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

SPONSOR	Dixon/Egolf/Serrato	**ORIGINAL DATE** / **LAST UPDATED**	2/2/22 / 2/16/22	**HB**	7/aHCEDC/aHFl#1 /aHFl#2
SHORT TITLE	Opportunity Enterprise Act			**SB**	
				ANALYST	Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$300.0	$300.0-$20,000.0	$300.0-$20,000.0	$900.0 - $40,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (NMAG)
Economic Development Department (EDD)

No Response Received
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of HFl#1 and HFl#2 Amendments

House Floor Amendment #1 makes some minor language changes for clarification. The amendment also changes the disclosure provisions of the act, mandating that the names of enterprise assistance recipients be public information.

House Floor Amendment #2 clarifies that enterprise assistance funds may be used in "nonurban" communities, defined as municipalities with a population of less than 40 thousand.

Synopsis of HCEDC Amendment

The Commerce & Economic Development Committee amendment to House Bill 7 includes some minor language changes, including inserting the phrase "no less than" before the word zero, and inserting the word "projects" after "economic development".

The committee amended the bill to include a new subsection, reading:

> The authority may provide a guarantee to a federally insured financial institution on behalf of a person who would otherwise be eligible as an opportunity enterprise partner; provided that the proceeds of any guaranteed loan are used for an enterprise development project. A guarantee pursuant to this subsection shall be provided subject to terms approved by the board.

The new subsection gives the newly created board more power, but does not significantly impact the fiscal impact of the bill.

Synopsis of Original Bill

House Bill 7, the Opportunity Enterprise Act, creates the opportunity enterprise review board that would work in conjunction with the New Mexico Finance Authority (NMFA) and the Economic Development Department (EDD) to provide financing, leases, loans, and revolving funds to applicants who qualify.

Section 1 of the Bill entitles the act.

Section 2 of the Bill provides definitions necessary for the operation of the act.

Section 3 outlines the powers and duties of NMFA, including acquiring title or other interest in enterprise development projects, provide financing, entering into contracts, make loans, and collect costs, fees, payments, principal and interest for the same; dispose of property; take legal action; enter into joint powers agreements; adopt rules; and enter into opt-in agreements.

Section 4 of the Bill outlines the powers and duties of EDD, including coordinating with the Board to recommend projects for enterprise assistance and enter into opt-in agreements.

Section 5 creates the Board and details the membership and the terms of Board members.

Section 6 outlines the powers of the Board and directs the Board and the EDD to work together to provide outreach, evaluate partners and projects, and obtain input.

Section 7 directs the Board to engage in rulemaking activities in order to carry out the provisions of the act.

Section 8 describes the general requirements for applications and contracts for enterprise assistance, directs NMFA and EDD to work together to make the applications available, and directs that contracts shall only be made if the requirements of the act are met. Applications shall include:

- Scope and plans of the enterprise development project
- Will create or expand economic development opportunities within the state
- Comply with state and federal laws
- Provide evidence that financing is unavailable or insufficient

Section 9 of the Bill describes how to conduct opportunity enterprise financing.

Section 10 describes how to conduct opportunity enterprise leases.

Section 11 describes how to manage opportunity enterprise loans.

Section 12 describes the opportunity enterprise revolving funds and how the funds may be used.

House Bill 7 creates a revolving fund. The fund will consist of appropriations, distributions, transfers as well as the income from rents, leases, and income form the investments of the fund. The monies in the fund will not revert unless the amount in the fund exceeds the annual average over the past five years by 6 percent. Any amount over the 6 percent will transfer to the general fund. NMFA will administer the fund.

Section 13 discusses how to manage excess revenue.

Section 14 requires annual reports beginning in 2023 and details what the reports need to include.

Section 15 describes how to handle conflicts of interest and provides for penalties for knowingly participating in a conflict of interest or failing to disclose one.

The effective date of the bill is July 1, 2022.

FISCAL IMPLICATIONS

The bill does not appear to contain an appropriation. NMFA was unable to submit agency analysis at the time this FIR was published, and it is unclear if managing the Opportunity Enterprise Act and board would require additional resources for NMFA. HB7 creates a board, but compensation for the board is unclear.

The estimated additional operating budget table reflects $300 thousand to $20 million annual fiscal impact, assuming at a minimum some monies for the board would be necessary, and at a maximum the revolving fund would require appropriations. This analysis uses appropriations made to the local economic development act fund (LEDA), which makes similar awards, to assume appropriations to the revolving fund.

The General Appropriations Act (GAA) includes a total of $40 million for business space development and research and development for the Economic Development Department.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The Economic Development Department submitted several concerns with the provisions of the bill:

> New Mexico often faces infrastructure challenges when competing with other states for business relocation and expansion projects, and that includes a lack of available buildings for many of these projects. However, creating spec buildings also adds risk that future projects to occupy these buildings and create jobs may or may not materialize.
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> The bill combines some aspects of various programs already offered by separate agencies and departments, such as EDD's Local Economic Development Act (LEDA) funding and

tax increment for development districts (TIDDs), while adding new elements to address the state's shortage of buildings for major expansion and relocation projects. This combination seems to be done with the intent to create "spec" buildings for projects that are not directly tied to an immediate job creation project, unlike LEDA, which requires such a project.

The bill requires claw back or recapture provision for a project that may default. However, this may be difficult to negotiate since one of the requirements of the project is to demonstrate that financing is unavailable or insufficient.
Section 7, B - EDD has already created a 20-year plan that has had extensive work done by multiple stakeholders throughout the state. By giving the board the ability to "establish economic development goals", it may lead future boards to abandon work that has already been completed.
This could leave multiple sets of goals that could be in competition with one another, creating confusion amongst businesses and economic developers around the state.

Section 8, A, 2 - "expand economic development opportunities" is a broad statement that can be construed to mean many things.

Section 8, A, 3 - by making an application for enterprise assistance comply with federal law, it will limit all projects around cannabis.

Section 8, A, 4 - a project that must demonstrate that outside financing is either unavailable or insufficient may lead to deals that are financially risky for the state, although this provision seems to be necessary to fulfill the intent of the bill to create more business facility spaces than would be constructed without state assistance.

ADP/al