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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/13
 SPONSOR Crook LAST UPDATED 03/08/13 HB 592/aHJC
 SHORT TITLE Economic Development Project Public Info SB _____
 ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	NFI			

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 370, SB 437

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment cleans up the definition for “economic development corporation” and adds to the definition by stating that the corporation must provide “economic development services, including marketing and recruiting, related to a local economic development project, pursuant to a contract with a local or regional government.” However, not all economic development corporations perform marketing and recruiting functions as this requires appropriate staffing and funding levels as well as a desire to bring in outside companies to the local community. This language eliminates protections for economic development corporations that work with local startups or expansions in favor of those that either additionally or solely recruit companies. This would have the effect of protecting certain information provided by and to outside companies being recruited but not necessarily existing local companies trying to expand or entrepreneurs trying to start initial operations.

Synopsis of Original Bill

House Bill 592 amends and enacts new sections within the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 to:

1. provide definitions for “economic development corporation,” “incentive information,” and “proprietary technical or business information;”
2. provide an exemption to inspection pursuant to the Inspection of Public Records Act for proprietary business information from a qualifying entity obtained by an economic development corporation or the Economic Development Department (EDD); and
3. provide the same exemption to the Inspection of Public Records Act for incentive information offered by an economic development corporation to a business or person until an ordinance related to a local economic development project, to which the incentive information relates, is introduced to the governing body.

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

FISCAL IMPLICATIONS

There are no significant fiscal implications.

SIGNIFICANT ISSUES

The EDD reports 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.

This bill protects proprietary information obtained by an economic development corporation or the EDD, but does not protect that information if it is obtained by a municipality or county. Additionally, the bill protects incentive information provided by an economic development corporation to a business or person, but does not protect incentive information provided by a municipality, county, or the EDD. Further, the incentive information is only protected until such time as an ordinance relating to the incentive information is introduced to a governing body.

This incentive information protection allows local economic development corporations to have protected, initial discussions with companies regarding incentives, but as soon as the governing body begins official consideration of these incentives the information shall again be available pursuant to the Inspection of Public Records Act. This maintains the current level of transparency related to incentives provided to corporations.

The AGO analysis notes concerns regarding the introduction of a definition of and references to an economic development corporation, which is not referenced in existing statute, and neither the current Local Economic Development Act nor HB 592 contain provisions describing the status, functions, or authority of an economic development corporation.

The AOC reports that 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. 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.

CONFLICT, RELATIONSHIP

HB 592 makes amendments to the Local Economic Development Act that are similar to but conflict with those made by HB 370 and SB 437.

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.

JC/blm