

State of New Mexico
Senate

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

February 28, 2021

SENATE FLOOR AMENDMENT number 2 to SENATE TAX, BUSINESS AND
TRANSPORTATION COMMITTEE
SUBSTITUTE FOR SENATE
HEALTH AND PUBLIC AFFAIRS
COMMITTEE SUBSTITUTE FOR
SENATE BILL 49

Amendment sponsored by Senator Jacob R. Candelaria

1. On page 1, line 16, after "ENTITY", insert "; AMENDING THE
STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT; INCLUDING BROADBAND
PROJECTS; REQUIRING CERTAIN CONDITIONS BE MET REGARDING BROADBAND
DEVELOPMENT".

2. On page 1, between lines 18 and 19, insert the following
new section:

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

"5-10-2. FINDINGS AND PURPOSE OF ACT.--

A. The legislature finds that:

(1) development of the New Mexico economy is vital to
the well-being of the state and its residents;

(2) it is difficult for municipalities and counties
in New Mexico to attract and retain businesses capable of enhancing
the local and state economy without the resources necessary to
compete with other states and locales;

(3) municipalities and counties may need to be able
to provide land, buildings and infrastructure as a tool for basic

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business growth and the introduction of basic business ventures into the state;

(4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and

(5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.

B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act and to ensure that all residential, commercial and public locations have access to broadband that meets the baseline standards set by the federal communications commission."

3. Renumber the succeeding sections accordingly.

4. On page 6, line 20, strike "and".

5. On page 6, line 21, after the semicolon, insert "and" and between lines 21 and 22, insert the following new paragraph:

"(10) a broadband telecommunications network facility or a business that develops, builds or maintains a broadband telecommunications network facility;"

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6. On page 7, between lines 15 and 16, insert the following new sections:

"SECTION 3. Section 5-10-4 NMSA 1978 (being Laws 1993, Chapter 297, Section 4, as amended) is amended to read:

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

A. No local or regional government shall provide public support for economic development projects:

(1) as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law; and

(2) other than a project defined in Subparagraph (b) of Paragraph (1) of Subsection E of Section 5-10-3 NMSA 1978 unless all commercial, public and private locations within the jurisdiction of the local or regional government have access to broadband that meets the baseline standards set by the federal communications commission.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

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

(2) revenue generated through the imposition of an increment of the municipal gross receipts tax at a rate not to

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exceed one-fourth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

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

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

(5) the proceeds of a revenue bond issue to which the revenue from an increment of the county gross receipts tax, imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to a project, is pledged; or

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

C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic

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development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

D. In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or county that has imposed a municipal or county local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or county infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or county local option gross receipts tax for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts and Compensating Taxes Act or the County Local Option Gross Receipts and Compensating Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance

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Act.

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

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

SECTION 4. Section 5-10-6 NMSA 1978 (being Laws 1993, Chapter 297, Section 6, as amended) is amended to read:

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

A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component, and an economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional

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government proposing the plan or plan amendment.

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

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

(2) describe the types of qualifying entities and economic activities that will qualify for economic development projects;

(3) describe the criteria to be used to determine eligibility of an economic development project and a qualifying entity to participate in an economic development project;

(4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

(5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;

(6) if an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate its economic assistance and recoup its investment;

(7) identify revenue sources, including those of the

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local or regional government, that will be used to support economic development projects;

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

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

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

(11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments [~~who~~] that are party to the agreement.

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

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D. Prior to December 31, 2024, all economic development plans or comprehensive plans submitted pursuant to this section shall include actionable strategies and comprehensive steps to ensure that all residential, commercial and public locations located within the jurisdiction of the local or regional government shall have access to broadband that meets the baseline standards set by the federal communications commission; provided that if an economic development plan or comprehensive plan has been submitted prior to the effective date of this 2021 act, the local or regional government shall supplement or update the existing plan to include the information required by this subsection no later than December 31, 2024."

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

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

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

B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

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C. Prior to December 31, 2024, all regional economic development plans developed pursuant to this section shall include actionable strategies and comprehensive steps to ensure that all residential, commercial and public locations located within the jurisdiction of the regional government shall have access to broadband that meets the baseline standards set by the federal communications commission; provided that if a regional economic development plan has been developed prior to the effective date of this 2021 act, the regional government shall supplement or update the existing plan to include the information required by this subsection no later than December 31, 2024."

