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

SPONSOR SCORC **ORIGINAL DATE** 3/01/19 **LAST UPDATED** 3/11/19 **HB**

SHORT TITLE Economic Development & Tax Info Reporting **SB** 151/SCORCS

ANALYST Clark

APPROPRIATION (dollars in thousands)

Appropriation					Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**		
	$188.0				Recurring/ Nonrecurring	General Fund

Parenthesis ( ) indicate expenditure decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Moderate	Moderate	Moderate	Recurring	Agency Operating Budgets

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

Senate Corporations and Transportation Committee Substitute for Senate Bill 151 requires the Taxation and Revenue Department (TRD) to continue publishing the annual tax expenditure report required by an executive order from the prior administration. The bill also provides access by staff economists at LFC, TRD, the Department of Finance and Administration (DFA), and the Economic Development Department (EDD) to certain confidential taxpayer and business information held by TRD, EDD, and the Workforce Solutions Department (WSD). Exceptions are made for TRD data where access is barred by federal law and for EDD data where access would violate an existing non-disclosure agreement.

The staff economists are not permitted to reveal any confidential information except aggregated to at least three businesses, the existing TRD standard. The penalty for unauthorized disclosure remains the same as for any person revealing confidential taxpayer information. The one designated economist at each of the aforementioned agencies may request this confidential data for any of three purposes, and no other purpose:

- Improve revenue tracking and forecasting,
- Evaluate tax expenditures and economic development incentives, or
- Analyze potential issues of aggregate taxpayer misreporting as part of broader tax policy and tax administration concerns (following a TRD request, the bill specifically prohibits this analysis from acting as an audit of any individual taxpayers).

The request from the economist must be accompanied by the approval of the agency director or secretary.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

The appropriation of $188 thousand contained in this bill is partially a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY20 shall revert to the general fund.

It is expected the significant majority of the appropriation would be used to fund the one-time purchase of software that would allow dynamic modeling of the costs and benefits of tax expenditures and economic development incentives. The remaining funds would be used to hire a contractor to assist with the modeling and research.

After the initial year of implementation, there could be some ongoing maintenance costs for the software, depending on the product purchased. Additionally, existing staff resources would be insufficient to continue efforts to analyze tax expenditures and economic development incentives after that first year. It is assumed the Legislature would continue some level of recurring appropriations for software maintenance and staff (FTE or contractor) resources for these evaluations.

Additionally, WSD reports federal requirements would result in LFC paying WSD for any costs of providing any confidential unemployment compensation data, and this would be a recurring impact to the LFC budget. WSD provided the following estimated costs.

Set Up Cost			
Labor Category	***Rate***	***Hours***	***Extended***
Business Analyst/Testers	$35.00	40	$1,400.00
Developers	$100.00	40	$4,000.00
Database Architect	$135.00	40	$5,400.00
Network Administrator	$45.00	10	$450.00
Technician	$20.00	10	$200.00
Total			**$11,450.00**
Ongoing Costs by FY:			
Business Analyst	$35	40	$1,400
Technician On Call	$20	40	$800
Estimated ongoing costs			$2,200

SIGNIFICANT ISSUES

New Mexico is falling behind other states for evaluating tax incentives. *Pew Charitable Trusts* recently reported 28 other states now perform regular tax incentive evaluations. The primary obstacle for New Mexico, as it was for many other states, is access to taxpayer data for the evaluations. This bill provides a significant portion of the needed data through two mechanisms. The first is a requirement that TRD continue to publish its annual tax expenditure report, which is a useful reference for many purposes but would also be a good starting point for evaluations. This requirement is nearly identical to the language in the original LFC-sponsored bill a decade ago for a tax expenditure budget, and it ensures continuation of this reporting under future governors.

Second, the bill provides access to confidential information held by TRD, EDD, and WSD. This information is necessary to be able to evaluate tax expenditures and other economic development incentives.

Taxpayer data availability and reporting is a balancing act between the desire to maintain a high level of taxpayer confidentiality and the desire to provide public accountability, oversight, and evaluations of tax expenditures and economic development incentives for effectiveness and efficiency. This bill attempts to provide a modest level of access to existing taxpayer records sufficient to perform such evaluations. It maintains a high degree of confidentiality because access is restricted to just the staff economists of LFC, TRD, DFA, and EDD. Currently, LFC has two economists, DFA has one economist, and EDD has one economist. Additionally, any information or analysis may not be released by the economists unless it is aggregated to at least three taxpayers, the existing standard for TRD data publication.

Furthermore, the economists are not permitted to request confidential data for any purpose; it must be to perform these evaluations, improve revenue tracking or forecasting, or analyze potential issues of aggregate taxpayer misreporting.

WSD provided the following analysis.

> Under federal regulations, WSD may disclose confidential unemployment compensation data to employees of other New Mexico state agencies or departments under §603 because they are considered "public officials" and are within the executive branch of the state government. However, WSD may not disclose data directly to LFC under the confidentiality provisions of §603 since the committee is not part of the executive branch of the government. The department would have to enter into an agreement with the leader of the committee who has the authority to bind the committee to the agreement. Then WSD may disclose the information to the leader who may, in turn, disclose the information to the state professional economist for analysis. In any event, under §603, WSD will still require a written, enforceability confidentiality agreement.

