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SENATE BILL 69

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO PROCUREMENT; ENACTING THE RESIDENT BUSINESS SET-  
ASIDE ACT; REQUIRING THAT THIRTY-THREE PERCENT OF CERTAIN  
CONTRACTS BE AWARDED TO RESIDENT BUSINESSES; PROVIDING FOR  
CERTIFICATION OF RESIDENT BUSINESSES AND RESIDENT CONTRACTORS;  
REQUIRING REPORTING; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Resident Business Set-Aside Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the  
Resident Business Set-Aside Act is to encourage the health of  
the state's economy, which is directly related to the  
competitive strength and well-being of the state's businesses,  
by providing an opportunity for businesses to freely enter into  
business and to grow and expand and by ensuring that a fair

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1 proportion of the state's total contracts for construction,  
2 property and services is placed with resident businesses.

3 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Resident Business Set-Aside Act:

5 A. "contracting agency" means a department,  
6 commission, council, board, committee, institution, legislative  
7 body, agency, government corporation or official of the  
8 executive, legislative or judicial branch of the government of  
9 the state;

10 B. "department" means the general services  
11 department;

12 C. "legacy contractor" means a construction  
13 business that has been licensed in this state for ten  
14 consecutive years;

15 D. "new business" means a business that has been in  
16 existence for less than three years;

17 E. "new contractor" means a business that has been  
18 in existence for less than five years;

19 F. "relocated business" means a business that moved  
20 eighty percent of its total domestic personnel from another  
21 state to New Mexico in the past five years;

22 G. "resident business" means a business or  
23 contractor that has a valid resident business or resident  
24 contractor certificate issued by the taxation and revenue  
25 department pursuant to Section 5 of the Resident Business Set-

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1 Aside Act; and

2 H. "set-aside contract" means:

3 (1) a contract for goods, equipment,  
4 construction or services that is designated as a contract with  
5 respect to which bids are invited and accepted only from a  
6 resident business; or

7 (2) a portion of a contract when that portion  
8 has been designated as a portion with respect to which bids are  
9 invited and accepted only from a resident business.

10 SECTION 4. [NEW MATERIAL] CONTRACTING AGENCIES--  
11 REQUIREMENTS--DESIGNATION OF SET-ASIDE CONTRACTS.--

12 A. Every contracting agency shall award at least  
13 thirty-three per cent of the total number of its contracts to  
14 resident businesses.

15 B. Every contracting agency shall, in consultation  
16 with the department, develop an annual plan for how it will  
17 achieve the purpose and requirements of the Resident Business  
18 Set-Aside Act.

19 C. Contracting agencies, in consultation with the  
20 department, may designate a contract, or a portion thereof, for  
21 goods, equipment, construction or services as a resident  
22 business set-aside contract pursuant to the Resident Business  
23 Set-Aside Act if there is a reasonable expectation that bids  
24 may be obtained from at least three qualified resident  
25 businesses that are capable of furnishing the desired goods,

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1 equipment, construction or services at a fair and reasonable  
2 price. The designation of the contract shall be made before  
3 the contracting agency solicits bids or proposals.

4 D. If the department and a contracting agency  
5 disagree as to the designation of a resident business set-aside  
6 contract or the requirement that a resident business  
7 subcontractor perform work on a portion of a contract, the  
8 dispute shall be submitted to the state auditor for a final  
9 determination within seven days.

10 E. If the implementation of the purpose or  
11 provisions of the Resident Business Set-Aside Act would  
12 jeopardize the state's participation in a program from which  
13 the state receives federal funds or other benefits, a  
14 contracting agency may, in consultation with the department,  
15 withdraw the affected contracts from consideration or  
16 calculation of a contracting agency's resident business  
17 contract awards.

