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AN ACT

RELATING TO PUBLIC FINANCES; AMENDING THE LOCAL ECONOMIC DEVELOPMENT ACT; INCLUDING RETAIL BUSINESSES LOCATED IN UNINCORPORATED AREAS OF A COUNTY IN THE DEFINITION OF "RETAIL BUSINESS"; CLARIFYING THAT FUNDING MAY BE USED FOR REHABILITATION OR REMODELING AS WELL AS CONSTRUCTION OF A BUILDING FOR USE BY A QUALIFYING ENTITY.

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

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

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

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

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

C. "cultural facility" means a facility that is

1 owned by the state, a county, a municipality or a qualifying
2 entity that serves the public through preserving, educating
3 and promoting the arts and culture of a particular locale,
4 including theaters, museums, libraries, galleries, cultural
5 compounds, educational organizations, performing arts venues
6 and organizations, fine arts organizations, studios and media
7 laboratories and live-work housing facilities;

8 D. "department" means the economic development
9 department;

10 E. "economic development project" or "project"
11 means the provision of public support or assistance by the
12 state to a local or regional government or the provision of
13 direct or indirect assistance to a qualifying entity by a
14 local or regional government. "Economic development
15 project":

16 (1) includes:

17 (a) the purchase, lease, grant,
18 construction, reconstruction, improvement or other
19 acquisition or conveyance of land, buildings or other
20 infrastructure;

21 (b) rights-of-way infrastructure,
22 including trenching and conduit, for the placement of new
23 broadband telecommunications network facilities;

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

1 (d) payments for professional services
2 contracts necessary for local or regional governments to
3 implement a plan or project;

4 (e) the provision of direct loans or
5 grants for land, buildings or infrastructure;

6 (f) technical assistance to cultural
7 facilities;

8 (g) loan guarantees securing the cost
9 of land, buildings or infrastructure in an amount not to
10 exceed the revenue that may be derived from an increment of
11 the: 1) municipal gross receipts tax imposed at a rate not
12 to exceed one-fourth percent and dedicated by the ordinance
13 imposing the increment to a project; or 2) county gross
14 receipts tax imposed at a rate not to exceed one-eighth
15 percent and dedicated by the ordinance imposing the increment
16 to a project;

17 (h) grants for public works
18 infrastructure improvements essential to the location or
19 expansion of a qualifying entity and grants or subsidies to
20 cultural facilities;

21 (i) the purchase of land for a publicly
22 held industrial park or a publicly owned cultural facility;
23 and

24 (j) the construction of a building for
25 use by a qualifying entity; but

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

3 F. "governing body" means the city council, city
4 commission or board of trustees of a municipality or the
5 board of county commissioners of a county;

6 G. "local government" means a municipality or
7 county;

8 H. "municipality" means an incorporated city, town
9 or village;

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

11 (1) that is primarily performed in
12 New Mexico;

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

16 (3) that is:

17 (a) involved, directly or in a
18 supervisory capacity, with the production of: 1) a service;
19 provided that the majority of the revenue generated from the
20 service is from sources outside the state; or 2) tangible or
21 intangible personal property for sale; or

22 (b) held by an employee who is employed
23 at a regional, national or international headquarters
24 operation or at an operation that primarily provides services
25 for other operations of the qualifying entity that are

1 located outside the state; and

2 (4) that is not directly involved with
3 natural resources extraction or processing, on-site services
4 where the customer is present for the delivery of the
5 service, retail, construction or agriculture except for
6 value-added processing performed on agricultural products
7 that would then be sold for wholesale or retail consumption;

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

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

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

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

25 (3) a business, including a restaurant or

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

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

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

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

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

18 (8) a cultural facility; and

19 (9) a retail business;

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

25 M. "retail business" means a business that is

1 primarily engaged in the sale of goods or commodities at
2 retail and that is located:

3 (1) in a municipality with a population,
4 according to the most recent federal decennial census, of:

5 (a) fifteen thousand or less; or

6 (b) more than fifteen thousand if the
7 economic development project is not funded or financed with
8 state government revenues; or

9 (2) in an unincorporated area of a county."

10 SECTION 2. Section 5-10-15 NMSA 1978 (being Laws 2020,
11 Chapter 74, Section 2) is amended to read:

12 "5-10-15. STATE PARTICIPATION IN ECONOMIC DEVELOPMENT
13 PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND
14 REQUIREMENTS--ECONOMIC DEVELOPMENT DEPARTMENT.--

15 A. The department may participate with local or
16 regional governments in economic development projects that:

17 (1) provide for:

18 (a) the purchase, lease, grant,
19 construction, reconstruction, improvement or other
20 acquisition or conveyance of land, buildings or other
21 infrastructure;

22 (b) rights-of-way infrastructure,
23 including trenching and conduit, for the placement of new
24 broadband telecommunications network facilities;

