURABLE CONTRACT**

12 STANDARDS.--Before entering into a contract, a contracting
13 agency shall establish measurable standards for assessing the
14 quality of the goods or services, personal services, personal
15 property, public improvements or public works, alterations,
16 repairs or maintenance that a contractor will provide or
17 perform under the contract. The contracting agency may develop
18 the quality standards applicable to the contract in cooperation
19 with or as a result of negotiations with the recipient
20 contractor. Unless the contracting agency for good cause
21 specifies otherwise, the quality standards shall not be less
22 than the highest standards prevalent in the industry or
23 business most closely involved in providing the appropriate
24 goods or services, personal services, personal property, public
25 improvements, public works, alterations, repairs or

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 maintenance.

2 SECTION 6. DEVELOPMENT SUBSIDY--ANNUAL REPORTS--PENALTY.--

3 A. A granting body, together with the recipient
4 corporation, shall complete an annual report for a development
5 subsidy on a form prescribed by the economic development
6 department no later than thirty days after the start of the
7 fiscal year. The report shall provide information necessary to
8 determine the effectiveness of the development subsidy in
9 serving the public interest, including:

10 (1) the name, street and mailing address and
11 phone number of the chief officer of the granting body;

12 (2) the name, street and mailing address and
13 phone number of the chief officer of the recipient corporation;

14 (3) the name, street and mailing address and
15 phone number of the official within the contracting agency
16 responsible for monitoring the development subsidy;

17 (4) a summary of the number of jobs required,
18 created and lost, broken down by full-time, part-time and
19 temporary employment;

20 (5) the name, type and description of the
21 development subsidy;

22 (6) the average hourly wage paid to all
23 current and new employees at the project site, broken down by
24 full-time, part-time and temporary positions and further broken
25 down by hourly wage groups as follows: eight dollars (\$8.00)

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 or less per hour, eight dollars one cent (\$8.01) to nine
2 dollars (\$9.00) per hour, nine dollars one cent (\$9.01) to ten
3 dollars (\$10.00) per hour, ten dollars one cent (\$10.01) to
4 eleven dollars (\$11.00) per hour, eleven dollars one cent
5 (\$11.01) to twelve dollars (\$12.00) per hour, twelve dollars
6 one cent (\$12.01) to thirteen dollars (\$13.00) per hour,
7 thirteen dollars one cent (\$13.01) to fourteen dollars (\$14.00)
8 per hour and fourteen dollars one cent (\$14.01) or more per
9 hour;

10 (7) location of employees by zip code;

11 (8) the type and amount of health care
12 coverage provided to employees at the project site, including
13 costs borne by the employees;

14 (9) the number of current employees
15 represented by collective bargaining;

16 (10) the rating of a certification that the
17 project meets the green building and performance measures by an
18 independent third party, if applicable;

19 (11) the start and end dates and schedule for
20 the development subsidy;

21 (12) the project site's proximity to mass
22 transit, a regional rail line or a major highway off-ramp;

23 (13) the comparison of the total employment in
24 New Mexico by the recipient corporation, including
25 subsidiaries, corporate parent and corporate parent

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 subsidiaries, on the date of subsidy and the date of the
2 report, broken down by full-time, part-time and temporary
3 employment;

4 (14) a statement indicating whether the
5 development subsidy reduced employment at any other site
6 controlled by the recipient corporation or corporate parent as
7 a result of automation, merger, acquisition, corporate
8 restructuring or other business activity during the preceding
9 fiscal year;

10 (15) a statement indicating whether affordable
11 housing has been displaced by the project;

12 (16) a statement indicating whether the
13 project has involved the relocation of work from any other
14 address, the number of jobs relocated and the address from
15 which the jobs were relocated;

16 (17) identification of all sources of public
17 and private financing in relation to the project;

18 (18) a cost analysis or feasibility study that
19 may have been conducted by the state or granting agency before
20 the development subsidy was awarded;

21 (19) material documents necessary to ensure
22 that the development subsidy is reasonably crafted and geared
23 toward its public interest within a cofinanced or leveraged
24 project, including insurance policies or rating agency reports;

25 (20) the net tax revenue accruing to the state

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 and political subdivisions of the state as a result of the
2 development subsidy;

3 (21) total subsidy value;

4 (22) recorded action the granting agency has
5 taken against potential noncompliance, if applicable; and

6 (23) an affidavit attesting the accuracy of
7 the information in the report by the chief officer of the
8 recipient corporation.

