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FISCAL IMPACT REPORT

SPONSOR: Zanetti DATE TYPED: 02/24/03 HB 589

SHORT TITLE: Economic Development Corporation Act SB _____

ANALYST: Padilla

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|-----------|-----------------------------|--------|----------------------|---------------|
| FY03 | FY04 | FY03 | FY04 | | |
| | \$3,000.0 | | \$50.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 493 and HB 494, when considered together, in most respects
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Economic Development Department
 Attorney General's Office
 Department of Finance and Administration

SUMMARY

Synopsis of Bill

House Bill 589 creates a new non-profit corporation named Adelante New Mexico to carry out activities related to economic development. The bill creates a 15-member Board of Directors and gives the board the power to hire a president to direct the corporation's activities. The corporation's purposes are explained in Section 2 and its duties are outlined in Section 5. The bill gives the board certain powers, including the power to hire officers and staff as it deems necessary. The bill appropriates \$3,000.0 to the Economic Development Department to fund the corporation via a contract. The bill exempts the contract from the provisions of the Procurement Code.

The programmatic functions of the corporation are to:

- Establish relationships with New Mexico communities in order to understand their eco-

conomic development goals;

- Work for those communities to recruit targeted businesses and jobs;
- Solicit economic development funds from federal and private sources;
- Participate in economic development conferences and job fairs;
- Solicit and sell memberships to businesses and individuals wishing to participate in Adelante New Mexico and its programs; and to
- Sponsor forums and conferences to assist New Mexico businesses and citizens to develop needed skills.

Section 6 of the bill makes the corporation “separate and apart from the state” and says that it shall not be deemed an agency, public body or other subdivision of New Mexico for purposes of applying various state government laws, such as personnel laws, per diem and mileage, procurement, etc. The bill grants the corporation and its officers, directors and employees immunity from torts under the Tort Claims Act and allows them to purchase insurance even though a covered loss may also be covered by the state’s risk management fund.

Significant Issues

1. According to the AG’s office, New Mexico law is unclear whether legislation creating a corporation such as the one in this bill violates Article XI, Section 13 of the state constitution, which requires the legislature to provide for the organization of corporations by general law, or Article IV, Section 24, which bars the legislature from passing special laws granting to any corporation the right to “any special or exclusive privilege, immunity or franchise,” which this bill does. The AG’s office notes that while the courts have recognized a difference between public and private corporations, they have not established criteria for a public corporation or determined whether such a corporation would be constitutional. The AG’s office itself has interpreted these constitutional provisions in an opinion. According to the analytical framework set out in that opinion, it appears that the corporation established by this bill would satisfy the criteria (i.e., duties are specified by statute, its purposes are defined as public, it has no shares, it is non-profit and its members are appointed by the governor). The AG’s office believes, therefore, the corporation may well be constitutional, except for the exemptions from open meetings and public records laws. (See Significant Issue 3.)

2. Although the bill states that the corporation would not be subject to laws governing state government entities, the AG’s office believes otherwise, stating “the fact that it is created by the legislature renders it a quasi-governmental agency and thus subject to all of the limitations contained in the state constitution, including the anti-donation clause.” The corporation could not give gifts, donations or grants to any private entity.

3. Two issues arise relating to accountability. First, the AG’s office is concerned that exempting the corporation from open meetings and public records laws, as the bill does, removes public accountability and is contrary to the underlying principles of open government. It may also render the corporation a private entity, and thus in violation of the state constitution. Second, because the corporation would be funded through means of a large contract, ensuring accountability would be the responsibility of both the Board and the EDD contract manager.

4. It is unclear if this bill is intended to replace current EDD functions or to supplement them. The duties of the corporation relate to a considerable extent to the current responsibilities and programs of EDD under its enabling act (Section 9-15-1). For example, Section 9-15-2 states that EDD should, among other items:

- Actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand.
- Serve as a comprehensive source of information and assistance to businesses wishing to expand or locate to New Mexico.

Section 9-15-15 further requires EDD to cooperate with local and regional development agencies, including:

- Assisting in gathering information on local and regional assets.
- Assisting in the establishment of programs to attract new labor forces or training local labor forces.
- Identifying barriers to local or regional economic development and developing plans to overcome such barriers.

According to EDD and DFA, however, the new corporation will allow EDD to *outsource* its external recruitment and marketing functions. Currently there are approximately nine FTEs at EDD (six recruiters and three marketing staff) focused on business recruitment and marketing. The corporation's duties also appear to relate directly to some of the responsibilities of EDD's Community Development Program.

5. The bill stipulates that the contract between EDD and the new corporation shall contain reporting requirements to ensure that the contract furthers the purposes of the Economic Development Corporation Act. EDD reports that the contract will be performance-based, with deliverables to include leads, prospects and signed deals in both rural and urban communities. EDD notes that performance of the corporation will be measured as follows:

- Increased leads generation
- Increased trade show leads
- Increase in direct inquires and exposures
- Increase in earned media
- Increase in web traffic

FISCAL IMPLICATIONS

The appropriation of \$3,000.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 04 shall revert to the general fund.

EDD's FY03 general fund budget was \$6,001.5.

If the AG's office provides counsel to the corporation, it reports that the fiscal implications would be approximately \$50.0 a year.

ADMINISTRATIVE IMPLICATIONS

This will be a large contract for EDD to manage. EDD reports, however, that this bill will result in only a minimal increase in administrative functions for the department.

RELATIONSHIP

This bill relates to the EDD appropriation in the General Appropriation Act. The LFC general fund recommendation for FY04 is \$5,820.7.

This bill duplicates HB 493 and HB 494 (which are companion bills) in most respects except the following:

- This bill gives the corporation the name Adelante New Mexico.
- In HB 494, the governor appoints the chair of the board of directors. In this bill, the board elects its chair.
- This bill allows the sale of memberships to private entities to participate in the corporation.
- This bill contains an appropriation to fund the contract with the corporation.

OTHER SUBSTANTIVE ISSUES

Other states use the model of an economic development corporation and tend to completely replace their governmental entities with the new organization. For example:

- Enterprise Florida Inc. was formed in 1996 when Florida became the first state to close its Commerce Department and place principal responsibility for economic development, international trade and statewide business marketing in the hands of a private organization.
- Michigan's state-level economic development is carried out by the Michigan Economic Development Corporation.
- Rhode Island turned over all responsibility for the promotion of economic development, tourism, commerce and agriculture to a public corporation of the state.

POSSIBLE AMENDMENTS

1. EDD would prefer to separate Section 7, which contains the appropriation for the corporation, into a separate bill. This is the approach that House Bills 493 and 494 take.
2. The Attorney General's office believes the bill should be amended to either provide an appropriation to AGO for the cost of providing counsel to the corporation or to provide authority to the corporation to hire its own counsel.

LP/yr/njw