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SENATE BILL 139

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO STATEWIDE ECONOMIC DEVELOPMENT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO SEEK CERTIFICATION TO BE A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO DETERMINE ELIGIBILITY FOR CERTAIN ECONOMIC DEVELOPMENT FUNDING.

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

**SECTION 1.** A new section of the Statewide Economic Development Finance Act is enacted to read:

"[NEW MATERIAL] ADDITIONAL POWERS--FEDERAL COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAMS.--In addition to other powers granted to the authority, the authority may form one or more nonprofit or for-profit financing entities for the purpose of participation in the federal community development financial institutions fund programs and, pursuant

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1 to participation in the federal community development financial  
2 institutions fund programs, may:

3 A. apply for and obtain one or more certifications  
4 for community development financial institutions fund status;

5 B. provide financial products to one or more target  
6 markets;

7 C. provide development services to one or more  
8 target markets; and

9 D. take all actions necessary or convenient to  
10 carry out the purposes of a certified community development  
11 financial institution or to participate in the federal  
12 community development financial institutions fund programs."

13 SECTION 2. Section 6-25-3 NMSA 1978 (being Laws 2003,  
14 Chapter 349, Section 3, as amended) is amended to read:

15 "6-25-3. DEFINITIONS.--As used in the Statewide Economic  
16 Development Finance Act:

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

19 B. "department" means the economic development  
20 department;

21 C. "community development entity" means an entity  
22 designed to take advantage of the federal new markets tax  
23 credit program;

24 D. "economic development assistance provisions"  
25 means the economic development assistance provisions of

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1 Subsection D of Article 9, Section 14 of the constitution of  
2 New Mexico;

3 E. "project revenue bonds" means bonds, notes or  
4 other instruments authorized in Section 6-25-7 NMSA 1978 and  
5 issued by the authority pursuant to the Statewide Economic  
6 Development Finance Act on behalf of eligible entities;

7 F. "economic development goal" means:

8 (1) assistance to rural and underserved areas  
9 designed to increase business activity;

10 (2) retention and expansion of existing  
11 business enterprises;

12 (3) attraction of new business enterprises; or

13 (4) creation and promotion of an environment  
14 suitable for the support of start-up and emerging business  
15 enterprises within the state;

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

20 H. "eligible entity" means a for-profit or not-for-  
21 profit business enterprise, including a corporation, limited  
22 liability company, partnership or other entity, determined by  
23 the ~~[department]~~ authority to be engaged in an enterprise that  
24 serves an economic development goal and is suitable for  
25 financing assistance;

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

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

9 K. "fund" means the economic development revolving  
10 fund;

11 L. "mortgage" means a mortgage, deed of trust or  
12 pledge of any assets as a collateral security;

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

22 N. "payment in lieu of taxes" means the total  
23 annual payment, including any state in-lieu payment, paid as  
24 compensation for the tax impact of a project, in an amount  
25 negotiated and determined in the opt-in agreement between the

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

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

12 (1) industrial or manufacturing facilities;

13 (2) commercial facilities, including  
14 facilities for wholesale sales and services;

15 (3) health care facilities, including  
16 hospitals, clinics, laboratory facilities and related office  
17 facilities;

18 (4) educational facilities, including schools;

19 (5) arts, entertainment or cultural  
20 facilities, including museums, theaters, arenas or assembly  
21 halls; and

22 (6) recreational and tourism facilities,  
23 including parks, pools, trails, open space and equestrian  
24 facilities;

25 P. "project" means a standard project or a state

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1 project;

2 Q. "qualifying municipality or county" means a  
3 municipality or county that enters into an opt-in agreement;

4 R. "quantifiable benefits" means a project's  
5 advancement of an economic development goal as measured by a  
6 variety of factors, including:

7 (1) the benefits an eligible entity contracts  
8 to provide, such as local hiring quotas, job training  
9 commitments and installation of public facilities or  
10 infrastructure; and

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

18 S. "school district" means a school district where  
19 a project is located that is exempt from property taxes  
20 pursuant to the Statewide Economic Development Finance Act;

21 T. "state in-lieu payment" means an annual payment,  
22 in an amount determined by the department, that will be  
23 distributed to a qualifying county, a school district and, if  
24 applicable, a qualifying municipality in the same proportion as  
25 property tax revenues are normally distributed to those

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1 recipients;

2 U. "state project" means land, buildings or  
3 infrastructure for facilities to support new or expanding  
4 eligible entities for which financing assistance is provided  
5 pursuant to the economic development assistance provisions; and

6 V. "tax impact of a project" means the annual  
7 reduction in property tax revenue to affected property tax  
8 revenue recipients directly resulting from the conveyance of a  
9 project to the department."