9 B. The granting body shall compile the data
10 specified in Subsection A of this section and file a report
11 with the economic development department for each project for
12 which a development subsidy has been granted no later than
13 sixty days after the start of the fiscal year.

14 C. The granting body and recipient corporation
15 shall file annual reports for the duration of the development
16 subsidy or not less than five years, whichever period is
17 greater. On subsequent annual reports, the granting body shall
18 indicate whether the recipient corporation is in compliance
19 with its job creation, wage and benefit goals and whether the
20 corporate parent is still in compliance with its state
21 employment requirement.

22 D. The economic development department shall
23 compile and publish all data from the progress reports in both
24 written and electronic form, including on the department's web
25 site. The department's web site shall provide an easily

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 accessible, searchable database of the specified data.

2 E. The granting body shall provide a final report
3 at the conclusion of each development subsidy that shall
4 contain the information described in Subsection A of this
5 section, in written form available to the public and through
6 its web site. The granting body's web site shall provide an
7 easily accessible, searchable database of the specified data.

8 F. The granting body and the economic development
9 department shall have access at all reasonable times to the
10 project site and the records of the recipient corporation in
11 order to monitor the development subsidy and to prepare
12 reports.

13 G. A recipient corporation that fails to provide
14 the granting body or economic development department with the
15 information or access pursuant to this section shall be subject
16 to a fine of not less than five hundred dollars (\$500) per day
17 if the recipient corporation has not provided the granting body
18 or economic development department with the necessary
19 information thirty days after the start of each fiscal year.

20 **SECTION 7. CONTRACTS--ANNUAL REPORTS--PENALTY.--**

21 A. Each contracting agency, together with the
22 recipient contractor, shall complete a report for the contract
23 on a form prescribed by the department of finance and
24 administration no later than thirty days after the start of the
25 fiscal year. The report shall provide information necessary to

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 determine the effectiveness of the contract in serving the
2 public interest, including:

3 (1) a tracking number for the contracting
4 agency and contracted service;

5 (2) the name, street and mailing address and
6 phone number of the chief officer of the contracting agency;

7 (3) the name, street and mailing address and
8 phone number of the chief officer of the contract recipient's
9 corporate parent, if applicable;

10 (4) the name, street and mailing address and
11 phone number of the chief officer of the contract recipient;

12 (5) the name, street and mailing address,
13 employer and employment category or job description of each
14 person that provided consulting services under the contract,
15 including subcontractors;

16 (6) the name, street and mailing address and
17 phone number of the official within the contracting agency
18 responsible for monitoring the contract;

19 (7) the three-digit North American industry
20 classification system number of the contract recipient;

21 (8) the procedure the agency used to solicit
22 and award the contract, including if the procedure involved
23 competitive bidding or competitive proposals, and a summary of
24 the extent to which the procedure sought to and succeeded in
25 soliciting bids or proposals from minorities, women or emerging

.183385.1

1 small businesses;

2 (9) the type of service required by the
3 contract;

4 (10) the total number of individuals employed
5 by the contract recipient on the date the contract recipient
6 applied for the contract and the date of the report, broken
7 down by full-time, part-time and temporary employment;

8 (11) the total number of individuals employed
9 in New Mexico by the contract recipient, including
10 subsidiaries, corporate parent and corporate parent
11 subsidiaries, as of December 31 of the preceding fiscal year,
12 broken down by full-time, part-time and temporary employment;

