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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 TAXATION AND REVENUE
DEPARTMENT TO COMPILE AND PRESENT A TAX EXPENDITURE BUDGET TO
THE GOVERNOR AND LEGISLATIVE COMMITTEES; 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.

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

2 SECTION 1. A new section of the Local Economic
3 Development Act is enacted to read:

4 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

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

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

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

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

22 (3) that is:

23 (a) involved, directly or in a
24 supervisory capacity, with the production of: 1) a service;
25 provided that the majority of the revenue generated from the

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1 service is from sources outside the state; or 2) tangible or
2 intangible personal property for sale; or

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

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

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

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

20 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
21 INFORMATION.--

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

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1 B. A return or return information revealed [~~under~~]
2 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA
3 1978:

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

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

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

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

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

25 (1) list the name and position of any official

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1 or employee of the person to whom a return or return
2 information is authorized to be revealed under the provision;

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

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

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

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

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

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

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

25 B. Upon written request by a state professional

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1 economist, including by electronic means, the department shall
2 provide return information except that to which access is
3 prohibited by federal law. In cases where access is prohibited
4 by federal law, and upon an additional request by a state
5 professional economist, the department shall provide the
6 requested return information, redacting any prohibited
7 information.

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

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

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

- 22 (1) improve revenue tracking and forecasting;
23 (2) evaluate tax expenditures and economic
24 development incentives for effectiveness and efficiency or to
25 make recommendations regarding the continuance of such

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1 expenditures and incentives; and

2 (3) analyze potential issues of multiple
3 taxpayers' misreporting or underreporting.

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

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

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

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

23 B. If a person who is authorized to receive a
24 return or return information receives a request from another
25 person who is not authorized to receive such information, the

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

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

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

14 A. No later than October 15 of each year, the
15 secretary shall compile and present a tax expenditure budget to
16 the governor, the revenue stabilization and tax policy
17 committee and the legislative finance committee.

18 B. A tax expenditure budget shall:

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

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

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1 (3) include the number of taxpayers that
2 claimed each tax expenditure.

3 C. The department is authorized to request from an
4 executive agency or a local government agency or official,
5 information necessary to complete the tax expenditure budget
6 required by this section. An agency or official shall comply
7 with a request made pursuant to this section by the department
8 as permitted by law.

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

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

17 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
18 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

19 A. Those organizational units of the department and
20 the officers of those units specified by law shall have all of
21 the powers and duties enumerated in the specific laws involved.
22 However, the carrying out of those powers and duties shall be
23 subject to the direction and supervision of the secretary, and
24 [~~he~~] the secretary shall retain the final decision-making
25 authority and responsibility for the administration of any such

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1 laws as provided in Subsection B of Section 9-15-6 NMSA 1978.
2 The department shall have access to all records, data and
3 information of other state departments, agencies and
4 institutions, including its own organizational units, not
5 specifically held confidential by law. Except as provided in
6 Subsection B of this section, any information obtained by the
7 department that is proprietary technical information or related
8 to the possible relocation or expansion of a business shall be
9 deemed confidential and withheld from inspection pursuant to
10 the Inspection of Public Records Act.

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

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

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

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

8 "9-26-14. DISCLOSURE OF INFORMATION.--

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

20 B. To the extent permitted by federal law, upon
21 written request by a state professional economist, including by
22 electronic means, the department shall provide all information
23 related to labor data obtained by the department. The state
24 professional economist is prohibited from requesting or using
25 this information for any purpose other than to evaluate tax

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1 expenditures and economic development incentives for
2 effectiveness and efficiency or to make recommendations
3 regarding the continuance of such expenditures and incentives.

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

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

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

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