TRD provided the following analysis.

> There is an expectation by individuals and companies that information they provide on tax returns is in order to comply with federal and state tax laws and is otherwise protected as confidential. Both the federal government, under the IRS, and the state of New Mexico, through the TRD, protect that confidentiality in federal and state laws.[1] To maintain the trust of the public within a tax system of voluntary compliance, TRD must consider very carefully any expansions to the access of tax return data, it must be clear on the intent to that access and work with its partners at the IRS.
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> There is great analytical value to having direct access to state tax administrative data. Professional state economists who work outside of TRD would deepen their ability to evaluate tax policies and forecast revenues through access to this data. Currently, most New Mexico tax data available to researchers is aggregated and the majority of variables collected by TRD are not available in that aggregated format. This limited data format limits the research that can be initiated.
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> This bill seeks a balance of both public trust and confidentiality laws and the research benefit to working with tax administration data. The requirement of the requesting agency to enter into a memorandum of understanding with TRD will enable TRD to enforce federal and state laws to protect taxpayers' data. State economists' research will be strengthened by working with direct data. TRD and outside agencies will maintain the separation of tax administration responsibilities versus economic and policy research and recommendations.
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> Mandating a tax expenditure budget report brings New Mexico in line with many other states that have defined expenditure reporting requirements in state statute. (Tax expenditure reports reviewed from 20% of states all indicate the report is mandated in state statute.) This will provide consistent reporting of a key area of tax policy to the governor, legislators, and the public. Continued reporting on the impact of tax expenditures will be an important data source for tax policy makers to make informed decisions about tax incentives.

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[1] The primary federal statute is: 26 U.S. Code § 6103 – Confidentiality and disclosure of returns and return information. The primary state statue is: 7-1-8. NMSA 1978 Confidentiality of returns and other information.

As it is the role of the legislature, with veto authority of the governor, to create tax expenditures in statute, it will be TRD's responsibility to report on them. TRD suggests that any tax expenditure's intended purpose be clearly written into law. A new proposed subsection to the bill could read as follows: "On and after January 1, 2019, any bill that creates a new tax expenditure or extends an expiring tax expenditure shall include a legislative declaration stating the intended purpose of the tax expenditure." The language is from Colorado's statute, C.R.S 39-21-304. While it is agreed that the intended purpose of a tax expenditure should be reported, it is not always clear from statutory language what that purpose is, and TRD may not always be in a position to infer legislative intent.

ADMINISTRATIVE IMPLICATIONS

WSD reports it has an established process for data sharing. This process includes the establishment of a memorandum of understanding agreement which includes the specific required pass-down federal regulations. The agreement also includes standards for security controls and breach notification with which DFA, LFC, and/or TRD will need to comply. WSD staff will need to establish secure file transfer protocol connections with each organization configured to the frequency and content of the data request. Each participating organization will also need to provide IT support related to the establishment of this type of exchange process.

TRD provided the following administrative implications.

The bill requires TRD to address an increased volume of data requests for tax return data. TRD staff will need to review this data to assure compliance with federal and state disclosure laws and note any confidential released data. Once the data is examined, the data will need to be placed in an editable electronic format. TRD will also need to track the compliance requirements for economists requesting the data of destroying all confidential return information with one year. The culmination of the added requirements for the TRD will require an additional FTE. A mid-level information technology classification salary was used in the estimate of the recurring budget impact.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2019	**FY2020**	**FY2021**	**FY 19-21**		
$0	$119	$119	$238	R	Taxation and Revenue Department

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

TECHNICAL ISSUES

WSD reports in order to conform with federal Department of Labor requirements, the bill must include a provision that allows for paying WSD any costs of furnishing the information (to be in compliance with 20 CFR §603 concerning disclosures of confidential unemployment compensation information) and WSD may not use grant funds to pay for any of the costs of data sharing.

On page 14, line 25, the first instance of "or" appears extraneous and should be removed, and the words "an actual or" similarly appear extraneous and should be replaced with "a" to improve clarity.

TRD provided the following technical issues.

> Page 8, Section 7-18-12 (B) and page 9 Section 7-18-12 (E): The two subsections appear to have a conflict of language between subsection (B), "redacting any prohibited information" and subsection (E), "clearly marked notification of confidential return information." Confidential return information could fall into the category of prohibited information. Clarity in the language of the bill will help shape the intent of the bill and how TRD must prepare the requested data. Additionally, subsection (E) speaks to aggregating information to three businesses whereas subsection (B) speaks to three taxpayers in order to protect taxpayer confidentiality. Clarity in the bill will help assure all taxpayers are protected depending on the type of tax administration data provided to state economists.
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> Ensure that any information disclosed by TRD through the provisions of this bill that would not be subject to release pursuant to the Inspection of Public Records Act (IPRA) would also not be subject to release under IPRA once it is in the possession of the agency to which TRD disclosed it.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

JC/gb