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

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

A. The local or regional government shall review each project application, and projects shall be approved by ordinance.

B. The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

C. The local or regional government may negotiate with a qualifying entity on the type or amount of assistance to be provided or on the scope of the economic development project.

D. No local or regional government shall approve a project application other than a project application for a project defined in Subparagraph (b) of Paragraph (1) of Subsection E of Section

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5-10-3 NMSA 1978 unless all commercial, public and private locations within the jurisdiction of the local or regional government have access to broadband that meets the baseline standards set by the federal communications commission."

7. Renumber the succeeding sections accordingly.
8. On page 7, line 21, strike "The" and insert in lieu thereof "Subject to the limitation in Subsection H of this section, the".
9. On page 12, line 25, strike the closing quotation mark.
10. On page 12, after line 25, insert the following new subsection:

"H. The department shall not participate in a local or regional government economic development project other than a project defined in Subparagraph (b) of Paragraph (1) of Subsection E of Section 5-10-3 NMSA 1978 unless all commercial, public and private locations within the jurisdiction of the local or regional government have access to broadband that meets the baseline standards set by the federal communications commission."

11. On page 13, before line 1, insert the following:

"SECTION 8. Section 6-25-2 NMSA 1978 (being Laws 2003, Chapter 349, Section 2, as amended) is amended to read:

"6-25-2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) it is important for government to promote, support and assist in developing a thriving economic base within the state; increase opportunities for gainful employment and improved living conditions; assist in promoting a balanced and productive

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economy; encourage the flow of private capital for investment in productive enterprises; and otherwise improve the prosperity, health and general welfare of the people of the state;

(2) in order to attract and encourage established businesses to locate in New Mexico, to retain and expand existing New Mexico businesses and to provide an environment that supports new and emerging businesses within the state, New Mexico communities must be able to provide basic infrastructure and educational, cultural and recreational facilities that require substantial financial resources beyond those of many New Mexico communities;

(3) other states have agencies dedicated to providing financing for economic development projects, which agencies work directly with the state, municipalities, counties and regional economic development agencies to provide the necessary financing related to retaining and attracting businesses and to provide financing to qualified nonprofit corporations that provide community housing, education, health care and cultural facilities;

(4) it is necessary to provide coordinated planning and financing resources to address community and cultural infrastructure needs; and

(5) the combined expertise and resources of the economic development department and the New Mexico finance authority should be used:

(a) for the effective promotion of economic development within the state;

(b) to increase the gainful employment of the citizens and decrease the cost of social services and unemployment compensation;

(c) to increase the tax base of the state; and

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(d) to improve the prosperity, health and welfare of the people of the state.

B. The purpose of the Statewide Economic Development Finance Act is to:

(1) stimulate economic development with needed programs in the public interest that serve necessary and valid public purposes; [and]

(2) provide one method of implementing the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico for state projects; and

(3) ensure that all residential, commercial and public locations have access to broadband that meets the baseline standards set by the federal communications commission."

SECTION 9. Section 6-25-3 NMSA 1978 (being Laws 2003, Chapter 349, Section 3, as amended) is amended to read:

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

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

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;

[B-] C. "department" means the economic development department;

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~~[C.]~~ D. "community development entity" means an entity designed to take advantage of the federal new markets tax credit program;

~~[D.]~~ E. "economic development assistance provisions" means the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico;

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

~~[F.]~~ G. "economic development goal" means:

(1) assistance to rural and underserved areas designed to increase business activity, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products;

(2) retention and expansion of existing business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products;

(3) attraction of new business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products; ~~[or]~~

(4) creation and promotion of an environment suitable for the support of start-up and emerging business, including agricultural enterprises, such as new or ongoing agricultural projects that add value to New Mexico agricultural products within the state; or

(5) ensuring that all residential, commercial and

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public locations have access to broadband that meets the baseline standards set by the federal communications commission;

[~~G.~~] H. "economic development revolving fund bonds" means bonds, notes or other instruments payable from the fund and issued by the authority pursuant to the Statewide Economic Development Finance Act;