13 (12) the contracts applied for with the
14 contracting agency and the value of each contract, the name of
15 any other contracting agencies from which contracts were
16 applied or obtained and the aggregate value of all contracts
17 applied or obtained from all sources;

18 (13) the number of contractors, subcontractors
19 and contract employees who performed required services, broken
20 down by full-time, part-time and temporary employment;

21 (14) the types of services the contractor,
22 subcontractor and any contract employee provide;

23 (15) the average hourly wage paid to each
24 contractor, subcontractor and contract employee, broken down by
25 full-time, part-time and temporary employment and further

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 broken down by wage groups as follows: eight dollars (\$8.00)
2 or less per hour, eight dollars one cent (\$8.01) to nine
3 dollars (\$9.00) per hour, nine dollars one cent (\$9.01) to ten
4 dollars (\$10.00) per hour, ten dollars one cent (\$10.01) to
5 eleven dollars (\$11.00) per hour, eleven dollars one cent
6 (\$11.01) to twelve dollars (\$12.00) per hour, twelve dollars
7 one cent (\$12.01) to thirteen dollars (\$13.00) per hour,
8 thirteen dollars one cent (\$13.01) to fourteen dollars (\$14.00)
9 per hour and fourteen dollars one cent (\$14.01) or more per
10 hour;

11 (16) the number of hours each person,
12 including each subcontractor, works in providing consulting
13 services to the contracting agency under the terms of the
14 contract;

15 (17) the total compensation of each
16 contractor, subcontractor and any contract employee;

17 (18) a summary of each amendment to the
18 contract that changed the contract terms, the contract price or
19 estimated total value, the nature of the consulting services
20 and the identity of a person providing consulting services
21 under the contract, including the identity of subcontractors;

22 (19) the type and amount of health care
23 coverage provided by the contract recipient within ninety days
24 of commencement of the contract, including any costs borne by
25 the employees;

.183385.1

underscoring material = new
[bracketed material] = delete

1 (20) the number of contractors or
2 subcontractors associated with the contract represented by
3 collective bargaining;

4 (21) for contract recipients based in a
5 metropolitan statistical area, as defined by the federal office
6 of management and budget, the average hourly wage paid to
7 nonmanagerial employees in New Mexico for the industries
8 involved at the project, as established by the United States
9 bureau of labor statistics;

10 (22) for contract recipients based outside of
11 a metropolitan statistical area, as defined by the federal
12 office of management and budget, the average weekly wage paid
13 to nonmanagerial employees in the county for industries
14 involved at the project, as established by the United States
15 department of commerce;

16 (23) the start and end dates for the contract;

17 (24) a statement confirming the contract
18 recipient's compliance with labor laws, including minimum wage,
19 employee rights and affirmative action;

20 (25) the savings accrued to the contracting
21 agency;

22 (26) the total cost of the contract;

23 (27) a cost analysis, if previously conducted
24 by the state or contracting agency;

25 (28) a comparison of the actual contract cost

.183385.1

underscoring material = new
~~[bracketed material]~~ = delete

1 with the findings of a cost analysis, if previously conducted
2 by the contracting agency;

3 (29) a copy of the actual contract and any
4 revisions or amendments; and

5 (30) an affidavit attesting to the accuracy of
6 the information in the report by the chief officer of the
7 contract recipient.

8 B. Each contracting agency shall compile the data
9 specified in Subsection A of this section and file a progress
10 report with the department of finance and administration for
11 each contract no later than sixty days after the start of the
12 fiscal year.

13 C. The contracting agency and recipient contractors
14 shall file annual progress reports for the duration of the
15 contract, or not less than five years, whichever period is
16 greater. On all subsequent annual progress reports, the
17 contracting agency shall indicate whether the contract
18 recipient is still in compliance with its savings, wage and
19 benefit goals and has met the measurable standards set by the
20 contracting agency, pursuant to Section 5 of the Budget and
21 Corporate Transparency Act.

