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SENATE BILL 5

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO BUSINESS; AMENDING DEFINITIONS IN THE LOCAL ECONOMIC DEVELOPMENT ACT AND CONFORMING RELATED SECTIONS OF THE ACT; PROVIDING THAT A PORTION OF STATE AND LOCAL GROSS RECEIPTS AND COMPENSATING TAX REVENUE IMPOSED ON CERTAIN ECONOMIC DEVELOPMENT PROJECTS MAY BE PROVIDED AS PUBLIC SUPPORT FOR THE PROJECTS; CHANGING THE NAME OF THE "LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND" TO THE "LOCAL ECONOMIC DEVELOPMENT ACT FUND" AND THE PERMITTED USES OF THE FUND; CREATING A PROGRAM WITH THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE GRANTS TO CERTAIN BUSINESSES TO REIMBURSE RENT AND LEASE PAYMENTS FROM FUNDING TRANSFERRED TO THE ECONOMIC DEVELOPMENT DEPARTMENT FROM THE SEVERANCE TAX PERMANENT FUND; DECLARING AN EMERGENCY.

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

SECTION 1. Section 5-10-3 NMSA 1978 (being Laws 1993,

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1 Chapter 297, Section 3, as amended) is amended to read:

2 "5-10-3. DEFINITIONS.--As used in the Local Economic
3 Development Act:

4 A. "arts and cultural district" means a developed
5 district of public and private uses that is created pursuant to
6 the Arts and Cultural District Act;

7 B. "broadband telecommunications network
8 facilities" means the electronics, equipment, transmission
9 facilities, fiber-optic cables and any other item directly
10 related to a system capable of transmission of internet
11 protocol or other formatted data at current federal
12 communications commission minimum speed standard, all of which
13 will be owned and used by a provider of internet access
14 services;

15 C. "cultural facility" means a facility that is
16 owned by the state, a county, a municipality or a qualifying
17 entity that serves the public through preserving, educating and
18 promoting the arts and culture of a particular locale,
19 including theaters, museums, libraries, galleries, cultural
20 compounds, educational organizations, performing arts venues
21 and organizations, fine arts organizations, studios and media
22 laboratories and live-work housing facilities;

23 D. "department" means the economic development
24 department;

25 E. "economic development project" or "project"

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1 means the ~~[provision of public support or assistance by the~~
2 ~~state to a local or regional government or the provision of~~
3 ~~direct or indirect assistance to a qualifying entity by a local~~
4 ~~or regional government. "Economic development project":~~

5 (1) ~~includes:~~

6 (a) ~~the purchase, lease, grant,~~
7 ~~construction, reconstruction, improvement or other acquisition~~
8 ~~or conveyance of land, buildings or other infrastructure;~~

9 (b) ~~rights-of-way infrastructure,~~
10 ~~including trenching and conduit, for the placement of new~~
11 ~~broadband telecommunications network facilities;~~

12 (c) ~~public works improvements essential~~
13 ~~to the location or expansion of a qualifying entity;~~

14 (d) ~~payments for professional services~~
15 ~~contracts necessary for local or regional governments to~~
16 ~~implement a plan or project;~~

17 (e) ~~the provision of direct loans or~~
18 ~~grants for land, buildings or infrastructure;~~

19 (f) ~~technical assistance to cultural~~
20 ~~facilities;~~

21 (g) ~~loan guarantees securing the cost of~~
22 ~~land, buildings or infrastructure in an amount not to exceed~~
23 ~~the revenue that may be derived from an increment of the: 1)~~
24 ~~municipal gross receipts tax imposed at a rate not to exceed~~
25 ~~one-fourth percent and dedicated by the ordinance imposing the~~

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1 ~~increment to a project; or 2) county gross receipts tax imposed~~
2 ~~at a rate not to exceed one eighth percent and dedicated by the~~
3 ~~ordinance imposing the increment to a project;~~

4 ~~(h) grants for public works~~
5 ~~infrastructure improvements essential to the location or~~
6 ~~expansion of a qualifying entity and grants or subsidies to~~
7 ~~cultural facilities;~~

8 ~~(i) the purchase of land for a publicly~~
9 ~~held industrial park or a publicly owned cultural facility; and~~

10 ~~(j) the construction of a building for~~
11 ~~use by a qualifying entity; but~~

12 ~~(2) does not include the purchase, lease,~~
13 ~~grant or other acquisition or conveyance of water rights]~~
14 project of a qualifying entity for which public support may be
15 provided pursuant to the Local Economic Development Act;

16 F. "governing body" means the city council, city
17 commission or board of trustees of a municipality or the board
18 of county commissioners of a county;

19 G. "local government" means a municipality or
20 county;

21 H. "municipality" means an incorporated city, town
22 or village;

23 I. "new full-time economic base job" means a job:

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

25 (2) that is held by an employee who is hired

1 to work an average of at least thirty-two hours per week for at
2 least forty-eight weeks per year;

3 (3) that is:

4 (a) involved, directly or in a
5 supervisory capacity, with the production of: 1) a service;
6 provided that the majority of the revenue generated from the
7 service is from sources outside the state; or 2) tangible or
8 intangible personal property for sale; or

9 (b) held by an employee who is employed
10 at a regional, national or international headquarters operation
11 or at an operation that primarily provides services for other
12 operations of the qualifying entity that are located outside
13 the state; and

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

20 J. "person" means an individual, corporation,
21 association, partnership or other legal entity;

22 K. "public support" means the provision of
23 assistance by the state to a local or regional government or
24 the provision of direct or indirect assistance to a qualifying
25 entity by a local or regional government for an economic

