

1 HOUSE BILL 341

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

11 RELATING TO PROCUREMENT; AMENDING THE SUNSHINE PORTAL
12 TRANSPARENCY ACT; REQUIRING THE APPLICATION OF THE INSPECTION
13 OF PUBLIC RECORDS ACT AND OPEN MEETINGS ACT TO CERTAIN
14 CONTRACTS; PROVIDING REQUIREMENTS FOR OUTSOURCING CONTRACTS.

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

17 SECTION 1. Section 10-16D-3 NMSA 1978 (being Laws 2010,
18 Chapter 34, Section 3, as amended) is amended to read:

19 "10-16D-3. SUNSHINE PORTAL--DEPARTMENT DUTIES.--

20 A. The department, with the department of finance
21 and administration, shall develop, operate and maintain a
22 single internet web site that is free, user-friendly,
23 searchable and accessible to the public, known as the "sunshine
24 portal", to host the state's financial information for the
25 purpose of governmental transparency and accountability to

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1 taxpayers.

2 B. No later than October 1, 2010, the department
3 shall create the architecture and the information exchange
4 process for the collection and electronic publication of the
5 state's financial information.

6 C. No later than July 1, 2011, the sunshine portal
7 shall be available for public access and include updated
8 information as required by Subsection D of this section.

9 D. The sunshine portal shall provide, at a minimum,
10 access to the following information:

11 (1) the state's cash balances by account or
12 fund;

13 (2) a monthly summary of the state's
14 investment accounts;

15 (3) annual operating budgets for each state
16 agency with monthly expenditures by category;

17 (4) contracts that a state agency enters into
18 for the lease, sale or development of state land and state
19 contracts that have a total contract price of more than twenty
20 thousand dollars (\$20,000) [~~naming the recipient of the~~
21 ~~contract, the purpose of the contract and the amounts~~
22 ~~expended~~]. In the case of a contract that has a total price of
23 more than twenty thousand dollars (\$20,000), the information
24 shall include:

25 (a) a description of the contract, its

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1 purpose and the services being provided;

2 (b) the name of the state agency
3 entering into the contract;

4 (c) the effective and expiration dates
5 of the contract;

6 (d) amounts paid to the contractor in
7 prior fiscal years and in the current fiscal year;

8 (e) the total projected cost of the
9 contract during its full term; and

10 (f) the names of all contractor and
11 subcontractor employees who have provided or are providing the
12 services required by the contract and their hourly wage or
13 other rate of compensation;

14 (5) the revenue that the state received in the
15 preceding month by source, such as type of tax, fee, fine,
16 administrative fee or other collection category;

17 (6) special appropriations received outside
18 the general appropriation act by each state agency and the
19 purpose of those appropriations;

20 (7) approved budget adjustment requests by
21 state agency and affected budget category;

22 (8) quarterly consensus revenue estimates;

23 (9) reversions and cash balances by state
24 agency and fund;

25 (10) appropriations for capital projects,

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1 identified by project location, type of project and funding
2 source;

3 (11) a directory of all employee positions,
4 other than exempt employee positions, identified only by state
5 agency, position title and salary;

6 (12) a directory of all exempt employee
7 positions, identified by state agency, position title, salary
8 and the name of the individual that holds the position;

9 (13) information relating to local education
10 providers compiled and published by the public education
11 department pursuant to Section 10-16D-6 NMSA 1978;

12 (14) a link to an open meeting tracker web
13 site upon which each state agency shall post open meetings
14 scheduled for the current month and the next month, including
15 the time and place of the meeting, the subject of the meeting
16 and an agenda;

17 (15) a link to the web site maintained by the
18 regulation and licensing department for the purpose of
19 accessing information relating to occupational licenses;

20 (16) a link to the state auditor's web site
21 for the purpose of accessing financial audits;

22 (17) a link to New Mexico's statutes;

23 (18) a link to the New Mexico Administrative
24 Code;

25 (19) a link to the secretary of state's web

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1 sites for lobbyist regulation;

2 (20) an annual summary within three months
3 after the end of the fiscal year, or as soon thereafter as the
4 information becomes available, of the state's fiscal health,
5 including the state budget, revenues and expenditures for the
6 previous fiscal year and projected revenues and operating
7 budgets for the current fiscal year; and

8 (21) additional information, as required by
9 rule of the department of finance and administration, that will
10 assist the public in understanding state government operations
11 and the use of taxpayer dollars.

12 E. State agencies shall provide updated financial
13 information as frequently as possible but at least monthly.

14 F. The department shall update the web site as new
15 information is received but at least monthly, include
16 information from the previous month or year, where relevant,
17 for comparison purposes and maintain the web site as the
18 primary source of public information about the activity of the
19 state government."