22 D. The department of finance and administration
23 shall compile and publish all data from the progress reports in
24 both written and electronic form, including on the department's
25 web site. The department's web site shall provide an easily

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 accessible, searchable database of the specified data.

2 E. The contracting agency shall provide a final
3 report at the conclusion of each contract that shall contain
4 the information described in Subsection A of this section, in
5 written form and available to the public through its web site.
6 The contracting agency's web site shall provide an easily
7 accessible and searchable database of the specified data.

8 F. The contracting agency and the department of
9 finance and administration shall have access at all reasonable
10 times to the project site and the records of the recipient
11 contractor in order to monitor the project and to prepare
12 reports.

13 G. A recipient contractor that fails to provide the
14 contracting agency with the information or access pursuant to
15 this section shall be subject to a fine of not less than five
16 hundred dollars (\$500) per day if the recipient contractor has
17 not provided the contracting agency with necessary information
18 thirty days after the start of each fiscal year.

19 **SECTION 8. CONTRACT AUDITS.--**

20 A. The state auditor is authorized to audit a
21 recipient contractor's performance under the contract into
22 which a contracting agency enters. The audit shall use
23 generally accepted accounting principles and may:

24 (1) examine the contractor's books, papers,
25 correspondence and other records related to the contract;

.183385.1

underscoring material = new
~~[bracketed material]~~ = delete

1 (2) assess whether the contractor has met the
2 quality standards set forth in the contract pursuant to Section
3 5 of the Budget and Corporate Transparency Act;

4 (3) determine whether the contractor has met
5 commercial standards of good faith and fair dealing in the
6 contractor's course of dealing with the contracting agency; and

7 (4) examine other issues that the state
8 auditor deems germane to assessing the contractor's performance
9 pursuant to the contract.

10 B. A contracting agency may request the state
11 auditor to audit a recipient contractor's performance under a
12 contract for any reason and at any point during which the
13 contract is in effect or for a period of six years after the
14 date on which the contract terminates.

15 C. The terms of a contract shall require a
16 recipient contractor to keep books, papers and other records
17 and to document the recipient contractor's performance under
18 the terms of the contract, with particular reference to the
19 recipient contractor's compliance with the quality standards
20 set forth in the contract, in as much detail as will enable the
21 state auditor to conduct an audit pursuant to this section.
22 The contractor shall keep those records for a minimum period of
23 six years after the date on which the contract terminates.

24 D. A contracting agency shall designate a person
25 that will have the authority to audit contractor performance

underscored material = new
[bracketed material] = delete

1 under the contract into which the contracting agency enters.
2 The person the contracting agency authorizes to conduct the
3 audit shall do so in accordance with the standards prescribed
4 in this section and shall follow as closely as practicable the
5 procedures employed by the state auditor.

6 E. The contracting agency and the recipient
7 contractor shall cooperate with the state auditor in all
8 respects and shall permit full access to all information that
9 the state auditor deems necessary for a true and complete
10 review.

11 SECTION 9. UNIFIED TAX EXPENDITURE BUDGET.--

12 A. No later than one hundred twenty days after the
13 end of the fiscal year, the department of finance and
14 administration together with the taxation and revenue
15 department shall compile a tax expenditure budget for the
16 preceding fiscal year and present the tax expenditure budget,
17 including an analysis of tax expenditures, to the governor and
18 the legislature. The tax expenditure budget shall report on
19 tax expenditures with revenue impacts equal to or greater than
20 five thousand dollars (\$5,000) in the aggregate for a specific
21 tax expenditure, and shall include:

22 (1) the amount of uncollected state tax
23 revenues resulting from every tax credit, abatement, exemption
24 and reduction provided by the state or a local government unit,
25 including but not limited to gross receipts, income, sales,

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 use, raw materials, excise, property, utility and inventory
2 taxes;

