

1 HOUSE BILL 160

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC PURCHASING; ENACTING THE HISTORICALLY
12 UNDERUTILIZED BUSINESS OPPORTUNITY ACT; PROVIDING ADDITIONAL
13 DUTIES FOR STATE AGENCIES; ENCOURAGING STATE AGENCIES TO USE
14 HISTORICALLY UNDERUTILIZED BUSINESSES; MAKING AN APPROPRIATION.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
18 through 5 of this act may be cited as the "Historically
19 Underutilized Business Opportunity Act".

20 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
21 Historically Underutilized Business Opportunity Act is to
22 stimulate economic development and job creation by promoting
23 full and equal business opportunities for all businesses by
24 encouraging and setting goals for the use of historically
25 underutilized businesses by state agencies in all public

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1 purchasing decisions and collecting data on the usage of
2 historically underutilized businesses by state agencies. The
3 Historically Underutilized Business Opportunity Act does not
4 inhibit or prevent purchases of goods and services from
5 businesses that are otherwise qualified to provide such goods
6 and services.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Historically Underutilized Business Opportunity Act:

9 A. "historically underutilized business" means a
10 legally recognized for-profit business organization,
11 corporation, sole proprietorship, partnership or joint venture
12 that has applied for and received a valid historically
13 underutilized business certificate issued by the taxation and
14 revenue department certifying that:

15 (1) it has an average gross revenue for the
16 preceding three calendar years that does not exceed five
17 million dollars (\$5,000,000), as reported to the taxation and
18 revenue department, or an average number of employees in New
19 Mexico for the preceding three calendar years that does not
20 exceed fifty;

21 (2) it is a "resident business" as certified
22 by the taxation and revenue department pursuant to Section
23 13-1-22 NMSA 1978; and

24 (3) as certified by the taxation and revenue
25 department, more than fifty percent of the business is owned by

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1 women or persons who are members of one or more of the
2 following communities of color: African American, Latino or
3 Hispanic, Asian, Pacific Islander, Native American or Alaska
4 Native;

5 B. "nonprofit entity" means an organization that
6 has been granted exemption from federal income tax by the
7 United States internal revenue service as an organization
8 described in Section 501(c)(3) of the Internal Revenue Code of
9 1986;

10 C. "qualified facilitating nonprofit entity" means
11 a nonprofit entity that is organized to promote and enhance
12 economic development opportunities; that can also provide
13 business and workforce education with expertise in assisting
14 historically underutilized businesses; and that is approved by
15 the general services department to assist in the identification
16 of qualified applicants for certification and to assist
17 applicants in applying for and maintaining certification as a
18 historically underutilized business, including precertification
19 screening of eligibility, appeal of a denial or revocation of
20 certification and recertification; and

21 D. "state agency" means any department, commission,
22 council, board, committee, institution, agency, government
23 corporation or educational institution, including any office or
24 officer of the above, that procures, purchases, rents, leases
25 or otherwise acquires items of tangible personal property,

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1 services or construction, but does not include the legislative
2 or judicial branch or local public bodies.

3 SECTION 4. [NEW MATERIAL] DUTIES OF TAXATION AND REVENUE
4 DEPARTMENT AND GENERAL SERVICES DEPARTMENT.--

5 A. The taxation and revenue department shall
6 establish the procedures for the certification of applicants
7 for historically underutilized business status. In the
8 certification of applicants, the taxation and revenue
9 department may rely on federal or state certifications and
10 information that relate to the ownership of applicants for
11 historically underutilized business status. The taxation and
12 revenue department shall develop procedures for an appeal of a
13 denial or revocation of certification; provided that the
14 procedures shall be consistent with the procedures for a tax
15 protest provided in Section 7-1B-8 NMSA 1978.

16 B. The general services department shall develop an
17 online, searchable database of businesses certified as
18 historically underutilized businesses and establish procedures
19 to qualify nonprofit entities as qualified facilitating
20 nonprofit entities.