25 (c) public works improvements essential

1 to the location or expansion of a qualifying entity;

2 (d) payments for professional services
3 contracts necessary for local or regional governments to
4 implement a plan or project;

5 (e) the provision of direct loans or
6 grants for land, buildings or infrastructure;

7 (f) loan guarantees securing the cost
8 of land, buildings or infrastructure;

9 (g) grants for public works
10 infrastructure improvements essential to the location or
11 expansion of a qualifying entity and grants or subsidies to
12 cultural facilities;

13 (h) the purchase of land for a publicly
14 held industrial park or a publicly owned cultural facility;

15 (i) technical assistance to cultural
16 facilities; or

17 (j) the construction, rehabilitation or
18 remodeling of a building for use by a qualifying entity; and

19 (2) that also:

20 (a) provide new full-time economic base
21 jobs;

22 (b) are primarily engaged in the sale
23 of goods or commodities at retail if: 1) the department has
24 determined that the retail project would not substantially
25 compete with a specific business already in operation in the

1 state; and 2) the business is located outside a class A
2 county and is located in a municipality with a population of
3 fifteen thousand or less according to the most recent federal
4 decennial census or is located within the unincorporated
5 portion of a county; or

6 (c) provide extensions or improvements
7 to infrastructure, excluding buildings, on government owned
8 land not obtained through the issuance of industrial revenue
9 bonds pursuant to the Industrial Revenue Bond Act or the
10 County Industrial Revenue Bond Act in a municipality with a
11 population of less than sixty thousand according to the most
12 recent federal decennial census or in an unincorporated area
13 not located within ten miles of the external boundaries of a
14 municipality with a population of sixty thousand or more
15 according to the most recent federal decennial census;
16 provided that the project shall not include a participating
17 qualifying entity; and provided further that the department
18 shall prioritize participation in a project pursuant to this
19 subparagraph based on: 1) the likelihood of creating jobs;
20 2) the economic impact on the local economy; and 3)
21 contributions from the local or regional government or other
22 New Mexico governmental entity, the federal government or
23 private entities; but

24 (3) do not include the purchase, lease,
25 grant or other acquisition or conveyance of water rights.

1 B. If the department participates in an economic
2 development project in which a qualifying entity
3 participates, the department, the local or regional
4 government and the qualifying entity shall enter into a
5 project participation agreement pursuant to this section.

6 C. If the department participates in an economic
7 development project that does not include a qualifying
8 entity, the department shall not enter into a project
9 participation agreement pursuant to this section, but shall
10 enter into an intergovernmental agreement with the
11 participating local or regional government.

12 D. The project participation agreement shall
13 require that public support provided for the economic
14 development project shall be in exchange for a substantive
15 contribution from the qualifying entity as determined by the
16 department.

17 E. The qualifying entity shall provide security to
18 the state and each local or regional government or any other
19 New Mexico governmental entity providing public support for
20 the economic development project. The security shall secure
21 the qualifying entity's obligations based on terms stated in
22 the project participation agreement with the department and
23 the local or regional government and shall reflect a
24 proportional decline in security as the substantive
25 contribution requirements are met by the qualifying entity.

1 The department at the discretion of the secretary of economic
2 development may release at any time the security for that
3 portion of the public support provided by the state.

4 F. If a qualifying entity fails to perform its
5 substantive contribution, the state, local, regional or other
6 participating New Mexico governmental entity may enforce the
7 project participation agreement to recover its proportional
8 share of that portion of the public support for which the
9 qualifying entity failed to provide a substantive
10 contribution; provided that the recovery shall be:

11 (1) limited to the amount of public support
12 provided by the governmental entity enforcing the project
13 participation agreement, unless otherwise authorized by
14 another participating governmental entity; and

15 (2) proportional to the failed performance
16 of the substantive contribution and shall take into account
17 all previous substantive contributions for the economic
18 development project performed by the qualifying entity, based
19 on the terms stated in the project participation agreement.

20 G. The project participation agreement shall at a
21 minimum set out:

22 (1) the contributions to be made by the
23 qualifying entity, the state and the local or regional
24 government or other New Mexico governmental entity;

25 (2) the security provided to the state and

1 each local or regional government or other New Mexico
2 governmental entity by the qualifying entity in the form of a
3 letter of credit, lien, mortgage or other indenture and the
4 pledge of the qualifying entity's financial or material
5 participation and cooperation to guarantee the qualifying
6 entity's performance pursuant to the project participation
7 agreement;

8 (3) a schedule for project development and
9 completion, including measurable goals and time limits for
10 those goals;

11 (4) provisions for performance review and
12 actions to be taken upon a determination that project
13 performance is unsatisfactory; and

14 (5) provisions allowing the department and
15 the local or regional government or other New Mexico
16 governmental entity to recover that portion of the public
17 support for which the qualifying entity failed to provide a
18 substantive contribution as determined by the department."

19 SECTION 3. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2021. _____

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