

HOUSE BILL 160

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

INTRODUCED BY

Linda Serrato and Antonio Maestas

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC PURCHASING; ENACTING THE HISTORICALLY UNDERUTILIZED BUSINESS OPPORTUNITY ACT; PROVIDING ADDITIONAL DUTIES FOR STATE AGENCIES; ENCOURAGING STATE AGENCIES TO USE HISTORICALLY UNDERUTILIZED BUSINESSES ~~H AFC~~ ~~MAKING AN~~ ~~APPROPRIATION~~ ~~H AFC~~ .

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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through 5 of this act may be cited as the "Historically Underutilized Business Opportunity Act".

**SECTION 2.** [NEW MATERIAL] PURPOSE.--The purpose of the Historically Underutilized Business Opportunity Act is to stimulate economic development and job creation by promoting full and equal business opportunities for all businesses by encouraging and setting goals for the use of historically underutilized businesses by state agencies in all public purchasing decisions and collecting data on the usage of historically underutilized businesses by state agencies. The Historically Underutilized Business Opportunity Act does not inhibit or prevent purchases of goods and services from businesses that are otherwise qualified to provide such goods and services.

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

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

(1) it has an average gross revenue for the preceding three calendar years that does not exceed five million dollars (\$5,000,000), as reported to the taxation and

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revenue department, or an average number of employees in New Mexico for the preceding three calendar years that does not exceed fifty;

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

(3) as certified by the taxation and revenue department, more than fifty percent of the business is owned by women or persons who are members of one or more of the following communities of color: African American, Latino or Hispanic, Asian, Pacific Islander, Native American or Alaska Native;

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

C. "qualified facilitating nonprofit entity" means a nonprofit entity that is organized to promote and enhance economic development opportunities; that can also provide business and workforce education with expertise in assisting historically underutilized businesses; and that is approved by the general services department to assist in the identification of qualified applicants for certification and to assist applicants in applying for and maintaining certification as a

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historically underutilized business, including precertification screening of eligibility, appeal of a denial or revocation of certification and recertification; and

D. "state agency" means any department, commission, council, board, committee, institution, agency, government corporation or educational institution, including any office or officer of the above, that procures, purchases, rents, leases or otherwise acquires items of tangible personal property, services or construction, but does not include the legislative or judicial branch or local public bodies.

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

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

B. The general services department shall develop an online, searchable database of businesses certified as

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historically underutilized businesses and establish procedures to qualify nonprofit entities as qualified facilitating nonprofit entities.

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

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

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

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

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

(3) the total number and corresponding dollar amount of state agency contracts awarded to contractors and the total number and corresponding dollar amount of state agency contracts awarded directly or indirectly through subcontracts

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to historically underutilized businesses; and

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

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

(1) posting the report to the website of the general services department and the sunshine portal; and

(2) providing a copy of the report to the legislative finance committee.

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

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

Agency-specific goals shall be based on:

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

(2) the availability of historically underutilized businesses;

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

(4) other relevant factors as determined by

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the state agency;

B. shall require respondents to:

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

(2) upon project completion, report any subcontract made to a historically underutilized business for the purchase of goods or services and report the total dollar amount of payments issued pursuant to that subcontract;

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

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

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

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

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

B. the attorney general, return information

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acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

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

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

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

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

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

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

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

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

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

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department

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with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978;

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

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

(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily

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available in reports for which the department's information systems are programmed; and

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

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

P. the secretary of finance and administration or the secretary's designee, return information concerning a credit pursuant to the Film Production Tax Credit Act;

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

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

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

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

U. the secretary of environment or the secretary's

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designee, return information concerning tax credits for which eligibility is certified or otherwise determined by the secretary or the secretary's designee; and

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

~~H AFC → SECTION 7. APPROPRIATION. --~~

~~A. Two hundred forty thousand dollars (\$240,000) is appropriated from the general fund for expenditure in fiscal year 2023 as follows:~~

~~(1) one hundred twenty thousand dollars (\$120,000) to the general services department to fund one additional full-time-equivalent position to administer the provisions of the Historically Underutilized Business Opportunity Act; and~~

~~(2) one hundred twenty thousand dollars (\$120,000) to the taxation and revenue department to fund one additional full-time-equivalent position to administer the provisions of the Historically Underutilized Business Opportunity Act.~~

~~B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the general fund.~~ ←H AFC