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SENATE BILL 259

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO FINANCE; AMENDING THE STATEWIDE ECONOMIC
DEVELOPMENT FINANCE ACT; PROVIDING LOANS AND GRANTS TO
NONPROFIT ORGANIZATIONS TO COMPLETE CAPITAL OUTLAY PROJECTS;
ADDING DEFINITIONS; CREATING THE CAPITAL OUTLAY TRUST FUND;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 6-25-3 NMSA 1978 (being Laws 2003,
Chapter 349, Section 3, as amended) is amended to read:

"6-25-3. DEFINITIONS.--As used in the Statewide Economic
Development Finance Act:

A. "authority" means the New Mexico finance
authority;

B. "department" means the economic development
department;

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1 C. "capital outlay project" means the acquisition,
2 improvement, alteration or reconstruction of assets of a long-
3 term character that are intended to continue to be held or
4 used, including land, buildings, machinery, furniture and
5 equipment;

6 ~~[C.]~~ D. "community development entity" means an
7 entity designed to take advantage of the federal new markets
8 tax credit program;

9 E. "nonprofit organization" means a nonprofit
10 corporation operating in this state that has been granted
11 exemption from federal income tax by the United States
12 commissioner of internal revenue as an organization described
13 in Section 501(c)(3) of the Internal Revenue Code of 1986, as
14 amended;

15 ~~[D.]~~ F. "economic development assistance
16 provisions" means the economic development assistance
17 provisions of Subsection D of Article 9, Section 14 of the
18 constitution of New Mexico;

19 ~~[E.]~~ G. "project revenue bonds" means bonds, notes
20 or other instruments authorized in Section 6-25-7 NMSA 1978 and
21 issued by the authority pursuant to the Statewide Economic
22 Development Finance Act on behalf of eligible entities;

23 ~~[F.]~~ H. "economic development goal" means:

24 (1) assistance to rural and underserved areas
25 designed to increase business activity, including agricultural

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1 enterprises, such as new or ongoing agricultural projects that
2 add value to New Mexico agricultural products;

3 (2) retention and expansion of existing
4 business, including agricultural enterprises, such as new or
5 ongoing agricultural projects that add value to New Mexico
6 agricultural products;

7 (3) attraction of new business, including
8 agricultural enterprises, such as new or ongoing agricultural
9 projects that add value to New Mexico agricultural products; or

10 (4) creation and promotion of an environment
11 suitable for the support of start-up and emerging business,
12 including agricultural enterprises, such as new or ongoing
13 agricultural projects that add value to New Mexico agricultural
14 products within the state;

15 ~~[G.]~~ I. "economic development revolving fund bonds"
16 means bonds, notes or other instruments payable from the fund
17 and issued by the authority pursuant to the Statewide Economic
18 Development Finance Act;

19 ~~[H.]~~ J. "eligible entity" means a for-profit or
20 not-for-profit business, including an agricultural enterprise,
21 such as new or ongoing agricultural projects that add value to
22 New Mexico agricultural products and including a corporation,
23 limited liability company, partnership or other entity,
24 determined by the department to be engaged in an enterprise
25 that serves an economic development goal and is suitable for

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1 financing assistance;

2 ~~[I.]~~ K. "federal new markets tax credit program"
3 means the tax credit program codified as Section 45D of the
4 Internal Revenue Code of 1986, as that section may be amended
5 or renumbered, and regulations issued pursuant to that section;

6 ~~[J.]~~ L. "financing assistance" means project
7 revenue bonds, loans, loan participations or loan guarantees
8 provided by the authority to or for eligible entities pursuant
9 to the Statewide Economic Development Finance Act;

10 ~~[K.]~~ M. "fund" means the economic development
11 revolving fund;

12 ~~[L.]~~ N. "mortgage" means a mortgage, deed of trust
13 or pledge of any assets as a collateral security;

14 ~~[M.]~~ O. "opt-in agreement" means an agreement
15 entered into between the department and a qualifying county, a
16 school district and, if applicable, a qualifying municipality
17 that provides for county, school district and, if applicable,
18 municipal approval of a project, subject to compliance with all
19 local zoning, permitting and other land use rules, and for
20 payments in lieu of taxes to the qualifying county, school
21 district and, if applicable, qualifying municipality as
22 provided by the Statewide Economic Development Finance Act;

23 ~~[N.]~~ P. "payment in lieu of taxes" means the total
24 annual payment, including any state in-lieu payment, paid as
25 compensation for the tax impact of a project, in an amount

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1 negotiated and determined in the opt-in agreement between the
2 department and the qualifying county, the school district and,
3 if applicable, the qualifying municipality, which payment shall
4 be distributed to the county, municipality and school district
5 in the same proportion as property tax revenues are normally
6 distributed to those recipients;

7 ~~[θ-]~~ Q. "standard project" means land, buildings,
8 improvements, machinery and equipment, operating capital and
9 other personal property for which financing assistance is
10 provided for adequate consideration, taking into account the
11 anticipated quantifiable benefits of the standard project, for
12 use by an eligible entity as:

- 13 (1) industrial or manufacturing facilities;
- 14 (2) commercial facilities, including
15 facilities for wholesale sales and services;
- 16 (3) health care facilities, including
17 hospitals, clinics, laboratory facilities and related office
18 facilities;
- 19 (4) educational facilities, including schools;
- 20 (5) arts, entertainment or cultural
21 facilities, including museums, theaters, arenas or assembly
22 halls;
- 23 (6) recreational and tourism facilities,
24 including parks, pools, trails, open space and equestrian
25 facilities; and

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1 (7) agricultural enterprises, including new or
2 ongoing agricultural projects and projects that add value to
3 New Mexico agricultural products;

4 ~~[P.]~~ R. "project" means a standard project or a
5 state project;

6 ~~[Q.]~~ S. "qualifying municipality or county" means a
7 municipality or county that enters into an opt-in agreement;

8 ~~[R.]~~ T. "quantifiable benefits" means a project's
9 advancement of an economic development goal as measured by a
10 variety of factors, including:

11 (1) the benefits an eligible entity contracts
12 to provide, such as local hiring quotas, job training
13 commitments and installation of public facilities or
14 infrastructure; and

15 (2) other benefits such as the total number of
16 direct and indirect jobs created by the project, total amount
17 of annual salaries to be paid as a result of the project, total
18 gross receipts and occupancy tax collections, total property
19 tax collections, total state corporate and personal income tax
20 collections and other fee and revenue collections resulting
21 from the project;

22 ~~[S.]~~ U. "school district" means a school district
23 where a project is located that is exempt from property taxes
24 pursuant to the Statewide Economic Development Finance Act;

25 ~~[T.]~~ V. "state in-lieu payment" means an annual

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1 payment, in an amount determined by the department, that will
2 be distributed to a qualifying county, a school district and,
3 if applicable, a qualifying municipality in the same proportion
4 as property tax revenues are normally distributed to those
5 recipients;

6 [U-] W. "state project" means land, buildings or
7 infrastructure for facilities to support new or expanding
8 eligible entities for which financing assistance is provided
9 pursuant to the economic development assistance provisions; and

10 [V-] X. "tax impact of a project" means the annual
11 reduction in property tax revenue to affected property tax
12 revenue recipients directly resulting from the conveyance of a
13 project to the department."

14 **SECTION 2.** Section 6-25-6 NMSA 1978 (being Laws 2016,
15 Chapter 38, Section 1, as amended) is amended to read:

16 "6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS
17 AND DUTIES.--

18 A. To implement a program to assist eligible
19 entities in financing projects, the authority has the powers
20 specified in this section.

