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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13  
 SPONSOR SCORC LAST UPDATED 02/26/13 HB \_\_\_\_\_  
 SHORT TITLE Inspection of Some Economic Development Info SB 437/SCORCS  
 ANALYST Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicate to HB 592

Relates to HB 370

### 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 Bill

The Senate Corporations and Transportation Committee substitute for Senate Bill 437 (SB 437) 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 Attorney General's Office (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 SB 437 contain provisions describing the status, functions, or authority of an economic development corporation.

The Administrative Office of the Courts (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, DUPLICATION, RELATIONSHIP**

SB 437 duplicates HB 592; both bills make amendments to the Local Economic Development Act that are similar to but conflict with those made by HB 370.

### **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.