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SENATE BILL 477

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mary Kay Papen

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO FINANCE; AMENDING THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT TO AUTHORIZE THE NEW MEXICO FINANCE AUTHORITY TO MAKE, PARTICIPATE IN AND GUARANTEE LOANS FOR ECONOMIC DEVELOPMENT PROJECTS; AUTHORIZING ECONOMIC DEVELOPMENT REVOLVING FUND BONDS; CHANGING THE NAME OF A FUND; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 6-25-1 NMSA 1978 (being Laws 2003, Chapter 349, Section 1) is amended to read:

"6-25-1. SHORT TITLE. -- ~~[Sections 1 through 16 of this act]~~ Chapter 6, Article 25 NMSA 1978 may be cited as the "Statewide Economic Development Finance Act". "

Section 2. Section 6-25-2 NMSA 1978 (being Laws 2003,

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1 Chapter 349, Section 2) is amended to read:

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

3 A. The legislature finds that:

4 (1) ~~[an]~~ it is important ~~[purpose-of]~~ for
5 government ~~[is]~~ to promote, support and assist in developing a
6 thriving economic base within the state; increase opportunities
7 for gainful employment and improved living conditions; assist
8 in promoting a balanced and productive economy; encourage the
9 flow of private capital for investment in productive
10 enterprises; and otherwise improve the prosperity, health and
11 general welfare of the people of the state;

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

20 (3) other states have agencies dedicated to
21 providing financing for economic development projects, which
22 agencies work directly with the state, ~~[cities]~~ municipalities,
23 counties and regional economic development agencies to provide
24 the necessary financing related to retaining and attracting
25 businesses and to provide financing to qualified nonprofit

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1 corporations that provide community housing, education, health
2 care and cultural facilities;

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

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

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

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

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

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

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

20 (1) stimulate economic development with ~~a~~
21 needed ~~program~~ programs in the public interest that ~~serves~~
22 ~~a~~ serve necessary and valid public ~~purpose~~ purposes; and

23 (2) provide one method of implementing the
24 economic development assistance provisions of Subsection D of
25 Article 9, Section 14 of the constitution of New Mexico for

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1 state projects. "

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

4 "6-25-3. DEFINITIONS. --As used in the Statewide Economic
5 Development Finance Act:

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

8 B. "department" means the economic development
9 department;

10 C. "economic development assistance provisions"
11 means the economic development assistance provisions of
12 Subsection D of Article 9, Section 14 of the constitution of
13 New Mexico;

14 [~~C.~~ ~~"economic development"~~] D. "project revenue
15 bonds" [~~or "bonds"~~] means bonds, notes or other instruments
16 issued by the authority pursuant to the Statewide Economic
17 Development Finance Act on behalf of eligible entities;

18 [~~D.~~] E. "economic development goal" means [~~the~~]:

19 (1) assistance to rural and underserved areas
20 designed to increase business activity;

21 (2) retention and expansion of existing
22 business enterprises [~~the~~];

23 (3) attraction of new business enterprises; or
24 [~~the~~]

25 (4) creation and promotion of an environment

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1 suitable for the support of start-up and emerging business
2 enterprises within the state [~~whether the business enterprises~~
3 ~~are for-profit or not-for-profit~~];

4 F. "economic development revolving fund bonds"
5 means bonds, notes or other instruments issued by the authority
6 pursuant to the Statewide Economic Development Finance Act;

7 [~~E.~~] G. "eligible entity" means [the person
8 ~~operating a project; "eligible entity" may include]~~ a for-
9 profit or not-for-profit business enterprise, including a
10 corporation, limited liability company, partnership or other
11 entity, determined by the department to be engaged in [a
12 ~~project]~~ an enterprise that serves an economic development goal
13 and is suitable for financing assistance;

14 [~~F.~~] H. "financing assistance" means [financing]
15 project revenue bonds, loans, loan participations or loan
16 guarantees provided by the authority to or for eligible
17 entities pursuant to the Statewide Economic Development Finance
18 Act; [~~or the New Mexico Finance Authority Act that may be in~~
19 ~~the form of economic development bonds, loan participations or~~
20 ~~loan guarantees;~~

21 ~~G. "local school district" means a school district~~
22 ~~in which is located project property that has been or will be~~
23 ~~exempted from property taxes pursuant to the Statewide Economic~~
24 ~~Development Finance Act;]~~

25 I. "fund" means the economic development revolving

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1 fund;

2 [H-] J. "mortgage" means a mortgage, deed of trust
3 or pledge of any assets as a collateral security;

4 [I-] K. "opt-in agreement" means an agreement
5 entered into between the department and a qualifying county, a
6 school district and, if applicable, a qualifying municipality
7 that provides for county, [~~local~~] school district and, if
8 applicable, municipal approval of a project, subject to
9 compliance with all local zoning, permitting and other land use
10 [~~regulations~~] rules, and for payments in lieu of taxes to the
11 qualifying county, [~~local~~] school district and, if applicable,
12 qualifying municipality as provided by the Statewide Economic
13 Development Finance Act;

14 [J-] L. "payment in lieu of taxes" means the total
15 annual payment, including any state in-lieu payment, paid as
16 compensation for the tax impact of a project, in an amount
17 negotiated and determined in the opt-in agreement between the
18 department and the qualifying county, the [~~local~~] school
19 district and, if applicable, the qualifying municipality, which
20 payment shall be distributed to the county, municipality and
21 [~~local~~] school district in the same proportion as property tax
22 revenues are normally distributed to those recipients;

23 [K-] M. "standard project" means [~~the acquisition~~
24 ~~and use of~~] land, buildings, [~~other~~] improvements, [~~and other~~
25 ~~project property~~] machinery and equipment, operating capital