[~~H.~~] I. "eligible entity" means a for-profit or not-for-profit business, including an agricultural enterprise, such as new or ongoing agricultural projects that add value to New Mexico agricultural products and including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in an enterprise that serves an economic development goal and is suitable for financing assistance;

[~~I.~~] J. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the Internal Revenue Code of 1986, as that section may be amended or renumbered, and regulations issued pursuant to that section;

[~~J.~~] K. "financing assistance" means project revenue bonds, loans, loan participations or loan guarantees provided by the authority to or for eligible entities pursuant to the Statewide Economic Development Finance Act;

[~~K.~~] L. "fund" means the economic development revolving fund;

[~~L.~~] M. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

[~~M.~~] N. "opt-in agreement" means an agreement entered into between the department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, school district and, if applicable, municipal approval of a

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project, subject to compliance with all local zoning, permitting and other land use rules, and for payments in lieu of taxes to the qualifying county, school district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

[N.] Q. "payment in lieu of taxes" means the total annual payment, including any state in-lieu payment, paid as compensation for the tax impact of a project, in an amount negotiated and determined in the opt-in agreement between the department and the qualifying county, the school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and school district in the same proportion as property tax revenues are normally distributed to those recipients;

[O.] P. "standard project" means land, buildings, improvements, rights-of-way infrastructure, machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the anticipated quantifiable benefits of the standard project, for use by an eligible entity as:

- (1) industrial or manufacturing facilities;
- (2) commercial facilities, including facilities for wholesale sales and services;
- (3) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities;
- (4) educational facilities, including schools;
- (5) arts, entertainment or cultural facilities, including museums, theaters, arenas or assembly halls;
- (6) recreational and tourism facilities, including

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parks, pools, trails, open space and equestrian facilities; ~~and~~

(7) agricultural enterprises, including new or ongoing agricultural projects and projects that add value to New Mexico agricultural products; and

(8) broadband telecommunications network facilities;

~~[P.]~~ Q. "project" means a standard project or a state project;

~~[Q.]~~ R. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

~~[R.]~~ S. "quantifiable benefits" means a project's advancement of an economic development goal as measured by a variety of factors, including:

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

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

~~[S.]~~ T. "school district" means a school district where a project is located that is exempt from property taxes pursuant to the Statewide Economic Development Finance Act;

~~[T.]~~ U. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a school district and, if applicable, a

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qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients;

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

[V.] W. "tax impact of a project" means the annual reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of a project to the department."

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

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

A. Subject to the limitations of Subsection C of this section, for the purpose of recommending projects to the authority for financing assistance, the department and the authority shall coordinate to:

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

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

(3) formulate recommendations of projects that are suitable for financing assistance; and

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

B. Subject to the limitations of Subsection C of this section, the department, with such staffing and other assistance from the authority as the department may request, shall propose to enter into opt-in agreements with counties, school districts and municipalities for the purpose of facilitating local government approvals necessary to permit projects to proceed. Opt-in agreements shall provide:

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

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

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

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

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

(4) that the payments in lieu of taxes shall be distributed in a manner and in amounts calculated in accordance with the provisions of Section 6-25-14 NMSA 1978; and

(5) that the county, school district or municipality reserves the right to withdraw from the agreement if it determines that the project subject to the agreement does not satisfy the

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requirements enumerated in the opt-in agreement.

C. Until all commercial, public and private locations within the state have access to broadband that meets the baseline standards set by the federal communications commission, the department shall not:

(1) recommend any projects to the authority other than projects for broadband telecommunications network facilities;
or

(2) propose to enter into an opt-in agreement for any purpose other than for broadband telecommunications network facilities.

~~[6.]~~ D. The department shall adopt rules for the exercise of its powers and responsibilities pursuant to the Statewide Economic Development Finance Act."

SECTION 11. Section 6-25-6 NMSA 1978 (being Laws 2016, Chapter 38, Section 1, as amended) is amended to read:

"6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

A. To implement a program to assist eligible entities in financing projects, the authority has the powers specified in this section.

B. State projects receiving financing assistance with money in the fund shall first be approved by law. To protect public money in the fund or other public resources, rules of the authority relating to state projects shall include provisions to ensure achievement of the economic development goals of the state project and shall describe the means of recovering public money or other public resources if an eligible entity defaults on its obligations

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to the authority.

