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AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE OPPORTUNITY ENTERPRISE ACT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE FINANCING AND LOANS AND TO ENTER INTO LEASES WITH OPPORTUNITY ENTERPRISE PARTNERS; ESTABLISHING TERMS FOR FINANCING, LOANS AND LEASES; CREATING THE OPPORTUNITY ENTERPRISE REVOLVING FUND; TRANSFERRING CERTAIN EXCESS REVENUE FROM THE OPPORTUNITY ENTERPRISE REVOLVING FUND TO THE GENERAL FUND; CREATING THE OPPORTUNITY ENTERPRISE REVIEW BOARD; PROVIDING POWERS AND DUTIES; REQUIRING REPORTS; MAKING AN APPROPRIATION.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Opportunity Enterprise Act".

SECTION 2. DEFINITIONS.--As used in the Opportunity Enterprise Act:

- A. "authority" means the New Mexico finance authority;
- B. "board" means the opportunity enterprise review board;
- C. "department" means the economic development department;
- D. "economic development opportunities" means the advancement of an environmentally sustainable economic

1 development goal of the state as determined by the authority,  
2 in coordination with the department, and includes the  
3 creation of jobs, the provision of needed services and  
4 commodities to diverse communities across the state and the  
5 increase of tax and other revenue collections resulting from  
6 the enterprise development project;

7 E. "enterprise assistance" means opportunity  
8 enterprise financing, an opportunity enterprise lease or an  
9 opportunity enterprise loan;

10 F. "enterprise development project" means the  
11 purchase, planning, designing, building, surveying,  
12 improving, operating, furnishing, equipping or maintaining of  
13 land, buildings or infrastructure to create or expand  
14 economic development opportunities within the state;

15 G. "fund" means the opportunity enterprise  
16 revolving fund;

17 H. "opportunity enterprise partner" means a  
18 domestic corporation, a general partnership, a limited  
19 liability company, a limited partnership, a public benefit  
20 corporation, a nonprofit entity or other private business  
21 entity or combination thereof that the authority determines  
22 is or will be engaged in an enterprise that creates or  
23 expands economic development opportunities within the state  
24 and is eligible for enterprise assistance pursuant to the  
25 Opportunity Enterprise Act;

1 I. "opt-in agreement" means an agreement entered  
2 into among the authority, the department and a county,  
3 municipality or school district that ensures compliance with  
4 all local zoning, permitting and other land use rules and  
5 that provides for payments in lieu of taxes to the county,  
6 municipality or school district; and

7 J. "payment in lieu of taxes" means the total  
8 annual payment paid as compensation for the tax impact of an  
9 enterprise development project, in an amount negotiated and  
10 determined in the opt-in agreement among the authority, the  
11 department and the county, school district or, if applicable,  
12 municipality where the enterprise development project is  
13 located in the same proportional amount as property tax  
14 revenues are normally distributed to those recipients.

15 SECTION 3. NEW MEXICO FINANCE AUTHORITY--

16 POWERS--DUTIES.--To create or expand economic development  
17 opportunities within the state, the authority may:

18 A. acquire, whether by construction, purchase,  
19 gift or lease, and hold title to or other interest in an  
20 enterprise development project;

21 B. provide opportunity enterprise financing to  
22 opportunity enterprise partners and collect costs and fees  
23 associated with that financing;

24 C. enter into a contract to lease property to an  
25 opportunity enterprise partner and collect rent, costs and

1 fees associated with that lease;

2 D. make loans to opportunity enterprise partners  
3 and collect payments, including principal, interest costs and  
4 fees associated with that loan;

5 E. sell or otherwise dispose of any property  
6 obtained as a result of an enterprise development project;  
7 provided that proceeds received shall be deposited in the  
8 fund;

9 F. make, execute and enforce all contracts  
10 necessary to carry out the provisions of the Opportunity  
11 Enterprise Act;

12 G. take legal action available to the authority to  
13 recover public money or other public resources if an  
14 opportunity enterprise partner defaults on its obligations to  
15 the authority;

16 H. enter into joint powers agreements or other  
17 agreements with a state agency or governmental entity, as the  
18 authority determines to be appropriate for such purpose;

19 I. adopt rules relating to the use of the fund  
20 necessary to carry out the provisions of the Opportunity  
21 Enterprise Act subject to approval of the New Mexico finance  
22 authority oversight committee; and

23 J. enter into opt-in agreements where the  
24 enterprise development project is located to facilitate the  
25 development of an enterprise development project; provided

1 that if included in the opt-in agreement, the authority shall  
2 make payments in lieu of taxes to a county, municipality or  
3 school district to offset the tax impact of an enterprise  
4 development project.