3 (2) the name of each corporate taxpayer that
4 claimed any tax credit, abatement, exemption or reduction equal
5 to or greater than five thousand dollars (\$5,000), together
6 with the dollar amount received by each corporation;

7 (3) a projection of the costs of tax
8 expenditures for all significant general fund revenue sources;

9 (4) identification of each tax expenditure and
10 its statutory basis, purpose, year of enactment and date of
11 repeal, if applicable;

12 (5) identification, to the extent possible, of
13 the beneficiaries of each tax expenditure, including the number
14 of businesses that used the tax expenditure and the number of
15 businesses that potentially qualified for but failed to use the
16 tax expenditure;

17 (6) identification of any unintended
18 consequences of the tax expenditure that have come to the
19 attention of the taxation and revenue department or department
20 of finance and administration;

21 (7) an estimate of total state revenue
22 distributed for tax expenditures in the current fiscal year;

23 (8) an estimate of total state revenue to be
24 distributed for tax expenditures in the upcoming fiscal year;

25 (9) all state-appropriated expenditures for

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 economic development, including line-item budgets for every
2 state-funded entity concerned with economic development,
3 including the economic development department, tourism
4 department, workforce solutions department, New Mexico finance
5 authority, vocational education programs, state university
6 research programs and manufacturing extension services; and

7 (10) the costs of all development subsidies to
8 the state during the preceding fiscal year, an estimate of the
9 anticipated costs of development subsidies for the current
10 fiscal year and an estimate of the costs of all development
11 subsidies for the fiscal year of the requested budget,
12 including:

13 (a) the total cost to the state of tax
14 expenditures resulting from the development subsidies, the
15 costs for each category of tax expenditure and the amounts of
16 tax expenditures by geographical area; and

17 (b) the cost to the state of all
18 appropriated expenditures for development subsidies, including
19 line-item budgets for every state-funded entity concerned with
20 economic development.

21 B. Any tax credit, abatement, exemption or
22 reduction received by a corporation of less than five thousand
23 dollars (\$5,000) each shall not be itemized. The report shall
24 contain an aggregate dollar amount of such expenditures and the
25 number of companies aggregated for each tax expenditure.

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 C. The department of finance and administration and
2 taxation and revenue department are authorized to request from
3 a state agency or local government unit, and the state agency
4 or local government unit shall provide, official information
5 necessary to complete the tax expenditure budget required by
6 this section.

7 D. Before the conclusion of a tax expenditure of
8 value equal to or greater than five thousand dollars (\$5,000),
9 the department of finance and administration together with the
10 taxation and revenue department shall submit a report to the
11 legislature and governor to assess whether or not to reappraise
12 the particular tax credit, abatement, exemption or reduction,
13 which includes:

14 (1) a statement of the purpose served by the
15 tax expenditure;

16 (2) an appraisal of the tax expenditure's
17 effectiveness in serving its purpose;

18 (3) an evaluation of whether the tax
19 expenditure serves a public need;

20 (4) an evaluation of whether other statutes
21 have enhanced or impeded the tax expenditure's effectiveness in
22 serving its purpose;

23 (5) an appraisal of whether the tax
24 expenditure promotes economic growth and development;

25 (6) an estimate of the amount of revenue lost

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 each fiscal year because of the tax expenditure;

2 (7) a recommendation as to whether the tax
3 expenditure should be allowed to expire or be renewed; and

4 (8) any other relevant information.

5 E. The department of finance and administration
6 shall compile and publish all data from the report in both
7 written and electronic form, including on the department's web
8 site. The department's web site shall provide an easily
9 accessible, searchable database of the specified data.

