

SENATE BILL 118

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

George K. Munoz

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC FINANCES; CREATING THE LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND; PROVIDING PROCEDURES FOR USING MONEY IN THE FUND TO SUPPORT LOCAL AND REGIONAL ECONOMIC DEVELOPMENT PROJECTS.

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

SECTION 1. A new section of the Local Economic Development Act is enacted to read:

"[NEW MATERIAL] LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND--ECONOMIC DEVELOPMENT DEPARTMENT.--

.215841.2SAAIC February 3, 2020 (4:28pm)

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

A. The "local and regional economic development support fund" is created in the state treasury. The fund consists of gifts, grants, donations and bequests made to the fund and appropriations made to the department for projects pursuant to the Local Economic Development Act. Income from the fund shall be credited to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The department shall administer the fund, and money in the fund is appropriated to the department to pay the cost of administering the fund and for participation in local and regional economic development projects as determined by the department.

C. Money in the fund shall be expended on warrants of the department of finance and administration pursuant to vouchers signed by the secretary of economic development."

SECTION 2. A new section of the Local Economic Development Act is enacted to read:

"[NEW MATERIAL] STATE PARTICIPATION IN ECONOMIC DEVELOPMENT PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND REQUIREMENTS--ECONOMIC DEVELOPMENT DEPARTMENT.--

A. The department may participate with local or regional governments in economic development projects that:

(1) provide for:

(a) the purchase, lease, grant,

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure;

(b) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

(c) public works improvements essential to the location or expansion of a qualifying entity;

(d) payments for professional services contracts necessary for local or regional governments to implement a plan or project;

(e) the provision of direct loans or grants for land, buildings or infrastructure;

(f) loan guarantees securing the cost of land, buildings or infrastructure;

(g) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity SFC→SCORC→and grants or subsidies to cultural facilities;←SCORC←SFC SFC→and grants or subsidies to cultural facilities←SFC;

(h) the purchase of land for a publicly held industrial park SFC→SCORC→; and←SCORC←SFC SFC→SFC→; and←SFC←SFC SFC→SCORC→or a publicly owned cultural facility←SCORC←SFC

SCORC→(i) technical assistance to cultural facilities; and←SCORC

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

SCORC→(i)←SCORC SCORC→(j)←SCORC the construction of a building for use by a qualifying entity; and

(2) that also:

(a) provide new full-time economic base jobs;

(b) are primarily engaged in the sale of goods or commodities at retail if: 1) the department has determined that the retail project would not substantially compete with a specific business already in operation in the state; and 2) the business is located outside a class A county and is located in a municipality with a population of fifteen thousand or less according to the most recent federal decennial census or is located more than ten miles from the closest municipality with a population greater than fifteen thousand according to the most recent federal decennial census; or

(c) provide SFC→new,←SFC SFC→extensions←SFC or improvements to SFC→,←SFC SFC→water supply systems, wastewater treatment, power transmission, internet connectivity, roads, highways or rail←SFC infrastructure SFC→, excluding buildings,←SFC on government owned SFC→property←SFC SFC→land not obtained through the issuance of industrial revenue bonds pursuant to the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act←SFC in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in an

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

unincorporated area not located within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census; SFC→provided that the project shall not include a participating qualifying entity; and←SFC provided SFC→further←SFC that the department shall prioritize participation in a project pursuant to this subparagraph based on: 1) the likelihood of creating jobs; 2) the economic impact on the local economy; and 3) contributions from the local or regional government or other New Mexico governmental entity, the federal government or private entities; but

(3) do not include the purchase, lease, grant or other acquisition or conveyance of water rights.

B. If the department participates in an economic development project SFC→in which a qualifying entity participates←SFC, the department, the local or regional government and the qualifying entity shall enter into a project participation agreement pursuant to this section.

SFC→C. If the department participates in an economic development project that does not include a qualifying entity, the department shall not enter into a project participation agreement pursuant to this section, but shall enter into an intergovernmental agreement with the participating local or regional government.←SFC

SFC→E←SFC SFC→D←SFC. The project participation

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

agreement shall require that public support provided for the economic development project shall be in exchange for a substantive contribution from the qualifying entity as determined by the department.

SFC→~~D~~←SFC SFC→~~E~~←SFC. The qualifying entity shall provide security to the state and each local or regional government or any other New Mexico governmental entity providing public support for the economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the department and the local or regional government and shall reflect a proportional decline in security as the substantive contribution requirements are met by the qualifying entity. The department at the discretion of the secretary of economic development may release at any time the security for that portion of the public support provided by the state.

SFC→~~E~~←SFC SFC→~~F~~←SFC. If a qualifying entity fails to perform its substantive contribution, the state, local, regional or other participating New Mexico governmental entity may enforce the project participation agreement to recover its proportional share of that portion of the public support for which the qualifying entity failed to provide a substantive contribution; provided that the recovery shall be:

(1) limited to the amount of public support provided by the governmental entity enforcing the project

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

participation agreement, unless otherwise authorized by another participating governmental entity; and

(2) proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement.