5 SECTION 4. ECONOMIC DEVELOPMENT

6 DEPARTMENT--POWERS--DUTIES.--

7 A. For the purpose of recommending enterprise  
8 development projects to the board for enterprise assistance,  
9 the department and the board shall coordinate to:

10 (1) survey potential opportunity enterprise  
11 partners and enterprise development projects;

12 (2) provide outreach services to local  
13 governments and potential opportunity enterprise partners for  
14 the purpose of making recommendations regarding enterprise  
15 assistance; and

16 (3) evaluate potential opportunity  
17 enterprise partners and formulate recommendations regarding  
18 suitability for enterprise assistance.

19 B. The department may, when applicable, enter into  
20 opt-in agreements with the authority and the county, school  
21 district or, if applicable, municipality where the enterprise  
22 development project is located for the purpose of  
23 facilitating the development of the enterprise development  
24 project.

25 SECTION 5. OPPORTUNITY ENTERPRISE REVIEW

1 BOARD--CREATED--MEMBERSHIP.--

2 A. The "opportunity enterprise review board" is  
3 created. The authority shall provide necessary  
4 administrative services to the board.

5 B. The board is composed of the following twelve  
6 members:

7 (1) the secretary of economic development or  
8 the secretary's designee;

9 (2) the secretary of finance and  
10 administration or the secretary's designee;

11 (3) the secretary of general services or the  
12 secretary's designee;

13 (4) the state treasurer or the state  
14 treasurer's designee;

15 (5) the state auditor or the state auditor's  
16 designee;

17 (6) one representative appointed by the  
18 council of government organizations within the state; and

19 (7) six public members appointed by the New  
20 Mexico legislative council who shall have experience in any  
21 one or more of the following:

22 (a) the banking and finance industry;

23 (b) commercial or industrial credit;

24 (c) private equity, venture capital or  
25 mutual fund investments;

1 (d) commercial real estate development;  
2 (e) engineering, construction and  
3 construction management;  
4 (f) organized labor;  
5 (g) urban planning; or  
6 (h) environmentally sustainable  
7 construction and development.

8 C. Members of the board appointed pursuant to  
9 Paragraphs (6) and (7) of Subsection B of this section shall  
10 serve for staggered terms of six years; provided that the  
11 initial term of members appointed pursuant to Paragraph (7)  
12 of Subsection B of this section may be for a term of less  
13 than six years, as determined by the New Mexico legislative  
14 council, to ensure staggered membership of the board.  
15 Members of the board shall serve until their successors are  
16 appointed. A member of the board appointed pursuant to  
17 Paragraph (6) or (7) of Subsection B of this section may be  
18 removed from the board by the appointing authority for  
19 failure to attend three consecutive meetings or other cause.  
20 A vacancy on the board of an appointed member shall be filled  
21 by appointment by the original appointing authority for the  
22 remainder of the unexpired term of office; provided that a  
23 member who is removed pursuant to this section shall be  
24 ineligible for reappointment.

25 D. Members of the board appointed pursuant to

1 Paragraphs (6) and (7) of Subsection B of this section shall:

2 (1) be governed by the provisions of the  
3 Governmental Conduct Act; and

4 (2) not hold any office or employment in a  
5 political party.

6 E. The members shall select a chair, vice chair  
7 and other officers that the board deems necessary, who shall  
8 serve a term of two years. The board shall maintain minutes  
9 of all meetings of the board, and all meetings shall be held  
10 pursuant to the Open Meetings Act.

11 SECTION 6. OPPORTUNITY ENTERPRISE REVIEW

12 BOARD--POWERS.--

13 A. The board shall:

14 (1) meet quarterly and at the call of the  
15 chair;

16 (2) receive executed contracts for  
17 enterprise assistance;

18 (3) recommend to the authority application  
19 forms and procedures for approval of enterprise assistance;

20 (4) develop standards and procedures for the  
21 approval of proposed contracts for enterprise assistance;

22 (5) make recommendations to the authority of  
23 potential enterprise development projects;

24 (6) determine whether the use of enterprise  
25 assistance is a prudent expenditure of public funds and



1 report to the legislature annually on that determination; and

2 (7) make recommendations to the authority of  
3 potential rulemaking, application or lending changes to  
4 ensure transparent and efficient processes for carrying out  
5 the provisions of the Opportunity Enterprise Act.

