



State of New Mexico  
April 8, 2011

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OFFICE OF  
SECRETARY OF STATE

Susana Martinez  
Governor

SENATE EXECUTIVE MESSAGE NO. 45

The Honorable Timothy Z. Jennings, President Pro Tempore  
And Members of the New Mexico State Senate  
State Capitol Building  
Santa Fe, New Mexico 87501

Dear President Pro Tempore Jennings and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR SENATE BILL 19, as amended, enacted by the Fiftieth Legislature, First Session, 2011

This bill modifies New Mexico's procurement code to tighten the definition of a "resident business" for the purpose of ensuring that only in-state businesses are receiving a five percent preference in the award of bids.

I am a strong advocate for helping in-state businesses compete for government projects. However, during the legislative review process, a **fatal flaw** in the bill was identified that **would subject many private small businesses to the State's procurement code, which is intended ONLY for government purchases.** This new and unprecedented regulation could drive jobs out of the state and make it more difficult to entice new companies to New Mexico. This likely is an unintended drafting error.

I am committed to working with the bill's sponsors to fight for New Mexico's small businesses in the special session and I remain eager to sign legislation that would ensure that New Mexico businesses receive five percent preference on state government contracts.

Respectfully yours,

Susana Martinez  
Governor

SENATE EXECUTIVE MESSAGE NO. 45  
The Honorable Timothy Z. Jennings  
April 8, 2011  
Page 2

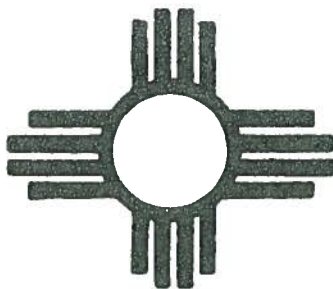
RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 8:56 a.m. p.m.  
Date: April 8 2011

By Bidy Ue  
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_ 2011

By \_\_\_\_\_  
Chief Clerk of the Senate



The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

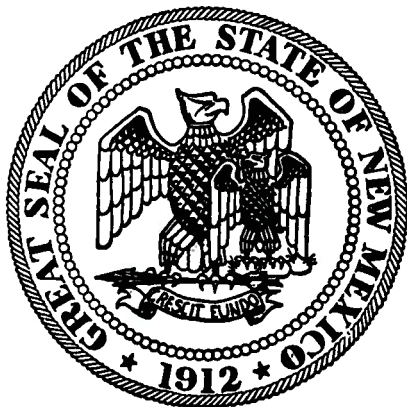
CHAPTER

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR

SENATE BILL 19, as amended

Introduced by

**VETOED**



1 AN ACT

2 RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE  
3 FOR IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT  
4 BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR  
5 OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT  
6 CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT  
7 MANUFACTURERS AND NEW YORK STATE BUSINESSES; PROVIDING  
8 PENALTIES; REPEALING SECTION 13-1-21.2 NMSA 1978 (BEING LAWS  
9 1997, CHAPTER 1, SECTION 1 AND LAWS 1997, CHAPTER 2,  
10 SECTION 1).

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,  
14 Chapter 72, Section 1, as amended) is amended to read:

15 "13-1-21. APPLICATION OF PREFERENCES.--

16 A. For the purposes of this section:

17 (1) "business" means a commercial enterprise  
18 carried on for the purpose of selling goods or services,  
19 including growing, producing, processing or distributing  
20 agricultural products for profit;

21 (2) "public body" means the executive,  
22 legislative and judicial branches of state and local  
23 governments, the New Mexico hospital equipment loan council,  
24 entities on state-owned land and all agencies or entities  
25 created by the constitution of New Mexico or any branch of

1 government that receives public funding, including political  
2 subdivisions, home rule municipalities, special taxing  
3 districts, school districts and institutions of higher  
4 education;

5 (3) "resident business" means a business  
6 that has a valid resident business certificate issued by the  
7 taxation and revenue department pursuant to Section 13-1-22  
8 NMSA 1978; and

9 (4) "recycled content goods" means supplies  
10 and materials composed twenty-five percent or more of  
11 recycled materials; provided that the recycled materials  
12 content meets or exceeds the minimum content standards  
13 required by bid specifications.