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1 development project. "Public support":

2 (1) includes the provision of:

3 (a) land, buildings or other
4 infrastructure, by purchase, lease, grant, construction,
5 reconstruction, improvement or other acquisition or conveyance;

6 (b) rights-of-way infrastructure,
7 including trenching and conduit, for the placement of new
8 broadband telecommunications network facilities;

9 (c) public works improvements essential
10 to the location or expansion of a qualifying entity;

11 (d) payments for professional services
12 contracts necessary for local or regional governments to
13 implement a plan or provide public support for a project;

14 (e) direct loans or grants for land,
15 buildings or infrastructure;

16 (f) technical assistance to cultural
17 facilities;

18 (g) loan guarantees securing the cost of
19 land, buildings or infrastructure in an amount not to exceed
20 the revenue that may be derived from an increment of the: 1)
21 municipal gross receipts tax imposed at a rate not to exceed
22 one-fourth percent and dedicated by the ordinance imposing the
23 increment for projects; or 2) county gross receipts tax imposed
24 at a rate not to exceed one-eighth percent and dedicated by the
25 ordinance imposing the increment for projects;

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1 (h) grants for public works
2 infrastructure improvements essential to the location or
3 expansion of a qualifying entity and grants or subsidies to
4 cultural facilities;

5 (i) land for a publicly held industrial
6 park or a publicly owned cultural facility, by purchase; and

7 (j) the construction of a building for
8 use by a qualifying entity; but

9 (2) does not include the purchase, lease,
10 grant or other acquisition or conveyance of water rights;

11 ~~[K-]~~ L. "qualifying entity" means a corporation,
12 limited liability company, partnership, joint venture,
13 syndicate, association or other person that is one or a
14 combination of two or more of the following:

15 (1) an industry for the manufacturing,
16 processing or assembling of agricultural or manufactured
17 products;

18 (2) a commercial enterprise for storing,
19 warehousing, distributing or selling products of agriculture,
20 mining or industry, but, other than as provided in Paragraph
21 (5), (6) or (9) of this subsection, not including any
22 enterprise for sale of goods or commodities at retail or for
23 distribution to the public of electricity, gas, water or
24 telephone or other services commonly classified as public
25 utilities;

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1 (3) a business, including a restaurant or
2 lodging establishment, in which all or part of the activities
3 of the business involves the supplying of services to the
4 general public or to governmental agencies or to a specific
5 industry or customer, but, other than as provided in Paragraph
6 (5) or (9) of this subsection, not including businesses
7 primarily engaged in the sale of goods or commodities at
8 retail;

9 (4) an Indian nation, tribe or pueblo or a
10 federally chartered tribal corporation;

11 (5) a telecommunications sales enterprise that
12 makes the majority of its sales to persons outside New Mexico;

13 (6) a facility for the direct sales by growers
14 of agricultural products, commonly known as farmers' markets;

15 (7) a business that is the developer of a
16 metropolitan redevelopment project;

17 (8) a cultural facility; and

18 (9) a retail business;

19 ~~[M.]~~ M. "regional government" means any combination
20 of municipalities and counties that enter into a joint powers
21 agreement to provide public support for economic development
22 projects pursuant to a plan adopted by all parties to the joint
23 powers agreement; and

24 ~~[M.]~~ N. "retail business" means a business that is
25 primarily engaged in the sale of goods or commodities at retail

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1 and that is located in a municipality with a population,
2 according to the most recent federal decennial census, of:

3 (1) fifteen thousand or less; or

4 (2) more than fifteen thousand but less than
5 thirty-five thousand if:

6 (a) the economic development project is
7 not funded or financed with state government revenues; and

8 (b) the business created through the
9 project will not directly compete with an existing business
10 that is: 1) in the municipality; and 2) engaged in the sale of
11 the same or similar goods or commodities at retail."

12 SECTION 2. Section 5-10-4 NMSA 1978 (being Laws 1993,
13 Chapter 297, Section 4, as amended) is amended to read:

14 "5-10-4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON
15 PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

16 A. No local or regional government shall provide
17 public support for economic development projects as permitted
18 pursuant to Article 9, Section 14 of the constitution of
19 New Mexico except as provided in the Local Economic Development
20 Act or as otherwise permitted by law.

21 B. The total amount of public money expended and
22 the value of credit pledged in the fiscal year in which that
23 money is expended by a local government for economic
24 development projects pursuant to Article 9, Section 14 of the
25 constitution of New Mexico and the Local Economic Development

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1 Act shall not exceed ten percent of the annual general fund
2 expenditures of the local government in that fiscal year. The
3 limits of this subsection shall not apply to:

4 (1) the value of any land or building
5 contributed to any project pursuant to a project participation
6 agreement;

7 (2) revenue generated through the imposition
8 of an increment of the municipal gross receipts tax at a rate
9 not to exceed one-fourth percent and dedicated to furthering or
10 implementing economic development plans and projects as defined
11 in the Local Economic Development Act or projects as defined in
12 the Statewide Economic Development Finance Act; provided that
13 no more than the greater of fifty thousand dollars (\$50,000) or
14 ten percent of the revenue collected shall be used for
15 promotion and administration of or professional services
16 contracts related to the implementation of any such economic
17 development plan adopted by the governing body;