SFC→F←SFC SFC→G←SFC. The project participation agreement shall at a minimum set out:

(1) the contributions to be made by the qualifying entity, the state and the local or regional government or other New Mexico governmental entity;

(2) the security provided to the state and each local or regional government or other New Mexico governmental entity by the qualifying entity in the form of a letter of credit, lien, mortgage or other indenture and the pledge of the qualifying entity's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

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

(4) provisions for performance review and actions to be taken upon a determination that project

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

performance is unsatisfactory; and

(5) provisions allowing the department and the local or regional government or other New Mexico governmental entity to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution as determined by the department."

SECTION 3. Section 5-10-3 NMSA 1978 (being Laws 1993, Chapter 297, Section 3, as amended by Laws 2019, Chapter 208, Section 1 and by Laws 2019, Chapter 274, Section 6) is amended to read:

"5-10-3. DEFINITIONS.--As used in the Local Economic Development Act:

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

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

C. "cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

D. "department" means the economic development department;

E. "economic development project" or "project" means SFC→the provision of public support or assistance by the state to a local or regional government or←SFC the provision of direct or indirect assistance to a qualifying entity by a local or regional government. [~~and~~] "Economic development project":

(1) includes:

[~~(1)~~] (a) the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure;

[~~(2)~~] (b) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

[~~(3)~~] (c) public works improvements essential to the location or expansion of a qualifying entity;

[~~(4)~~] (d) payments for professional services contracts necessary for local or regional governments to implement a plan or project;

.215841.2SAAIC February 3, 2020 (4:28pm)

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

[~~(5)~~] (e) the provision of direct loans or grants for land, buildings or infrastructure;

[~~(6)~~] (f) technical assistance to cultural facilities;

[~~(7)~~] (g) loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from an increment of the: [~~(a)~~] 1) municipal gross receipts tax imposed at a rate not to exceed one-fourth percent and dedicated by the ordinance imposing the increment to a project; or [~~(b)~~] 2) county gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to a project;

[~~(8)~~] (h) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity SCORC→, ←SCORC SCORC→and←SCORC grants or subsidies to cultural facilities;

[~~(9)~~] (i) the purchase of land for a publicly held industrial park or a publicly owned cultural facility; and

[~~(10)~~] (j) the construction of a building for use by a qualifying entity; but

(2) does not include the purchase, lease, grant or other acquisition or conveyance of water rights;

F. "governing body" means the city council, city

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

commission or board of trustees of a municipality or the board of county commissioners of a county;

G. "local government" means a municipality or county;

H. "municipality" means an incorporated city, town or village;

I. "new full-time economic base job" means a job:

(1) that is primarily performed in New Mexico;

(2) that is held by an employee who is hired to work an average of at least thirty-two hours per week for at least forty-eight weeks per year;

(3) that is:

(a) involved, directly or in a supervisory capacity, with the production of: 1) a service; provided that the majority of the revenue generated from the service is from sources outside the state; or 2) tangible or intangible personal property for sale; or

(b) held by an employee who is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other operations of the qualifying entity that are located outside the state; and

(4) that is not directly involved with natural resources extraction or processing, on-site services where the customer is present for the delivery of the service, retail,

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;

[F.] J. "person" means an individual, corporation, association, partnership or other legal entity;

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

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

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

(3) a business, including a restaurant or lodging establishment, in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph

.215841.2SAAIC February 3, 2020 (4:28pm)

undescored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

(5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

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

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

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

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

(8) a cultural facility; SFC→~~and~~←SFC
SFC→~~and~~←SFC

(9) a retail business SFC→~~and~~

~~(10) a commercial enterprise that provides new, or improvements to, water supply systems, wastewater treatment, power transmission, internet SCORC→connectively←SCORC SFC→ SCORC→connectivity←SCORC←SFC, roads, highways or rail infrastructure←SFC;~~

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

[L-] M. "retail business" means a business that is

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

(1) [~~ten~~] fifteen thousand or less; or

(2) more than [~~ten~~] fifteen thousand but less than thirty-five thousand if:

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

(b) the business created through the project will not directly compete with an existing business that is: 1) in the municipality; and 2) engaged in the sale of the same or similar goods or commodities at retail."

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

"5-10-10. LOCAL OR REGIONAL GOVERNMENT PARTICIPATION IN ECONOMIC DEVELOPMENT PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND REQUIREMENTS.--

A. If a local or regional government provides public support for an economic development project without the participation of the state, the local or regional government and the qualifying entity shall enter into a project participation agreement pursuant to this section.

B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. Public support provided for an

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

economic development project shall be in exchange for a substantive contribution from the qualifying entity. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

C. The qualifying entity shall provide security to each local or regional government [~~the state~~] or any other New Mexico governmental entity providing public support for an economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the local or regional government and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.

D. If a qualifying entity fails to perform its substantive contribution, the local or regional government shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement. [~~The project participation agreement for an economic development project~~

underscored material = new

[bracketed material] = delete

Amendments: new = → bold, blue, highlight ←

delete = → bold, red, highlight, strikethrough ←

~~that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state.]~~

E. The project participation agreement at a minimum shall set out:

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

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

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

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory."