

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; PROVIDING FOR CONFIDENTIALITY OF CERTAIN PROPRIETARY INFORMATION; 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.--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, Chapter 349, Section 2) 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 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

(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."

Section 3. Section 6-25-3 NMSA 1978 (being Laws 2003, Chapter 349, Section 3) 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. "department" means the economic development

department;

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

D. "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;

E. "economic development goal" means:

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

(2) retention and expansion of existing business enterprises;

(3) attraction of new business enterprises;

or

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

F. "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;

G. "eligible entity" means a for-profit or not-for-profit business enterprise, 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;

H. "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;

I. "fund" means the economic development revolving fund;

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

K. "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 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;

L. "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;

M. "standard project" means land, buildings, improvements, 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; and
- (6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities;

N. "project" means a standard project or a state project;

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

P. "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;

Q. "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;

R. "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 qualifying municipality in the same

proportion as property tax revenues are normally distributed to those recipients;

S. "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

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

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

A. acquire, whether by construction, purchase, gift or lease, and hold fee simple title to or other interest in any project;

B. enter into a lease of property in connection with any project;

C. sell, lease or otherwise dispose of any project;

D. assign lease payments, rents and any other revenues derived from a project to the authority pursuant to



leases, mortgages or indentures securing payment of the principal of, interest on and any other charges and expenses relating to project revenue bonds issued by the authority;

E. make state in-lieu payments to a qualifying county, a school district and, if applicable, a qualifying municipality to offset the tax impact of a project; and

F. coordinate with the authority:

(1) for the authority's provision of staffing support and assistance in carrying out the department's responsibilities under the Statewide Economic Development Finance Act; and

(2) to enter into memoranda of understanding or such other agreements as the department and authority determine to be appropriate for such purposes."

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

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

A. 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

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

B. 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 requirements enumerated in the opt-in agreement.

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

Section 6. Section 6-25-6 NMSA 1978 (being Laws 2003, Chapter 349, Section 6) 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. 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 to the authority.

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

D. 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;

(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 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. 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 with money in the fund; and

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

F. 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."

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

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

A. 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 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 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 infrastructure 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.

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."

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

"6-25-8. LEASES OF PROJECTS.--

A. Prior to the department's lease of any project to an eligible entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of and interest on project revenue bonds to be issued to finance the project;

(2) the amount necessary to be paid each

year into any reserve funds the authority establishes in connection with the retirement of the proposed project revenue bonds and the maintenance and repair of the project; and

(3) unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect to the project, the estimated cost of maintaining the project in good repair and keeping it properly insured.

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

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

(2) build up and maintain any reserve established by the authority for the bonds; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease obligates the lessee to pay for the maintenance and insurance of the project."

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

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

A. 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. 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."

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

"6-25-10. USE OF PROJECT REVENUE BOND PROCEEDS.--The

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proceeds from the sale of project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be applied only for the purpose for which the bonds were issued and costs related to the project. The cost of any project shall include the following:

A. all expenses in connection with the authorization, sale and issuance of the bonds; and

B. capitalized interest on the bonds for a reasonable time."

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

"6-25-11. PROJECT REVENUE BONDS LEGAL INVESTMENTS.-- Project revenue bonds issued pursuant to the Statewide Economic Development Finance Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries, including the state investment council, may properly and legally invest funds."

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

"6-25-13. ECONOMIC DEVELOPMENT REVOLVING FUND.--

A. The "economic development revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account and may consist of such

subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures for administering the fund in accordance with the Statewide Economic Development Finance Act.

B. Except as otherwise provided in the Statewide Economic Development Finance Act, money from payments of principal of, interest on and other fees or charges paid to the authority in connection with economic development revolving fund bonds, loans, project revenue bonds purchased with money on deposit in the fund, loan participations and loan guarantees shall be deposited in the fund.

C. Money in the economic development revolving fund is appropriated to the authority to:

(1) pay the reasonably necessary administrative and other costs incurred by the authority in evaluating, processing, originating and servicing economic development revolving fund bonds, loans, project revenue bonds, loan participations and loan guarantees;

(2) purchase loan participations for projects;

(3) make loans for projects;

(4) make loan guarantees for projects; and

(5) purchase project revenue bonds.

D. Money in the economic development revolving fund that is not needed for immediate disbursement, including



money held in reserve, may be deposited or invested in the same manner as other funds administered by the authority.

E. Money on deposit in the economic development revolving fund may be designated as a reserve for economic development revolving fund bonds issued and for financing assistance provided from the fund by the authority pursuant to the Statewide Economic Development Finance Act and the authority may covenant in any resolution or trust indenture to maintain and replenish the reserve from money deposited in the fund.

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

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

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

A. The "tax impact fund" is created within the state treasury. The tax impact fund shall consist of money

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

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

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

(1) title to the project has been transferred to the department in connection with financing assistance provided pursuant to the Statewide Economic Development Finance Act, resulting in an exemption from

property taxes that the qualifying county, school district and, if applicable, qualifying municipality would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county, school district and, if applicable, qualifying municipality have certified to the department in advance that they support the project, subject to the project's compliance with the planning, zoning, subdivision, building code and other applicable laws and regulations governing land use;

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

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

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

E. The amount of state in-lieu payments that a qualifying county, school district and, if applicable,

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

(1) the annual reduction in property tax revenue received by the qualifying county, school district and, if applicable, qualifying municipality that results from the transfer of title to the project to the department;

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

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

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

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

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

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

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

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS OF THE AUTHORITY--USE--SECURITY.--

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

- (1) making loans;
- (2) entering into loan participations;
- (3) providing loan guarantees;
- (4) purchasing project revenue bonds;
- (5) paying, funding or refunding of the principal of or interest or redemption premiums on economic development revolving fund bonds issued by the authority, whether the economic development revolving fund bonds or interest to be paid, funded or refunded have or have not become due;
- (6) establishing or increasing reserves or sinking funds to secure or to pay principal, premium, if any, or interest on economic development revolving fund bonds; and
- (7) paying all other costs or expenses of

the authority incident to and necessary or convenient to carry out its duties pursuant to the Statewide Economic Development Finance Act.