10 SECTION 10. UNIFIED REPORTING OF CONTRACTS.--

11 A. For the aggregated total of contracts, each
12 contracting agency shall provide a comprehensive report to the
13 department of finance and administration no later than ninety
14 days after the end of the fiscal year detailing:

15 (1) the total number of contracts that the
16 contracting agency awarded in the preceding fiscal year, along
17 with the total expenditures for all such contracts up until the
18 date on which the agency produced the report, including:

- 19 (a) consulting;
- 20 (b) construction;
- 21 (c) equipment;
- 22 (d) grants;
- 23 (e) leases;
- 24 (f) miscellaneous services;
- 25 (g) printing;

underscored material = new
~~[bracketed material] = delete~~

- 1 (h) repayment agreements;
- 2 (i) intergovernmental agreements; and
- 3 (j) goods;
- 4 (2) the total work force of the agency;
- 5 (3) the total number of persons, including
- 6 subcontractors, that provided consulting services to the
- 7 agency;
- 8 (4) a calculation of contractors as a percent
- 9 of total agency work force;
- 10 (5) the total number of minorities, women or
- 11 emerging small businesses that provided consulting services to
- 12 the contracting agency;
- 13 (6) the total number of bids or proposals the
- 14 agency received in connection with each contract;
- 15 (7) a description of the types of contracts
- 16 the agency awarded;
- 17 (8) the frequency of contracts awarded during
- 18 the preceding fiscal year arranged by the number of bids or
- 19 proposals and the source selection method;
- 20 (9) the number of contracts disapproved by the
- 21 contracting agency during the preceding fiscal year and the
- 22 reasons for disapproval arranged by contracting agency and
- 23 source selection method and the number and outcome of bid
- 24 protests;
- 25 (10) the total compensation the contracting

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 agency paid to each contract recipient, including
2 subcontractors that provided consulting services to the
3 contracting agency under all contracts the contracting agency
4 awarded to that contract recipient;

5 (11) average wages paid;

6 (12) total savings the contracting agency
7 accrued from using contractors;

8 (13) the estimated number and costs of
9 contracts to be awarded in the following fiscal year;

10 (14) the total cost of all contracts awarded;

11 and

12 (15) a comparison of the number of contracts
13 the contracting agency solicited and awarded independently to
14 the number of contracts the contracting agency solicited and
15 awarded in connection with a cooperative procurement process,
16 the sum of the contract prices or estimated dollar values of
17 the contracts solicited and awarded independently, together
18 with the sum of the contracting agency's expenditures for the
19 contracts through the date on which the contracting agency
20 produced the report, compared to the corresponding sums for
21 contracts solicited and awarded in connection with cooperative
22 procurement.

23 B. The department of finance and administration
24 shall compile the data pursuant to Subsection A of this section
25 and provide to the legislature and governor a comprehensive

.183385.1

underscored material = new
[bracketed material] = delete

1 presentation of that data and the costs of all contracts to the
2 state during the preceding fiscal year, an estimate of the
3 anticipated costs of contracts for the current fiscal year and
4 an estimate of the costs of all contracts for the fiscal year
5 of the requested budget.

6 C. The department of finance and administration
7 shall compile and publish all data from the report in both
8 written and electronic form, including on the department's web
9 site. The department's web site shall provide an easily
10 accessible, searchable database of the specified data.

11 SECTION 11. UNIFIED REPORTING OF PROPERTY TAX
12 REDUCTIONS.--

13 A. Each property-taxing entity shall annually
14 submit a report to the department of finance and administration
15 regarding any real property in the entity's jurisdiction that
16 has received a property tax abatement or reduction during the
17 fiscal year. The report shall provide information necessary to
18 determine the effectiveness of the property abatement or
19 reduction in serving the public interest, including:

- 20 (1) the name of the property owner;
21 (2) the address of the property;
22 (3) the start and end dates of the property
23 tax reduction or abatement;
24 (4) the schedule of the tax reduction;
25 (5) each tax abatement, reduction and

.183385.1

underscored material = new
[bracketed material] = delete

1 exemption for the property; and

2 (6) the total amount of property tax revenue
3 not paid to the property-taxing entity as a result of each
4 reduction or abatement on that property.

5 B. Each property-taxing entity shall also submit a
6 report to the department of finance and administration setting
7 forth the total property tax revenue not paid to the property-
8 taxing entity during the fiscal year as a result of all
9 property tax reductions and abatements in that entity's
10 jurisdiction.

