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HOUSE BILL 459

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Angelica Rubio

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE LOCAL ECONOMIC DEVELOPMENT ACT TO AUTHORIZE MUNICIPALITIES AND COUNTIES TO MAKE LOANS TO CERTAIN RETAIL BUSINESSES.

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

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

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

A. The legislature finds that:

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

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

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1 (3) municipalities and counties may need to be
2 able to provide land, buildings [~~and~~] infrastructure and direct
3 forgivable loans as a tool for basic business growth and the
4 introduction of basic business ventures into the state;

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

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

11 B. The purpose of the Local Economic Development
12 Act is to implement the provisions of the 1994 constitutional
13 amendment to Article 9, Section 14 of the constitution of
14 New Mexico to allow public support of economic development to
15 foster, promote and enhance local economic development efforts
16 while continuing to protect against the unauthorized use of
17 public money and other public resources. Further, the purpose
18 of that act is to allow municipalities and counties to enter
19 into joint powers agreements to plan and support regional
20 economic development projects, including investments in arts
21 and cultural districts created pursuant to the Arts and
22 Cultural District Act."

23 SECTION 2. Section 5-10-3 NMSA 1978 (being Laws 1993,
24 Chapter 297, Section 3, as amended) is amended to read:

25 "5-10-3. DEFINITIONS.--As used in the Local Economic

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1 Development Act:

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

5 B. "broadband telecommunications network
6 facilities" means the electronics, equipment, transmission
7 facilities, fiber-optic cables and any other item directly
8 related to a system capable of transmission of internet
9 protocol or other formatted data at current federal
10 communications commission minimum speed standard, all of which
11 will be owned and used by a provider of internet access
12 services;

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

21 D. "department" means the economic development
22 department;

23 E. "economic development project" or "project"
24 means the provision of direct or indirect assistance to a
25 qualifying entity by a local or regional government and

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1 includes the purchase, lease, grant, construction,
2 reconstruction, improvement or other acquisition or conveyance
3 of land, buildings or other infrastructure; rights-of-way
4 infrastructure, including trenching and conduit, for the
5 placement of new broadband telecommunications network
6 facilities; public works improvements essential to the location
7 or expansion of a qualifying entity; payments for professional
8 services contracts necessary for local or regional governments
9 to implement a plan or project; the provision of direct loans
10 or grants for land, buildings or infrastructure; the provision
11 of direct forgivable loans for opening, expanding, renovating
12 or purchasing grocery stores or small food retailers; technical
13 assistance to cultural facilities; loan guarantees securing the
14 cost of land, buildings or infrastructure in an amount not to
15 exceed the revenue that may be derived from the municipal
16 infrastructure gross receipts tax or the county infrastructure
17 gross receipts tax; grants for public works infrastructure
18 improvements essential to the location or expansion of a
19 qualifying entity; grants or subsidies to cultural facilities;
20 purchase of land for a publicly held industrial park or a
21 publicly owned cultural facility; and the construction of a
22 building for use by a qualifying entity;

23 F. "governing body" means the city council, city
24 commission or board of trustees of a municipality or the board
25 of county commissioners of a county;

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1 G. "grocery store" means a for-profit or nonprofit
2 establishment that primarily sells meat, seafood, fruits,
3 vegetables, dairy products, dry groceries, household products
4 and other healthy or fresh food;

5 ~~[G.]~~ H. "local government" means a municipality or
6 county;

7 ~~[H.]~~ I. "municipality" means an incorporated city,
8 town or village;

9 ~~[I.]~~ J. "person" means an individual, corporation,
10 association, partnership or other legal entity;

11 ~~[J.]~~ K. "qualifying entity" means a corporation,
12 limited liability company, partnership, joint venture,
13 syndicate, association or other person that is one or a
14 combination of two or more of the following:

15 (1) an industry for the manufacturing,
16 processing or assembling of agricultural or manufactured
17 products;

18 (2) a commercial enterprise for storing,
19 warehousing, distributing or selling products of agriculture,
20 mining or industry, but, other than as provided in Paragraph
21 (5), (6) or (9) of this subsection, not including any
22 enterprise for sale of goods or commodities at retail or for
23 distribution to the public of electricity, gas, water or
24 telephone or other services commonly classified as public
25 utilities;

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

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

11 (5) a telecommunications sales enterprise that
12 makes the majority of its sales to persons outside New Mexico;

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

15 (7) a business that is the developer of a
16 metropolitan redevelopment project;

17 (8) a cultural facility; and

18 (9) a retail business;