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1 and other personal property for which financing assistance is
2 provided for adequate consideration, taking into account the
3 anticipated quantifiable benefits of the standard project, for
4 use by an eligible entity as:

5 (1) industrial or manufacturing facilities;

6 (2) commercial facilities, including
7 facilities for wholesale sales and services;

8 (3) health care facilities, including
9 hospitals, clinics, laboratory facilities and related office
10 facilities;

11 (4) educational facilities, including schools;

12 (5) arts, [~~and~~] entertainment or cultural
13 facilities, including museums, theaters, arenas or assembly
14 halls; and

15 (6) recreational and tourism facilities,
16 including parks, pools, trails, open space and equestrian
17 facilities;

18 [~~L.~~] N. "project [~~property~~]" means [~~any land and~~
19 ~~improvements thereon, buildings and improvements thereto,~~
20 ~~machinery and equipment of all kinds necessary to the project;~~
21 ~~operating capital; and other personal property deemed necessary~~
22 ~~in connection with the project] a standard project or a state
23 project;~~

24 [~~M.~~] O. "qualifying municipality or county" means a
25 municipality or county that enters into an opt-in agreement;

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1 P. "quantifiable benefits" means a project's
2 advancement of an economic development goal as measured by a
3 variety of factors, including the total number of direct and
4 indirect jobs created by the project, total amount of annual
5 salaries to be paid as a result of the project, total gross
6 receipts and occupancy tax collections, total property tax
7 collections, total state corporate and personal income tax
8 collections and other fee and revenue collections resulting
9 from the project;

10 Q. "school district" means a school district where
11 a project is located that is exempt from property taxes
12 pursuant to the Statewide Economic Development Finance Act;

13 ~~[N.]~~ R. "state in-lieu payment" means an annual
14 payment, in an amount determined by the department, that will
15 be distributed to a qualifying county, a ~~[local]~~ school
16 district and, if applicable, a qualifying municipality in the
17 same proportion as property tax revenues are normally
18 distributed to those recipients; ~~[and]~~

19 S. "state project" means land, buildings or
20 infrastructure for facilities to support new or expanding
21 eligible entities for which financing assistance is provided
22 pursuant to the economic development assistance provisions; and

23 ~~[0.]~~ T. "tax impact of a project" means the annual
24 reduction in property tax revenue to affected property tax
25 revenue recipients directly resulting from the conveyance of

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1 [property] a project to the department. "

2 Section 4. Section 6-25-4 NMSA 1978 (being Laws 2003,
3 Chapter 349, Section 4) is amended to read:

4 "6-25-4. ECONOMIC DEVELOPMENT DEPARTMENT--ADDITIONAL
5 POWERS.--Consistent with the provisions of the Statewide
6 Economic Development Finance Act, the department may:

7 A. acquire, whether by construction, purchase, gift
8 or lease, and hold fee simple title to or other interest in any
9 project [~~or project property~~];

10 B. enter into a lease of property in connection
11 with any project [~~or project property~~];

12 C. sell, lease or otherwise dispose of any project
13 [property];

14 D. assign lease payments, rents and any other
15 revenues derived from a project to the authority pursuant to
16 leases, mortgages or indentures securing payment of the
17 principal of, interest on and any other charges and expenses
18 relating to project revenue bonds issued by the authority;

19 E. make state in-lieu payments to a qualifying
20 county, a [~~local~~] school district and, if applicable, a
21 qualifying municipality to offset the tax impact of a project;
22 and

23 F. coordinate with the authority:

24 (1) for the authority's provision of staffing
25 support and assistance in carrying out the department's

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1 responsibilities under the Statewide Economic Development
2 Finance Act; and

3 (2) to enter into memoranda of understanding
4 or such other agreements as the department and authority [~~deem~~]
5 determine to be appropriate for such purposes. "

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

8 "6-25-5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT
9 DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN
10 AGREEMENTS.--

11 A. For the purpose of recommending projects to the
12 authority for financing assistance, the department and the
13 authority shall coordinate to:

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

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

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

23 (4) obtain input and information [~~from the~~
24 ~~authority~~] relevant to the establishment and implementation of
25 criteria for evaluating potential projects.

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

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

9 (2) for payments in lieu of taxes to
10 qualifying counties, [~~local~~] school districts and, if
11 applicable, qualifying municipalities to mitigate the tax
12 impact of a project;

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

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

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

21 (4) that the payments in lieu of taxes shall
22 be distributed in a manner and in amounts calculated in
23 accordance with the provisions of Section [~~14 of the Statewide~~
24 ~~Economic Development Finance Act~~] 6-25-14 NMSA 1978; and

25 (5) that the county, school district or

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1 municipality reserves the right to withdraw from the agreement
2 if it determines that the project subject to the agreement does
3 not satisfy the requirements enumerated in the opt-in
4 agreement.

5 C. The department shall adopt rules for the
6 exercise of its powers and responsibilities pursuant to the
7 Statewide Economic Development Finance Act. "

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

10 "6-25-6. NEW MEXICO FINANCE AUTHORITY-- ADDITIONAL POWERS
11 AND DUTIES. --

12 A. ~~[Consistent with the provisions of]~~ To implement
13 a program to assist eligible entities in financing projects,
14 the authority has the powers specified in this section.

15 B. State projects receiving financing assistance
16 with money in the fund shall first be approved by law pursuant
17 to the economic development assistance provisions and the
18 Statewide Economic Development Finance Act. To protect public
19 money in the fund or other public resources, financing
20 assistance documents for state projects shall include
21 provisions to ensure achievement of the economic development
22 goal of the state project pursuant to rules of the authority
23 describing specific means of recovering public money or other
24 public resources if an eligible entity defaults on its
25 obligations to the authority.

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1 C. Standard projects shall be approved by the
2 authority pursuant to rules approved by the New Mexico finance
3 authority oversight committee.

4 D. The authority may:

5 (1) issue [~~economic development~~] project
6 revenue bonds [~~notes or other debt instruments~~] on behalf of an
7 eligible entity, payable from the revenues of a project and
8 other revenues authorized as security for the bonds, to finance
9 a project on behalf of an eligible entity;

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

13 [~~(2)~~] (3) enter into loan participation
14 agreements [~~on behalf of eligible entities~~] for projects,
15 whether in the form of an interest rate buy-down, the purchase
16 of loans or portions of loans originated and underwritten by
17 third-party lenders or other similar arrangements;

18 [~~(3) offer~~] (4) provide loan guarantees for
19 projects;

20 [~~(4)~~] (5) make, [~~enter into~~] execute and
21 enforce all contracts necessary, convenient or desirable for
22 purposes of the authority or pertaining to [~~the other powers~~
23 ~~granted pursuant to the~~] project revenue bonds, economic
24 development revolving fund bonds, loans, loan participations or
25 loan guarantees and the Statewide Economic Development Finance

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1 Act and pay the reasonable value of services rendered to the
2 authority pursuant to the contracts;

3 ~~[(5) make and execute contracts for the~~
4 ~~origination, administration, servicing or collection of any~~
5 ~~loan, and to pay the reasonable value of services rendered to~~
6 ~~the authority pursuant to the contracts;]~~

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

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

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

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

20 ~~[(6)]~~ (10) fix, revise from time to time,
21 charge and collect fees and other charges in connection with
22 the issuance of bonds; the making, purchase, participation in
23 or [guaranty] guarantee of loans; and [any other services
24 rendered by the authority] the review of proposed financing
25 assistance to an eligible entity, whether or not the financing

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1 assistance is provided;

2 [~~(7)~~] (11) employ architects, engineers,
3 accountants and attorneys; construction and financial experts;
4 and such other advisors, consultants and agents as may be
5 necessary in its judgment, and fix and pay their compensation;

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

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

14 [~~(8)~~] (14) acquire fee simple, leasehold,
15 mortgagor's or mortgagee's interests in real or personal
16 property and [~~to~~] sell, mortgage, convey, lease or assign that
17 property for authority purposes; and

18 [~~(9)~~] (15) in the event of default by an
19 eligible entity, enforce its rights by suit, mandamus and all
20 other remedies available under [~~state~~] law.

21 [~~B.~~] E. The authority shall adopt [~~policies and~~
22 ~~procedures~~] rules subject to approval of the New Mexico finance
23 authority oversight committee to:

24 [~~(1) establish minimum credit qualifications~~
25 ~~for financing assistance to eligible entities for projects~~

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1 ~~recommended by the department;~~

2 ~~(2)]~~ (1) establish procedures for applying for
3 financing assistance; [and]

4 (2) establish credit qualifications for
5 eligible entities and establish terms and conditions for
6 financing assistance;

7 (3) establish economic development goals for
8 projects in consultation with the department;

9 (4) establish criteria for determining whether
10 a project is to receive financing assistance as a standard
11 project or a state project;

12 (5) establish methods for determining
13 quantifiable benefits;

14 (6) provide safeguards to protect public money
15 and other public resources provided for a state project;

16 (7) establish procedures by which the
17 authority requests approved by law for state projects; and

18 ~~[(3)]~~ (8) establish fees to pay the costs of
19 evaluating, originating and administering financing assistance.

20 ~~[C.]~~ F. The authority shall coordinate with the
21 department to provide staffing and other assistance to the
22 department in carrying out the department's responsibilities
23 and activities pursuant to the Statewide Economic Development
24 Finance Act. "

25 Section 7. Section 6-25-7 NMSA 1978 (being Laws 2003,

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1 Chapter 349, Section 7) is amended to read:

2 "6-25-7. [~~ECONOMIC DEVELOPMENT~~] PROJECT REVENUE BONDS. --

3 A. The authority may issue [~~economic development~~]
4 project revenue bonds on behalf of an eligible entity to
5 provide funds for a project [~~recommended by the department for~~
6 ~~financing assistance~~]. Project revenue bonds issued pursuant
7 to the Statewide Economic Development Finance Act shall not be
8 a general obligation of the authority or the state within the
9 meaning of any provision of the constitution of New Mexico and
10 shall never give rise to a pecuniary liability of the authority
11 or the state or a charge against the general credit or taxing
12 powers of the state [~~and every bond issued pursuant to the~~
13 ~~Statewide Economic Development Finance Act shall state that~~
14 ~~fact plainly on its face~~]. Project revenue bonds shall be
15 payable from the revenue derived from a project being financed
16 by the bonds and from other revenues pledged by an eligible
17 entity, and may be secured in such manner as provided in the
18 Statewide Economic Development Finance Act and as [~~deemed~~
19 ~~appropriate~~] determined by the authority. Project revenue
20 bonds may be executed and delivered at any time, [~~and from time~~
21 ~~to time~~] may be in such form and denominations, [~~may be of such~~
22 ~~tenor~~] may be payable in [~~such~~] installments and at [~~such time~~
23 ~~or~~] times not exceeding thirty years from their date of
24 delivery, [~~may be payable at such place or places~~] may bear or
25 accrete interest at [~~such~~] a rate or rates [~~payable at such~~

