

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 151

3 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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10 AN ACT

11 RELATING TO ECONOMIC DEVELOPMENT INCENTIVES; REQUIRING
12 RECIPIENTS OF PUBLIC SUPPORT FROM THE STATE PURSUANT TO THE
13 LOCAL ECONOMIC DEVELOPMENT ACT TO REPORT JOB CREATION AND
14 CAPITAL INVESTMENT INFORMATION; AUTHORIZING THE REVEAL OF
15 TAXPAYER RETURN INFORMATION TO STATE PROFESSIONAL ECONOMISTS
16 FOR CERTAIN PURPOSES; IMPOSING A PENALTY ON A PERSON THAT
17 ATTEMPTS TO DIRECT OR COERCE A PERSON TO REVEAL CONFIDENTIAL
18 TAXPAYER RETURN INFORMATION; REQUIRING THE TAXATION AND REVENUE
19 DEPARTMENT TO COMPILE AND PRESENT A TAX EXPENDITURE BUDGET TO
20 THE GOVERNOR AND LEGISLATIVE COMMITTEES; REQUIRING THE ECONOMIC
21 DEVELOPMENT DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT
22 TO PROVIDE INFORMATION TO STATE PROFESSIONAL ECONOMISTS FOR
23 PURPOSES OF EVALUATING TAX EXPENDITURES AND OTHER ECONOMIC
24 DEVELOPMENT INCENTIVES; MAKING AN APPROPRIATION.

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

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

4 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

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

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

18 (1) that is primarily performed in New Mexico;

19 (2) that is held by an employee who is hired
20 to work an average of at least thirty-two hours per week for at
21 least forty-eight weeks per year;

22 (3) that is:

23 (a) involved, directly or in a
24 supervisory capacity, with the production of: 1) a service;
25 provided that the majority of the revenue generated from the

1 service is from sources outside the state; or 2) tangible or
 2 intangible personal property for sale; or

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

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

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

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

20 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights
 21 afforded New Mexico taxpayers during the assessment, collection
 22 and enforcement of any tax administered by the department as
 23 set forth in the Tax Administration Act include:

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

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

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

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

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

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

22 G. the right to seek review, through formal or
23 informal proceedings, of any findings or adverse decisions
24 relating to determinations during audit or protest procedures
25 in accordance with the provisions of Section 7-1-24 NMSA 1978

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1 and the Administrative Hearings Office Act;

2 H. the right to have the taxpayer's tax information
 3 kept confidential unless otherwise specified by law, in
 4 accordance with Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA
 5 1978;

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

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

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

25 SECTION 3. Section 7-1-8 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 13, as amended) is amended to read:

2 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
3 INFORMATION.--

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

8 B. A return or return information revealed [~~under~~]
9 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA
10 1978:

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

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

20 (3) shall at all times be protected from being
21 revealed to an unauthorized person by physical, electronic or
22 any other safeguards specified by directive by the secretary;
23 and

24 (4) shall be returned to the secretary or the
25 secretary's delegate or destroyed as soon as it is no longer

1 required for the authorized purpose.

2 C. If any provision of Sections 7-1-8.1 through
 3 [~~7-1-8.11~~] 7-1-8.12 NMSA 1978 requires that a return or return
 4 information will only be revealed pursuant to a written
 5 agreement between a person and the department, the written
 6 agreement shall:

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

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

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

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

19 D. A return or return information that is lawfully
 20 made public by an employee of the department or any other
 21 person, or that is made public by the taxpayer, is not subject
 22 to the provisions of this section once it is made public."

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

25 "7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE

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1 REVEALED TO STATE PROFESSIONAL ECONOMISTS.--

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

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

21 C. Prior to the initial reveal of return
22 information to a state professional economist, the department
23 and the state professional economist's agency shall enter into
24 a memorandum of understanding for security protocols regarding
25 the confidentiality of the return information. The memorandum

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1 of understanding shall be in effect for any subsequent requests
2 to reveal return information to that agency.

