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

ORIGINAL DATE 2/17/2020
SPONSOR SFl **LAST UPDATED** 2/19/2020 **HB**

SHORT TITLE Reporting Requirements For LEDA Recipients **SB** 52/SFlS

ANALYST Iglesias

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
-	Moderate	Moderate	Moderate	Recurring	LFC, DFA, EDD Operating Budgets
-	$87.0	-	$87.0	Nonrecurring	WSD Operating Budget
-	$121.0	$95.0	$216.0	Recurring	TRD Operating Budget

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

The Senate Floor substitute for Senate Bill 52 does the following:

(1) Adds reporting requirements for Local Economic Development Act (LEDA) recipients;
(2) Requires the Taxation and Revenue Department (TRD) to continue publishing the annual tax expenditure report required by an executive order from the prior administration; and,
(3) 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).

The bill's LEDA reporting provisions require award recipients to report the following information to EDD by April 1 of each year:

- The number of new full-time jobs created in the previous calendar year,

- The job title for those new jobs;
- The total annual wages and salaries for those jobs, and
- Any capital investments made in the previous calendar year.

The bill requires EDD to compile the annual reports and submit them to LFC and the Department of Finance and Administration (DFA).

Regarding the bill's data-sharing provisions, one designated economist at each of the aforementioned agencies may request confidential data for one of the following 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 staff economists are not permitted to reveal any confidential information and any reports must ensure that information cannot directly or indirectly identify a taxpayer. The data-sharing provisions do not apply to TRD data where access is barred by federal law and for EDD data where access would violate an existing nondisclosure agreement. The penalty for unauthorized disclosure remains the same as for any person revealing confidential taxpayer information, and the same penalty is also now applied to anyone attempting to compel or coerce an authorized person to reveal the taxpayer information to someone who is not authorized.

The effective date of this bill is July 1, 2020.

FISCAL IMPLICATIONS

TRD previously provide the following operating budget impacts:

> The bill requires TRD to potentially 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 secure 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. Initial support of requests by state chief economists is estimated at $26 thousand in work load costs but is dependent on the level of support requested.

Estimated Additional Operating Budget Impact*				**Recurring or Nonrecurring**	**Fund(s) or Agency Affected**
FY2020	**FY2021**	**FY2022**	**FY 20-22**		
--	$26	--	$26	Nonrecurring	Taxation and Revenue Department
	$95	$95	$190	Recurring	TRD – Information Technology Division

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

WSD previously provided the following estimated setup costs for the transfer of the specific data and ongoing support. WSD also stated additional fiscal funding for 1.0 FTE would be needed to setup the IT configuration to transmit the confidential data. WSD reported a total operating budget cost of $87 thousand in FY21.

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

This bill would also require LFC and DFA staff to establish new protocols for storing electronic information in order to protect data confidentiality, which may have an operating budget impact.

SIGNIFICANT ISSUES

This bill provides access for LFC and other specified state economists to a portion of the needed data needed to evaluate tax expenditures through two mechanisms. The first is a requirement that TRD continue to publish its annual tax expenditure report, is a useful reference for many purposes that 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.

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. Any attempt at this balancing act has benefits and drawbacks, and there can always be valid concerns about access to confidential taxpayer and client information.

This bill provides limited access to individual taxpayer records sufficient to perform such evaluations but attempts to safeguard the information from disclosure to a wider audience. Access is restricted to only the staff economists of LFC, TRD, DFA, and EDD. 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. Existing statute provides criminal penalties, including fines and significant prison time, for anyone disclosing confidential taxpayer information to unauthorized persons, and this bill does not change that – the economists would not be able to disclose the information to anyone else without being subject to these criminal penalties. The bill does not address how the information should be protected, but any agency participating in the disclosure process would need significant guidance and training from TRD.

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.