6 B. The board and the department shall coordinate  
7 to:

8 (1) provide outreach services to local  
9 governments and potential opportunity enterprise partners;

10 (2) evaluate opportunity enterprise partners  
11 and eligible enterprise development projects for suitability  
12 for enterprise assistance; and

13 (3) obtain input and information relevant to  
14 carrying out the purposes of the Opportunity Enterprise Act  
15 from recipients of enterprise assistance, local governments  
16 and local communities.

17 **SECTION 7. RULEMAKING--BOARD.--**The board shall adopt  
18 rules necessary to carry out the provisions of the  
19 Opportunity Enterprise Act to:

20 A. establish procedures for applying and  
21 qualifying for enterprise assistance;

22 B. establish economic development goals for the  
23 state in consultation with the department;

24 C. govern the application procedures and  
25 requirements for enterprise assistance;

1           D. determine how to select and prioritize  
2 applications for enterprise assistance to be funded by the  
3 authority; and

4           E. provide safeguards to protect public money and  
5 other public resources subject to the Opportunity Enterprise  
6 Act.

7           **SECTION 8. ENTERPRISE ASSISTANCE--GENERAL**  
8 **REQUIREMENTS.--**

9           A. An application for enterprise assistance shall:

10                   (1) describe the scope and plans of the  
11 enterprise development project or proposed use of leased  
12 property by the applicant;

13                   (2) demonstrate that the enterprise  
14 development project or lease will create or expand economic  
15 development opportunities within the state;

16                   (3) demonstrate that the proposed enterprise  
17 development project or lease will comply with applicable  
18 state and federal law;

19                   (4) provide sufficient evidence that other  
20 means of financing a proposed enterprise development project  
21 are unavailable or insufficient; and

22                   (5) include other documentation or  
23 certifications that the authority deems necessary.

24           B. The authority, in coordination with the  
25 department, shall:

1 (1) make the application publicly available,  
2 including a description of the scope and plans of the  
3 proposed enterprise development project or lease;

4 (2) ensure that all information relating to  
5 the enterprise development project or lease and the  
6 evaluation of the application is made publicly available,  
7 unless the information includes trade secrets or information  
8 that is otherwise unable to be disclosed as provided by law;

9 (3) prioritize applications for enterprise  
10 assistance that demonstrate local support and financial need;  
11 and

12 (4) prior to providing enterprise  
13 assistance, determine that:

14 (a) the proposed enterprise development  
15 project or lease will create or expand economic development  
16 opportunities within the state;

17 (b) the proposed enterprise development  
18 project or lease will comply with applicable state and  
19 federal law; and

20 (c) other means of financing a proposed  
21 enterprise development project are unavailable or  
22 insufficient.

23 C. A contract to provide enterprise assistance  
24 shall:

25 (1) define the roles and responsibilities of

1 the authority and the opportunity enterprise partner;

2 (2) provide clawback or recapture provisions  
3 that protect the public investment in the event of a default  
4 on the contract;

5 (3) provide a finance plan detailing the  
6 financial contributions and obligations of the authority and  
7 opportunity enterprise partner;

8 (4) require an opportunity enterprise  
9 partner to provide guarantees, letters of credit or other  
10 acceptable forms of security, as determined by the authority;

11 (5) specify how rents, if applicable, will  
12 be collected and accounted for;

13 (6) specify how debts incurred on behalf of  
14 the opportunity enterprise partner will be repaid; and

15 (7) provide that, in the event of a default,  
16 the authority may:

17 (a) elect to take possession of the  
18 property, including the succession of all right, title and  
19 interest in the enterprise development project; and

20 (b) terminate the lease or cease any  
21 further funding and exercise any other rights and remedies  
22 that may be available.

23 D. The authority may require any document,  
24 guarantee or certification from a recipient of enterprise  
25 assistance that the authority determines is necessary to

1 ensure economic development opportunities are advanced by the  
2 enterprise assistance.

3 E. The authority may prioritize an application for  
4 enterprise assistance for a proposed enterprise development  
5 project located in a nonurban community.

6 F. Enterprise assistance shall only be provided if  
7 compliant with the Opportunity Enterprise Act. All contracts  
8 for enterprise assistance shall be provided to the board no  
9 later than thirty days from the execution of that contract.

10 G. As used in this section, "nonurban community"  
11 means a municipality with a population of less than forty  
12 thousand according to the most recent federal decennial  
13 census or the unincorporated area of a county.

