F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/10/11
SPONSOR Chavez, E. **LAST UPDATED** ________ **HB** 156

SHORT TITLE Budget & Corporate Transparency **SB** ________

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
IT Development		Substantial - $250.0 - $500.0		Substantial - $250.0 - $500.0	Non-Recurring	General Fund
TRD		$400.0	$400.0	$800.0	Recurring	General Fund
EDD		$200.0	$200.0	$400.0	Recurring	General Fund
Total		Up to $1,100.0	$600.0	Up to $1,700.0		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 156 introduces the Budget and Corporate Transparency Act which requires detailed disclosure of information by any corporation applying for an economic development subsidy or for a government contract of $25,000 or more.

The bill designates the Taxation and Revenue Department (TRD) and the Economic Development Department (EDD) to develop forms, databases, timelines, collaborative procedures, website access, electronic and written published information.

The information required of corporations would include names and addresses of individuals providing contractual services; the name, address, and phone number of corporate officers; a list of other development subsidies received; number of jobs created and lost; informantion indicating the number of full-time, part-time and temporary employees at the project site, wages broken down by the average hourly pay of workers divided into a number of different categories, location of employees by zip code, type, amount and cost of health care coverage of employees, the use of energy conservation technologies, the proximity to mass transit, and other information.

Before entering into a contract of $25,000 or more, an agency would be required to establish measurable standards for determining the quality of the services provided under the contract. Agencies administering development subsidies would be required to prepare annual reports containing detailed information on the recipients of development subsidies. A corporation failing to provide the required information would be subject to a fine of $500 per day. In addition, if a corporation reduces its employment after the subsidy period, they are subject to recapture of the development subsidy.

Annually, the Department of Finance and Administration and the Taxation and Revenue Department (TRD) would be required to publish a tax expenditure report.

Each property tax imposing entity would be required to annually report on the amounts of any property tax abatements they have approved.

Corporations paying corporate income tax would be required to file an annual report detailing names and addresses of certain corporate officers, names of related corporate entities, and detailed financial information about the company's corporate income tax return.

FISCAL IMPLICATIONS

This bill has no significant revenue impact. It is doubtful that the $500 per day penality will result in any significant revenue. The purpose of the extensive reporting is to assist the TRD in preparing comprehensive tax expenditure reports as required by SB170 and SB47.

The operating budget impact, however, is substantial (see Administrative Implications)

SIGNIFICANT ISSUES

This proposal may increase the cost of doing business in New Mexico and may deter economic development.

ADMINISTRATIVE IMPLICATIONS

The proposal would have a major administrative impact on TRD and may potentially impact the department's other administrative functions, including collecting and distributing revenue for the state and local governments, would be negatively impacted. Dozens of tax laws fall within the requirements of the Act. It would be impossible to track and capture the type and amount of data required manually. Thus, a software modification is required, which would take at least 1 year to develop and have in place.

Other administrative requirements for TRD:

- A public notice and hearing will be required prior to approval of subsidies including abatements, exemptions, and credits. Such a requirement would greatly impede current processing which could require that additional interest be paid out by the Department.
- Preparing annual reports and publishing to the web;
- Monitoring reports filed within specified time to determine which corporations may be

subject to the $500 per day fine. Current tax system will need programming for such a fine which differs from current assessments.

- Preparing annual tax expenditure budget requiring information collection and processing;
- Processing new annual statements by corporations with detailed financial information. An additional annual statement is required if the tax return is amended or an audit adjustment is issued by the Taxation and Revenue Department. This report will be made available to the public.
- The tax system will have to be programmed to recapture the development subsidy through an assessment in the event the corporation does not meet the requirements of the subsidy.

An estimate of the increased administrative costs for TRD are presented in the table.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2011	FY2012	FY2013	FY 11-13		
--	$400.0	$400.0	$800.0	R	TRD administration

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

The proposal would also have major impacts on taxpayers because of the extremely detailed reporting required. Much of the required information is proprietary. Businesses would likely view the bill as creating an unfavorable business climate.

EDD reports that the bill would impact EDD's operating budget by requiring a minimum of two FTE's to accomplish the tasks associated with this proposed legislation; an auditor position would be required. The bill would require additional funds to create and monitor an interactive website.

The bill may also require local governing entities to amend their development processes currently in place via resolutions and ordinances, alter timelines on current and future developments, and publish notices.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related Bills: SB-47 "Tax & Rev. Depat. Tax Expenditure Budget" and SB-170 "Tax Itemization & Return Filing"

TECHNICAL ISSUES

According to TRD:
Sections 9, 10, 12 and 15 of this Act could conflict with NMSA 1978, § 7-1-8 which currently protects the confidentiality of tax return information.

- "Development subsidies" does not include deductions.
- "Corporations" does not include partnerships, LLC's and other business entities not taxed as corporations by the federal government.

- Many new definitions, e.g. “doing business,” “business site” of intangible property, etc. mean implementation will be costly and conflicts are likely to arise between the Department and taxpayers.
- “Granting body” means a state agency that “provides a development subsidy.” This phrase does not describe the Department’s role in administering tax laws. The Department does not “provide” subsidies, credits and exemptions are provided for by the legislature.
- “Subsidy value” means the “face value of a development subsidy.” This phrase has no clear meaning in the context of most tax laws.
- Determining whether subsidy is “reasonably crafted” is subjective and prone to dispute.

TRD reports that the July 2011 effective date is not attainable due to IT system updates that would be required.

OTHER SUBSTANTIVE ISSUES

This proposal creates a tradeoff between two desirable goals of tax policy – accountability vs. simplicity of administration and compliance. On the one hand, collecting more information on exemptions and credits would improve accountability for the tax dollars foregone through these provisions. On the other hand, added reporting would increase the cost of doing business in New Mexico. In addition, if taxpayers are required to divulge their detailed financial information, they may be reluctant to invest in the state’s economy.

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