C. Standard projects receiving financing assistance with money in the fund shall be approved by the authority pursuant to rules approved by the New Mexico finance authority oversight committee. Beginning July 1, 2023, standard projects shall first be approved by law.

D. Subject to the limitations of Subsection E of this section, the authority may:

(1) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) make loans from the fund for projects to eligible entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

(3) enter into loan participation agreements from the fund for projects, whether in the form of an interest rate buy-down, the purchase of loans or portions of loans originated and underwritten by third-party lenders or other similar arrangements;

(4) provide loan guarantees from the fund for projects;

(5) make, execute and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to project revenue bonds, economic development revolving fund bonds, loans, loan participations or loan guarantees and the Statewide Economic Development Finance Act and pay the reasonable value of services rendered to the authority pursuant to the contracts;

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(6) purchase and hold loans and loan participations in the fund at prices and in a manner determined by the authority;

(7) sell loans and loan participations acquired or held by the authority in the fund at prices and in a manner determined by the authority;

(8) prescribe the form of application or procedure required of an eligible entity to apply for financing assistance;

(9) fix the terms and conditions of the financing assistance, including the priority of lien and type of collateral or other security, and enter into agreements with eligible entities with respect to financing assistance;

(10) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase, participation in or guarantee of loans; and the review of proposed financing assistance to an eligible entity, whether or not the financing assistance is provided;

(11) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(12) to the extent allowed under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installments of principal or interest, security or any other term of financing assistance;

(13) consider the ability of the eligible entity to secure financing for a project from other sources and the costs of that financing;

(14) acquire fee simple, leasehold, mortgagor's or

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mortgagee's interests in real or personal property and sell, mortgage, convey, lease or assign that property for authority purposes; and

(15) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under law.

E. Until all commercial, public and private locations within the state have access to broadband that meets the baseline standards set by the federal communications commission, the authority shall only exercise the authorities provided in Subsection D of this section for a broadband telecommunications network facility project.

~~E.~~ F. The authority shall adopt rules subject to approval of the New Mexico finance authority oversight committee to:

- (1) establish procedures for applying for financing assistance;
- (2) establish credit qualifications for eligible entities and establish terms and conditions for financing assistance;
- (3) establish economic development goals for projects in consultation with the department;
- (4) establish methods for determining quantifiable benefits;
- (5) provide safeguards to protect public money and other public resources provided for a state project;
- (6) establish procedures by which the authority requests approval by law for projects receiving financing assistance

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with money in the fund; and

(7) establish fees to pay the costs of evaluating, originating and administering financing assistance.

~~[F.]~~ G. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act.

~~[G.]~~ H. The authority shall report to the New Mexico finance authority oversight committee twice each year regarding the total expenditures from the economic development revolving fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action."

SECTION 12. Section 6-25-7 NMSA 1978 (being Laws 2003, Chapter 349, Section 7, as amended) is amended to read:

"6-25-7. PROJECT REVENUE BONDS.--

A. Subject to the limitations of Subsection G of this section, the authority may issue project revenue bonds on behalf of an eligible entity to provide funds for a project. Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall not be a general obligation of the authority or the state within the meaning of any provision of the constitution of New Mexico and shall never give rise to a pecuniary liability of the authority or the state or a charge against the general credit or taxing powers of the state. Project revenue bonds shall be payable from the revenue derived from a project being financed by the bonds and from other revenues pledged by an eligible entity and may be secured in such manner as provided in the Statewide Economic Development Finance Act and as determined by the authority. Project revenue bonds may be executed and delivered at any time, may be in

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such form and denominations, may be payable in installments and at times not exceeding thirty years from their date of delivery, may bear or accrete interest at a rate or rates and may contain such provisions not inconsistent with the Statewide Economic Development Finance Act, all as provided in the resolution and proceedings of the authority authorizing issuance of the bonds. Project revenue bonds issued by the authority pursuant to the Statewide Economic Development Finance Act may be sold at public or private sale in such manner and from time to time as may be determined by the authority, and the authority may pay all expenses that the authority may determine necessary in connection with the authorization, sale and issuance of the bonds. All project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be negotiable.