14 **SECTION 9. OPPORTUNITY ENTERPRISE FINANCING.--**

15 A. The authority shall receive and review  
16 applications for opportunity enterprise financing. If the  
17 authority determines that an enterprise development project  
18 is eligible for financing, the authority may enter into a  
19 contract with the opportunity enterprise partner to provide  
20 financing to that partner, which shall be used to complete  
21 that project.

22 B. The authority shall ensure that all zoning,  
23 permitting and other regulatory requirements will be met by  
24 the enterprise development project and that the enterprise  
25 development project will create or expand economic

1 development opportunities within the state.

2 C. Financing shall not be subject to repayment if  
3 the terms of the contract for financing are carried out by  
4 the opportunity enterprise partner. A property associated  
5 with the enterprise development project shall be the property  
6 of the authority and shall be a property available for lease  
7 as provided in Section 10 of the Opportunity Enterprise Act.  
8 The authority may enter into agreements with the general  
9 services department or other state agency or entity approved  
10 by the board to administer and maintain the property as  
11 required by the Opportunity Enterprise Act.

12 D. As provided in rules adopted by the board, upon  
13 completion of an enterprise development project, the  
14 authority shall allow the opportunity enterprise partner  
15 responsible for the completion of that project an opportunity  
16 to obtain an opportunity enterprise lease for that property  
17 as provided in Section 10 of the Opportunity Enterprise Act;  
18 provided that any breach of the terms of the contract for  
19 opportunity enterprise financing may preclude that  
20 opportunity enterprise partner from leasing the property, and  
21 in that event, the property shall be made available for lease  
22 to other opportunity enterprise partners.

23 **SECTION 10. OPPORTUNITY ENTERPRISE LEASE--TERMS.--**

24 A. The authority shall receive and review  
25 applications for opportunity enterprise leases. If the

1 authority determines that an opportunity enterprise partner  
2 is eligible for an opportunity enterprise lease, the  
3 authority may enter into a contract to lease an available  
4 property to that opportunity enterprise partner in exchange  
5 for rent payments, subject to the terms provided by this  
6 section. The authority may enter into agreements with the  
7 general services department or other state agency or entity  
8 approved by the board to administer an opportunity enterprise  
9 lease.

10 B. An opportunity enterprise lease shall:

11 (1) require that the property be used solely  
12 to create and expand economic development opportunities;

13 (2) provide, based on the fair market value  
14 of the property, for:

15 (a) sufficient rent; and

16 (b) other securities to ensure the  
17 maintenance and protection of the property;

18 (3) require that the property be properly  
19 insured for the duration of the lease; and

20 (4) be bound only by the terms of the lease  
21 and any rules promulgated pursuant to the provisions of the  
22 Opportunity Enterprise Act.

23 C. Receipts from the payment of rent owed pursuant  
24 to an opportunity enterprise lease shall be deposited in the  
25 fund.

1           SECTION 11. OPPORTUNITY ENTERPRISE LOANS--

2           TERMS--REPAYMENT.--

3           A. The authority shall receive and review  
4           applications for opportunity enterprise loans. The authority  
5           may make loans to opportunity enterprise partners if:

- 6                       (1) funding is available;
- 7                       (2) the opportunity enterprise partner meets  
8           credit and identification criteria, as determined by the  
9           authority;
- 10                      (3) the opportunity enterprise partner  
11           certifies that the proceeds of the loan will be used for an  
12           enterprise development project; and

13                      (4) the opportunity enterprise partner meets  
14           any other requirement for an opportunity enterprise loan.

15           B. The opportunity enterprise partner shall  
16           provide the authority with ongoing information requested by  
17           the authority.

18           C. Opportunity enterprise loans shall be made for  
19           loan periods of no less than fifteen years and no more than  
20           thirty years, as determined by the authority. The loans  
21           shall bear an annual interest rate of no less than zero  
22           percent.

23           D. Beginning no later than the third anniversary  
24           of the funding date of the loan, payment on the outstanding  
25           principal of the loan shall be due on a schedule determined



1 by the authority for the remainder of the loan period.

2 E. Receipts from the repayment of opportunity  
3 enterprise loans shall be deposited in the fund.

4 F. No provision in an opportunity enterprise loan  
5 or the evidence of indebtedness of the loan shall include a  
6 penalty or premium for prepayment of the balance of the  
7 indebtedness.

