

SENATE BILL 52

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Bill Tallman

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

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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 SFC→, ~~MAKING AN APPROPRIATION~~←SFC.

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

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

"[NEW MATERIAL] REPORTING REQUIREMENTS.--

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

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

- (1) that is primarily performed in New Mexico;
- (2) that is held by an employee who is hired to work an average of at least thirty-two hours per week for at

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least forty-eight weeks per year;

(3) that is:

(a) involved, directly or in a supervisory capacity, with the production of: 1) a service; provided that the majority of the revenue generated from the service is from sources outside the state; or 2) tangible or intangible personal property for sale; or

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

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

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

**SECTION 2.** Section 7-1-4.2 NMSA 1978 (being Laws 2003, Chapter 398, Section 2, as amended) is amended to read:

"7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights

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afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978 or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act;

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty

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due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary in good faith is in doubt of the liability as provided in Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act;

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and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978."

**SECTION 3.** Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

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

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

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

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

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

(3) shall at all times be protected from being

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revealed to an unauthorized person by physical, electronic or any other safeguards specified by directive by the secretary; and

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

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

(1) list the name and position of any official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

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

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

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

D. A return or return information that is lawfully made public by an employee of the department or any other

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person, or that is made public by the taxpayer, is not subject to the provisions of this section once it is made public."

SECTION 4. A new Section 7-1-8.12 NMSA 1978 is enacted to read:

"7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED TO STATE PROFESSIONAL ECONOMISTS.--

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

B. Upon request by a state chief economist, including by electronic means, the department shall provide return information, except that which is prohibited by law, to a state professional economist of the same agency as that of the requesting state chief economist. In cases where access is prohibited by federal law, and upon an additional request by the state chief economist, the department shall provide the requested return information, redacting any prohibited information. In regard to return information filed pursuant to the Income Tax Act, Corporate Income and Franchise Tax Act, Withholding Tax Act and Uniform Division of Income for Tax Purposes Act, the department shall only provide aggregated data to three taxpayers, or more if necessary to maintain federal standards for confidential return information, as determined by the department, and shall not include personally identifiable information.

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C. Prior to the initial reveal of return information to a state professional economist, the department and the state professional economist's agency shall enter into a memorandum of understanding for security protocols regarding the confidentiality of the return information. The memorandum of understanding shall be in effect for any subsequent requests to reveal return information to that agency.

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

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

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

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

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expenditures and incentives; and

(3) analyze potential issues of multiple taxpayers' misreporting or underreporting as part of broader tax policy and tax administration concerns but not to act as an audit of any individual taxpayers.

G. A state professional economist shall destroy all confidential return information received pursuant to this section within one year of receipt of the information.

H. As used in this section:

(1) "state chief economist" means the chief economist of the legislative finance committee, department of finance and administration or economic development department, or if those agencies have no chief economist, the state professional economist designated by the secretary or director of such agency to request return information pursuant to this section; and

(2) "state professional economist" means a professional economist who is an employee or contractor of the legislative finance committee, department of finance and administration or economic development department."

SECTION 5. Section 7-1-76 NMSA 1978 (being Laws 1965, Chapter 248, Section 76, as amended) is amended to read:

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

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

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

SECTION 6. A new section of the Tax Administration Act is enacted to read:

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

A. No later than October 15 of each year, the secretary shall compile and present a tax expenditure budget to the governor, the revenue stabilization and tax policy committee and the legislative finance committee and post the tax expenditure budget report to the department's website.

B. A tax expenditure budget report shall include the following information for each tax deviation of a tax administered by the department:

- (1) identify the tax deviation and the deviation's statutory basis;
- (2) the year of enactment, amendment or repeal, if any;
- (3) a brief description of the tax deviation;
- (4) the intended purpose of the tax deviation, if specified in the law providing for the tax deviation or as otherwise determined by the department;
- (5) if the tax deviation is a tax expenditure, an estimate of the approximate amount of foregone revenue by fiscal year for:
  - (a) the three fiscal years preceding the current fiscal year, including the general fund, other state funds and local government revenues; and
  - (b) the current and subsequent fiscal year, if feasible, and a brief description of the methodology

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and assumptions applied to the forecasted estimate;

(6) the number of taxpayers that claimed a tax expenditure for each fiscal year reported, unless reporting of such data is in a form that can be associated with or otherwise identify, directly or indirectly, a particular taxpayer;

(7) the data source used for the estimate; and

(8) a measure of the reliability of the estimate.

C. A tax expenditure budget report may include additional information that the department considers relevant to the review of individual tax deviations, including:

(1) a description or reference citation of any tax deviation evaluation or compilation of information completed by an executive or legislative agency since the last tax expenditure budget report by the department; and

(2) a measure of the tax deviation's effect on the administration of the tax system.

D. The department may request from an executive agency or a local government agency or official, information necessary to complete the tax expenditure budget required by this section. An agency or official shall comply with a request made pursuant to this section by the department as permitted by law.

E. As used in this section:

(1) "tax deviation" means a deduction, credit,

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exemption, exclusion, preferential tax rate, subtraction, allowance or other deviation from a tax that reduces tax liability, as determined by the secretary in consultation with the legislative finance committee and the department of finance and administration. "Tax deviation" includes a tax expenditure and also a deviation that is not a tax expenditure but is enacted due to constitutional prohibition, federal preemption, comity between governments, avoiding taxation under multiple tax programs or defining a tax base or is otherwise determined to not be a tax expenditure; and

(2) "tax expenditure" means a tax deviation that deviates from the baseline of a tax, as determined by the secretary in consultation with the legislative finance committee and the department of finance and administration, to reflect state policy, such as to promote the general welfare of citizens or give preferential tax treatment to a specific industry, or to reflect a specific purpose, such as to incentivize consumer behavior, economic development or job creation."

SECTION 7. Section 9-15-10 NMSA 1978 (being Laws 1983, Chapter 297, Section 10, as amended) is amended to read:

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

A. Those organizational units of the department and the officers of those units specified by law shall have all of

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the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and [he] the secretary shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-15-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law. Except as provided in Subsection B of this section, any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act.

B. Upon written request by a state professional economist, including by electronic means, the department shall provide all information obtained by the department that is proprietary technical information or related to an actual or relocation or expansion of a business; provided that providing such information shall not violate the terms of a previously executed agreement with the department. The state professional economist is prohibited from requesting or using this information for any purpose other than to evaluate tax expenditures and economic development incentives for

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effectiveness and efficiency or to make recommendations regarding the continuance of such expenditures and incentives.

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

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

SECTION 8. Section 9-26-14 NMSA 1978 (being Laws 2007, Chapter 200, Section 14) is amended to read:

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

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

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that information or use it for any other purpose.

B. To the extent permitted by federal law, upon written request by a state professional economist, including by electronic means, the department shall provide all information related to labor data obtained by the department. The state professional economist is prohibited from requesting or using this information for any purpose other than to evaluate tax expenditures and economic development incentives for effectiveness and efficiency or to make recommendations regarding the continuance of such expenditures and incentives.

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

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

~~SFC → SECTION 9. APPROPRIATION. -- One hundred eighty-eight thousand dollars (\$188,000) is appropriated from the general fund to the legislative finance committee for expenditure in fiscal year 2021 to assist the committee in evaluating tax expenditures and other economic development incentives. Any~~

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~~unexpended or unencumbered balance remaining at the end of  
fiscal year 2021 shall revert to the general fund.~~←SFC

SECTION SFC→10←SFC SFC→9←SFC. EFFECTIVE DATE.--The  
effective date of the provisions of this act is July 1, 2020.

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