14 B. When a public body makes a purchase using a  
15 formal bid process, the public body shall deem the bids  
16 submitted by resident businesses to be five percent lower  
17 than the bids actually submitted.

18 C. When a public body makes a purchase using a  
19 formal request for proposals process:

20 (1) five percent of the relative weight of  
21 all the factors used in evaluating the proposals shall be  
22 based on whether the proposal was submitted by a resident  
23 business; or

24 (2) if the contract is awarded based on a  
25 point-based system, resident businesses shall be awarded the

1 equivalent of five percent of the total possible points to be  
2 awarded.

3 D. When a joint bid or joint proposal is submitted  
4 by both resident and nonresident businesses, the resident  
5 business preference provided pursuant to Subsection B or C of  
6 this section shall be reduced in proportion to the percentage  
7 of the contract, based on the dollar amount of the goods or  
8 services provided under the contract, that will be performed  
9 by a nonresident business as specified in the joint bid or  
10 proposal.

11 E. When bids are received for both recycled  
12 content goods and nonrecycled content goods, the public body  
13 shall deem the bids submitted for recycled content goods of  
14 equal quality to be five percent lower than the bids actually  
15 submitted. A bid calculation pursuant to this subsection for  
16 a resident business shall not also receive the bid  
17 calculation preference pursuant to Subsection B of this  
18 section.

19 F. The procedures provided in Sections 13-1-172  
20 through 13-1-183 NMSA 1978 apply to a protest to a public  
21 body concerning the awarding of a contract in violation of  
22 this section.

23 G. This section shall not apply when the  
24 expenditure includes federal funds for a specific purchase."

25 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,

1 Chapter 184, Section 1, as amended) is amended to read:

2 "13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR  
3 CERTIFICATION.--

4 A. To receive a resident business preference  
5 pursuant to Section 13-1-21 NMSA 1978 or a resident  
6 contractor preference pursuant to Section 13-4-2 NMSA 1978, a  
7 business or contractor shall submit with its bid or proposal  
8 a copy of a valid resident business certificate or valid  
9 resident contractor certificate issued by the taxation and  
10 revenue department.

11 B. An application for a resident business  
12 certificate shall include an affidavit from a certified  
13 public accountant setting forth that the business is  
14 authorized to do and is doing business under the laws of this  
15 state and that:

16 (1) the business has paid property taxes or  
17 rent on real property in New Mexico and paid at least one  
18 other tax administered by the taxation and revenue department  
19 in each of the three years immediately preceding the  
20 submission of the affidavit;

21 (2) if the business is an entrepreneur's  
22 business, the entrepreneur owns a majority of the business  
23 and has resided in New Mexico during the five-year period  
24 immediately preceding the submission of the affidavit and has  
25 not applied for a resident business or resident contractor

1 certificate pursuant to this section during that time period;

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

10 (4) if the business has changed its name  
11 from that of a previously certified business, the business is  
12 identical in every way to the previously certified business  
13 that meets all criteria.

14 C. An application for a resident contractor  
15 certificate shall include an affidavit from a certified  
16 public accountant setting forth that the contractor is  
17 currently licensed in this state and that:

18 (1) the contractor has:

19 (a) registered with the state at least  
20 one vehicle; and

21 (b) in each of the five years  
22 immediately preceding the submission of the affidavit:

23 1) paid property taxes or rent on real property in New Mexico  
24 and paid at least one other tax administered by the taxation  
25 and revenue department; and 2) unless the contractor is a



1 legacy contractor, paid unemployment compensation on at least  
2 three full-time employees who are residents of the state;