21 C. The general services department shall develop
22 training sessions and seminars or use other suitable means for
23 informing historically underutilized businesses of
24 opportunities and procedures for doing business with state
25 agencies.

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1 D. State agencies shall develop procedures, as
2 approved by the general services department, for the
3 utilization of historically underutilized businesses.

4 E. In accordance with rules promulgated by the
5 general services department, each state agency shall prepare
6 and submit to the general services department a report for each
7 fiscal year that includes:

8 (1) the total dollar amount of payments made
9 by state agencies for the purchase of goods and services;

10 (2) the total dollar amount of payments made
11 directly to historically underutilized businesses or indirectly
12 through subcontracts for the purchase of goods and services
13 directly;

14 (3) the total number and corresponding dollar
15 amount of state agency contracts awarded to contractors and the
16 total number and corresponding dollar amount of state agency
17 contracts awarded directly or indirectly through subcontracts
18 to historically underutilized businesses; and

19 (4) the total number of bids from historically
20 underutilized businesses received by the state agency.

21 F. The general services department shall prepare an
22 annual consolidated report based on the information submitted
23 by the state agencies. The general services department shall
24 make the report available by:

25 (1) posting the report to the website of the

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1 general services department and the sunshine portal; and
2 (2) providing a copy of the report to the
3 legislative finance committee.

4 SECTION 5. [NEW MATERIAL] DUTIES OF STATE AGENCIES.--Each
5 state agency:

6 A. shall establish agency-specific goals for the
7 use of historically underutilized businesses by July 1, 2023.

8 Agency-specific goals shall be based on:

9 (1) the state agency's fiscal year
10 expenditures and total contract expenditures;

11 (2) the availability of historically
12 underutilized businesses;

13 (3) the state agency's historic utilization of
14 historically underutilized businesses by contracting directly
15 with historically underutilized businesses or indirectly
16 through subcontracts; and

17 (4) other relevant factors as determined by
18 the state agency;

19 B. shall require respondents to:

20 (1) submit a plan to identify and attempt to
21 subcontract with applicable historically underutilized
22 businesses when soliciting bids, proposals, offers or other
23 applicable expressions of interest for contracts, including any
24 renewals; and

25 (2) upon project completion, report any

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1 subcontract made to a historically underutilized business for
2 the purchase of goods or services and report the total dollar
3 amount of payments issued pursuant to that subcontract;

4 C. shall make a good-faith effort to utilize
5 historically underutilized businesses in contracts; and

6 D. may achieve its agency-specific annual
7 historically underutilized business goals by contracting
8 directly with historically underutilized businesses or
9 indirectly through subcontracts.

10 SECTION 6. Section 7-1-8.8 NMSA 1978 (being Laws 2019,
11 Chapter 87, Section 2, as amended) is amended to read:

12 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE
13 AGENCIES.--An employee of the department may reveal to:

14 A. a committee of the legislature for a valid
15 legislative purpose, return information concerning any tax or
16 fee imposed pursuant to the Cigarette Tax Act;

17 B. the attorney general, return information
18 acquired pursuant to the Cigarette Tax Act for purposes of
19 Section 6-4-13 NMSA 1978 and the master settlement agreement
20 defined in Section 6-4-12 NMSA 1978;

21 C. the commissioner of public lands, return
22 information for use in auditing that pertains to rentals,
23 royalties, fees and other payments due the state under land
24 sale, land lease or other land use contracts;

25 D. the secretary of human services or the

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1 secretary's delegate under a written agreement with the
2 department, the last known address with date of all names
3 certified to the department as being absent parents of children
4 receiving public financial assistance, but only for the purpose
5 of enforcing the support liability of the absent parents by the
6 child support enforcement division or any successor
7 organizational unit;