18 (3) revenue generated through the imposition
19 of an increment of the county gross receipts tax at a rate not
20 to exceed one-eighth percent and dedicated to furthering or
21 implementing economic development plans and projects as defined
22 in the Local Economic Development Act or projects as defined in
23 the Statewide Economic Development Finance Act; provided that
24 no more than the greater of fifty thousand dollars (\$50,000) or
25 ten percent of the revenue collected shall be used for

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1 promotion and administration of or professional services
2 contracts related to the implementation of any such economic
3 development plan adopted by the governing body;

4 (4) the proceeds of a revenue bond issue to
5 which municipal infrastructure gross receipts tax revenue is
6 pledged;

7 (5) the proceeds of a revenue bond issue to
8 which the revenue from an increment of the county gross
9 receipts tax, imposed at a rate not to exceed one-eighth
10 percent and dedicated by the ordinance imposing the increment
11 to ~~[a project]~~ provide public support for projects, is pledged;
12 or

13 (6) funds donated by private entities to be
14 used for defraying the cost of a project.

15 C. A regional or local government that generates
16 revenue for economic development projects to which the limits
17 of Subsection B of this section do not apply shall create an
18 economic development fund into which such revenues shall be
19 deposited. The economic development fund and income from the
20 economic development fund shall be deposited as provided by
21 law. Money in the economic development fund may be expended
22 only as provided in the Local Economic Development Act or the
23 Statewide Economic Development Finance Act.

24 D. In order to expend money from an economic
25 development fund for arts and cultural district purposes,

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1 cultural facilities or retail businesses, the governing body of
2 a municipality or county that has imposed a municipal or county
3 local option infrastructure gross receipts tax for furthering
4 or implementing economic development plans and providing public
5 support for projects as defined in the Local Economic
6 Development Act or projects as defined in the Statewide
7 Economic Development Finance Act by referendum of the majority
8 of the voters voting on the question approving the ordinance
9 imposing the municipal or county infrastructure gross receipts
10 tax before July 1, 2013 shall be required to adopt a
11 resolution. The resolution shall call for an election to
12 approve arts and cultural districts as a qualifying purpose and
13 cultural facilities or retail businesses as a qualifying entity
14 before any revenue generated by the municipal or county local
15 option gross receipts tax for furthering or implementing
16 economic development plans and providing public support for
17 projects as defined in the Local Economic Development Act or
18 projects as defined in the Statewide Economic Development
19 Finance Act can be expended from the economic development fund
20 for arts and cultural district purposes, cultural facilities or
21 retail businesses.

22 E. The governing body shall adopt a resolution
23 calling for an election within seventy-five days of the date
24 the ordinance is adopted on the question of approving arts and
25 cultural districts as a qualifying purpose and cultural

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1 facilities or retail businesses as a qualifying entity eligible
2 to utilize revenue generated by the Municipal Local Option
3 Gross Receipts and Compensating Taxes Act or the County Local
4 Option Gross Receipts and Compensating Taxes Act for furthering
5 or implementing economic development plans and providing public
6 support for projects as defined in the Local Economic
7 Development Act or projects as defined in the Statewide
8 Economic Development Finance Act.

9 F. The question shall be submitted to the voters of
10 the municipality or county as a separate question at a regular
11 local or county election or at a special election called for
12 that purpose by the governing body. A special local election
13 shall be called, conducted and canvassed as provided in the
14 Local Election Act. A special county election shall be called,
15 conducted and canvassed in substantially the same manner as
16 provided by law for general elections.

17 G. If a majority of the voters voting on the
18 question approves the ordinance adding arts and cultural
19 districts and cultural facilities or retail businesses as an
20 approved use of the local option municipal or county economic
21 development infrastructure gross receipts tax fund, the
22 ordinance shall become effective on July 1 or January 1,
23 whichever date occurs first after the expiration of three
24 months from the date of the adopted ordinance. The ordinance
25 shall include the effective date."

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1 SECTION 3. Section 5-10-6 NMSA 1978 (being Laws 1993,
2 Chapter 297, Section 6, as amended) is amended to read:

3 "5-10-6. ECONOMIC DEVELOPMENT PLAN--CONTENTS--
4 PUBLICATION.--

5 A. Every local or regional government seeking to
6 pursue economic development projects shall adopt an economic
7 development plan or a comprehensive plan that includes an
8 economic development component, and an economic development
9 plan or comprehensive plan may include an analysis of the role
10 of arts and cultural activities in economic development. The
11 plan may be specific to a single economic development goal or
12 strategy or may include several goals or strategies, including
13 any goals or strategies relating to economic development
14 through arts and cultural activities. Any plan or plan
15 amendment shall be adopted by ordinance of the governing body
16 of the local government or each local government of a regional
17 government proposing the plan or plan amendment.

18 B. The economic development plan or the ordinance
19 adopting the plan may:

20 (1) describe the local or regional
21 government's economic development and community goals,
22 including any economic development goals with an arts and
23 cultural component, and assign priority to and strategies for
24 achieving those goals;

25 (2) describe the types of qualifying entities

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1 and economic activities that will qualify for [~~economic~~
2 ~~development projects~~] public support;

3 (3) describe the criteria to be used to
4 determine eligibility [~~of an economic development project~~] for
5 public support and a qualifying entity to participate in an
6 economic development project;

7 (4) describe the manner in which a qualifying
8 entity may submit an [~~economic development project~~] application
9 for public support pursuant to Section 5-10-8 NMSA 1978,
10 including the type of information required from the qualifying
11 entity sufficient to ensure its solvency and ability to perform
12 its contractual obligations, its commitment to remain in the
13 community and its commitment to the stated economic development
14 goals of the local or regional government;

15 (5) describe the process the local or regional
16 government will use to verify the information submitted on an
17 [~~economic development project~~] application for public support
18 pursuant to Section 5-10-8 NMSA 1978;

19 (6) if an economic development project is
20 determined to be unsuccessful or if a qualifying entity seeks
21 to leave the area, describe the methods the local or regional
22 government will use to terminate [~~its economic assistance~~] the
23 local or regional government's public support and recoup its
24 investment;

25 (7) identify revenue sources, including those

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1 of the local or regional government, that will be used to
2 provide public support for economic development projects;

3 (8) identify other resources the local or
4 regional government is prepared to offer qualifying entities,
5 including specific land or buildings it is willing to lease,
6 sell or grant a qualifying entity; community infrastructure it
7 is willing to build, extend or expand, including roads, water,
8 sewers or other utilities; and professional services contracts
9 by local or regional governments necessary to provide these
10 resources;

11 (9) detail the minimum benefit the local or
12 regional government requires from a qualifying entity,
13 including the number and types of jobs to be created; the
14 proposed payroll; repayment of loans, if any; purchase by the
15 qualifying entity of local or regional government-provided
16 land, buildings or infrastructure; the public to private
17 investment ratio; and direct local tax base expansion;

18 (10) describe the safeguards of public
19 resources that will be ensured, including specific ways the
20 local or regional government can recover any costs, land,
21 buildings or other thing of value if a qualifying entity ceases
22 operation, relocates or otherwise defaults or reneges on its
23 contractual or implied obligations to the local or regional
24 government; and

25 (11) if a regional government, describe the

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1 joint powers agreement, including whether it can be terminated
2 and, if so, how the contractual or other obligations, risks and
3 any property will be assigned or divided among the local
4 governments who are party to the agreement.

5 C. The economic development plan shall be printed
6 and made available to the residents within the local or
7 regional government area."

8 SECTION 4. Section 5-10-7 NMSA 1978 (being Laws 1993,
9 Chapter 297, Section 7) is amended to read:

10 "5-10-7. REGIONAL PLANS--JOINT POWERS AGREEMENT--REGIONAL
11 GOVERNMENT.--

12 A. Two or more municipalities, two or more counties
13 or one or more municipalities and counties may enter into a
14 joint powers agreement pursuant to the Joint Powers Agreements
15 Act to develop a regional economic development plan, which may
16 consist of existing local plans. The parties to the agreement
17 shall be deemed a regional government for the purposes of the
18 Local Economic Development Act.

19 B. The joint powers agreement shall require that
20 the governing body of each local government approve public
21 support for each economic development project. The agreement
22 may also provide for appointment of a project manager who shall
23 be responsible for the management of projects and project
24 funds. The agreement may provide for a regional body
25 consisting of representatives from the governing bodies of each

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1 local government that is a party to the agreement and may
2 determine the powers and duties of that body in implementing
3 the regional government's plan and providing public support for
4 projects."

5 SECTION 5. Section 5-10-8 NMSA 1978 (being Laws 1993,
6 Chapter 297, Section 8) is amended to read:

7 "5-10-8. [~~ECONOMIC DEVELOPMENT PROJECT~~] APPLICATIONS FOR
8 PUBLIC SUPPORT.--

9 A. After the adoption of an economic development
10 plan by a local or regional government, a qualifying entity
11 shall submit to the local or regional government an [~~economic~~
12 ~~development project~~] application for public support of a
13 qualifying entity's economic development project.

14 B. The application shall be on a form and require
15 such information as the local or regional government deems
16 necessary."

17 SECTION 6. Section 5-10-9 NMSA 1978 (being Laws 1993,
18 Chapter 297, Section 9, as amended) is amended to read:

19 "5-10-9. PROJECT EVALUATION--DEPARTMENT.--

20 A. The local or regional government shall review
21 each [~~project~~] application for public support submitted
22 pursuant to Section 5-10-8 NMSA 1978, and [~~projects~~] any public
23 support shall be approved by ordinance.

24 B. The local or regional government's evaluation of
25 an application shall be based on the provisions of the economic

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1 development plan, the financial and management stability of the
2 qualifying entity, the demonstrated commitment of the
3 qualifying entity to the community, a cost-benefit analysis of
4 the project and any other information the local or regional
5 government believes is necessary for a full review of the
6 economic development project application.

7 C. The local or regional government may negotiate
8 with a qualifying entity on the type or amount of ~~[assistance]~~
9 public support to be provided or on the scope of the economic
10 development project."

11 SECTION 7. Section 5-10-11 NMSA 1978 (being Laws 1993,
12 Chapter 297, Section 11) is amended to read:

13 "5-10-11. PROJECT REVENUES--SPECIAL FUND--ANNUAL AUDIT.--

14 A. Local or regional government revenues dedicated
15 or pledged for ~~[funding or financing of]~~ public support for
16 economic development projects shall be deposited in a separate
17 account. Separate accounts shall be established for each
18 separate project. Money in the special account shall be
19 expended only for economic development project purposes, which
20 may include the payment of necessary professional services
21 contract costs.

22 B. In the case of a regional government, revenues
23 of each local government dedicated or pledged for economic
24 development purposes shall be deposited in a special account of
25 that local government and may be expended only by that local

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1 government as provided by the regional government's economic
2 development plan and joint powers agreement.

3 C. The local or regional government shall provide
4 for an annual independent audit in accordance with the Audit
5 Act of each special fund and project account. The audit shall
6 be submitted to the local or regional government. The audit is
7 a public record."

8 SECTION 8. Section 5-10-12 NMSA 1978 (being Laws 1993,
9 Chapter 297, Section 12) is amended to read:

10 "5-10-12. PLAN AND PROJECT TERMINATION.--

11 A. At any time after approval of an economic
12 development plan, the governing body of the local government or
13 the governing body of each local government in a regional
14 government may enact an ordinance terminating the economic
15 development plan and dissolving or terminating any or all
16 public support for economic development projects. An ordinance
17 repealing an economic development plan shall not be effective
18 unless the ordinance provides for satisfying existing contracts
19 and the rights of the parties arising from those contracts.

20 B. Any unexpended and unencumbered balances
21 remaining in any project fund or account upon repeal of a plan
22 and termination of public support for or dissolution of a
23 project may be transferred to the general fund of the local
24 government holding the fund or account. In the case of funds
25 or accounts of a regional government, the unexpended and

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1 unencumbered balances shall be divided among the local
2 governments as provided in the joint powers agreement."

3 SECTION 9. Section 5-10-14 NMSA 1978 (being Laws 2020,
4 Chapter 74, Section 1) is amended to read:

5 "5-10-14. LOCAL [~~AND REGIONAL~~] ECONOMIC DEVELOPMENT
6 [~~SUPPORT~~] ACT FUND [~~ECONOMIC DEVELOPMENT DEPARTMENT~~].--

7 A. The "Local [~~and regional~~] Economic Development
8 [~~support~~] Act fund" is created in the state treasury. [~~The~~
9 ~~fund consists of gifts, grants, donations and bequests made to~~
10 ~~the fund and appropriations made to the department for projects~~
11 ~~pursuant to the Local Economic Development Act.~~] Income from
12 the fund shall be credited to the fund. Money in the fund
13 shall not revert or be transferred to any other fund at the end
14 of a fiscal year. [~~B.~~] The department shall administer the
15 fund, and money in the fund is appropriated to the department
16 to pay the cost of administering the fund and for
17 [~~participation in local and regional~~] economic development
18 projects [~~as determined by the department~~] pursuant to the
19 Local Economic Development Act. [~~C.~~] Money in the fund shall
20 be expended on warrants of the department of finance and
21 administration pursuant to vouchers signed by the secretary of
22 economic development.

23 B. The following may be used to provide public
24 support for economic development projects of qualifying
25 entities pursuant to Section 10 of this 2021 act:

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1 (1) up to fifty-six and twenty-five hundredths
2 percent of the tax revenue attributable to the state gross
3 receipts tax and compensating tax, as determined pursuant to
4 Subsection A of Section 10 of this 2021 act, and distributed
5 pursuant to Subsection A of Section 14 of this 2021 act; and

6 (2) that portion of the tax revenue
7 attributable to the local option gross receipts tax and county
8 compensating tax imposed by a county and local option gross
9 receipts tax and municipal compensating tax imposed by a
10 municipality dedicated pursuant to Subsection B of Section 10
11 of this 2021 act and distributed pursuant to Subsection B of
12 Section 14 of this 2021 act."

13 SECTION 10. A new section of the Local Economic
14 Development Act is enacted to read:

15 "[NEW MATERIAL] GROSS RECEIPTS TAX AND COMPENSATING TAX
16 REVENUE AS PUBLIC SUPPORT FOR CERTAIN PROJECTS.--

17 A. A qualifying entity that meets the following
18 requirements may receive public support for the qualifying
19 entity's economic development project from funds in the Local
20 Economic Development Act fund pursuant to Subsection B of
21 Section 5-10-14 NMSA 1978 in an amount determined by the
22 department but not to exceed fifty-six and twenty-five
23 hundredths percent of the net receipts attributable to the
24 state gross receipts tax and compensating tax imposed on the
25 expenses related to the construction of the qualifying entity's

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1 project, as determined by the department, related to the
2 economic development project and the amount dedicated pursuant
3 to Subsection B of this section; provided that the public
4 support shall be provided for a period of no more than ten
5 years, beginning on the date the applicable project
6 participation agreement with the qualifying entity is executed:

7 (1) the qualifying entity signs a project
8 participation agreement with the governing body of each local
9 government that has jurisdiction of the area in which the
10 qualifying entity's economic development project is located and
11 the local government has passed an ordinance dedicating local
12 government gross receipts tax revenue pursuant to Subsection B
13 of this section;

14 (2) the qualifying entity signs a project
15 participation agreement with the department; provided that the
16 department shall not sign the agreement unless the applicable
17 local governments have signed a project participation agreement
18 pursuant to Paragraph (1) of this subsection;

19 (3) the economic development project has a
20 reasonable expectation to incur, within ten years of the date
21 the project participation agreement with the local government
22 and the department is executed, at least three hundred fifty
23 million dollars (\$350,000,000) in expenses related to the
24 construction and infrastructure of the project in the state;

25 (4) the qualifying entity and the economic

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1 development project meet all other requirements to receive
2 public support pursuant to the Local Economic Development Act;
3 and

4 (5) prior to the end of each month, the
5 qualifying entity submits the appropriate documents, including
6 tax documents of the qualifying entity and its contractors
7 submitted to the taxation and revenue department, to the
8 department and to the local governments with which the
9 qualifying entity signed a project participation agreement, on
10 forms and in a manner determined by the department, of the
11 taxable expenses related to the construction of the economic
12 development project for the previous month.

13 B. A local government may dedicate, by ordinance,
14 fifty-six and twenty-five hundredths percent of the tax revenue
15 attributable to the gross receipts and compensating taxes
16 imposed by the local government on the qualifying entity's
17 receipts for construction-related expenses, as determined by
18 the department, related to the economic development project to
19 the Local Economic Development Act fund for the purposes
20 provided in Subsection B of Section 5-10-14 NMSA 1978.

21 C. If the requirements of Subsection A of this
22 section have been met, the department and the local governments
23 that signed a project participation agreement with the
24 qualifying entity shall:

25 (1) review the documents submitted by a

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1 qualifying entity pursuant to Paragraph (5) of Subsection A of
2 this section;

3 (2) estimate the amount equal to seventy-five
4 percent of the tax revenue attributable to the gross receipts
5 tax and compensating tax imposed on the taxable expenses
6 related to the construction of the economic development project
7 appropriate to:

8 (a) the local government's gross
9 receipts and compensating taxes if a local government; and

10 (b) the state gross receipts and
11 compensating taxes if the department;

12 (3) if a local government, on the first
13 business day of each month, submit the estimated amount and the
14 supporting documents to the department; and

15 (4) if the department, on or before the
16 twenty-fifth day of December, March, June and September,
17 provide the estimates and any supporting documentation to the
18 taxation and revenue department, on forms and in a manner
19 determined by that department.

20 D. The taxation and revenue department shall review
21 the estimated amounts for accuracy and computation, make any
22 necessary corrections or adjustments and make a final
23 determination of the amounts to be distributed from the
24 relevant tax revenue pursuant to Section 14 of this 2021 act.

25 The taxation and revenue department shall provide notice of the

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1 final determination, including the reasoning for any
2 corrections or adjustments made, prior to making the
3 distribution."

4 SECTION 11. A new section of the Local Economic
5 Development Act is enacted to read:

6 "[NEW MATERIAL] GRANTS TO REIMBURSE RENT OR LEASE PAYMENTS
7 FOR CERTAIN BUSINESSES.--

8 A. Prior to January 1, 2023, the department may use
9 funds transferred pursuant to Section 15 of this 2021 act or
10 other funds appropriated by the legislature to the department
11 for the purpose of transferring those funds to the authority to
12 provide recovery grants to recovery entities pursuant to this
13 section.

14 B. The department and the authority shall enter
15 into a memorandum of understanding to develop a program for the
16 authority to accept a transfer of funds from the department
17 pursuant to Subsection A of this section, to provide recovery
18 grants to recovery entities, to accept and review applications
19 for recovery grants and to disburse recovery grants to recovery
20 entities. The authority shall require documentation from
21 applicants of tax obligations and payments, employment levels
22 and rent and lease payments for taxable years 2020 through
23 2022. The authority shall prioritize funding to applicants
24 that had the greatest decline in business revenues from taxable
25 year 2019 to taxable year 2020. The department shall provide

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1 oversight of the program and may set policies and promulgate
2 rules in accordance with this section. The authority shall
3 adopt rules in consultation with the department to govern the
4 application procedures and requirements for disbursing recovery
5 grants, including requirements consistent with the purpose of
6 this section for determining the eligibility of recovery
7 entities for grants; provided that the authority shall not
8 create additional requirements for eligibility other than those
9 provided by this section.

10 C. To receive a recovery grant, a recovery entity
11 shall agree to:

12 (1) use the proceeds of the recovery grant for
13 reimbursement of rent or lease obligations of the recovery
14 entity for its business locations within the state of New
15 Mexico;

16 (2) provide a written certification signed by
17 an appropriate officer of the recovery entity that certifies
18 that:

19 (a) the officer understands that the
20 recovery entity receiving a recovery grant shall provide
21 documentation that tax payments made to the state in each
22 taxable year during the term of the agreement exceed the sum of
23 the recovery entity's tax payments during taxable year 2020
24 plus the amount of recovery grants received in each taxable
25 year;

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1 (b) the officer understands that,
2 pursuant to the Local Economic Development Act, the recovery
3 grant shall be accompanied by new job creation in accordance
4 with department rules and policies and the terms of the
5 agreement issued by the authority to the recovery entity in
6 advance of disbursement of the recovery grant;

7 (c) all documents submitted in support
8 of the recovery grant application are true and accurate to the
9 best of the officer's knowledge;

10 (d) the officer has a reasonable basis
11 to believe that, as of the date of a recovery grant application
12 and receipt of any recovery grant, the recovery entity does not
13 expect to permanently cease business operations or file for
14 bankruptcy;

15 (e) as of the date of a recovery grant
16 application and of receipt of a recovery grant, the recovery
17 entity is current on all obligations pursuant to the Income Tax
18 Act, the Corporate Income and Franchise Tax Act, the
19 Withholding Tax Act, the Gross Receipts and Compensating Tax
20 Act and the Unemployment Compensation Law applicable to the
21 recovery entity's business operations; and

22 (f) all recovery grant proceeds will be
23 used for the purpose of payment of rent or lease payments of
24 the recovery entity pursuant to the Local Economic Development
25 Act;

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1 (3) upon request, provide the department and
2 the authority with information relevant to the reporting
3 requirements of the department and the authority pursuant to
4 Subsection H of this section; and

5 (4) submit an application to the authority for
6 a recovery grant pursuant to rules established by the
7 authority, but no later than June 30, 2022.

