

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 52

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

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 THE PROFESSIONAL ECONOMISTS OF
CERTAIN EXECUTIVE AND LEGISLATIVE AGENCIES FOR FISCAL
EVALUATION PURPOSES; IMPOSING A PENALTY ON A PERSON WHO COMPELS
OR COERCES AN AUTHORIZED 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
DEVELOPMENT DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT
TO PROVIDE INFORMATION TO THE PROFESSIONAL ECONOMISTS FOR
PURPOSES OF EVALUATING TAX EXPENDITURES AND OTHER ECONOMIC
DEVELOPMENT INCENTIVES.

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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 the public support, report to the department the number of new full-time jobs created by the qualifying entity in the previous calendar year, the job title for each person employed in a new full-time job, the total annual wages and salaries for those new full-time jobs and any capital investments made by the qualifying entity in the previous calendar year.

B. Prior to August 1 of each year, the department shall compile the annual reports received from the qualifying entities and submit the compilation to the legislative finance committee and the department of finance and administration.

C. As used in this section, "new full-time 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 least forty-eight weeks per year; and

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1 (3) that the qualifying entity attributes to
2 the public support provided by the state."

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

5 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights
6 afforded New Mexico taxpayers during the assessment, collection
7 and enforcement of any tax administered by the department as
8 set forth in the Tax Administration Act include:

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

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

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

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

24 E. the right to obtain nontechnical information
25 that explains the procedures, remedies and rights available

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1 during audit, protest, appeals and collection proceedings
2 pursuant to the Tax Administration Act;

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

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

12 H. the right to have the taxpayer's tax information
13 kept confidential unless otherwise specified by law, in
14 accordance with Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA
15 1978;

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

23 J. upon receipt of a tax assessment, the right to
24 be informed clearly that if the assessment is not paid,
25 secured, protested or otherwise provided for in accordance with

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1 the provisions of Section 7-1-16 NMSA 1978, the taxpayer will
 2 be a delinquent taxpayer and, upon notice of delinquency, the
 3 right to timely notice of any collection actions that will
 4 require sale or seizure of the taxpayer's property in
 5 accordance with the provisions of the Tax Administration Act;
 6 and

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

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

12 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
 13 INFORMATION.--

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

18 B. A return or return information revealed [~~under~~]
 19 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA
 20 1978:

21 (1) may only be revealed to a person
 22 specifically authorized to receive the return or return
 23 information and the employees, directors, officers and agents
 24 of such person whose official duties or duties in the course of
 25 their employment require the return or return information and

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1 to an employee of the department;

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

5 (3) shall at all times be protected from being
6 revealed to an unauthorized person by physical, electronic or
7 any other safeguards specified by directive by the secretary;
8 and

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

12 C. If any provision of Sections 7-1-8.1 through
13 [~~7-1-8.11~~] 7-1-8.12 NMSA 1978 requires that a return or return
14 information will only be revealed pursuant to a written
15 agreement between a person and the department, the written
16 agreement shall:

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

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

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

25 (4) provide for reimbursement to the

1 department for all costs incurred by the department in
2 supplying the returns or return information to, and
3 administering the agreement with, the person.

4 D. A return or return information that is lawfully
5 made public by an employee of the department or any other
6 person, or that is made public by the taxpayer, is not subject
7 to the provisions of this section once it is made public."

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

10 "7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE
11 REVEALED TO PROFESSIONAL ECONOMISTS.--

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

15 B. Upon request by a chief economist, including by
16 electronic means, the department shall provide return
17 information, except that which is prohibited by law, to a
18 professional economist of the same agency as that of the
19 requesting chief economist. In cases where access is
20 prohibited by federal law, and upon an additional request by
21 the chief economist, the department shall provide the requested
22 return information, redacting any prohibited information
23 necessary to maintain federal standards for confidential return
24 information, as determined by the department.

25 C. Prior to the initial reveal of return

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1 information to a professional economist, the department and the
2 professional economist's agency shall enter into a memorandum
3 of understanding for security protocols regarding the
4 confidentiality of the return information. The memorandum of
5 understanding shall be in effect for any subsequent requests to
6 reveal return information to that agency.

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

12 E. The department shall provide visible and clearly
13 marked notification of confidential return information provided
14 to a professional economist pursuant to this section. A
15 professional economist shall not reveal such return information
16 that can be associated with or directly or indirectly identify
17 a particular taxpayer.

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

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

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

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

8 H. As used in this section:

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

16 (2) "professional economist" means a
17 professional economist who is employed or contracted to perform
18 the duties of an economist for the legislative finance
19 committee, department of finance and administration or economic
20 development department."