3 (2) if the contractor is an entrepreneur,  
4 the entrepreneur owns a majority of the business and has  
5 resided in New Mexico during the five-year period immediately  
6 preceding the submission of the affidavit and has not applied  
7 for a resident business or resident contractor certificate  
8 pursuant to this section during that time period;

9 (3) if the contractor is a relocated  
10 business, at least eighty percent of the total personnel of  
11 the business in the year immediately preceding the submission  
12 of the affidavit were residents of New Mexico and that, prior  
13 to the submission of the affidavit, the contractor either  
14 leased property for ten years or purchased property greater  
15 than one hundred thousand dollars (\$100,000) in value in New  
16 Mexico;

17 (4) if the contractor has changed its name  
18 from that of a previously certified contractor, the  
19 contractor is identical in every way to the previously  
20 certified contractor that meets all criteria; or

21 (5) if the contractor is a legacy  
22 contractor, the requirement of at least three full-time  
23 employees who are residents of the state is waived.

24 D. The taxation and revenue department shall  
25 prescribe the form and content of the application and

1 required affidavit. The taxation and revenue department  
2 shall examine the application and affidavit and, if  
3 necessary, may seek additional information to ensure that the  
4 business or contractor is eligible to receive the certificate  
5 pursuant to the provisions of this section. If all is in  
6 order, the taxation and revenue department shall issue a  
7 certificate within thirty days of the submission of an  
8 application. A certificate is valid for three years from the  
9 date of its issuance; provided that if there is a change of  
10 ownership of more than fifty percent, a resident business or  
11 resident contractor shall reapply for a certificate.

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

20 F. The taxation and revenue department may assess  
21 a reasonable fee for the issuance of a certificate to cover  
22 the costs of administering the taxation and revenue  
23 department's duties pursuant to this section.

24 G. The state auditor may audit or review the  
25 issuance or validity of certificates.

1 H. For purposes of this section:

2 (1) "entrepreneur" means a person who is an  
3 owner and operator of an entirely new business that did not  
4 exist in any form and that has been in existence for less  
5 than five years;

6 (2) "legacy contractor" means a construction  
7 business that has been licensed in this state and owned by a  
8 resident for ten consecutive years; and

9 (3) "relocated business" means a business  
10 that moved its principal place of business from another state  
11 to New Mexico in the past five years."

12 SECTION 3. Section 13-1-103 NMSA 1978 (being Laws 1984,  
13 Chapter 65, Section 76, as amended) is amended to read:

14 "13-1-103. INVITATION FOR BIDS.--

15 A. An invitation for bids shall be issued and  
16 shall include the specifications for the services,  
17 construction or items of tangible personal property to be  
18 procured, all contractual terms and conditions applicable to  
19 the procurement, the location where bids are to be received,  
20 the date, time and place of the bid opening and the  
21 requirements for complying with any applicable in-state  
22 preference provisions as provided by law.

23 B. If the procurement is to be by sealed bid  
24 without electronic submission, the invitation for bids shall  
25 include the location where bids are to be received and the

1 date, time and place of the bid opening.

2 C. If the procurement is to be by sealed bid with  
3 part or all of the bid to be submitted electronically, the  
4 invitation for bids shall comply with the requirements of  
5 Section 13-1-95.1 NMSA 1978."

6 SECTION 4. Section 13-1-112 NMSA 1978 (being Laws 1984,  
7 Chapter 65, Section 85, as amended) is amended to read:

8 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR  
9 PROPOSALS.--

10 A. Competitive sealed proposals, including  
11 competitive qualifications-based proposals, shall be  
12 solicited through a request for proposals that shall be  
13 issued and shall include:

14 (1) the specifications for the services or  
15 items of tangible personal property to be procured;

16 (2) all contractual terms and conditions  
17 applicable to the procurement;

18 (3) the form for disclosure of campaign  
19 contributions given by prospective contractors to applicable  
20 public officials pursuant to Section 13-1-191.1 NMSA 1978;

21 (4) the location where proposals are to be  
22 received and the date, time and place where proposals are to  
23 be received and reviewed; and

24 (5) the requirements for complying with any  
25 applicable in-state preference provisions as provided by law.

1           B. A request for proposals may, pursuant to  
2 Section 13-1-95.1 NMSA 1978, require that all or a portion of  
3 a responsive proposal be submitted electronically.

4           C. In the case of requests for competitive  
5 qualifications-based proposals, price shall be determined by  
6 formal negotiations related to scope of work."

7           SECTION 5. Section 13-1-178 NMSA 1978 (being Laws 1984,  
8 Chapter 65, Section 151) is amended to read:

9           "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME  
10 LIMIT.--The causes for debarment or suspension occurring  
11 within three years of a procurement include but are not  
12 limited to the following:

13           A. conviction of a bidder, offeror or contractor  
14 for commission of a criminal offense related to obtaining or  
15 attempting to obtain a public or private contract or  
16 subcontract, or in the performance of such contract or  
17 subcontract;

18           B. conviction of a bidder, offeror or contractor  
19 under state or federal statutes of embezzlement, theft,  
20 forgery, bribery, falsification or destruction of records or  
21 receiving stolen property;

22           C. conviction of a bidder, offeror or contractor  
23 under state or federal antitrust statutes arising out of the  
24 submission of bids or proposals;

25           D. violation by a bidder, offeror or contractor of

1 contract provisions, as set forth in this subsection, of a  
2 character that is reasonably regarded by the state purchasing  
3 agent or a central purchasing office to be so serious as to  
4 justify suspension or debarment action:

5 (1) willful failure to perform in accordance  
6 with one or more contracts, provided that this failure has  
7 occurred within a reasonable time preceding the decision to  
8 impose debarment; or

9 (2) a history of failure to perform or of  
10 unsatisfactory performance of one or more contracts, provided  
11 that this failure or unsatisfactory performance has occurred  
12 within a reasonable time preceding the decision to impose  
13 debarment and provided further that failure to perform or  
14 unsatisfactory performance caused by acts beyond the control  
15 of the contractor shall not be considered to be a basis for  
16 debarment;

17 E. any other cause occurring within three years of  
18 a procurement that the state purchasing agent or a central  
19 purchasing office determines to be so serious and compelling  
20 as to affect responsibility as a contractor;

21 F. willful violation by a bidder, offeror or  
22 contractor of the provisions of the Procurement Code within  
23 three years of a procurement; or

24 G. providing false information in order to obtain  
25 a preference for contract certificate pursuant to Section

1 13-1-22 NMSA 1978 or using a certificate to obtain a resident  
2 business or resident contractor preference for a bid or  
3 proposal and failing to perform the percentage of the  
4 contract specified in the bid or proposal."

5 SECTION 6. Section 13-4-2 NMSA 1978 (being Laws 1984,  
6 Chapter 66, Section 2, as amended) is amended to read:

7 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF  
8 PREFERENCE.--

9 A. For the purposes of this section:

10 (1) "public body" means the executive,  
11 legislative and judicial branches of state and local  
12 governments, the New Mexico hospital equipment loan council,  
13 entities on state-owned land and all agencies or entities  
14 created by the constitution of New Mexico or any agency or  
15 entity that receives public funding, including political  
16 subdivisions, home rule municipalities, special taxing  
17 districts, school districts and institutions of higher  
18 education;

19 (2) "public works contract" means a contract  
20 for construction, construction management, architectural,  
21 landscape architectural, engineering, surveying or interior  
22 design services; and

23 (3) "resident contractor" means any person,  
24 firm, corporation or other legal entity that has a valid  
25 resident contractor certificate issued by the taxation and

1 revenue department pursuant to Section 13-1-22 NMSA 1978.

2 B. For the purpose of awarding a public works  
3 contract, a public body shall deem the bids submitted by  
4 resident contractors to be five percent lower than the bids  
5 actually submitted.

6 C. When a public body awards a contract using a  
7 formal request for proposals process:

8 (1) five percent of the relative weight of  
9 all the factors used in evaluating the proposals shall be  
10 based on whether the proposal was submitted by a resident  
11 contractor; or

12 (2) if the contract is awarded based on a  
13 point-based system, resident contractors shall be awarded the  
14 equivalent of five percent of the total possible points to be  
15 awarded.

16 D. When a joint bid or joint proposal is submitted  
17 by both resident and nonresident contractors, the resident  
18 contractor preference provided pursuant to Subsection B or C  
19 of this section shall be reduced in proportion to the  
20 percentage of the contract, based on the dollar amount of the  
21 goods or services provided under the contract, that will be  
22 performed by a nonresident contractor as specified in the  
23 joint bid or joint proposal.

24 E. The procedures provided in Sections 13-1-172  
25 through 13-1-183 NMSA 1978 apply to a protest to a public



1 body concerning the awarding of a contract in violation of  
2 this section."

3 SECTION 7. Section 13-4-5 NMSA 1978 (being Laws 1933,  
4 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,  
5 Section 4 and also by Laws 1997, Chapter 2, Section 4) is  
6 amended to read:

7 "13-4-5. USE OF NEW MEXICO MATERIALS.--In all public  
8 works within New Mexico, whether constructed or maintained by  
9 the state or by a department, board or commission of the  
10 state or by any political subdivision of the state, or in any  
11 construction or maintenance to which the state or any  
12 political subdivision of the state has granted aid,  
13 preference shall be given to materials produced, grown,  
14 processed or manufactured in New Mexico by citizens or  
15 residents of New Mexico. In any case where, in the judgment  
16 of the different officers, boards, commissions or other  
17 authorities in this state vested with the power of  
18 contracting for material used in the construction or  
19 maintenance of public works referred to in this section, it  
20 appears that an attempt is being made by producers, growers,  
21 processors or manufacturers in the state to form a trust or  
22 combination of any kind for the purpose of fixing or  
23 regulating the price of materials to be used in any public  
24 works to the detriment of or loss to the state, the  
25 provisions of this section shall not apply."

1 SECTION 8. A new section of the Procurement Code is  
2 enacted to read:

3 "FALSE CERTIFICATION--FAILURE TO PERFORM--ADDITIONAL  
4 CIVIL PENALTY.--Upon a showing that a business or contractor  
5 provided false information to the taxation and revenue  
6 department in order to obtain a certificate pursuant to  
7 Section 13-1-22 NMSA 1978 or that a business or contractor  
8 used a certificate to obtain a resident business or resident  
9 contractor preference for a bid or proposal and the resident  
10 business or contractor did not perform the percentage of the  
11 contract specified in the bid or proposal, the business or  
12 contractor is subject to a civil penalty of up to fifty  
13 thousand dollars (\$50,000) for each violation in addition to  
14 and pursuant to the terms and conditions of Section 13-1-196  
15 NMSA 1978."

16 SECTION 9. TEMPORARY PROVISION.--A certification as a  
17 resident business or resident manufacturer by the general  
18 services department that is in effect on June 30, 2011 is  
19 valid until January 1, 2012 for the purpose of obtaining a  
20 resident business preference pursuant to Section 13-1-21 NMSA  
21 1978. A certification as a resident contractor by the  
22 general services department that is in effect on  
23 June 30, 2011 is valid until January 1, 2012 for the purpose  
24 of obtaining a resident contractor preference pursuant to  
25 Section 13-4-2 NMSA 1978. After January 1, 2012, a



s/John A. Sanchez  
John A. Sanchez, President  
Senate

s/Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

s/Ben Lujan  
Ben Lujan, Speaker  
House of Representatives

s/Stephen R. Arias  
Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011

s/Governor Susana Martinez  
Governor Susana Martinez  
State of New Mexico