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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ECONOMIC DEVELOPMENT INCENTIVES; REQUIRING
RECIPIENTS OF PUBLIC SUPPORT FROM THE STATE PURSUANT TO THE
LOCAL ECONOMIC DEVELOPMENT ACT TO REPORT JOB CREATION AND
CAPITAL INVESTMENT INFORMATION; AUTHORIZING THE REVEAL OF
TAXPAYER RETURN INFORMATION TO STATE PROFESSIONAL ECONOMISTS
FOR CERTAIN PURPOSES; IMPOSING A PENALTY ON A PERSON THAT
ATTEMPTS TO DIRECT OR COERCE A PERSON TO REVEAL CONFIDENTIAL
TAXPAYER RETURN INFORMATION; REQUIRING THE ECONOMIC DEVELOPMENT
DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT TO PROVIDE
INFORMATION TO STATE PROFESSIONAL ECONOMISTS FOR PURPOSES OF
EVALUATING TAX EXPENDITURES AND OTHER ECONOMIC DEVELOPMENT
INCENTIVES; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Local Economic

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1 Development Act is enacted to read:

2 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

3 A. A qualifying entity that receives public support
4 provided by the state to a local or regional government shall,
5 prior to April 1 of each year for five years following
6 receiving public support, report to the department the number
7 of new full-time economic base jobs created in the previous
8 calendar year, the total annual wages and salaries for those
9 jobs and any capital investments made in the previous calendar
10 year. Prior to August 1 of each year, the department shall
11 compile the annual reports and submit the compilation to the
12 legislative finance committee and the department of finance and
13 administration.

14 B. As used in this section, "new full-time economic
15 base job" means a job:

16 (1) that is primarily performed in New Mexico;

17 (2) that is held by an employee who is hired
18 to work an average of at least thirty-two hours per week for at
19 least forty-eight weeks per year;

20 (3) that is:

21 (a) involved, directly or in a
22 supervisory capacity, with the production of: 1) a service;
23 provided that the majority of the revenue generated from the
24 service is from sources outside the state; or 2) tangible or
25 intangible personal property for sale; or

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1 (b) held by an employee that is employed
2 at a regional, national or international headquarters operation
3 or at an operation that primarily provides services for other
4 operations of the qualifying entity that are located outside
5 the state;

6 (4) that is created as a direct result of the
7 public support provided by the state and that would not have
8 been created in the state but for the public support, as
9 determined by the qualifying entity; and

10 (5) that is not directly involved with natural
11 resources extraction or processing, on-site services where the
12 customer is present for the delivery of the service, retail,
13 construction or agriculture except for value-added processing
14 performed on agricultural products that would then be sold for
15 wholesale or retail consumption."

16 SECTION 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 13, as amended) is amended to read:

18 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
19 INFORMATION.--

20 A. It is unlawful for any person other than the
21 taxpayer to reveal to any other person the taxpayer's return or
22 return information, except as provided in Sections 7-1-8.1
23 through [~~7-1-8.11~~] 7-1-8.12 NMSA 1978.

24 B. A return or return information revealed [~~under~~]
25 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA

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1 1978:

2 (1) may only be revealed to a person
3 specifically authorized to receive the return or return
4 information and the employees, directors, officers and agents
5 of such person whose official duties or duties in the course of
6 their employment require the return or return information and
7 to an employee of the department;

8 (2) may only be revealed for the authorized
9 purpose and only to the extent necessary to perform that
10 authorized purpose;

11 (3) shall at all times be protected from being
12 revealed to an unauthorized person by physical, electronic or
13 any other safeguards specified by directive by the secretary;
14 and

15 (4) shall be returned to the secretary or the
16 secretary's delegate or destroyed as soon as it is no longer
17 required for the authorized purpose.

18 C. If any provision of Sections 7-1-8.1 through
19 [~~7-1-8.11~~] 7-1-8.12 NMSA 1978 requires that a return or return
20 information will only be revealed pursuant to a written
21 agreement between a person and the department, the written
22 agreement shall:

23 (1) list the name and position of any official
24 or employee of the person to whom a return or return
25 information is authorized to be revealed under the provision;

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1 (2) describe the specific purpose for which
2 the return or return information is to be used;

3 (3) describe the procedures and safeguards the
4 person has in place to ensure that the requirements of
5 Subsection B of this section are met; and

6 (4) provide for reimbursement to the
7 department for all costs incurred by the department in
8 supplying the returns or return information to, and
9 administering the agreement with, the person.