21 B. State projects receiving financing assistance
22 with money in the fund shall first be approved by law. To
23 protect public money in the fund or other public resources,
24 rules of the authority relating to state projects shall include
25 provisions to ensure achievement of the economic development

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1 goals of the state project and shall describe the means of
2 recovering public money or other public resources if an
3 eligible entity defaults on its obligations to the authority.

4 C. Standard projects receiving financing assistance
5 with money in the fund shall be approved by the authority
6 pursuant to rules approved by the New Mexico finance authority
7 oversight committee. Beginning July 1, 2027, standard projects
8 shall first be approved by law.

9 D. The authority may:

10 (1) issue project revenue bonds on behalf of
11 an eligible entity, payable from the revenues of a project and
12 other revenues authorized as security for the bonds, to finance
13 a project on behalf of an eligible entity;

14 (2) make loans from the fund for projects to
15 eligible entities that establish one or more dedicated sources
16 of revenue to repay the loan from the authority;

17 (3) enter into loan participation agreements
18 from the fund for projects, whether in the form of an interest
19 rate buy-down, the purchase of loans or portions of loans
20 originated and underwritten by third-party lenders or other
21 similar arrangements;

22 (4) provide loan guarantees from the fund for
23 projects;

24 (5) make loans and grants from the fund for
25 capital outlay projects;

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1 [~~5~~] (6) make, execute and enforce all
2 contracts necessary, convenient or desirable for purposes of
3 the authority or pertaining to project revenue bonds, economic
4 development revolving fund bonds, loans, loan participations or
5 loan guarantees and the Statewide Economic Development Finance
6 Act and pay the reasonable value of services rendered to the
7 authority pursuant to the contracts;

8 [~~6~~] (7) purchase and hold loans and loan
9 participations in the fund at prices and in a manner determined
10 by the authority;

11 [~~7~~] (8) sell loans and loan participations
12 acquired or held by the authority in the fund at prices and in
13 a manner determined by the authority;

14 [~~8~~] (9) prescribe the form of application or
15 procedure required of:

16 (a) an eligible entity to apply for
17 financing assistance; and

18 (b) a nonprofit organization to receive
19 loans and grants for capital outlay projects;

20 [~~9~~] (10) fix the terms and conditions of the
21 financing assistance, including the priority of lien and type
22 of collateral or other security, and enter into agreements with
23 eligible entities with respect to financing assistance;

24 [~~10~~] (11) fix, revise from time to time,
25 charge and collect fees and other charges in connection with

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1 the issuance of bonds; the making, purchase, participation in
2 or guarantee of loans; and the review of proposed financing
3 assistance to an eligible entity, whether or not the financing
4 assistance is provided;

5 [~~(11)~~] (12) employ architects, engineers,
6 accountants and attorneys; construction and financial experts;
7 and such other advisors, consultants and agents as may be
8 necessary in its judgment, and fix and pay their compensation;

9 [~~(12)~~] (13) to the extent allowed under its
10 contracts with the holders of bonds of the authority, consent
11 to modification of the rate of interest, time and payment of
12 installments of principal or interest, security or any other
13 term of financing assistance;

14 [~~(13)~~] (14) consider the ability of the
15 eligible entity to secure financing for a project from other
16 sources and the costs of that financing;

17 [~~(14)~~] (15) acquire fee simple, leasehold,
18 mortgagor's or mortgagee's interests in real or personal
19 property and sell, mortgage, convey, lease or assign that
20 property for authority purposes; and

21 [~~(15)~~] (16) in the event of default by an
22 eligible entity, enforce its rights by suit, mandamus and all
23 other remedies available under law.

24 E. The authority shall adopt rules subject to
25 approval of the New Mexico finance authority oversight

1 committee to:

2 (1) establish procedures for applying for
3 financing assistance;

4 (2) establish credit qualifications for
5 eligible entities and establish terms and conditions for
6 financing assistance;

7 (3) establish economic development goals for
8 projects in consultation with the department;

9 (4) establish methods for determining
10 quantifiable benefits;

11 (5) provide safeguards to protect public money
12 and other public resources provided for a state project;

13 (6) establish procedures by which the
14 authority requests approval by law for projects receiving
15 financing assistance with money in the fund; and

16 (7) establish fees to pay the costs of
17 evaluating, originating and administering financing assistance.

