

LFC Requester:	Anne Hanika-Ortiz
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 12 January 2015
Bill No: SB 69

Sponsor: Sen. Michael Padilla
Short Title: Resident Business Set-Aside Act

Agency Code: Attorney General's Office
Person Writing: Luis Carrasco, Asst. Atty. Gen.
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

Senate Bill 69 (“SB69”) is an act requiring that state government entities invite and accept bids from, and make awards to, only certain New Mexico businesses relative to at least 33% of its total awarded contracts for goods, equipment, construction or services. Under SB69, each government entity subject to its provisions are required to consult with the General Services Department (“GSD”) to create an annual plan for achieving its requirements and purpose. Prior to soliciting bids and proposals for these types of contracts, a government entity, with consultation with GSD, may designate an entire contract, or a portion thereof, to be available to only certain New Mexico businesses when there is a reasonable expectation that bids may be obtained from at least 3 qualified New Mexico businesses that are able to furnish the goods, equipment, construction or services required at a fair and reasonable price. Where the government entity and GSD agree about making such a designation for a particular contract, SB69 places responsibility for resolving the dispute with the State Auditor. SB69 provides an exception to its provisions where its implementation would “jeopardize the state’s participation in a program from which the state received federal funds or other benefits[.]”

SB69 imposes certain requirements on New Mexico businesses in order to be eligible to bid and receive contracts designated to be set-aside under its terms. Those requirements include submitting an application to the Taxation and Revenue Department (“TRD”) containing: (1) an affidavit from a certified public accountant, licensed attorney or enrolled agent authorized to practice before the IRS making certain representations about the business’ licensure, residency and taxation status, the owner’s residency and taxation status, the residency status of the business’ personnel, and any reorganization the business may have undergone. Similar information for those entities seeking “resident contractor” state is required to be provided on their applications to the TRD, which exercises some discretion in exercising its authority to issue certifications of a business’ eligibility to bid for and receive contracts set aside for resident businesses. An appeal process for denials by TRD is provided for in SB69. Providing false information to obtain a certification or failing to perform work required under a set-aside contract, under SB69’s provisions, may result in a business or contractor’s ineligibility to receive a certification for a period of 5 years and the imposition of an administrative penalty up to \$50,000.00 for each violation. Decisions by the TRD are appealable to the district courts of the state.

SB69 further authorizes TRD to assess reasonable fees for the issuance of resident business/contractor certifications, which are not to exceed the actual cost of administering TRD's responsibilities thereunder. The State Auditor is granted authority to audit or review the issuance/validity of certificates issued by TRD. Section 6 of SB69 mandates that government entities subject to its provisions submit an annual report, by a GSD established deadline, to GSD, containing specified information. GSD is then required to compile the information contained in those reports and submit its own annual report to the governor and legislature to demonstrate whether SB69's purpose and directives were met during the preceding fiscal year. GSD is further mandated to consult at least every six months with representatives from industries affected by SB69, and to promulgate rules necessary to implement its provisions.

FISCAL IMPLICATIONS

As a government entity who would be subject to SB69's requirements, additional duties are imposed on the Attorney General's Office ("AGO") relative to the issuance of contracts and requiring the expenditure of additional resources, including staff time. However, no appropriations to compensate government entities for these expenditures are provided for by SB69.

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

As noted above, government entities subject to SB69's provisions, including the AGO, will be required to expend more resources in order to comply with its provisions, without any appropriation or other mechanism to compensate for such expenditures. In sum, government entities will be required to perform more work with the same amount of resources, which may result in diminished agency performance.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

SB69's definition of "contracting agency" does not explicitly indicate whether the state's educational institutions, including those designated in the New Mexico constitution, are to be included within the definition. SB69 does not contain a definition for "resident contractor" and it is not clear whether "resident contractors" are intended to have a separate status from, or be included within, the definition of "resident business." If resident contractors are to have the same status as a resident business, it may be helpful to make that explicit and/or to reference resident contractors whenever resident businesses are discussed. Section 5(A)(3) and (B)(3) do not indicate for how many immediately preceding years a relocated businesses' personnel must have

been residents of the state for purposes of designation as a resident business or contractor. Use of the word “has” at page 5, line 7 and page 6, line 24 may be incorrect.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain, and government entities will have no obligation to restrict any portion of their total contract awards to resident businesses or contractors.

AMENDMENTS

N/A