11 C. The reports required pursuant to Subsections A
12 and B of this section shall be prepared on two forms prescribed
13 by the department of finance and administration and shall be
14 submitted to the department by the property-taxing entity no
15 later than ninety days after the end of the fiscal year.

16 D. The department of finance and administration
17 shall annually compile and publish all of the data contained in
18 the reports required pursuant to this section in both written
19 and electronic form, including on the department's web site.
20 The department's web site shall provide an easily accessible,
21 searchable database of the specified data.

22 SECTION 12. CORPORATE TAX DISCLOSURE--CONTENT OF TAX
23 DISCLOSURE.--

24 A. Publicly traded corporations, including
25 corporations traded on foreign stock exchanges and corporations

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 of which fifty percent or more of the voting stock is owned,
2 directly or indirectly, by a publicly traded corporation that
3 is doing business in New Mexico, shall file with the taxation
4 and revenue department an annual statement within thirty days
5 following the filing of the tax return required pursuant to the
6 Corporate Income and Franchise Tax Act with the following
7 information:

8 (1) the name of the corporation and the street
9 address of its principal executive office;

10 (2) the name of any corporation that owns,
11 directly or indirectly, fifty percent or more of the voting
12 stock of the corporation and the street address of the
13 corporate parent's principal executive office, if applicable;

14 (3) the corporation's three-digit North
15 American industry classification system code number;

16 (4) a unique code number, assigned by the
17 secretary of taxation and revenue, to identify the corporation,
18 which code number will remain constant from year to year;

19 (5) total gross income;

20 (6) total cost of goods sold claimed as a
21 deduction from gross income;

22 (7) taxable income prior to net operating loss
23 deductions or apportionment;

24 (8) property, payroll and sales apportionment
25 factors;

.183385.1

1 (9) calculated overall apportionment factor in
2 the state;

3 (10) total business income apportioned to the
4 state;

5 (11) net operating loss deduction, if
6 applicable;

7 (12) total nonbusiness income and the amount
8 of nonbusiness income allocated to the state;

9 (13) total taxable income;

10 (14) total tax before credits;

11 (15) tax credits claimed, with each credit
12 individually enumerated;

13 (16) tax due;

14 (17) tax paid; and

15 (18) amount of tax due or paid under protest,
16 if applicable.

17 B. A corporation doing business in New Mexico but
18 not required to file a tax return pursuant to the Corporate
19 Income and Franchise Tax Act may elect to file a statement with
20 the taxation and revenue department containing the following
21 information:

22 (1) the name of the corporation and the street
23 address of its principal executive office;

24 (2) the name of any corporation that owns,
25 directly or indirectly, fifty percent or more of the voting

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 stock of the corporation and the street address of the
2 corporate parent's principal executive office, if applicable;

3 (3) the corporation's three-digit North
4 American industry classification system code number;

5 (4) a unique code number, assigned by the
6 secretary of taxation and revenue, to identify the corporation,
7 which code number will remain constant from year to year; and

8 (5) total gross receipts from sales to
9 purchasers in New Mexico.

10 C. A corporation submitting a statement pursuant to
11 this section shall be permitted to submit supplemental
12 information that, in its sole judgment, could facilitate proper
13 interpretation of the information included in the statement.

14 D. If a corporation files an amended tax return,
15 the corporation shall file a revised statement under this
16 section within sixty calendar days after the amended return is
17 filed. If a corporation's tax liability for a taxable year is
18 changed as the result of an uncontested audit adjustment or
19 final determination of liability by the taxation and revenue
20 department or by a court of competent jurisdiction, the
21 corporation shall file a revised statement pursuant to this
22 section within sixty calendar days of the final determination
23 of liability.

24 E. The statements required pursuant to this section
25 shall be a public record. The taxation and revenue department

.183385.1

underscored material = new
~~[bracketed material] = delete~~

1 shall make all information contained in the statements required
2 pursuant to this section for all filing corporations available
3 to the public on an ongoing basis in the form of a searchable
4 database accessible through the department's web site. The
5 taxation and revenue department shall make available and set
6 charges that cover the cost to the state of providing copies on
7 appropriate computer-readable media of the entire database for
8 statements filed during each calendar year as well as hard
9 copies of an individual annual statement for a specific
10 corporation. The statement for any corporation for a
11 particular taxable year shall not be publicly available until
12 the first day of the third calendar year that follows the
13 calendar year in which the particular taxable year ends.

14 F. The accuracy of the statements submitted to the
15 taxation and revenue department pursuant to this section shall
16 be attested to in writing by the chief operating officer of
17 that corporation and shall be subject to audit by the taxation
18 and revenue department.

19 **SECTION 13. DEVELOPMENT SUBSIDY RECAPTURE.--**

20 A. A recipient corporation shall fulfill its job
21 creation, wage, health care and other benefit requirements for
22 the project site within two years of the date of subsidy. The
23 recipient corporation shall maintain its wage and benefit goals
24 as long as the development subsidy is in effect, or for five
25 years, whichever is longer.

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 B. The recipient corporation and corporate parent,
2 if applicable, shall maintain at least ninety percent of its
3 employment in New Mexico as long as the development subsidy is
4 in effect, or not less than five years, whichever is longer.

5 C. If the requirements of Subsections A and B of
6 this section are not fulfilled, the granting body shall
7 recapture the development subsidy from the recipient
8 corporation. Upon a failure by the recipient corporation to
9 create the required number of jobs or to pay the required wages
10 or benefits, the amount recaptured shall be based on the pro
11 rata amount by which the unfulfilled jobs, wages or benefits
12 bear to the total amount of the development subsidy. Upon a
13 failure of the recipient corporation and corporate parent to
14 maintain ninety percent of its employment in New Mexico, the
15 rate of recapture shall equal twice the percentage by which the
16 employment is less than ninety percent.

17 D. The granting body shall provide notice to the
18 recipient corporation of its intent to recapture the
19 development subsidy and state the reasons and amount to be
20 recaptured. The recipient corporation shall remit to the
21 governing body such amount within sixty calendar days of the
22 date of such notice.

23 E. If a recipient corporation defaults on a
24 development subsidy in three consecutive calendar years, the
25 granting body shall declare the subsidy void and shall notify

.183385.1

underscoring material = new
~~[bracketed material] = delete~~

1 the economic development department and the recipient
2 corporation. The recipient corporation shall pay back to the
3 granting body all remaining value of the development subsidy it
4 has not previously repaid within one hundred eight calendar
5 days of the date of the notice of the default.

6 SECTION 14. PRIVATE RIGHT OF ACTION.--If a granting body
7 or contracting agency fails to enforce any provision of the
8 Budget and Corporate Transparency Act, an individual who paid
9 personal income taxes to the state in the calendar year
10 preceding the year in dispute, or an organization representing
11 that taxpayer, shall be entitled to bring a civil action in a
12 court of competent jurisdiction to compel enforcement. The
13 court shall award reasonable attorney fees and costs to the
14 prevailing taxpayer or organization.

15 SECTION 15. PUBLIC RECORD DISCLOSURE.--Except as
16 otherwise provided, all records and information collected,
17 assembled or prepared pursuant to the Budget and Corporate
18 Transparency Act are public information and shall be retained,
19 stored, destroyed and made available for the examination of the
20 public as provided by the Public Records Act.

21 SECTION 16. SEVERABILITY.--If any part or application of
22 the Budget and Corporate Transparency Act is held invalid, the
23 remainder or its application to other situations or persons
24 shall not be affected.

25 SECTION 17. EFFECTIVE DATE.--The effective date of the

.183385.1

underscoring material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2011.

2 - 43 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.183385.1