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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
SPONSOR Crook LAST UPDATED _____ HB 370
SHORT TITLE Inspection of Some Economic Development Info SB _____
ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	NFI			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 370 amends and enacts new sections within the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 to define and provide an exemption for proprietary business information to inspection pursuant to the Inspection of Public Records Act. The exemption applies to any municipality or county that receives proprietary technical or business information or is related to the possible relocation or expansion of a qualifying business entity.

The bill makes it a misdemeanor crime for an employee or former employee of a municipality or county to reveal to another person other than another employee of the municipality or county such confidential information, except in response to a court order.

The effective date of the provisions of this act is July 1, 2013.

FISCAL IMPLICATIONS

There are no significant fiscal implications. There will be a minimal administrative cost for documentation of statutory changes.

SIGNIFICANT ISSUES

The EDD reports this bill extends the protections that already exist for documents received by the EDD and the NMFA to those received by local governments, and that it is unnecessary and harmful to allow public disclosure of private sector entities' proprietary technical or business information that is typically considered "trade secrets" or which would give competitors access to key market information.

The AOC provides the following analysis.

Section 74-2-11 NMSA 1978 also provides an exemption to the Inspection of Public Records Act for confidential business information and trade secrets -- in this case those obtained under the Air Quality Control Act by the Environmental Improvement Board, the Environment Department or a local air quality control board. Under that statute, however, in order to be determined to be confidential information, a satisfactory showing of the need for confidentiality must be made to the applicable board or department. While HB 370 defines "proprietary technical or business information," the bill does not require an officer or appropriate employee of a municipality or county to make a finding that specific information falls under the inspection exemption, making it possible for an unwitting employee or former employee, who is not business savvy, to be faced with a misdemeanor penalty absent any intent to disclose confidential information.

TECHNICAL ISSUES

The EDD provides the following technical issue in its analysis.

The bill applies only to local governments, although the information at issue provided by a company regarding a LEDA project is also delivered to the EDD and sometimes the DFA. By striking "by a municipality or county" from page 5, line 16, the same protections would extend to information provided to any government entity.

However, striking that phrase from just one line may be insufficient to achieve the desired effect, particularly as the following subsections making it unlawful to disclose the protected information and imposing penalties on those who do again reference only current and former employees of a municipality or county. Additionally, as referenced in "Significant Issues" the EDD reports this bill extends to local governments the protections that already exist for documents received by the EDD and the NMFA, seemingly negating the need for additional protections for other government entities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Companies' proprietary information may be made public during or after discussions regarding the possible receipt of public assistance.

AMENDMENTS

The AOC proposes the following amendment.

Require an officer or appropriate employee of a municipality or county to make a determination that specific records are exempt from the inspection requirement.

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Alternatively, amend the bill to require that the disclosure of confidential information be made “knowingly”.

The EDD recommends striking “by a municipality or county” from page 5, line 16. (See discussion under “Technical Issues.”)

JC/svb