B. The principal of and interest on project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be secured by a pledge of the revenues of the project being financed with the proceeds of the bonds, may be secured by a mortgage of all or a part of the project being financed or other collateral pledged by an eligible entity and may be secured by the lease of such project, which collateral and lease may be assigned, in whole or in part, by the department to the authority or to third parties to carry out the purposes of the Statewide Economic Development Finance Act. The resolution of the authority pursuant to which the project revenue bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including provisions respecting the fixing and collection of all revenues from any project to which the resolution or mortgage pertains, the terms to be incorporated in the lease of the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues of the project and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as determined by the authority or the department and as shall not be in conflict with the Statewide

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Economic Development Finance Act; provided, however, that, in making any such agreements or provisions, the authority and the department may not obligate themselves except with respect to the project and application of the revenues from the project, and except as expressly permitted by the Statewide Economic Development Finance Act, and shall not have the power to incur a pecuniary liability or a charge or to pledge the general credit or taxing power of the state. The resolution authorizing the issuance of project revenue bonds may provide procedures and remedies in the event of default in payment of the principal of or interest on the bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon the authority, the department or the state or any charge against the general credit or taxing powers of the state.

C. The authority may arrange for such other guarantees, insurance or other credit enhancements or additional security provided by an eligible entity as determined by the authority for the project revenue bonds and may provide for the payment of the costs from the proceeds of the bonds or may require payment of the costs by the eligible entity on whose behalf the bonds are issued.

D. Project revenue bonds issued to finance a project may also be secured by pledging a portion of the qualifying municipal or county gross receipts tax revenues by the municipality or county in which the project is located, as permitted by the Local Economic Development Act.

E. The project revenue bonds and the income from the bonds, all mortgages or other instruments executed as security for the bonds, all lease agreements made pursuant to the provisions of the Statewide Economic Development Finance Act and revenue derived from any sale or lease of a project shall be exempt from all taxation by the state or any political subdivision of the state. The authority may issue project revenue bonds the interest on which is exempt from taxation under federal law.

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F. In any calendar year, no more than fifteen percent of the state ceiling allocated pursuant to the Private Activity Bond Act may be used for projects financed pursuant to the Statewide Economic Development Finance Act.

G. Until all commercial, public and private locations within the state have access to broadband that meets the baseline standards set by the federal communications commission, the authority shall only issue bonds for a broadband telecommunications network facility project."

SECTION 13. Section 6-25-9 NMSA 1978 (being Laws 2003, Chapter 349, Section 9, as amended) is amended to read:

"6-25-9. PROJECT REVENUE REFUNDING BONDS.--

A. Subject to the limitations of Subsection C of this section, outstanding project revenue bonds may be refunded by the authority by issuing its refunding bonds in such amounts as the authority may determine to refund all or a portion of the principal of the project revenue bonds, all interest on the bonds to the normal maturity date of such bonds or to selected prior redemption dates, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding. The principal amount of project revenue refunding bonds may be equal to, less than or greater than the principal amount of the project revenue bonds to be refunded. Any such refunding may be effected whether the bonds to be refunded have matured or will thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded; provided that the holders of any project revenue bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.

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Project revenue refunding bonds shall be payable from the revenues out of which other project revenue bonds are payable or from the amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts, or from any combination of the foregoing sources, and may be secured in the manner that other project revenue bonds issued pursuant to the Statewide Economic Development Finance Act may be secured.

B. Proceeds of project revenue refunding bonds shall either be applied immediately to the retirement of the project revenue bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers. Notwithstanding any other provision of law, the escrowed proceeds may be invested in short-term or long-term securities. Except to the extent inconsistent with the express terms of the Statewide Economic Development Finance Act, the resolution of the authority pursuant to which the project revenue bonds to be refunded were issued, including any mortgage or trust indenture securing the bonds, shall govern the establishment of any escrow in connection with the refunding bonds and the investment or reinvestment of any escrowed proceeds.

C. Until all commercial, public and private locations within the state have access to broadband that meets the baseline standards set by the federal communications commission, the authority shall only refund an outstanding project revenue bond and use the proceeds of that project revenue refunding bond for the purpose of funding a broadband telecommunications network facility project."

12. Renumber the succeeding section accordingly.

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Jacob R. Candelaria

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____