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AN ACT

RELATING TO PUBLIC FINANCES; CREATING THE LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND; PROVIDING PROCEDURES FOR USING MONEY IN THE FUND TO SUPPORT LOCAL AND REGIONAL ECONOMIC DEVELOPMENT PROJECTS.

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

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

"LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND--
ECONOMIC DEVELOPMENT DEPARTMENT.--

A. The "local and regional economic development support fund" is created in the state treasury. The fund consists of gifts, grants, donations and bequests made to the fund and appropriations made to the department for projects pursuant to the Local Economic Development Act. Income from the fund shall be credited to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The department shall administer the fund, and money in the fund is appropriated to the department to pay the cost of administering the fund and for participation in local and regional economic development projects as determined by the department.

C. Money in the fund shall be expended on warrants

1 of the department of finance and administration pursuant to
2 vouchers signed by the secretary of economic development."

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

5 "STATE PARTICIPATION IN ECONOMIC DEVELOPMENT
6 PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND
7 REQUIREMENTS--ECONOMIC DEVELOPMENT DEPARTMENT.--

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

10 (1) provide for:

11 (a) the purchase, lease, grant,
12 construction, reconstruction, improvement or other
13 acquisition or conveyance of land, buildings or other
14 infrastructure;

15 (b) rights-of-way infrastructure,
16 including trenching and conduit, for the placement of new
17 broadband telecommunications network facilities;

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

20 (d) payments for professional services
21 contracts necessary for local or regional governments to
22 implement a plan or project;

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

25 (f) loan guarantees securing the cost

1 of land, buildings or infrastructure;

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

6 (h) the purchase of land for a
7 publicly held industrial park or a publicly owned cultural
8 facility;

9 (i) technical assistance to cultural
10 facilities; and

11 (j) the construction of a building for
12 use by a qualifying entity; and

13 (2) that also:

14 (a) provide new full-time economic base
15 jobs;

16 (b) are primarily engaged in the sale
17 of goods or commodities at retail if: 1) the department has
18 determined that the retail project would not substantially
19 compete with a specific business already in operation in the
20 state; and 2) the business is located outside a class A
21 county and is located in a municipality with a population of
22 fifteen thousand or less according to the most recent federal
23 decennial census or is located more than ten miles from the
24 closest municipality with a population greater than fifteen
25 thousand according to the most recent federal decennial

1 census; or

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

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

22 B. If the department participates in an economic
23 development project in which a qualifying entity
24 participates, the department, the local or regional
25 government and the qualifying entity shall enter into a

1 project participation agreement pursuant to this section.

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

8 D. The project participation agreement shall
9 require that public support provided for the economic
10 development project shall be in exchange for a substantive
11 contribution from the qualifying entity as determined by the
12 department.

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

25 F. If a qualifying entity fails to perform its

1 substantive contribution, the state, local, regional or other
2 participating New Mexico governmental entity may enforce the
3 project participation agreement to recover its proportional
4 share of that portion of the public support for which the
5 qualifying entity failed to provide a substantive
6 contribution; provided that the recovery shall be:

7 (1) limited to the amount of public support
8 provided by the governmental entity enforcing the project
9 participation agreement, unless otherwise authorized by
10 another participating governmental entity; and

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

16 G. The project participation agreement shall at a
17 minimum set out:

18 (1) the contributions to be made by the
19 qualifying entity, the state and the local or regional
20 government or other New Mexico governmental entity;

21 (2) the security provided to the state and
22 each local or regional government or other New Mexico
23 governmental entity by the qualifying entity in the form of a
24 letter of credit, lien, mortgage or other indenture and the
25 pledge of the qualifying entity's financial or material

1 participation and cooperation to guarantee the qualifying
2 entity's performance pursuant to the project participation
3 agreement;

4 (3) a schedule for project development and
5 completion, including measurable goals and time limits for
6 those goals;

7 (4) provisions for performance review and
8 actions to be taken upon a determination that project
9 performance is unsatisfactory; and

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

15 SECTION 3. Section 5-10-3 NMSA 1978 (being Laws 1993,
16 Chapter 297, Section 3, as amended by Laws 2019, Chapter 208,
17 Section 1 and by Laws 2019, Chapter 274, Section 6) is
18 amended to read:

19 "5-10-3. DEFINITIONS.--As used in the Local Economic
20 Development Act:

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

24 B. "broadband telecommunications network
25 facilities" means the electronics, equipment, transmission

1 facilities, fiber-optic cables and any other item directly
2 related to a system capable of transmission of internet
3 protocol or other formatted data at current federal
4 communications commission minimum speed standard, all of
5 which will be owned and used by a provider of internet access
6 services;

7 C. "cultural facility" means a facility that is
8 owned by the state, a county, a municipality or a qualifying
9 entity that serves the public through preserving, educating
10 and promoting the arts and culture of a particular locale,
11 including theaters, museums, libraries, galleries, cultural
12 compounds, educational organizations, performing arts venues
13 and organizations, fine arts organizations, studios and media
14 laboratories and live-work housing facilities;

15 D. "department" means the economic development
16 department;

17 E. "economic development project" or "project"
18 means the provision of public support or assistance by the
19 state to a local or regional government or the provision of
20 direct or indirect assistance to a qualifying entity by a
21 local or regional government. "Economic development
22 project":