10 D. A return or return information that is lawfully
11 made public by an employee of the department or any other
12 person, or that is made public by the taxpayer, is not subject
13 to the provisions of this section once it is made public."

14 SECTION 3. A new Section 7-1-8.12 NMSA 1978 is enacted to
15 read:

16 "7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE
17 REVEALED TO STATE PROFESSIONAL ECONOMISTS OF THE LEGISLATIVE
18 FINANCE COMMITTEE AND THE DEPARTMENT OF FINANCE AND
19 ADMINISTRATION.--

20 A. An employee of the department may reveal to a
21 state professional economist return information for purposes
22 provided in this section.

23 B. Upon written request by a state professional
24 economist, including by electronic means, the department shall
25 provide return information except that to which access is

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1 prohibited by federal law. In cases where access is prohibited
2 by federal law, and upon an additional request by a state
3 professional economist, the department shall provide the
4 requested return information, redacting any prohibited
5 information.

6 C. If the information requested pursuant to
7 Subsection B of this section is available in an electronic
8 format, the information shall be provided in an editable
9 electronic format available for viewing and editing in software
10 available to the state professional economist.

11 D. The department shall provide visible and clearly
12 marked notification of confidential return information provided
13 to a state professional economist pursuant to this section. A
14 state professional economist shall not reveal such return
15 information unless the information is aggregated to at least
16 three businesses.

17 E. A state professional economist is prohibited
18 from requesting or using return information received pursuant
19 to this section for any purpose other than to:

20 (1) improve revenue tracking and forecasting;

21 (2) evaluate tax expenditures and economic
22 development incentives for effectiveness and efficiency or to
23 make recommendations regarding the continuance of such
24 expenditures and incentives; and

25 (3) analyze potential issues of multiple

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1 taxpayers' misreporting or underreporting.

2 F. As used in this section, "state professional
3 economist" means a professional economist who is an employee or
4 contractor of the legislative finance committee or the
5 department of finance and administration."

6 SECTION 4. Section 7-1-76 NMSA 1978 (being Laws 1965,
7 Chapter 248, Section 76, as amended) is amended to read:

8 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS--
9 ATTEMPTS TO DIRECT AN AUTHORIZED PERSON TO REVEAL TAXPAYER
10 INFORMATION--PENALTY.--

11 A. A person who reveals to another person any
12 return or return information that is prohibited from being
13 revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a
14 return or return information for any purpose that is not
15 authorized by Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA
16 1978 is guilty of a misdemeanor and shall, upon conviction
17 thereof, be fined not more than one thousand dollars (\$1,000)
18 or imprisoned up to one year, or both, together with costs of
19 prosecution, and shall not be employed by the state for a
20 period of five years after the date of the conviction.

21 B. If a person who is authorized to receive a
22 return or return information receives a request from another
23 person who is not authorized to receive such information, the
24 authorized person shall notify the requester in writing that
25 the information cannot be revealed pursuant to Section 7-1-8

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1 NMSA 1978. If, after receiving the written notification, the
2 requester attempts to direct or coerce the authorized person to
3 provide the information, the requester is guilty of a
4 misdemeanor and shall, upon conviction thereof, be fined not
5 more than one thousand dollars (\$1,000) or imprisoned up to one
6 year, or both, together with costs of prosecution, and shall
7 not be employed by the state for a period of five years after
8 the date of the conviction."

9 SECTION 5. A new section of the Tax Administration Act is
10 enacted to read:

11 "[NEW MATERIAL] TAX EXPENDITURE BUDGET.--

12 A. No later than October 15 of each year, the
13 secretary shall compile and present a tax expenditure budget to
14 the governor and the legislative finance committee.

15 B. A tax expenditure budget shall:

16 (1) detail the approximate costs in foregone
17 revenue from each tax expenditure that impacts the general fund
18 from the three years preceding the current fiscal year and the
19 current and upcoming fiscal years;

20 (2) identify each tax expenditure and the
21 expenditure's statutory basis, purpose, year of enactment and
22 date of amendment or repeal, if any; and

23 (3) include the number of taxpayers that
24 claimed each tax expenditure.