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1 ~~place or places and evidenced in such manner~~] and may contain
2 such provisions not inconsistent with the Statewide Economic
3 Development Finance Act, all as ~~[shall be]~~ provided in the
4 resolution and proceedings of the authority authorizing
5 issuance of the bonds. Project revenue bonds issued by the
6 authority pursuant to the Statewide Economic Development
7 Finance Act may be sold at public or private sale in such
8 manner and from time to time as may be determined by the
9 authority ~~[to be most advantageous]~~, and the authority may pay
10 all expenses ~~[attorney, engineering and architect fees;~~
11 ~~premiums; and commissions]~~ that the authority may ~~[deem]~~
12 determine necessary ~~[or advantageous]~~ in connection with the
13 authorization, sale and issuance of the bonds. All project
14 revenue bonds issued pursuant to the Statewide Economic
15 Development Finance Act shall ~~[be construed to]~~ be negotiable.

16 B. The principal of and interest on project revenue
17 bonds issued pursuant to the Statewide Economic Development
18 Finance Act shall be secured by a pledge of the revenues of the
19 project being financed with the proceeds of the bonds, may be
20 secured by a mortgage of all or ~~[any]~~ a part of the project
21 ~~[property]~~ being financed or other collateral pledged by an
22 eligible entity, and may be secured by the lease of such
23 project ~~[property]~~, which collateral and lease may be assigned,
24 in whole or in part, by the department to the authority or to
25 third parties to carry out the purposes of the Statewide

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1 Economic Development Finance Act. The resolution of the
2 authority pursuant to which the project revenue bonds are
3 authorized to be issued or any such mortgage may contain any
4 agreement and provisions customarily contained in instruments
5 securing bonds, including [~~without limiting the generality of~~
6 ~~the foregoing~~] provisions respecting the fixing and collection
7 of all revenues from any project to which the resolution or
8 mortgage pertains, the terms to be incorporated in the lease of
9 the project [~~property~~], the maintenance and insurance of the
10 project [~~property~~], the creation and maintenance of special
11 funds from the revenues of the project and the rights and
12 remedies available in event of default to the bondholders or to
13 the trustee under a mortgage, all as determined by the
14 authority or the department [~~shall deem advisable~~] and as shall
15 not be in conflict with the Statewide Economic Development
16 Finance Act; provided, however, that in making any such
17 agreements or provisions, the authority and the department may
18 not obligate themselves except with respect to the project and
19 application of the revenues [~~therefrom~~] from the project, and
20 except as expressly permitted by the Statewide Economic
21 Development Finance Act, and shall not have the power to incur
22 a pecuniary liability or a charge, or to pledge the general
23 credit or taxing power of the state. The resolution
24 authorizing the issuance of project revenue bonds may provide
25 procedures and remedies in the event of default in payment of

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1 the principal of or interest on the bonds or in the performance
2 of any agreement. No breach of any such agreement shall impose
3 any pecuniary liability upon the authority, the department or
4 the state or any charge against the general credit or taxing
5 powers of the state.

6 C. The authority may arrange for such other
7 guarantees, insurance or other credit enhancements or
8 additional security provided by an eligible entity as
9 determined by the authority [~~may deem appropriate~~] for the
10 project revenue bonds and may provide for the payment of the
11 costs [~~of the same~~] from the proceeds of the bonds, or may
12 require payment of the costs by the eligible entity on whose
13 behalf the bonds are issued.

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

19 E. The project revenue bonds and the income from
20 the bonds, all mortgages or other instruments executed as
21 security for the bonds, all lease agreements made pursuant to
22 the provisions [~~hereof~~] of the Statewide Economic Development
23 Finance Act and revenue derived from any sale or lease of a
24 project [~~property~~] shall be exempt from all taxation by the
25 state or any political subdivision of the state. The authority

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1 may issue project revenue bonds the interest on which is exempt
2 from taxation under federal law.

3 F. In any calendar year, no more than fifteen
4 percent of the state ceiling allocated pursuant to the Private
5 Activity Bond Act may be used for projects financed [~~with bonds~~
6 ~~issued~~] pursuant to the Statewide Economic Development Finance
7 Act. "

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

10 "6-25-8. LEASES OF [~~PROJECT PROPERTY~~] PROJECTS. --

11 A. Prior to the department's lease of any project
12 [~~property~~] to an eligible entity, the authority shall
13 determine:

14 (1) the amount necessary in each year to pay
15 the principal of and interest on project revenue bonds
16 [~~proposed~~] to be issued to finance the project;

17 (2) the amount necessary to be paid each year
18 into any reserve funds [~~that~~] the authority [~~may deem~~
19 ~~advisable to establish~~] establishes in connection with the
20 retirement of the proposed project revenue bonds and the
21 maintenance and repair of the project [~~property~~]; and

22 (3) unless the terms under which the project
23 [~~property~~] is to be leased provide that the lessee shall
24 maintain the project [~~property~~] and carry all proper insurance
25 with respect [~~thereto~~] to the project, the estimated cost of

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1 maintaining the project [~~property~~] in good repair and keeping
2 it properly insured.