8 D. Up to one hundred thousand dollars (\$100,000) in
9 a recovery grant may be provided to each recovery entity in
10 quarterly payments in an amount of up to twenty-five percent of
11 the total amount of the recovery grant awarded to the recovery
12 entity. The department shall promulgate rules to determine the
13 amount of a recovery grant; provided that, for each quarterly
14 payment, a recovery entity may be awarded a specified amount
15 for each job created depending on the wages provided and the
16 relative decline in business revenues for taxable year 2020,
17 not to exceed a total of twenty-five thousand dollars (\$25,000)
18 per quarter. To remain eligible for additional quarterly
19 payments, a recovery entity shall provide documentation to the
20 department and to the authority demonstrating the following:

21 (1) the recovery entity remains active and
22 open with new full-time-equivalent employees added to the
23 payroll in the prior quarter, as submitted quarterly to the
24 workforce solutions department from the date of application to
25 the date of receipt of a recovery grant payment;

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1 (2) the recovery entity is current on rent and
2 lease obligations and those obligations were equal to or
3 greater than the amount of any prior recovery grant payments
4 disbursed to the recovery entity;

5 (3) the recovery entity is current on state
6 and local tax obligations; and

7 (4) taxes paid to the state in each taxable
8 year during the agreement pursuant to Subsection C of this
9 section exceed the total amount of taxes paid to the state in
10 taxable year 2020 and the value of the grants received during
11 each taxable year of the agreement, and the excess is due to a
12 result of business activity and hiring of employees during the
13 time frame of the agreement. The excess shall be deemed to
14 meet the state's requirement to invest money in the severance
15 tax permanent fund pursuant to Article 8, Section 10 of the
16 constitution of New Mexico.

17 E. If, on the effective date of this 2021 act,
18 there remains in effect a public health order that requires
19 businesses to remain closed, the department and the authority
20 shall set aside a portion of the funds available for recovery
21 grants until such time as the public health order ceases to be
22 in effect or is changed to permit all businesses subject to the
23 public health order to be open. The portion set aside shall be
24 estimated, at the discretion of the department and the
25 authority, to represent the number of recovery entities and

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1 employees impacted by the public health order, but in no case
2 shall exceed twenty percent of the total funds transferred
3 pursuant to Section 15 of this 2021 act.

4 F. Upon the effective date of this 2021 act, the
5 department and the state investment council shall coordinate to
6 develop a funding schedule to ensure that sufficient funding is
7 made available to the department to carry out the provisions of
8 this section.

9 G. Information obtained by the department and the
10 authority regarding individual recovery entity grant applicants
11 shall be confidential and not subject to inspection pursuant to
12 the Inspection of Public Records Act; provided that nothing in
13 this section shall prevent the department and the authority
14 from disclosing broad demographic information and information
15 relating to the total amount of recovery grants made, the total
16 outstanding balance of recovery grants made and the names of
17 the recovery entities that received recovery grants.

18 H. The department and the authority shall submit an
19 annual report in each year of 2021 through 2023 to the
20 legislature, the legislative finance committee, the New Mexico
21 finance authority oversight committee, the revenue
22 stabilization and tax policy committee and the interim
23 legislative committee concerning economic and rural
24 development. The report shall provide information regarding
25 recovery grants made pursuant to this section. The report

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1 shall include:

2 (1) the total dollar value of recovery grants
3 made to date, along with breakouts of disbursements by
4 quarterly payment number;

5 (2) the number of recovery entities assisted,
6 in total and by county;

7 (3) the total number of new jobs created and
8 the total number of employees currently employed by recovery
9 entities that received grants;

10 (4) the total projected annual payroll for the
11 jobs created;

12 (5) the state tax revenues generated by the
13 recovery entities that have received and are receiving recovery
14 grants, in total, and the estimated increase in state tax
15 revenues in excess of state tax revenues in taxable year 2020
16 that are attributable to recovery entities that received
17 recovery grants;

18 (6) the total number of recovery grant
19 applications;

20 (7) the number of recovery entities, if any,
21 that received initial payments but were determined to be
22 ineligible for additional quarterly payments; and

23 (8) an overview of the industries and types of
24 business entities represented by recovery entities that
25 received recovery grants.

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I. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "recovery entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that:

(a) is a business operating in New Mexico with one or more employees but with fewer than seventy-five people employed at any of the business's business locations;

(b) filed tax returns to the taxation and revenue department demonstrating a decline in business revenues for taxable year 2020 greater than or equal to twenty-five percent from revenues for taxable year 2019; and

(c) is current on all state or local tax obligations;

(3) "recovery grant" means a grant disbursed to a recovery entity by the authority from funds provided by the department from a transfer from the severance tax permanent fund for the purpose of reimbursement of rent or lease payments of the recovery entity pursuant to the Local Economic Development Act; and

(4) "taxable year" means "taxable year" as that term is used in the Income Tax Act or the Corporate Income and Franchise Tax Act, as applicable to a recovery entity."

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1 SECTION 12. Section 7-1-6.12 NMSA 1978 (being Laws 1983,
2 Chapter 211, Section 17, as amended) is amended to read:

3 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
4 GROSS RECEIPTS AND COMPENSATING TAXES.--

5 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
6 shall be made to each municipality for which the department is
7 collecting a local option gross receipts tax and municipal
8 compensating tax imposed by that municipality in an amount,
9 subject to any increase or decrease made pursuant to Section
10 7-1-6.15 NMSA 1978, equal to the net receipts attributable to
11 the local option gross receipts tax and municipal compensating
12 tax imposed by that municipality, less any deduction for
13 administrative cost determined and made by the department
14 pursuant to the provisions of the act authorizing imposition by
15 that municipality of the local option gross receipts tax and
16 municipal compensating tax and any additional administrative
17 fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

18 B. A transfer pursuant to this section may be
19 adjusted for a distribution made to a tax increment development
20 district with respect to a portion of a gross receipts tax
21 increment dedicated by a municipality pursuant to the Tax
22 Increment for Development Act.