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

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

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

17 (1) improve revenue tracking and forecasting;

18 (2) evaluate tax expenditures and economic
19 development incentives for effectiveness and efficiency or to
20 make recommendations regarding the continuance of such
21 expenditures and incentives; and

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

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

4 H. As used in this section:

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

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

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

18 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS--
19 ATTEMPTS TO DIRECT AN AUTHORIZED PERSON TO REVEAL TAXPAYER
20 INFORMATION--PENALTY.--

21 A. A person who reveals to another person any
22 return or return information that is prohibited from being
23 revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a
24 return or return information for any purpose that is not
25 authorized by Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA

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1 1978 is guilty of a misdemeanor and shall, upon conviction
 2 thereof, be fined not more than one thousand dollars (\$1,000)
 3 or imprisoned up to one year, or both, together with costs of
 4 prosecution, and shall not be employed by the state for a
 5 period of five years after the date of the conviction.

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

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

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

22 A. No later than October 15 of each year, the
 23 secretary shall compile and present a tax expenditure budget to
 24 the governor, the revenue stabilization and tax policy
 25 committee and the legislative finance committee and post the

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1 tax expenditure budget report to the department's website.

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

5 (1) identify the tax expenditure and the
6 expenditure's statutory basis;

7 (2) the year of enactment, amendment or
8 repeal, if any;

9 (3) a brief description of the tax
10 expenditure;

11 (4) the intended purpose of the tax
12 expenditure, if specified in the law providing for the tax
13 expenditure or as otherwise determined by the department;

14 (5) an estimate of the approximate amount of
15 foregone revenue by fiscal year for the three fiscal years
16 preceding the current fiscal year, including the general fund,
17 other state funds and local government revenues;

18 (6) an estimate of the approximate costs in
19 foregone revenue by fiscal year for the current and subsequent
20 fiscal year, if feasible, and a brief description of the
21 methodology and assumptions applied to the forecasted estimate;

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

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1 taxpayer;

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

3 (9) a measure of the reliability of the
4 estimate.

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

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

12 (2) a measure of the tax expenditure's effect
13 on the administration of the tax system.

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

20 E. As used in this section, "tax expenditure" means
21 a deduction, credit, exemption, exclusion, preferential tax
22 rate, subtraction or allowance that reduces tax liability, as
23 determined by the secretary in consultation with the
24 legislative finance committee and the department of finance and
25 administration."

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

3 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
4 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

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

22 B. Upon written request by a state professional
23 economist, including by electronic means, the department shall
24 provide all information obtained by the department that is
25 proprietary technical information or related to an actual or

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1 relocation or expansion of a business; provided that providing
 2 such information shall not violate the terms of a previously
 3 executed agreement with the department. The state professional
 4 economist is prohibited from requesting or using this
 5 information for any purpose other than to evaluate tax
 6 expenditures and economic development incentives for
 7 effectiveness and efficiency or to make recommendations
 8 regarding the continuance of such expenditures and incentives.

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

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

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

21 "9-26-14. DISCLOSURE OF INFORMATION.--

22 A. To the extent permitted by federal law, upon the
 23 written request of a corporation organized pursuant to the
 24 Educational Assistance Act, the department shall furnish the
 25 last known address and the date of that address of every person

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1 certified to the department as being an absent obligor of an
2 educational debt that is due and owed to the corporation or
3 that the corporation has lawfully contracted to collect. The
4 corporation and its officers and employees shall use such
5 information only for the purpose of enforcing the educational
6 debt obligation of such absent obligors and shall not disclose
7 that information or use it for any other purpose.

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

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

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

1 department or the taxation and revenue department."

2 SECTION 9. APPROPRIATION.--One hundred eighty-eight
3 thousand dollars (\$188,000) is appropriated from the general
4 fund to the legislative finance committee for expenditure in
5 fiscal year 2020 to assist the committee in evaluating tax
6 expenditures and other economic development incentives. Any
7 unexpended or unencumbered balance remaining at the end of
8 fiscal year 2020 shall revert to the general fund.

9 SECTION 10. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2019.

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