3 B. The determinations required by Subsection A of
4 this section shall be set forth in the resolution under which
5 the proposed project revenue bonds are to be issued; and prior
6 to the issuance of the bonds, the department shall lease or
7 sell the project [~~property~~] to a lessee or purchaser pursuant
8 to an agreement conditioned upon completion of the project and
9 providing for payment to the department and assigned to the
10 authority or a trustee, of such rentals or payments as will be
11 sufficient to:

12 (1) pay the principal of and interest on the
13 bonds issued to finance the project;

14 (2) build up and maintain any reserve [~~deemed~~]
15 established by the authority [~~to be advisable in connection~~
16 ~~with~~] for the bonds; and

17 (3) pay the costs of maintaining the project
18 [~~property~~] in good repair and keeping it properly insured,
19 unless the lease obligates the lessee to pay for the
20 maintenance and insurance of the project [~~property~~]. "

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

23 "6-25-9. PROJECT REVENUE REFUNDING BONDS. --

24 A. Outstanding [~~economic development~~] project
25 revenue bonds may [~~at any time and from time to time~~] be

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1 refunded by the authority by issuing its refunding bonds in
2 such amounts as the authority may determine to refund all or a
3 portion of the principal of the project revenue bonds, all
4 [~~unpaid accrued and unaccrued~~] interest on the bonds to the
5 normal maturity date of such bonds or to selected prior
6 redemption dates [~~thereof~~], any redemption premiums, any
7 commission and all estimated costs incidental to the issuance
8 of such bonds and to such refunding [~~as may be determined by~~
9 ~~the authority~~]. The principal amount of project revenue
10 refunding bonds may be equal to, less than or greater than the
11 principal amount of the project revenue bonds to be refunded.
12 Any such refunding may be effected whether the bonds to be
13 refunded have matured or will thereafter mature, either by sale
14 of the refunding bonds and the application of the proceeds
15 [~~thereof~~] for the payment of the bonds to be refunded
16 [~~thereby~~], or by exchange of the refunding bonds for the bonds
17 to be refunded [~~thereby~~]; provided that the holders of any
18 project revenue bonds to be refunded shall not be compelled
19 without their consent to surrender their bonds for payment or
20 exchange prior to the date on which they are payable or, if
21 they are called for redemption, prior to the date on which
22 [~~the~~] they are by their terms subject to redemption. Project
23 revenue refunding bonds shall be payable from the revenues out
24 of which other project revenue bonds [~~issued pursuant to the~~
25 ~~Statewide Economic Development Finance Act may be~~] are payable

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underscored material = new
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1 or from the amounts derived from an escrow as provided in this
2 section, including amounts derived from the investment of
3 refunding bond proceeds and other legally available amounts
4 [~~also as provided in this section~~], or from any combination of
5 the foregoing sources, and may be secured in the manner that
6 other project revenue bonds issued pursuant to the Statewide
7 Economic Development Finance Act may be secured.

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

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

24 "6-25-10. USE OF PROJECT REVENUE BOND PROCEEDS. -- The
25 proceeds from the sale of project revenue bonds issued pursuant

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1 to the Statewide Economic Development Finance Act shall be
2 applied only for the purpose for which the bonds were issued
3 and ~~[cost]~~ costs related to ~~[the acquisition of]~~ the project
4 ~~[property]~~. The cost of ~~[acquiring]~~ any project ~~[property]~~
5 shall include the following:

6 ~~[A. the cost of the construction of any part of~~
7 ~~project property that may be constructed, including architect,~~
8 ~~engineering and attorney fees;~~

9 ~~B. the purchase price of any part of project~~
10 ~~property that may be acquired by purchase;~~

11 ~~C. the cost of the extension of any utility to the~~
12 ~~project site;~~

13 ~~D.]~~ A. all expenses in connection with the
14 authorization, sale and issuance of the bonds; and

15 ~~[E. the]~~ B. capitalized interest on the bonds for
16 a reasonable time ~~[prior to construction, during construction~~
17 ~~and a reasonable time after completion of construction]. "~~

18 Section 11. Section 6-25-11 NMSA 1978 (being Laws 2003,
19 Chapter 349, Section 11) is amended to read:

20 "6-25-11. PROJECT REVENUE BONDS LEGAL INVESTMENTS. --
21 Project revenue bonds issued pursuant to the Statewide Economic
22 Development Finance Act shall be legal investments ~~[for savings~~
23 ~~banks and insurance companies organized under the laws of the~~
24 ~~state]~~ in which all insurance companies, banks and savings and
25 loan associations organized under the laws of the state, public

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1 officers and public bodies and all administrators, guardians,
2 executors, trustees and other fiduciaries, including the state
3 investment council, may properly and legally invest funds. "

4 Section 12. Section 6-25-13 NMSA 1978 (being Laws 2003,
5 Chapter 349, Section 13) is amended to read:

6 "6-25-13. [~~STATEWIDE LOAN PARTICIPATION~~] ECONOMIC
7 DEVELOPMENT REVOLVING FUND. --

8 A. The "~~[statewide loan participation]~~ economic
9 development revolving fund" is created within the authority.
10 The fund shall be administered by the authority as a separate
11 account and may consist of such subaccounts as the authority
12 deems necessary to carry out the purposes of the fund. The
13 authority may establish procedures for administering the fund
14 in accordance with the Statewide Economic Development Finance
15 Act.

16 B. Except as otherwise provided in the Statewide
17 Economic Development Finance Act, money from payments of
18 principal of [~~and~~], interest on and other fees or charges paid
19 to the authority in connection with economic development
20 revolving fund bonds, loans, project revenue bonds purchased
21 with money on deposit in the fund, loan participations [~~and~~
22 other securities held by the authority for projects receiving
23 financing assistance based upon the department's
24 recommendation] and loan guarantees shall be deposited in the
25 fund [~~provided that fees charged by the authority to pay the~~

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1 ~~costs of originating and administering loans, loan~~
2 ~~participations or loan guarantees for projects, other than~~
3 ~~interest, shall not be deposited in the fund, but shall be~~
4 ~~deposited in a separate account and may be used by the~~
5 ~~authority to meet its administrative costs].~~

6 C. ~~[Except as otherwise provided in the Statewide~~
7 ~~Economic Development Finance Act] Money in the economic~~
8 ~~development revolving fund is appropriated to the authority to:~~

9 (1) pay the reasonably necessary
10 administrative and other costs [of] incurred by the authority
11 in evaluating, processing, originating and servicing economic
12 development revolving fund bonds, loans, project revenue bonds,
13 loan participations [to] and loan guarantees;

14 (2) purchase loan participations [~~and to~~
15 ~~purchase securities to assist eligible entities in financing~~
16 ~~projects in accordance with the Statewide Economic Development~~
17 ~~Finance Act and pursuant to the recommendation of each project~~
18 ~~by the department] for projects;~~

19 (3) make loans for projects;

20 (4) make loan guarantees for projects; and

21 (5) purchase project revenue bonds.