23 C. A transfer pursuant to this section shall be
24 adjusted for a distribution made to the Local Economic
25 Development Act fund pursuant to Section 14 of this 2021 act

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1 and with respect to the amount dedicated by a municipality
2 pursuant to Subsection B of Section 10 of this 2021 act."

3 SECTION 13. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
4 Chapter 211, Section 18, as amended) is amended to read:

5 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
6 GROSS RECEIPTS AND COMPENSATING TAXES.--

7 A. [~~Except as provided in Subsection B of this~~
8 ~~section~~] A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall
9 be made to each county for which the department is collecting a
10 local option gross receipts tax and county compensating tax
11 imposed by that county in an amount, subject to any increase or
12 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
13 the net receipts attributable to the local option gross
14 receipts tax and county compensating tax imposed by that
15 county, less any deduction for administrative cost determined
16 and made by the department pursuant to the provisions of the
17 act authorizing imposition by that county of the local option
18 gross receipts tax and county compensating tax and any
19 additional administrative fee withheld pursuant to Section
20 7-1-6.41 NMSA 1978.

21 B. A transfer pursuant to this section may be
22 adjusted for a distribution made to a tax increment development
23 district with respect to a portion of a gross receipts tax
24 increment dedicated by a county pursuant to the Tax Increment
25 for Development Act.

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1 C. A transfer pursuant to this section shall be
2 adjusted for a distribution made to the Local Economic
3 Development Act fund pursuant to Section 14 of this 2021 act
4 and with respect to the amount dedicated by a county pursuant
5 to Subsection B of Section 10 of this 2021 act."

6 SECTION 14. A new section of the Tax Administration Act
7 is enacted to read:

8 "[NEW MATERIAL] DISTRIBUTION--LOCAL ECONOMIC DEVELOPMENT
9 ACT FUND.--

10 A. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made to the Local Economic Development Act fund
12 equal to the following amounts of the following taxes imposed
13 and paid on the expenses related to the construction of the
14 qualifying entity's economic development project, as determined
15 pursuant to Section 10 of this 2021 act:

16 (1) seventy-five percent of the net receipts
17 attributable to the state gross receipts tax and the state
18 compensating tax; and

19 (2) fifty-six and twenty-five hundredths
20 percent of the net receipts attributable to the local option
21 gross receipts tax and county compensating tax imposed by a
22 county and local option gross receipts tax and municipal
23 compensating tax imposed by a municipality.

24 B. As used in this section:

25 (1) "economic development project" means

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1 "economic development project" as used in the Local Economic
2 Development Act; and

3 (2) "qualifying entity" means "qualifying
4 entity" as used in the Local Economic Development Act."

5 SECTION 15. A new section of the Severance Tax Bonding
6 Act is enacted to read:

7 "[NEW MATERIAL] TRANSFER TO THE ECONOMIC DEVELOPMENT
8 DEPARTMENT FOR RECOVERY GRANTS TO CERTAIN BUSINESSES.--Within
9 thirty days of the effective date of this 2021 act, the state
10 investment officer shall make a commitment to the economic
11 development department to invest two hundred million dollars
12 (\$200,000,000) of the severance tax permanent fund for the
13 purpose of providing recovery grants pursuant to Section 11 of
14 this 2021 act. The state investment office shall transfer from
15 the commitment to the economic development department amounts
16 necessary to provide the recovery grants, as determined by the
17 economic development department. The economic development
18 department may expend no more than one percent of the funding
19 transferred to it pursuant to this section for administering
20 the provisions of this section. Any of the transferred funds
21 not encumbered for recovery grants at the end of fiscal year
22 2023 shall revert to the severance tax permanent fund."

23 SECTION 16. Section 7-27-5 NMSA 1978 (being Laws 1983,
24 Chapter 306, Section 7, as amended) is amended to read:

25 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

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1 A. The severance tax permanent fund shall be
2 invested in separate differential rate and market rate
3 investment classes. "Differential rate investments" are
4 permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13
5 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA 1978
6 and are intended to stimulate the economy of New Mexico and to
7 provide income to the severance tax permanent fund. "Market
8 rate investments" are investments that are not differential
9 rate investments and are intended to provide income to the
10 severance tax permanent fund. All market rate investments and
11 differential rate investments shall be invested in accordance
12 with the Uniform Prudent Investor Act and shall be accounted
13 for in accordance with generally accepted accounting
14 principles.

15 B. In addition to the investment classes described
16 in Subsection A of this section, the severance tax permanent
17 fund shall be invested in:

18 (1) loans to provide emergency economic relief
19 to local governments as provided by Section [~~8 of this 2020~~
20 ~~act~~] 7-27-5.27 NMSA 1978; and

21 (2) the economic development department to
22 provide recovery grants as provided by Section 15 of this 2021
23 act."

24 SECTION 17. EFFECTIVE DATE.--The effective date of the
25 provisions of Sections 1 through 10 and 12 through 14 of this
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1 act is July 1, 2021.

2 SECTION 18. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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