18 F. The authority shall coordinate with the
19 department to provide staffing and other assistance to the
20 department in carrying out the department's responsibilities
21 and activities pursuant to the Statewide Economic Development
22 Finance Act.

23 G. The authority shall report to the New Mexico
24 finance authority oversight committee twice each year regarding
25 the total expenditures from the economic development revolving

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1 fund for the previous fiscal year, the purposes for which
2 expenditures were made, an analysis of the progress of the
3 projects funded and proposals for legislative action."

4 SECTION 3. A new section of the Statewide Economic
5 Development Finance Act is enacted to read:

6 "[NEW MATERIAL] CAPITAL OUTLAY PROJECTS--LOANS AND
7 GRANTS--RULES--TERMS--REPAYMENT--LOAN FORGIVENESS.--

8 A. Beginning June 1, 2025, the authority shall
9 administer loans and grants to nonprofit organizations to
10 complete capital outlay projects. Applications shall be made
11 on forms and in a manner prescribed by the authority. The
12 authority shall receive and review applications for loans and
13 grants for capital outlay projects. If the authority
14 determines that a capital outlay project is eligible for a loan
15 or a grant, the authority may enter into a contract with a
16 nonprofit organization.

17 B. Loans shall not be subject to repayment if the
18 terms of the contract, including the completion of the capital
19 outlay project, are carried out by the nonprofit organization.

20 C. As necessary to implement this section, upon
21 completion of a capital outlay project, the nonprofit
22 organization shall hold title in fee simple of any real
23 property purchased by the nonprofit organization in the course
24 of fulfilling the contract; provided that a breach of the terms
25 of the contract of a loan or a grant shall preclude the

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1 nonprofit organization from obtaining title to the property."

2 SECTION 4. A new section of the Statewide Economic
3 Development Finance Act is enacted to read:

4 "[NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--ADDITIONAL
5 POWERS--CAPITAL OUTLAY PROJECTS.--In providing loans and grants
6 for capital outlay projects pursuant to Section 3 of this 2024
7 act, the authority shall:

8 A. promulgate rules:

9 (1) for application, including requirements
10 for loans and grants;

11 (2) establishing procedures for review,
12 evaluation and approval of loan and grant applications;

13 (3) governing the terms of the loan or grant
14 contract;

15 (4) establishing requirements for repayment of
16 loans, including payment schedules, interest rates and loan
17 terms; and

18 (5) governing loan forgiveness;

19 B. on or before August 1 of each year, evaluate
20 proposed capital outlay projects on the merits of those
21 projects, which includes considering:

22 (1) a nonprofit organization's capacity to
23 fulfill the proposed capital outlay project;

24 (2) other sources of funding available to
25 complete the proposed capital outlay project;

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1 (3) the ability to repay monetary obligations
2 as result of the loan; and

3 (4) whether the proposed capital outlay
4 project meets the needs of the community where it would occur;
5 and

6 C. seek recoupment of an outstanding loan balance."

7 SECTION 5. A new section of the Statewide Economic
8 Development Finance Act is enacted to read:

9 "[NEW MATERIAL] CAPITAL OUTLAY TRUST FUND--CREATED--
10 INVESTMENT--DISTRIBUTION.--

11 A. The "capital outlay trust fund" is created in
12 the state treasury. The capital outlay trust fund consists of
13 appropriations, distributions, gifts, grants, donations and
14 money otherwise accruing to the fund. Money in the capital
15 outlay trust fund shall be invested by the state investment
16 officer as land grant permanent funds are invested pursuant to
17 Chapter 6, Article 8 NMSA 1978. Income from investment of the
18 capital outlay trust fund shall be credited to the capital
19 outlay trust fund. Except as provided in Subsection B of this
20 section, money in the capital outlay trust fund shall not be
21 expended for any purpose.

22 B. On July 1, 2025 and each July 1 of each year
23 thereafter, a distribution shall be made from the capital
24 outlay trust fund to the economic development revolving fund in
25 the amount of one million dollars (\$1,000,000) until that

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1 amount is less than an amount equal to four and seven-tenths
2 percent of the average of the year-end market values of the
3 capital outlay trust fund for the immediately preceding five
4 calendar years. Thereafter, the amount of the distribution
5 shall be four and seven-tenths percent of the average of the
6 year-end market values of the capital outlay trust fund for the
7 immediately preceding five calendar years."

8 SECTION 6. Section 6-25-13 NMSA 1978 (being Laws 2003,
9 Chapter 349, Section 13, as amended) is amended to read:

10 "6-25-13. ECONOMIC DEVELOPMENT REVOLVING FUND.--

11 A. The "economic development revolving fund" is
12 created within the authority. The fund shall be administered
13 by the authority as a separate account and may consist of such
14 subaccounts as the authority deems necessary to carry out the
15 purposes of the fund. The authority may establish procedures
16 for administering the fund in accordance with the Statewide
17 Economic Development Finance Act.

18 B. [~~Except as otherwise provided in the Statewide~~
19 ~~Economic Development Finance Act]~~ Money from payments of
20 principal of, interest on and other fees or charges paid to the
21 authority in connection with economic development revolving
22 fund bonds, loans, project revenue bonds purchased with money
23 on deposit in the fund, loan participations, [~~and~~] loan
24 guarantees and distributions from the capital outlay trust fund
25 shall be deposited in the fund.

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1 C. Money in the economic development revolving fund
2 is appropriated to the authority to:

- 3 (1) pay the reasonably necessary
4 administrative and other costs incurred by the authority in
5 evaluating, processing, originating and servicing economic
6 development revolving fund bonds, loans, grants, project
7 revenue bonds, loan participations and loan guarantees;
8 (2) purchase loan participations for projects;
9 (3) make loans for projects;
10 (4) make loan guarantees for projects; [~~and~~]
11 (5) make loans for capital outlay projects;
12 (6) make grants for capital outlay projects;

13 and

- 14 [~~(5)~~] (7) purchase project revenue bonds.

15 D. Money in the economic development revolving fund
16 that is not needed for immediate disbursement, including money
17 held in reserve, may be deposited or invested in the same
18 manner as other funds administered by the authority.

19 E. Money on deposit in the economic development
20 revolving fund may be designated as a reserve for economic
21 development revolving fund bonds issued and for financing
22 assistance provided from the fund by the authority pursuant to
23 the Statewide Economic Development Finance Act and the
24 authority may covenant in any resolution or trust indenture to
25 maintain and replenish the reserve from money deposited in the

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1 fund.

2 F. Money in the economic development revolving fund
3 may be used to purchase project revenue bonds issued by the
4 authority pursuant to the Statewide Economic Development
5 Finance Act, which are payable from any designated source of
6 revenues or collateral. Purchasing and holding the bonds shall
7 not result in cancellation or merger of the bonds,
8 notwithstanding the fact that the authority as the issuer of
9 the bonds is obligated to make the required debt service
10 payments and the fund held by the authority is entitled to
11 receive the required debt service payments."

12 SECTION 7. REPEAL.--Sections 6-26-1 through 6-26-8,
13 24-1C-1 through 24-1C-10 and 24-24-1 through 24-24-4 NMSA 1978
14 (being Laws 2004, Chapter 71, Sections 1 through 8, Laws 1994,
15 Chapter 62, Sections 7 through 12, 15 and 16 and Laws 2003,
16 Chapter 316, Sections 1 through 4, as amended) are repealed.

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