19 [~~K.~~] L. "regional government" means any combination
20 of municipalities and counties that enter into a joint powers
21 agreement to provide for economic development projects pursuant
22 to a plan adopted by all parties to the joint powers agreement;
23 [~~and~~

24 [~~H.~~] M. "retail business" means a business,
25 including a grocery store and small food retailer, that is

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1 primarily engaged in the sale of goods or commodities at retail
2 and that is located in a municipality with a population,
3 according to the most recent federal decennial census, of:

4 (1) ten thousand or less; or

5 (2) more than ten thousand but less than
6 thirty-five thousand if:

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

9 (b) the business created through the
10 project will not directly compete with an existing business
11 that is: 1) in the municipality; and 2) engaged in the sale of
12 the same or similar goods or commodities at retail; provided
13 that the provisions of this subparagraph shall not apply to a
14 grocery store or small food retailer; and

15 N. "small food retailer" means a grocery store
16 containing less than two thousand five hundred square feet and
17 includes a small-scale store, corner store, convenience store,
18 neighborhood store, small grocery, farm stand, mobile market,
19 food hub or bodega."

20 SECTION 3. Section 5-10-6 NMSA 1978 (being Laws 1993,
21 Chapter 297, Section 6, as amended) is amended to read:

22 "5-10-6. ECONOMIC DEVELOPMENT PLAN--CONTENTS--
23 PUBLICATION.--

24 A. Every local or regional government seeking to
25 pursue economic development projects shall adopt an economic

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1 development plan or a comprehensive plan that includes an
2 economic development component, and an economic development
3 plan or comprehensive plan may include an analysis of the role
4 of arts and cultural activities in economic development. The
5 plan may be specific to a single economic development goal or
6 strategy or may include several goals or strategies, including
7 any goals or strategies relating to economic development
8 through arts and cultural activities. Any plan or plan
9 amendment shall be adopted by ordinance of the governing body
10 of the local government or each local government of a regional
11 government proposing the plan or plan amendment.

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

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

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

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

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

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

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

16 (7) identify revenue sources, including those
17 of the local or regional government, that will be used to
18 support economic development projects;

19 (8) identify other resources the local or
20 regional government is prepared to offer qualifying entities,
21 including specific land or buildings it is willing to lease,
22 sell or grant a qualifying entity; community infrastructure it
23 is willing to build, extend or expand, including roads, water,
24 sewers or other utilities; direct loans it is willing to offer
25 to open, expand or renovate grocery stores or small food

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1 retailers; and professional services contracts by local or
2 regional governments necessary to provide these resources;

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

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

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

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

25 SECTION 4. Section 5-10-10 NMSA 1978 (being Laws 1993,

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1 Chapter 297, Section 10, as amended) is amended to read:

2 "5-10-10. PROJECT PARTICIPATION AGREEMENT--DUTIES AND
3 REQUIREMENTS.--

4 A. The local or regional government and the
5 qualifying entity shall enter into a project participation
6 agreement.

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

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

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1 contribution expected from the qualifying entity, or if the
2 public support is a direct loan, the amount of the loan and the
3 terms of repayment.

4 D. If a qualifying entity fails to perform its
5 substantive contribution or repay a direct loan, the local or
6 regional government shall enforce the project participation
7 agreement to recover the amount due under the loan or that
8 portion of the public support for which the qualifying entity
9 failed to provide a substantive contribution. [~~The~~]

10 E. If the public support is a direct loan, the
11 recovery shall be the amount due under the terms of the loan
12 and may include the costs of the action and reasonable attorney
13 fees.

14 F. If the public support is not a direct loan, the
15 recovery shall be proportional to the failed performance of the
16 substantive contribution and shall take into account all
17 previous substantive contributions for the economic development
18 project performed by the qualifying entity, based on the terms
19 stated in the project participation agreement. The project
20 participation agreement for an economic development project
21 that uses public support provided by the state to a local or
22 regional government shall include a recapture agreement for the
23 state.

24 [~~E.~~] G. The project participation agreement at a
25 minimum shall set out:

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

3 (2) the security provided to each governmental
4 entity that provides public support for an economic development
5 project by the qualifying entity in the form of a lien,
6 mortgage or other indenture and the pledge of the qualifying
7 business's financial or material participation and cooperation
8 to guarantee the qualifying entity's performance pursuant to
9 the project participation agreement;

10 (3) a schedule for project development and
11 completion, including measurable goals and time limits for
12 those goals; ~~and~~

13 (4) provisions for performance review and
14 actions to be taken upon a determination that project
15 performance is unsatisfactory; and

16 (5) if the public support is a direct loan,
17 the amount and terms of the loan."

18 SECTION 5. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2019.