18 SECTION 5. [NEW MATERIAL] RESIDENT BUSINESS AND RESIDENT  
19 CONTRACTOR--CERTIFICATION.--

20 A. To be certified as a resident business, a  
21 business shall submit an application to the taxation and  
22 revenue department. The application shall include an affidavit  
23 from a certified public accountant, licensed attorney or  
24 enrolled agent authorized to practice before the internal  
25 revenue service setting forth that the business is licensed to

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1 do business in this state and:

2 (1) that the business has paid property taxes  
3 or rent on real property in the state and has paid at least one  
4 other tax administered by the state in each of the three years  
5 immediately preceding the submission of the affidavit;

6 (2) if the business is a new business, that  
7 the owner or majority of owners has paid property taxes or rent  
8 on real property in the state and has paid at least one other  
9 tax administered by the state in each of the three years  
10 immediately preceding the submission of the affidavit and has  
11 not applied for a resident business or resident contractor  
12 certificate pursuant to this section during that time period;

13 (3) if the business is a relocated business,  
14 that at least eighty percent of the total personnel of the  
15 business in each of the years immediately preceding the  
16 submission of the affidavit were residents of the state and  
17 that, prior to the submission of the affidavit, the business  
18 either leased real property for ten years or purchased real  
19 property greater than one hundred thousand dollars (\$100,000)  
20 in value in the state; or

21 (4) if the business was previously certified  
22 pursuant to this subsection and the business has reorganized  
23 into one or more different legal entities, was purchased by  
24 another legal entity but operates in the state as substantially  
25 the same commercial enterprise or has merged with a different

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1 legal entity but operates in the state as substantially the  
2 same commercial enterprise and the business has obtained a new  
3 tax identification number, that the business meets the  
4 requirements provided in Paragraph (1) of this subsection.

5 B. To be certified as a resident contractor, a  
6 contractor shall submit an application to the taxation and  
7 revenue department. The application shall include an affidavit  
8 from a certified public accountant, licensed attorney or  
9 enrolled agent authorized to practice before the internal  
10 revenue service setting forth that the contractor is currently  
11 licensed as a contractor in this state and:

12 (1) that the contractor has:

13 (a) registered with the state at least  
14 one vehicle; and

15 (b) in each of the five years  
16 immediately preceding the submission of the affidavit: 1) paid  
17 property taxes or rent on real property in the state and paid  
18 at least one other tax administered by the state; and 2) paid  
19 unemployment insurance on at least three full-time employees  
20 who are residents of the state; provided that if a contractor  
21 is a legacy contractor, the requirement of at least three  
22 full-time employees who are residents of the state is waived;

23 (2) if the contractor is a new contractor,  
24 that the owner or majority of owners has paid property taxes or  
25 rent on real property in the state and has paid at least one

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1 other tax administered by the state in each of the five years  
2 immediately preceding the submission of the affidavit and has  
3 not applied for a resident business or resident contractor  
4 certificate pursuant to this section during that time period;

5 (3) if the contractor is a relocated business,  
6 that at least eighty percent of the total personnel of the  
7 business in each of the years immediately preceding the  
8 submission of the affidavit were residents of the state and  
9 that, prior to the submission of the affidavit, the contractor  
10 either leased real property for ten years or purchased real  
11 property greater than one hundred thousand dollars (\$100,000)  
12 in value in the state; or

13 (4) if the contractor was previously certified  
14 pursuant to this subsection and the contractor has reorganized  
15 into one or more different legal entities, was purchased by  
16 another legal entity but operates in the state as substantially  
17 the same enterprise or has merged with a different legal entity  
18 but operates in the state as substantially the same commercial  
19 enterprise and the contractor has obtained a new tax  
20 identification number, that the contractor meets the  
21 requirements provided in Paragraph (1) of this subsection.

22 C. The taxation and revenue department shall  
23 prescribe the form and content of an application for  
24 certification as a resident business or resident contractor and  
25 of the required affidavit.

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1           D. The taxation and revenue department shall  
2 examine applications and affidavits submitted pursuant to this  
3 section and, if necessary, may seek additional information to  
4 ensure that the business or contractor is eligible to receive a  
5 certificate pursuant to the provisions of this section. If the  
6 taxation and revenue department determines that an applicant is  
7 eligible, it shall issue a certificate. If the taxation and  
8 revenue department determines that the applicant is not  
9 eligible, it shall issue notification within thirty days. If  
10 no notification is provided by the taxation and revenue  
11 department, the certificate is deemed approved. A certificate  
12 is valid for three years from the date of its issuance;  
13 provided that if there is a change of ownership of more than  
14 fifty percent, a resident business or resident contractor shall  
15 reapply for a certificate.

16           E. A business or contractor whose application for a  
17 certificate is denied has fifteen days from the date of the  
18 taxation and revenue department's decision to file an objection  
19 with the taxation and revenue department. The person filing  
20 the objection shall submit evidence to support the objection  
21 and may request a hearing. The taxation and revenue department  
22 shall review the evidence and issue a decision within fifteen  
23 days of the filing of the objection.

24           F. If, following a hearing and an opportunity to be  
25 heard, the taxation and revenue department finds that a

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1 business or contractor provided false information to the  
2 taxation and revenue department in order to obtain a  
3 certificate or that a business or contractor used a certificate  
4 to obtain a bid on a resident business set-aside contract and  
5 the resident business or contractor did not perform work  
6 pursuant to the contract that was required to be performed by a  
7 resident business or contractor, the business or contractor:

8 (1) is not eligible to receive a certificate  
9 pursuant to this section for a period of five years from the  
10 date on which the taxation and revenue department became aware  
11 of the submission of the false information or the failure to  
12 perform the contract as required; and

13 (2) is subject to an administrative penalty of  
14 up to fifty thousand dollars (\$50,000) for each violation.

15 G. In a decision issued pursuant to Subsection D, E  
16 or F of this section, the taxation and revenue department shall  
17 state the reasons for the action taken and inform an aggrieved  
18 business or contractor of the right to judicial review of the  
19 determination pursuant to the provisions of Section 39-3-1.1  
20 NMSA 1978.

21 H. The taxation and revenue department may assess a  
22 reasonable fee for the issuance of a certificate not to exceed  
23 the actual cost of administering the taxation and revenue  
24 department's duties pursuant to this section.

25 I. The state auditor may audit or review the

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1 issuance or validity of certificates.

2 SECTION 6. [NEW MATERIAL] ANNUAL REPORT.--

3 A. Every contracting agency shall submit an annual  
4 report to the department on or before the deadline established  
5 by the department. An annual report shall include:

6 (1) the total number of contracts that the  
7 contracting agency awarded to a resident business, and the  
8 total dollar value of those contracts;

9 (2) the total number of contracts for which a  
10 portion of the contract work was performed by a resident  
11 business, and the total dollar value of the work performed  
12 pursuant to those contracts;

13 (3) the total number of resident business set-  
14 aside contracts designated and awarded, and the total dollar  
15 value of those contracts;

16 (4) the percentage of the contracting agency's  
17 total procurement that was awarded to a resident business; and

18 (5) the efforts made by the contracting agency  
19 to publicize and promote procurement pursuant to the Resident  
20 Business Set-Aside Act.

21 B. The department shall receive and analyze reports  
22 submitted pursuant to this section and, using the report data,  
23 shall prepare and submit an annual report to the governor and  
24 to the legislature and for publication on the sunshine portal  
25 by November 1 of each year, beginning in 2016, to show whether

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1 the purpose and the directives of the Resident Business Set-  
2 Aside Act were met during the preceding fiscal year.

3 SECTION 7. [NEW MATERIAL] CONSULTATION WITH INDUSTRY.--  
4 The department shall consult at least every six months with  
5 representatives from industries affected by the Resident  
6 Business Set-Aside Act to ensure effective implementation of  
7 that act.

8 SECTION 8. [NEW MATERIAL] RULES.--The department shall  
9 promulgate rules necessary to implement the provisions of the  
10 Resident Business Set-Aside Act.

11 SECTION 9. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2015.