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

15 SECTION 12. OPPORTUNITY ENTERPRISE REVOLVING  
16 FUND--CREATED--PERMITTED USES.--

17 A. The "opportunity enterprise revolving fund" is  
18 created within the authority. The fund consists of  
19 appropriations, distributions, transfers, gifts, grants,  
20 donations, bequests, fees collected, payments of principal  
21 and interest on opportunity enterprise loans, income from  
22 rents paid on opportunity enterprise leases, income from  
23 investment of the fund and any other money distributed or  
24 otherwise allocated to the fund. Balances in the fund at the  
25 end of a fiscal year shall not revert to the general fund

1 except as provided in Section 13 of the Opportunity  
2 Enterprise Act. The fund shall be administered by the  
3 authority as a separate account and may consist of such  
4 subaccounts as the authority deems necessary to carry out the  
5 purposes of the fund.

6 B. Money in the fund shall be used by the  
7 authority to carry out the provisions of the Opportunity  
8 Enterprise Act, including to:

9 (1) pay the reasonably necessary  
10 administrative costs, payments in lieu of taxes and other  
11 costs and fees incurred by the authority in carrying out the  
12 provisions of that act;

13 (2) provide opportunity enterprise  
14 financing; and

15 (3) make opportunity enterprise loans.

16 C. Money in the fund that is not needed for  
17 immediate disbursement may be deposited or invested in the  
18 same manner as other funds administered by the authority.

19 **SECTION 13. EXCESS REVENUE TO THE GENERAL**  
20 **FUND--OPPORTUNITY ENTERPRISE REVOLVING FUND--TRANSFER.--**

21 A. If, on June 30, 2028 and by June 30 of each  
22 fiscal year thereafter, the balance in the fund for that  
23 fiscal year exceeds the annual average amount by an amount  
24 greater than six percent, the amount in excess of six percent  
25 shall be transferred to the general fund. If there is not an

1 excess amount pursuant to this section, no transfer shall be  
2 made from the fund.

3 B. As used in this section, "annual average  
4 amount" means the total balance of the fund in the  
5 immediately preceding five fiscal years, divided by five.

6 SECTION 14. REPORTS.--

7 A. Prior to October 1, 2023 and each succeeding  
8 October 1 thereafter, the authority shall submit a report to  
9 the governor, the legislature, the legislative finance  
10 committee, the New Mexico finance authority oversight  
11 committee, the revenue stabilization and tax policy committee  
12 and other appropriate legislative interim committees. The  
13 report shall provide details regarding enterprise assistance  
14 provided pursuant to the Opportunity Enterprise Act. The  
15 report shall include:

16 (1) the total amount of enterprise  
17 assistance provided for enterprise development projects and  
18 state revenue derived from each enterprise development  
19 project;

20 (2) the total number of loans made pursuant  
21 to the Opportunity Enterprise Act; the amount of those loans;  
22 the number of loan recipients in a delinquent status, in  
23 default or in the process of filing or that have filed for  
24 bankruptcy;

25 (3) an overview of the industries and types

1 of business entities operating pursuant to an enterprise  
2 development project or lease;

3 (4) the total number of employees currently  
4 employed directly or indirectly related to an enterprise  
5 development project or lease; and

6 (5) any recommended changes to the  
7 Opportunity Enterprise Act to ensure proper safeguards for  
8 public money and to ensure enterprise assistance is able to  
9 efficiently advance the economic development interests of the  
10 state.

11 B. Information obtained by the authority regarding  
12 applicants for enterprise financing is confidential and not  
13 subject to inspection pursuant to the Inspection of Public  
14 Records Act; provided that nothing shall prevent the  
15 authority from disclosing:

16 (1) information required in the report  
17 pursuant to this section;

18 (2) public information pursuant to  
19 Paragraphs (1) and (2) of Subsection B of Section 8 of the  
20 Opportunity Enterprise Act; and

21 (3) the names of persons that have received  
22 enterprise assistance and the amount of enterprise assistance  
23 provided pursuant to the Opportunity Enterprise Act.

24 **SECTION 15. CONFLICT OF INTEREST.--**

25 A. If a member of the board or an employee of the

1 authority has an interest, either direct or indirect, in an  
2 application or contract relating to enterprise assistance,  
3 that interest shall be disclosed to the authority and the  
4 board in writing. The person having such interest shall not  
5 participate in actions by the board or the authority with  
6 respect to that conflict.

7 B. A person who has a conflict of interest and  
8 participates in an action involving that conflict of interest  
9 or knowingly fails to notify the authority and the board in  
10 writing of that conflict is guilty of a misdemeanor and upon  
11 conviction shall be sentenced pursuant to the provisions of  
12 Section 31-19-1 NMSA 1978.

13 SECTION 16. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2022. \_\_\_\_\_

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