TRD previously provided the following policy discussion regarding the data sharing provisions:

> Two taxation policy areas are addressed in this bill: (1) the expansion of sharing taxpayer return data with outside entities, and (2) placing the tax expenditure budget report in statute.
>
> As pertains to Section 4, proposed new Section 7-1-8.12 NMSA 1978 to share taxpayer return data with state professional economists:
>
> There are other options available under current law to solve the problems addressed by this bill. Under current law, TRD can work with outside entities to review data on site if they follow the mandatory IRS trainings for viewing FTI and the state secures an additional sharing agreement with the IRS. This strategy mitigates many of the risks that occur once data leaves the confines of the secure system of record. Given that New Mexico is not a state that has in statute policies to ensure the consistent security of data across all agencies or departments, this would limit the target from outside entities to do harm.
>
> Under current law, senior management at TRD stresses to employees in the Tax Policy Office the important role they play in researching trends and anomalies that only they have the opportunity to research due to their access to confidential taxpayer information. Senior management expects Tax Policy Office staff to be responsive to requests from state and local stakeholders to research and explain trends and anomalies.
>
> 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 Internal Revenue Service (IRS), and the state of New Mexico, through the Taxation and Revenue Department (TRD), protect that confidentiality in federal and state laws. To maintain the trust of the public within a tax system of voluntary compliance, the TRD must consider very carefully any expansions to the access of tax return data, be clear on the intent to that access and work with its partners at the IRS.
>
> 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.
>
> 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.

TRD also previously provided the following discussion regarding the tax expenditure reporting requirements:

Mandating a tax expenditure budget report brings New Mexico in line with the majority of other states that have defined expenditure reporting requirements in state statute. A PEW Charitable Trust report highlighted that New Mexico fails to have a regular evaluation of tax incentives defined in statute.[1] 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.

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, 2020, 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 that DFA, LFC, and/or TRD would 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.

TECHNICAL ISSUES

TRD previously identified the following technical and legal issues, which appear to remain pertinent to the floor substitute of this bill; and, where appropriate, the department provides recommendations for changes to clarify or simplify existing provisions.

As pertains to **Section 1**, proposed new section of the Local Economic Development Act:

The term "public support" is referred to on page 2, line 5 and page 3, line 9. TRD suggests specifying in the language that this refers to public funds.

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[1] "How States Are Improving Tax Incentives for Jobs and Growth: A national assessment of evaluation processes." The Pew Charitable Trusts, May 2017,

The definition of [a "new full-time job" does not identify] what would constitute a "new" job. This definition should be clear in defining a new job versus a replacement of an existing job. There are multiple definitions that have been a point of dispute used in other settings such as the current language from the High Wage Jobs Tax Credit and development projects. As pertains to **Section 4**, proposed new Section 7-1-8.12 NMSA 1978:

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….

Page 9, subsection (D), TRD suggests adding language that the editable electronic format be provided by secure means in order to meet federal and state laws of data confidentiality and security.

As pertains to **Section 5**, amendment to Section 7-1-76 NMSA 1978:

Given that the bill proposes the sharing of tax information to both employees of the state and contractors of the LFC, DFA, and EDD, TRD suggests strengthening the language for the penalties to cover contractors to a fuller extent. TRD suggests adding language on page 11, in subsection (A), line 4 and subsection (B), line 17 to include after "employed", "or contracted" to read "shall not be employed or contracted by the state for a period of five years after the date of conviction."

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.

As pertains to **Section 6**, proposed new section of the Tax Administration Act to place the tax expenditure budget report in statute:

TRD suggests for clarity to refer consistently in the bill to the "Tax Expenditure Budget Report" as opposed to just the "Tax Expenditure Budget."

TRD suggests adding to the lists of definition "baseline of a tax" as listed on page 14, line 7. As taken from the 2018 TRD Tax Expenditure Report, this definition may state: "baseline tax system created by specific tax law provisions."

OTHER SUBSTANTIVE ISSUES

While the economists at LFC, DFA, TRD, and EDD will be able to use existing staff resources for analyzing tax expenditures and economic development incentives, the bill does not contain any appropriation to fund a one-time purchase of software that would allow dynamic modeling of the costs and benefits of these expenditures. A future appropriation for this purpose would strengthen the ability of staff economists to analyze the effectiveness and efficiency of tax expenditures and economic development incentives.

DI/sb/al/rl