25 C. The department is authorized to request from an

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1 executive agency or a local government agency or official,
2 information necessary to complete the tax expenditure budget
3 required by this section. An agency or official shall comply
4 with a request made pursuant to this section by the department
5 as permitted by law.

6 D. As used in this section, "tax expenditure" means
7 a deduction, credit, exemption, exclusion, preferential tax
8 rate, subtraction or allowance that reduces tax liability, as
9 determined by the secretary in consultation with the
10 legislative finance committee and the department of finance and
11 administration."

12 SECTION 6. Section 9-15-10 NMSA 1978 (being Laws 1983,
13 Chapter 297, Section 10, as amended) is amended to read:

14 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
15 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

16 A. Those organizational units of the department and
17 the officers of those units specified by law shall have all of
18 the powers and duties enumerated in the specific laws involved.
19 However, the carrying out of those powers and duties shall be
20 subject to the direction and supervision of the secretary, and
21 ~~[he]~~ the secretary shall retain the final decision-making
22 authority and responsibility for the administration of any such
23 laws as provided in Subsection B of Section 9-15-6 NMSA 1978.
24 The department shall have access to all records, data and
25 information of other state departments, agencies and

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1 institutions, including its own organizational units, not
2 specifically held confidential by law. Except as provided in
3 Subsection B of this section, any information obtained by the
4 department that is proprietary technical information or related
5 to the possible relocation or expansion of a business shall be
6 deemed confidential and withheld from inspection pursuant to
7 the Inspection of Public Records Act.

8 B. Upon written request by a state professional
9 economist, including by electronic means, the department shall
10 provide all information obtained by the department that is
11 proprietary technical information or related to an actual or
12 possible relocation or expansion of a business. The state
13 professional economist is prohibited from requesting or using
14 this information for any purpose other than to evaluate tax
15 expenditures and economic development incentives for
16 effectiveness and efficiency or to make recommendations
17 regarding the continuance of such expenditures and incentives.

18 C. The department shall provide visible and clearly
19 marked notification of confidential information revealed
20 pursuant to Subsection B of this section. A state professional
21 economist shall not reveal such confidential information unless
22 the information is aggregated to at least three businesses.

23 D. As used in this section, "state professional
24 economist" means a professional economist who is an employee or
25 contractor of the legislative finance committee, the department

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1 of finance and administration or the taxation and revenue
2 department."

3 SECTION 7. Section 9-26-14 NMSA 1978 (being Laws 2007,
4 Chapter 200, Section 14) is amended to read:

5 "9-26-14. DISCLOSURE OF INFORMATION.--

6 A. To the extent permitted by federal law, upon the
7 written request of a corporation organized pursuant to the
8 Educational Assistance Act, the department shall furnish the
9 last known address and the date of that address of every person
10 certified to the department as being an absent obligor of an
11 educational debt that is due and owed to the corporation or
12 that the corporation has lawfully contracted to collect. The
13 corporation and its officers and employees shall use such
14 information only for the purpose of enforcing the educational
15 debt obligation of such absent obligors and shall not disclose
16 that information or use it for any other purpose.

17 B. To the extent permitted by federal law, upon
18 written request by a state professional economist, including by
19 electronic means, the department shall provide all information
20 related to labor data obtained by the department. The state
21 professional economist is prohibited from requesting or using
22 this information for any purpose other than to evaluate tax
23 expenditures and economic development incentives for
24 effectiveness and efficiency or to make recommendations
25 regarding the continuance of such expenditures and incentives.

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1 C. The department shall provide visible and clearly
2 marked notification of confidential information revealed
3 pursuant to Subsection B of this section. A state professional
4 economist shall not reveal such confidential information unless
5 the information is aggregated to at least three businesses.

6 D. As used in this section, "state professional
7 economist" means a professional economist who is an employee or
8 contractor of the legislative finance committee, the department
9 of finance and administration or the taxation and revenue
10 department."

11 **SECTION 8. APPROPRIATION.**--One hundred eighty-eight
12 thousand dollars (\$188,000) is appropriated from the general
13 fund to the legislative finance committee for expenditure in
14 fiscal year 2020 to assist the committee in evaluating tax
15 expenditures and other economic development incentives. Any
16 unexpended or unencumbered balance remaining at the end of
17 fiscal year 2020 shall revert to the general fund.

18 **SECTION 9. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is July 1, 2019.