20 **SECTION 2.** Section 13-1-170 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 143, as amended by Laws 1997, Chapter 104,
22 Section 2 and also by Laws 1997, Chapter 222, Section 2) is
23 amended to read:

24 "13-1-170. UNIFORM CONTRACT CLAUSES.--

25 A. A state agency, local public body or central

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1 purchasing office with the power to issue regulations may
2 require by regulation that contracts include uniform clauses
3 providing for termination of contracts, adjustments in prices,
4 adjustments in time of performance or other contract provisions
5 as appropriate, including but not limited to the following
6 subjects:

7 (1) the unilateral right of a state agency or
8 a local public body to order in writing:

9 (a) changes in the work within the scope
10 of the contract; and

11 (b) temporary stoppage of the work or
12 the delay of performance;

13 (2) variations occurring between estimated
14 quantities of work in a contract and actual quantities;

15 (3) liquidated damages;

16 (4) permissible excuses for delay or
17 nonperformance;

18 (5) termination of the contract for default;

19 (6) termination of the contract in whole or in
20 part for the convenience of the state agency or a local public
21 body;

22 (7) assignment clauses providing for the
23 assignment by the contractor to the state agency or a local
24 public body of causes of action for violation of state or
25 federal antitrust statutes;

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1 (8) identification of subcontractors by
2 bidders in bids; and

3 (9) uniform subcontract clauses in contracts.

4 B. A state agency, local public body or central
5 purchasing office with the power to issue regulations shall
6 require by regulation that contracts include a clause imposing
7 late payment charges against the state agency or local public
8 body in the amount and under the conditions stated in Section
9 13-1-158 NMSA 1978.

10 C. A state agency, local public body or central
11 purchasing office with the power to issue regulations shall
12 require by regulation that contracts include:

13 (1) a clause requiring that the contractor
14 maintain all records relating to the contract and providing
15 that those records are public records subject to the Inspection
16 of Public Records Act and shall be made available upon request
17 to the state agency, local public body or central purchasing
18 office without charge; and

19 (2) a clause providing that a meeting between
20 the contractor and a policymaking body of the state agency,
21 local public body or central purchasing office is subject to
22 the Open Meetings Act."

23 SECTION 3. A new section of the Procurement Code is
24 enacted to read:

25 "[NEW MATERIAL] OUTSOURCING CONTRACTS--COST ANALYSES--
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1 COMPLIANCE--WAGES--PARTICULAR PROVISIONS.--Prior to a state
2 agency or local public body entering into a contract for
3 services that will replace the provision of similar services by
4 public employees, the state agency or local public body shall:

5 A. conduct an analysis comparing the internal cost
6 of providing the services by an independent contractor with the
7 cost of continuing the provision of the services by public
8 employees. For the purpose of this section, "cost" includes
9 wages or salary, health and other fringe benefits and the
10 proportional share of administrative and material costs for
11 support of employees performing the services. A state agency
12 or local public body shall not enter into a contract for the
13 services if the analysis reveals that cost savings resulting
14 from contracting for the services is less than ten percent of
15 the cost of the provision of the services by a public employee;

16 B. if the analysis conducted pursuant to Subsection
17 A of this section reveals a cost savings of more than ten
18 percent, permit the public employees whose services are
19 proposed to be replaced by an independent contractor, or the
20 public employees' authorized representative pursuant to the
21 Public Employee Bargaining Act, to review the analysis and to
22 present their recommendations for cost savings and quality
23 control in order to make the proposed contract unnecessary.
24 The state agency or local public body shall provide a written
25 response to the public employees concerning their

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1 recommendations, explaining the reasons for accepting or
2 rejecting them;

3 C. conduct an analysis assessing the external cost
4 of providing the services by an independent contractor. For
5 the purpose of this section, "external cost" includes the
6 impact on employment and income, social services, public
7 assistance, businesses, tax revenue and the natural environment
8 in the local area where the services are performed. The
9 analysis process shall include a description of the local area
10 assessed and the reasoning for selecting that local area, a
11 notice to residents and businesses in that local area regarding
12 the proposed contract and an opportunity for those receiving
13 notice to be heard on the matter. The completed analysis shall
14 be posted on the contracting state agency or local public
15 body's web site or the web site used by that entity;

16 D. require a potential contractor to attest under
17 penalty of perjury that the contractor is in compliance with
18 all federal and state laws applicable to the contractor,
19 including tax, health, safety, labor and licensing laws;

20 E. if the state agency or local public body decides
21 to proceed with a contract, require the potential contractor to
22 pay its employees performing the replaced services a wage or
23 salary equal to the wage or salary paid to the public employees
24 performing the services immediately prior to the beginning of
25 the contract term and to provide health benefits comparable to

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1 those offered to the public employees performing the services
2 immediately prior to the beginning of the contract term; and

3 F. provide, when appropriate based on the nature of
4 the services, in an invitation for bids or request for
5 proposals, that the contract shall:

6 (1) not guarantee an occupancy rate;

7 (2) not prohibit the state agency or local
8 public body from maintaining, operating, improving or building
9 public infrastructure;

10 (3) not penalize the state agency or local
11 public body if the contractor loses revenue or does not meet
12 its revenue projections unless the loss or failure of
13 expectation is due to a breach of contract by the state agency
14 or local public body; and

15 (4) provide that any increase in fees or
16 charges allowed for the public service to be provided by the
17 contract must be approved by the state agency or local public
18 body."

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