8 E. the department of information technology, by
9 electronic media, a database updated quarterly that contains
10 the names, addresses, county of address and taxpayer
11 identification numbers of New Mexico personal income tax
12 filers, but only for the purpose of producing the random jury
13 list for the selection of petit or grand jurors for the state
14 courts pursuant to Section 38-5-3 NMSA 1978;

15 F. the state courts, the random jury lists produced
16 by the department of information technology under Subsection E
17 of this section;

18 G. the director of the New Mexico department of
19 agriculture or the director's authorized representative, upon
20 request of the director or representative, the names and
21 addresses of all gasoline or special fuel distributors,
22 wholesalers and retailers;

23 H. the public regulation commission, return
24 information with respect to the Corporate Income and Franchise
25 Tax Act required to enable the commission to carry out its

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1 duties;

2 I. the state racing commission, return information
3 with respect to the state, municipal and county gross receipts
4 taxes paid by racetracks;

5 J. the gaming control board, tax returns of license
6 applicants and their affiliates as provided in Subsection E of
7 Section 60-2E-14 NMSA 1978;

8 K. the director of the workers' compensation
9 administration or to the director's representatives authorized
10 for this purpose, return information to facilitate the
11 identification of taxpayers that are delinquent or noncompliant
12 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
13 1978;

14 L. the secretary of workforce solutions or the
15 secretary's delegate, return information for use in enforcement
16 of unemployment insurance collections pursuant to the terms of
17 a written reciprocal agreement entered into by the department
18 with the secretary of workforce solutions for exchange of
19 information;

20 M. the New Mexico finance authority, information
21 with respect to the amount of municipal and county gross
22 receipts taxes collected by municipalities and counties
23 pursuant to any local option municipal or county gross receipts
24 taxes imposed, and information with respect to the amount of
25 governmental gross receipts taxes paid by every agency,

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1 institution, instrumentality or political subdivision of the
2 state pursuant to Section 7-9-4.3 NMSA 1978;

3 N. the secretary of human services or the
4 secretary's delegate; provided that a person who receives the
5 confidential return information on behalf of the human services
6 department shall not reveal the information and shall be
7 subject to the penalties in Section 7-1-76 NMSA 1978 if the
8 person fails to maintain the confidentiality required:

9 (1) that return information needed for reports
10 required to be made to the federal government concerning the
11 use of federal funds for low-income working families;

12 (2) the names and addresses of low-income
13 taxpayers for the limited purpose of outreach to those
14 taxpayers; provided that the human services department shall
15 pay the department for expenses incurred by the department to
16 derive the information requested by the human services
17 department if the information requested is not readily
18 available in reports for which the department's information
19 systems are programmed; and

20 (3) return information required to administer
21 the Health Care Quality Surcharge Act;

22 O. the superintendent of insurance, return
23 information with respect to the premium tax and the health
24 insurance premium surtax;

25 P. the secretary of finance and administration or

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1 the secretary's designee, return information concerning a
2 credit pursuant to the Film Production Tax Credit Act;

3 Q. the secretary of economic development or the
4 secretary's designee, return information concerning a credit
5 pursuant to the Film Production Tax Credit Act;

6 R. the secretary of public safety or the
7 secretary's designee, return information concerning the Weight
8 Distance Tax Act;

9 S. the secretary of transportation or the
10 secretary's designee, return information concerning the Weight
11 Distance Tax Act;

12 T. the secretary of energy, minerals and natural
13 resources or the secretary's designee, return information
14 concerning tax credits or deductions for which eligibility is
15 certified or otherwise determined by the secretary or the
16 secretary's designee; [~~and~~]

17 U. the secretary of environment or the secretary's
18 designee, return information concerning tax credits for which
19 eligibility is certified or otherwise determined by the
20 secretary or the secretary's designee; and

21 V. the secretary of general services or the
22 secretary's designee, the return information needed to carry
23 out the provisions of the Historically Underutilized Business
24 Opportunity Act."

25 SECTION 7. APPROPRIATION.--

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