23 (1) includes:

24 (a) the purchase, lease, grant,
25 construction, reconstruction, improvement or other

1 acquisition or conveyance of land, buildings or other
2 infrastructure;

3 (b) rights-of-way infrastructure,
4 including trenching and conduit, for the placement of new
5 broadband telecommunications network facilities;

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

8 (d) payments for professional services
9 contracts necessary for local or regional governments to
10 implement a plan or project;

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

13 (f) technical assistance to cultural
14 facilities;

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

24 (h) grants for public works
25 infrastructure improvements essential to the location or

1 expansion of a qualifying entity and grants or subsidies to
2 cultural facilities;

3 (i) the purchase of land for a publicly
4 held industrial park or a publicly owned cultural facility;
5 and

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

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

10 F. "governing body" means the city council, city
11 commission or board of trustees of a municipality or the
12 board of county commissioners of a county;

13 G. "local government" means a municipality or
14 county;

15 H. "municipality" means an incorporated city, town
16 or village;

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

18 (1) that is primarily performed in
19 New Mexico;

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

23 (3) that is:

24 (a) involved, directly or in a
25 supervisory capacity, with the production of: 1) a service;

1 provided that the majority of the revenue generated from the
2 service is from sources outside the state; or 2) tangible or
3 intangible personal property for sale; or

4 (b) held by an employee who is employed
5 at a regional, national or international headquarters
6 operation or at an operation that primarily provides services
7 for other operations of the qualifying entity that are
8 located outside the state; and

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

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

17 K. "qualifying entity" means a corporation,
18 limited liability company, partnership, joint venture,
19 syndicate, association or other person that is one or a
20 combination of two or more of the following:

21 (1) an industry for the manufacturing,
22 processing or assembling of agricultural or manufactured
23 products;

24 (2) a commercial enterprise for storing,
25 warehousing, distributing or selling products of agriculture,

1 mining or industry, but, other than as provided in Paragraph
2 (5), (6) or (9) of this subsection, not including any
3 enterprise for sale of goods or commodities at retail or for
4 distribution to the public of electricity, gas, water or
5 telephone or other services commonly classified as public
6 utilities;

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

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

17 (5) a telecommunications sales enterprise
18 that makes the majority of its sales to persons outside
19 New Mexico;

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

23 (7) a business that is the developer of a
24 metropolitan redevelopment project;

25 (8) a cultural facility; and

1 (9) a retail business;

2 L. "regional government" means any combination of
3 municipalities and counties that enter into a joint powers
4 agreement to provide for economic development projects
5 pursuant to a plan adopted by all parties to the joint powers
6 agreement; and

7 M. "retail business" means a business that is
8 primarily engaged in the sale of goods or commodities at
9 retail and that is located in a municipality with a
10 population, according to the most recent federal decennial
11 census, of:

12 (1) fifteen thousand or less; or

13 (2) more than fifteen thousand but less than
14 thirty-five thousand if:

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

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

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

23 "5-10-10. LOCAL OR REGIONAL GOVERNMENT PARTICIPATION IN
24 ECONOMIC DEVELOPMENT PROJECTS--PROJECT PARTICIPATION
25 AGREEMENT--DUTIES AND REQUIREMENTS.--

1 A. If a local or regional government provides
2 public support for an economic development project without
3 the participation of the state, the local or regional
4 government and the qualifying entity shall enter into a
5 project participation agreement pursuant to this section.

6 B. The local or regional government shall require
7 a substantive contribution from the qualifying entity for
8 each economic development project. Public support provided
9 for an economic development project shall be in exchange for
10 a substantive contribution from the qualifying entity. The
11 contribution shall be of value and may be paid in money,
12 in-kind services, jobs, expanded tax base, property or other
13 thing or service of value for the expansion of the economy.

14 C. The qualifying entity shall provide security to
15 each local or regional government or any other New Mexico
16 governmental entity providing public support for an economic
17 development project. The security shall secure the
18 qualifying entity's obligations based on terms stated in the
19 project participation agreement with the local or regional
20 government and shall reflect the amount of public support
21 provided to the qualifying entity and the substantive
22 contribution expected from the qualifying entity.

23 D. If a qualifying entity fails to perform its
24 substantive contribution, the local or regional government
25 shall enforce the project participation agreement to recover

1 that portion of the public support for which the qualifying
2 entity failed to provide a substantive contribution. The
3 recovery shall be proportional to the failed performance of
4 the substantive contribution and shall take into account all
5 previous substantive contributions for the economic
6 development project performed by the qualifying entity, based
7 on the terms stated in the project participation agreement.

8 E. The project participation agreement at a
9 minimum shall set out:

10 (1) the contributions to be made by each
11 party to the participation agreement;

12 (2) the security provided to each
13 governmental entity that provides public support for an
14 economic development project by the qualifying entity in the
15 form of a lien, mortgage or other indenture and the pledge of
16 the qualifying business's financial or material participation
17 and cooperation to guarantee the qualifying entity's
18 performance pursuant to the project participation agreement;

19 (3) a schedule for project development and
20 completion, including measurable goals and time limits for
21 those goals; and

22 (4) provisions for performance review and
23 actions to be taken upon a determination that project
24 performance is unsatisfactory." _____