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

23 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS--
24 COMPELLING OR COERCING AN AUTHORIZED PERSON TO REVEAL TAXPAYER
25 RETURN INFORMATION--PENALTY.--

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1 A. A person who reveals to another person any
2 return or return information that is prohibited from being
3 revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a
4 return or return information for any purpose that is not
5 authorized by Sections 7-1-8 through ~~[7-1-8.11]~~ 7-1-8.12 NMSA
6 1978 is guilty of a misdemeanor and shall, upon conviction
7 thereof, be fined not more than one thousand dollars (\$1,000)
8 or imprisoned up to one year, or both, together with costs of
9 prosecution, and shall not be employed by the state for a
10 period of five years after the date of the conviction.

11 B. If a person who is authorized to receive a
12 return or return information receives a request from another
13 person who is not authorized to receive such information, the
14 authorized person shall notify the requester in writing that
15 the information cannot be revealed pursuant to Section 7-1-8
16 NMSA 1978.

17 C. If a person who is not authorized to receive a
18 return or return information compels, coerces or attempts to
19 compel or coerce a person authorized to receive a return or
20 return information to reveal such information, the non-
21 authorized person is guilty of a misdemeanor and shall, upon
22 conviction thereof, be fined not more than one thousand dollars
23 (\$1,000) or imprisoned up to one year, or both, together with
24 costs of prosecution, and shall not be employed by the state
25 for a period of five years after the date of the conviction."

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

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

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

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

12 (1) identify the tax deviation and the
13 deviation's statutory basis;

14 (2) the year of enactment, amendment or
15 repeal, if any;

16 (3) a brief description of the tax deviation;

17 (4) the intended purpose of the tax deviation,
18 if specified in the law providing for the tax deviation or as
19 otherwise determined by the department;

20 (5) if the tax deviation is a tax expenditure,
21 an estimate of the approximate amount of foregone revenue by
22 fiscal year for:

23 (a) the three fiscal years preceding the
24 current fiscal year, including the general fund, other state
25 funds and local government revenues; and

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1 (b) the current and subsequent fiscal
2 year, if feasible, and a brief description of the methodology
3 and assumptions applied to the forecasted estimate;

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

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

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

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

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

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

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

1 E. As used in this section:

2 (1) "tax deviation" means a deduction, credit,
 3 exemption, exclusion, preferential tax rate, subtraction,
 4 allowance or other deviation from a tax that reduces tax
 5 liability, as determined by the secretary in consultation with
 6 the legislative finance committee and the department of finance
 7 and administration. "Tax deviation" includes a tax expenditure
 8 and also a deviation that is not a tax expenditure but is
 9 enacted due to constitutional prohibition, federal preemption,
 10 comity between governments, avoiding taxation under multiple
 11 tax programs or defining a tax base or is otherwise determined
 12 to not be a tax expenditure; and

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

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

24 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
 25 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

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

18 B. Upon written request by a professional
19 economist, including by electronic means, the department shall
20 provide all information obtained by the department that is
21 proprietary technical information or related to an actual or
22 relocation or expansion of a business; provided that providing
23 such information shall not violate the terms of a previously
24 executed agreement with the department. The professional
25 economist is prohibited from requesting or using this

1 information for any purpose other than to evaluate tax
 2 expenditures and economic development incentives for
 3 effectiveness and efficiency or to make recommendations
 4 regarding the continuance of such expenditures and incentives.

5 C. The department shall provide visible and clearly
 6 marked notification of confidential information revealed
 7 pursuant to Subsection B of this section. A professional
 8 economist shall not reveal such confidential information that
 9 can be associated with or directly or indirectly identify a
 10 particular business.

11 D. As used in this section, "professional
 12 economist" means a professional economist who is employed or
 13 contracted to perform the duties of an economist for the
 14 legislative finance committee, the department of finance and
 15 administration or the taxation and revenue department."

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

18 "9-26-14. DISCLOSURE OF INFORMATION.--

19 A. To the extent permitted by federal law, upon the
 20 written request of a corporation organized pursuant to the
 21 Educational Assistance Act, the department shall furnish the
 22 last known address and the date of that address of every person
 23 certified to the department as being an absent obligor of an
 24 educational debt that is due and owed to the corporation or
 25 that the corporation has lawfully contracted to collect. The

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1 corporation and its officers and employees shall use such
2 information only for the purpose of enforcing the educational
3 debt obligation of such absent obligors and shall not disclose
4 that information or use it for any other purpose.

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

14 C. The department shall provide visible and clearly
15 marked notification of confidential information revealed
16 pursuant to Subsection B of this section. A professional
17 economist shall not reveal such confidential information that
18 can be associated with or directly or indirectly identify a
19 particular business.

20 D. As used in this section, "professional
21 economist" means a professional economist who is employed or
22 contracted to perform the duties of an economist for the
23 legislative finance committee, the department of finance and
24 administration, the economic development department or the
25 taxation and revenue department."

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1 SECTION 9. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2020.

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