22 D. Money in the economic development revolving fund
23 that is not needed for immediate disbursement, including money
24 held in reserve, may be deposited or invested in the same
25 manner as other funds administered by the authority.

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1 E. Money on deposit in the economic development
2 revolving fund may be designated as a reserve for economic
3 development revolving bonds issued and for financing assistance
4 provided by the authority for any project pursuant to the
5 Statewide Economic Development Finance Act [~~including bonds~~
6 ~~payable from sources other than the fund~~] and the authority may
7 covenant in any [~~bond~~] resolution or trust indenture to
8 maintain and replenish the reserve from money deposited in the
9 fund [~~after issuance of bonds by the authority~~].

10 F. Money in the economic development revolving fund
11 may be used to purchase project revenue bonds issued by the
12 authority pursuant to the Statewide Economic Development
13 Finance Act, which are payable from any designated source of
14 revenues or collateral. Purchasing and holding the bonds shall
15 not result in cancellation or merger of the bonds,
16 notwithstanding the fact that the authority as the issuer of
17 the bonds is obligated to make the required debt service
18 payments and the fund held by the authority is entitled to
19 receive the required debt service payments. "

20 Section 13. Section 6-25-14 NMSA 1978 (being Laws 2003,
21 Chapter 349, Section 14) is amended to read:

22 "6-25-14. TAX IMPACT FUND. --

23 A. The "tax impact fund" is created within the
24 state treasury. The tax impact fund shall consist of money
25 appropriated to the fund and money distributed to the fund by

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1 law. Money remaining in the tax impact fund at the end of each
2 fiscal year shall not revert, but shall remain in the fund for
3 the purposes set forth in the Statewide Economic Development
4 Finance Act. For the purpose of mitigating the tax impact of a
5 project, money in the tax impact fund shall be disbursed by
6 warrant of the [~~department~~] secretary of finance and
7 administration, upon vouchers submitted by the department, to
8 qualifying counties, school districts and, if applicable,
9 qualifying municipalities as state in-lieu payments in the same
10 proportion as property taxes are distributed.

11 B. [~~State in-lieu payments from the tax impact fund~~
12 ~~shall be made as a portion of the total amount of the annual~~
13 ~~payment in lieu of taxes required in the opt-in agreement.~~]

14 The amount of state in-lieu payments shall be determined by the
15 department, as specified in the opt-in agreement, and shall be
16 subject to the availability of money in the tax impact fund in
17 each fiscal year during the term of the opt-in agreement.

18 C. In each fiscal year during the term of an opt-in
19 agreement, a county, school district and, if applicable, a
20 municipality shall qualify to receive state in-lieu payments in
21 connection with project [~~property~~] when the following
22 conditions are satisfied:

23 (1) title to the project [~~property~~] has been
24 transferred to the department in connection with financing
25 assistance provided pursuant to the Statewide Economic

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1 Development Finance Act, resulting in an exemption from
2 property taxes that the qualifying county, [~~the~~] school
3 district and, if applicable, qualifying municipality would
4 otherwise have been entitled to receive;

5 (2) pursuant to an opt-in agreement, the
6 qualifying county, [~~the~~] school district and, if applicable,
7 qualifying municipality have certified to the department in
8 advance that [~~it supports~~] they support the project, subject to
9 the project's compliance with the planning, zoning,
10 subdivision, building code and other applicable laws and
11 regulations governing land use;

12 (3) pursuant to an opt-in agreement, the
13 county, the [~~the~~] school district and, if applicable, the
14 municipality and the department have agreed on the amount of
15 the annual payment in lieu of taxes; and

16 (4) the department has determined that there
17 is sufficient money on deposit in the tax impact fund in the
18 current fiscal year to make distributions of state in-lieu
19 payments for the project.

20 D. The department shall establish by rule
21 procedures for certification by local governments concerning
22 project support, notification of local school boards concerning
23 financing and qualification for state in-lieu payments.

24 E. The amount of state in-lieu payments that a
25 qualifying county, [~~the~~] school district and, if applicable,

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1 qualifying municipality are entitled to receive shall be
2 determined by the department based upon:

3 (1) the annual reduction in property tax
4 revenue received by the qualifying county, ~~[local]~~ school
5 district and, if applicable, qualifying municipality that
6 results from the transfer of title to the project ~~[property]~~ to
7 the department;

8 (2) the increase in local revenues that the
9 qualifying county, ~~[local]~~ school district and, if applicable,
10 qualifying municipality are anticipated to receive as a result
11 of the project;

12 (3) an allocation of the annual revenue
13 deposited to the tax impact fund among the qualifying
14 municipalities, ~~[and]~~ counties and ~~[local]~~ school districts
15 that have qualified to receive state in-lieu payments; and

16 (4) such adjustments as the department may
17 determine by rule are appropriate and necessary to carry out
18 the purposes of the Statewide Economic Development Finance Act,
19 including, without limitation, adjustments that are necessary
20 or desirable to:

21 (a) overcome particular barriers to
22 economic expansion in specific locales;

23 (b) mitigate the tax impact of a project
24 that will not be offset by increased local gross receipts
25 revenue production directly or indirectly resulting from the

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1 project; or

2 (c) encourage job growth in an area in
3 which unemployment is a particular problem "

4 Section 14. A new section of the Statewide Economic
5 Development Finance Act is enacted to read:

6 "[NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING FUND BONDS
7 OF THE AUTHORITY--USE--SECURITY.--

8 A. The authority may issue and sell economic
9 development revolving fund bonds in principal amounts it
10 determines necessary to provide sufficient money for any
11 purpose of the Statewide Economic Development Finance Act,
12 including:

- 13 (1) making loans;
- 14 (2) entering into loan participations;
- 15 (3) providing loan guarantees;
- 16 (4) purchasing project revenue bonds;
- 17 (5) paying, funding or refunding of the
18 principal of or interest or redemption premiums on economic
19 development revolving fund bonds issued by the authority,
20 whether the economic development revolving fund bonds or
21 interest to be paid, funded or refunded have or have not become
22 due;

- 23 (6) establishing or increasing reserves or
24 sinking funds to secure or to pay principal, premium, if any,
25 or interest on economic development revolving fund bonds; and

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1 (7) paying all other costs or expenses of the
2 authority incident to and necessary or convenient to carry out
3 its duties pursuant to the Statewide Economic Development
4 Finance Act.

5 B. All economic development revolving fund bonds or
6 other obligations issued by the authority shall be payable
7 solely from the fund and the revenues, income and fees
8 deposited in the fund, and the economic development revolving
9 fund bonds or other obligations shall not create an obligation,
10 debt or liability of the state. No breach of any pledge,
11 obligation or agreement of the authority shall impose a
12 pecuniary liability or a charge upon the general credit or
13 taxing power of the state or any political subdivision of the
14 state. "

15 Section 15. A new section of the Statewide Economic
16 Development Finance Act is enacted to read:

17 "[NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING FUND
18 BONDS-- AUTHORIZATION FOR ISSUANCE-- TERMS AND CONDITIONS. --

19 A. Economic development revolving fund bonds of the
20 authority shall be authorized by resolution of the authority
21 and may be issued in one or more series. The economic
22 development revolving fund bonds shall bear the dates, be in
23 the form, be issued in the denominations, have terms and
24 maturities, bear or accrete interest at rates and be payable
25 and evidenced in the manner and times as the resolution of the

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1 authority or the trust agreement securing the economic
2 development revolving fund bonds provides. The economic
3 development revolving fund bonds may be redeemed with or
4 without premiums prior to maturity, may be ranked or assigned
5 priority status and may contain provisions not inconsistent
6 with this subsection.

7 B. The economic development revolving fund bonds
8 issued by the authority may be sold at any time at private or
9 public sale at prices agreed upon by the authority.

10 C. Economic development revolving fund bonds may be
11 issued pursuant to the Statewide Economic Development Finance
12 Act without obtaining the consent of any agency of the state
13 and without any other proceeding or condition other than the
14 proceedings or conditions specified in that act.

15 D. The economic development revolving fund bonds
16 issued by the authority are negotiable instruments for all
17 purposes of the Uniform Commercial Code.

18 E. Any resolution for the issuance of economic
19 development revolving fund bonds shall provide that each
20 economic development revolving fund bond authorized shall
21 recite that it is issued by the authority. The recital shall
22 clearly state that the economic development revolving fund
23 bonds are in full compliance with all of the provisions of the
24 Statewide Economic Development Finance Act. "

25 Section 16. A new section of the Statewide Economic

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1 Development Finance Act is enacted to read:

2 " [NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING FUND BONDS
3 SECURED BY TRUST INDENTURE. -- Economic development revolving
4 fund bonds may be secured by a trust indenture between the
5 authority and a corporate trustee that may be either a bank
6 having trust powers or a trust company. The trust indenture
7 may contain reasonable provisions for protecting and enforcing
8 the rights and remedies of bondholders, including covenants
9 setting forth the duties of the authority in relation to the
10 exercise of its powers and the custody, use and investment of
11 the money. The authority may provide by the trust indenture
12 for the payment of the proceeds of the economic development
13 revolving fund bonds and the revenue to the trustee under the
14 trust indenture or other depository for disbursement with such
15 safeguards as the authority determines are necessary. "

16 Section 17. A new section of the Statewide Economic
17 Development Finance Act is enacted to read:

18 " [NEW MATERIAL] PUBLICATION OF NOTICE-- VALIDATION--
19 LIMITATION OF ACTION. --

20 A. After adoption of a resolution authorizing
21 issuance of economic development revolving fund bonds or
22 project revenue bonds in accordance with the Statewide Economic
23 Development Finance Act, the authority shall publish notice of
24 the adoption of the resolution once in a newspaper of general
25 statewide circulation.

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1 B. After the passage of thirty days from the
2 publication required by Subsection A of this section, any
3 action attacking the validity of the proceedings taken by the
4 authority preliminary to and in the authorization and issuance
5 of the bonds described in the notice is perpetually barred. "

6 Section 18. A new section of the Statewide Economic
7 Development Finance Act is enacted to read:

8 "[NEW MATERIAL] REFUNDING BONDS. --The authority is
9 authorized to issue bonds for the purpose of refunding any
10 economic development revolving fund bonds then outstanding,
11 including the payment of any redemption premiums and any
12 interest accrued or to accrue to the date of redemption of the
13 outstanding economic development revolving fund bonds. Until
14 the proceeds of the bonds issued for the purpose of refunding
15 outstanding economic development revolving fund bonds are
16 applied to the purchase, retirement or redemption of the
17 outstanding economic development revolving fund bonds, the
18 proceeds may be placed in escrow and be invested and
19 reinvested. The interest, income and profits, if any, earned
20 or realized on any such investment may also be applied to the
21 payment of the outstanding economic development revolving fund
22 bonds to be refunded by purchase, retirement or redemption.
23 After the terms of the escrow have been fully satisfied, any
24 balance may be returned to the authority for use by it in any
25 lawful manner. All such refunding bonds shall be issued and

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1 secured and shall be subject to the provisions of the Statewide
2 Economic Development Finance Act in the same manner and to the
3 same extent as any other bonds issued pursuant to that act. "

4 Section 19. A new section of the Statewide Economic
5 Development Finance Act is enacted to read:

6 "[NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING FUND AND
7 PROJECT REVENUE BOND ANTICIPATION NOTES. --The authority is
8 authorized to issue negotiable economic development revolving
9 fund and project revenue bond anticipation notes and may renew
10 the notes from time to time, but the maximum maturity of such
11 notes, including renewals of such notes, shall not exceed ten
12 years from the date of issue of the original notes. The notes
13 shall be payable from any available money of the authority from
14 payments made by an eligible entity or from the proceeds of
15 sale of the bonds of the authority in anticipation of which
16 such notes were issued. The notes may be issued for any
17 purpose of the authority authorized by the Statewide Economic
18 Development Finance Act. All such notes shall be issued and
19 secured and shall be subject to the provisions of that act in
20 the same manner and to the same extent as bonds issued pursuant
21 to that act. "

22 Section 20. A new section of the Statewide Economic
23 Development Finance Act is enacted to read:

24 "[NEW MATERIAL] REMEDIES OF HOLDERS OF ECONOMIC
25 DEVELOPMENT REVOLVING FUND BONDS AND PROJECT REVENUE BONDS. --

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1 Any holder of economic development revolving fund bonds or
2 project revenue bonds issued by the authority pursuant to the
3 Statewide Economic Development Finance Act or a trustee under a
4 trust indenture entered into pursuant to that act, except to
5 the extent that his rights are restricted by any bond
6 resolution or trust indenture may protect and enforce, by any
7 suitable form of legal proceedings, any rights provided by the
8 laws of this state or granted by the bond resolution or trust
9 indenture. Such rights include the right to compel the
10 performance of all duties of the authority or the department
11 required by the Statewide Economic Development Finance Act, the
12 bond resolution or the trust indenture and to enjoin unlawful
13 activities. "

14 Section 21. A new section of the Statewide Economic
15 Development Finance Act is enacted to read:

16 "[NEW MATERIAL] AGREEMENT OF THE STATE. --The state pledges
17 to and agrees with the holders of any economic development
18 revolving fund bonds, project revenue bonds or notes issued by
19 the authority under the Statewide Economic Development Finance
20 Act that the state will not limit or alter the rights vested in
21 the authority or the department to fulfill the terms of any
22 agreements made with the holders of the economic development
23 revolving fund bonds, project revenue bonds or notes or in any
24 way impair the rights and remedies of those holders until the
25 economic development revolving fund bonds, project revenue

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1 bonds or notes together with the interest on the economic
2 development revolving fund bonds, project revenue bonds or
3 notes, with interest on any unpaid installments of interest,
4 and all costs and expenses in connection with any action or
5 proceedings by or on behalf of those holders, are fully met and
6 discharged. The authority may include this pledge and
7 agreement of the state in any agreement with the holders of the
8 economic development revolving fund bonds, project revenue
9 bonds or notes. "

10 Section 22. A new section of the Statewide Economic
11 Development Finance Act is enacted to read:

12 "[NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING FUND
13 BONDS--LEGAL INVESTMENTS.--The economic development revolving
14 fund bonds or notes issued under the Statewide Economic
15 Development Finance Act shall be legal investments in which all
16 insurance companies, banks and savings and loan associations
17 organized under the laws of the state, public officers and
18 public bodies and all administrators, guardians, executors,
19 trustees and other fiduciaries, including the state investment
20 council, may properly and legally invest funds. "

21 Section 23. A new section of the Statewide Economic
22 Development Finance Act is enacted to read:

23 "[NEW MATERIAL] TAX EXEMPTION.--The promotion of proposed
24 projects pursuant to the Statewide Economic Development Finance
25 Act is a public purpose. The state covenants with the

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1 purchasers and all subsequent holders and transferees of bonds
2 issued by the authority, in consideration of the acceptance of
3 and payment for the economic development revolving fund bonds,
4 that the economic development revolving fund bonds issued
5 pursuant to that act and the income from the economic
6 development revolving fund bonds shall at all times be free
7 from taxation by the state, except for estate or gift taxes and
8 taxes on transfers. "

9 Section 24. TEMPORARY PROVISION-- FUND NAME CHANGE--
10 OUTSTANDING BONDS-- FUND BALANCES.-- Nothing in this act shall be
11 deemed to impair economic development bonds or loan
12 participations outstanding on the effective date of this act.
13 The economic development revolving fund is the new name for the
14 statewide loan participation fund and is not a new fund created
15 by this act.

16 Section 25. REPEAL.-- Section 6-25-12 NMSA 1978 (being
17 Laws 2003, Chapter 349, Section 12) is repealed.

18 Section 26. EMERGENCY.-- It is necessary for the public
19 peace, health and safety that this act take effect immediately.