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F I S C A L I M P A C T R E P O R T

SPONSOR: Varela DATE TYPED: 03/05/03 HB 494/aHFl#1
SHORT TITLE: Economic Development Corporation Act SB _____
ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI – but see HB 493		See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Companion to HB 493, which contains a \$3,000.0 appropriation for the purposes of carrying out this bill.

Duplicates HB 589 in most respects
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
Economic Development Department
Attorney General's Office
Department of Finance and Administration
General Services Department

SUMMARY

Synopsis of House Floor Amendment #1

The amendment strikes language that would have exempted the corporation from open meetings and public records laws. It provides, however, that when proprietary business information or information related to a business relocation is involved, meetings can still be closed or information kept confidential.

Significant Issues

The amendment appears to address concerns of the Attorney General's Office related to the corporation's accountability (see "Significant Issue 3" below). By allowing for some continued confidentiality, as the amendment does, EDD believes the corporation will have a means to pro-

tect proprietary and confidential information of a business, such as financial statements. EDD points out that language in EDD's authorizing statute provides similar provisions for the department.

Synopsis of Original Bill

House Bill 494 creates a new non-profit corporation to carry out activities related to economic development. The bill creates a 15-member Board of Directors and gives the board the power to hire a president to the corporation's activities. The corporation's purposes are explained in Section 2 and its duties are outlined in Section 5. The bill gives the board certain powers, including the power to hire officers and staff as it deems necessary.

The programmatic functions of the corporation are to:

- Establish relationships with New Mexico communities in order to understand their economic development goals;
- Work for those communities to recruit targeted businesses and jobs;
- Solicit economic development funds from federal and private sources;
- Participate in economic development conferences and job fairs; and to
- Sponsor forums and conferences to assist New Mexico businesses and citizens to develop needed skills.

Section 6 of the bill makes the corporation "separate and apart from the state" and says that it shall not be deemed an agency, public body or other subdivision of New Mexico for purposes of applying various state government laws, such as personnel laws, per diem and mileage, procurement, etc. The bill grants the corporation and its officers, directors and employees immunity from torts under the Tort Claims Act and allows them to purchase insurance even though a covered loss may also be covered by the state's risk management fund.

DFA notes that this bill is an initiative of the Governor.

Significant Issues

1. According to the AG's office, New Mexico law is unclear whether legislation creating a corporation such as the one in this bill violates Article XI, Section 13 of the state constitution, which requires the legislature to provide for the organization of corporations by general law, or Article IV, Section 24, which bars the legislature from passing special laws granting to any corporation the right to "any special or exclusive privilege, immunity or franchise," which this bill does. The AG's office notes that while the courts have recognized a difference between public and private corporations, they have not established criteria for a public corporation or determined whether such a corporation would be constitutional. The AG's office itself has interpreted these constitutional provisions in an opinion. According to the analytical framework set out in that opinion, it appears that the corporation established by this bill would satisfy the criteria (i.e., duties are specified by statute, its purposes are defined as public, it has no shares, is non-profit and its members are appointed by the governor). The AG's office believes, therefore, the corporation may well be constitutional, except for the exemptions from open meetings and public records laws. (See Significant Issue 3.)
2. Although the bill states that the corporation would not be subject to laws governing

state government entities, the AG's office believes otherwise, stating "the fact that it is created by the legislature renders it a quasi-governmental agency and thus subject to all of the limitations contained in the state constitution, including the anti-donation clause." The corporation could not give gifts, donations or grants to any private entity.

3. Two issues arise relating to accountability. First, the AG's office is concerned that exempting the corporation from open meetings and public records laws, as the bill does, removes public accountability and is contrary to the underlying principles of open government. It may also render the corporation a private entity, and thus in violation of the state constitution. Second, because the corporation would be funded through means of a large contract, ensuring accountability would be the responsibility of both the Board and the EDD contract manager.

4. It is unclear if this bill is intended to replace current EDD functions or to supplement them. The duties of the corporation relate to a considerable extent to the current responsibilities and programs of EDD under its enabling act (Section 9-15-1). For example, Section 9-15-2 states that EDD should, among other items:

- Actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand.
- Serve as a comprehensive source of information and assistance to businesses wishing to expand or locate to New Mexico.

Section 9-15-15 further requires EDD to cooperate with local and regional development agencies, including:

- Assisting in gathering information on local and regional assets.
- Assisting in the establishment of programs to attract new labor forces or training local labor forces.
- Identifying barriers to local or regional economic development and developing plans to overcome such barriers.

According to EDD and DFA, however, the new corporation will allow EDD to *outsource* its external recruitment and marketing functions. Currently there are approximately nine FTEs at EDD (six recruiters and three marketing staff) focused on business recruitment and marketing. The corporation's duties also appear to relate directly to some of the responsibilities of EDD's Community Development Program.

5. A number of existing EDD programs also relate to the functions of the corporation. Over the last several years, for example, the Community Development Program has conducted "community assessments" of most of New Mexico's municipalities to determine their readiness for economic development and their target industries. The Community Development Program also currently provides different types training to New Mexico communities and organizations. The Science and Technology Division's NM 9000 program trains New Mexico businesses in quality manufacturing standards. The Trade Division sponsors numerous "how-to-export" seminars.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. House Bill 493 is a companion to this bill, however, and contains an appropriation of \$3,000.0 from the general fund.

EDD notes that it must have “adequate” funding in order to partner and coordinate EDD’s efforts with those of the new corporation. It did not provide any specific funding information, however. EDD’s FY03 general fund budget was \$6,001.5.

If the AG’s office provides counsel to the corporation, it reports that the fiscal implications would be approximately \$50.0 a year.

ADMINISTRATIVE IMPLICATIONS

This bill, combined with HB 493, creates a significant administrative challenge for EDD.

RELATIONSHIP

House Bill 493 is the companion to this bill. It appropriates \$3,000.0 from the general fund to EDD for the purpose of contracting with the corporation.

This bill duplicates HB 589 in most respects except the following:

- HB 589 gives the corporation another name.
- In HB 589, the board elects its chair; in this bill, the governor appoints the chair.
- HB 589 allows the sale of memberships to private entities to participate in the corporation.
- HB 589 contains an appropriation to fund the contract with the corporation.

This bill relates to the EDD appropriation in the General Appropriation Act.

OTHER SUBSTANTIVE ISSUES

Other states use the model of an economic development corporation. For example:

- Enterprise Florida Inc. was formed to 1996 when Florida became the first state to close its Commerce Department and place principal responsibility for economic development, international trade and statewide business marketing in the hands of a private organization.
- Michigan’s state-level economic development is carried out by the Michigan Economic Development Corporation.
- Rhode Island turned over all responsibility for the promotion of economic development, tourism, commerce and agriculture to a public corporation of the state.

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