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

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

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS--  
AUTHORIZATION FOR ISSUANCE--TERMS AND CONDITIONS.--

A. Economic development revolving fund bonds of the authority shall be authorized by resolution of the authority and may be issued in one or more series. The economic development revolving fund bonds shall bear the dates, be in the form, be issued in the denominations, have terms and maturities, bear or accrete interest at rates and be payable and evidenced in the manner and times as the resolution of the authority or the trust agreement securing the economic development revolving fund bonds provides. The

economic development revolving fund bonds may be redeemed with or without premiums prior to maturity, may be ranked or assigned priority status and may contain provisions not inconsistent with this subsection.

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

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

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

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

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

"ECONOMIC DEVELOPMENT REVOLVING FUND BONDS SECURED BY

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TRUST INDENTURE.--Economic development revolving fund bonds may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture shall contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the money. The authority shall provide by the trust indenture for the payment of the proceeds of the economic development revolving fund bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with such safeguards as the authority determines are necessary."

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

"PUBLICATION OF NOTICE--VALIDATION--LIMITATION OF ACTION.--

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

B. After the passage of thirty days from the publication required by Subsection A of this section, any



action attacking the validity of the proceedings taken by the authority preliminary to and in the authorization and issuance of the bonds described in the notice is perpetually barred."

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

"REFUNDING BONDS.--The authority is authorized to issue economic development revolving fund bonds for the purpose of refunding any economic development revolving fund bonds then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding economic development revolving fund bonds. Until the proceeds of the bonds issued for the purpose of refunding outstanding economic development revolving fund bonds are applied to the purchase, retirement or redemption of the outstanding economic development revolving fund bonds, the proceeds may be placed in escrow and be invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding economic development revolving fund bonds to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied, any balance may be returned to the authority for use by it in any lawful manner. All such refunding bonds shall be issued and secured and shall be subject to the provisions of the Statewide Economic Development Finance Act

in the same manner and to the same extent as any other bonds issued pursuant to that act."

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

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

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

"REMEDIES OF HOLDERS OF ECONOMIC DEVELOPMENT REVOLVING FUND BONDS AND PROJECT REVENUE BONDS.--Any holder of economic development revolving fund bonds or project revenue bonds

issued by the authority pursuant to the Statewide Economic Development Finance Act or a trustee under a trust indenture entered into pursuant to that act, except to the extent that his rights are restricted by any bond resolution or trust indenture may protect and enforce, by any suitable form of legal proceedings, any rights provided by the laws of this state or granted by the bond resolution or trust indenture. Such rights include the right to compel the performance of all duties of the authority or the department required by the Statewide Economic Development Finance Act, the bond resolution or the trust indenture and to enjoin unlawful activities."

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

"AGREEMENT OF THE STATE.--The state pledges to and agrees with the holders of any economic development revolving fund bonds, project revenue bonds or notes issued by the authority under the Statewide Economic Development Finance Act that the state will not limit or alter the rights vested in the authority or the department to fulfill the terms of any agreements made with the holders of the economic development revolving fund bonds, project revenue bonds or notes or in any way impair the rights and remedies of those holders until the economic development revolving fund bonds, project revenue bonds or notes together with the interest on the economic

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

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

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

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

"TAX EXEMPTION.--The promotion of proposed projects pursuant to the Statewide Economic Development Finance Act is a public purpose. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued by the

authority, in consideration of the acceptance of and payment for the economic development revolving fund bonds, that the economic development revolving fund bonds issued pursuant to that act and the income from the economic development revolving fund bonds shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers."

Section 24. A new section of the Statewide Economic Development Finance Act is enacted to read:

"PROPRIETARY INFORMATION--CONFIDENTIALITY--PENALTY.--

A. Information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act.

B. It is unlawful for any employee of the department or the authority, or any former employee of the department or the authority to reveal to any person other than another employee of the department or the authority any confidential information obtained by the department or the authority that is proprietary technical or business information or related to the possible relocation or expansion of an eligible entity and not available from public sources, except in response to an order of a district court, an appellate court or a federal court.

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

Section 25. A new section of the Statewide Economic Development Finance Act is enacted to read:

"APPLICATION OF OTHER LAWS.--The Statewide Economic Development Finance Act shall be deemed to provide additional and alternative methods of financing projects authorized in that act and shall be deemed supplemental and additional to powers conferred by other laws."

Section 26. TEMPORARY PROVISION--FUND NAME CHANGE--OUTSTANDING BONDS--FUND BALANCES.--Nothing in this act shall be deemed to impair economic development bonds or loan participations outstanding on the effective date of this act. The economic development revolving fund is the new name for the statewide loan participation fund and is not a new fund created by this act.

Section 27. REPEAL.--Section 6-25-12 NMSA 1978 (being Laws 2003, Chapter 349, Section 12) is repealed.

Section 28. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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