10 SECTION 3. Section 6-25-5 NMSA 1978 (being Laws 2003,  
11 Chapter 349, Section 5, as amended) is amended to read:

12 "6-25-5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT  
13 DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN  
14 AGREEMENTS.--

15 A. ~~[For the purpose of recommending projects to the~~  
16 ~~authority for financing assistance]~~ The department and the  
17 authority shall coordinate to:

18 (1) survey potential eligible entities and  
19 projects and provide outreach services to local governments and  
20 eligible entities, for the purpose of identifying and  
21 recommending projects to the authority for financing  
22 assistance;

23 (2) evaluate potential projects for  
24 suitability for financing assistance;

25 (3) formulate recommendations of projects that

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1 are suitable for financing assistance; and

2 (4) obtain input and information relevant to  
3 the establishment and implementation of criteria for evaluating  
4 potential projects.

5 B. The department, with such staffing and other  
6 assistance from the authority as the department may request,  
7 shall propose to enter into opt-in agreements with counties,  
8 school districts and municipalities for the purpose of  
9 facilitating local government approvals necessary to permit  
10 projects to proceed. Opt-in agreements shall provide:

11 (1) for project compliance with all applicable  
12 local land use regulations;

13 (2) for payments in lieu of taxes to  
14 qualifying counties, school districts and, if applicable,  
15 qualifying municipalities to mitigate the tax impact of a  
16 project;

17 (3) that financing assistance is conditioned  
18 upon compliance with:

19 (a) all applicable ordinances,  
20 regulations and codes of a local government concerning  
21 planning, zoning and development permitting; and

22 (b) such other requirements as the  
23 department and the county, school district and municipality may  
24 agree to include;

25 (4) that the payments in lieu of taxes shall

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1 be distributed in a manner and in amounts calculated in  
2 accordance with the provisions of Section 6-25-14 NMSA 1978;  
3 and

4 (5) that the county, school district or  
5 municipality reserves the right to withdraw from the agreement  
6 if it determines that the project subject to the agreement does  
7 not satisfy the requirements enumerated in the opt-in  
8 agreement.

9 C. The department shall adopt rules for the  
10 exercise of its powers and responsibilities pursuant to the  
11 Statewide Economic Development Finance Act."

12 SECTION 4. Section 6-25-27 NMSA 1978 (being Laws 2005,  
13 Chapter 103, Section 24) is amended to read:

14 "6-25-27. PROPRIETARY INFORMATION--CONFIDENTIALITY--  
15 PENALTY.--

16 A. Information obtained by the department or the  
17 authority that is proprietary technical or business information  
18 or related to the possible relocation or expansion of an  
19 eligible entity or that is of a business enterprise applying  
20 for eligible entity status shall be confidential and not  
21 subject to inspection pursuant to the Inspection of Public  
22 Records Act.

23 B. It is unlawful for any employee of the  
24 department or the authority, or any former employee of the  
25 department or the authority, to reveal to any person other than

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1 another employee of the department or the authority any  
2 confidential information obtained by the department or the  
3 authority that is proprietary technical or business information  
4 or related to the possible relocation or expansion of an  
5 eligible entity or that is of a business enterprise applying  
6 for eligible entity status, and not available from public  
7 sources, except in response to an order of a district court, an  
8 appellate court or a federal court.

9 C. Any employee or former employee of the  
10 department or the authority who reveals to another person any  
11 information that ~~[he]~~ the employee or former employee is  
12 prohibited from lawfully revealing is guilty of a misdemeanor  
13 and shall be sentenced in accordance with the provisions of  
14 Section 31-19-1 NMSA 1978."

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