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SENATE BILL 118

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

INTRODUCED BY

George K. Munoz

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.--

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

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1 the fund shall be credited to the fund. Money in the fund
2 shall not revert or be transferred to any other fund at the end
3 of a fiscal year.

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

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

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

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

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

19 (1) provide for:

20 (a) the purchase, lease, grant,
21 construction, reconstruction, improvement or other acquisition
22 or conveyance of land, buildings or other infrastructure;

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

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

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

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

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

10 (g) grants for public works
11 infrastructure improvements essential to the location or
12 expansion of a qualifying entity;

13 (h) the purchase of land for a
14 publicly held industrial park; and

15 (i) the construction of a building for
16 use by a qualifying entity; and

17 (2) that also:

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

20 (b) are primarily engaged in the sale of
21 goods or commodities at retail if: 1) the department has
22 determined that the retail project would not substantially
23 compete with a specific business already in operation in the
24 state; and 2) the business is located outside a class A county
25 and is located in a municipality with a population of fifteen

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1 thousand or less according to the most recent federal decennial
2 census or is located more than ten miles from the closest
3 municipality with a population greater than fifteen thousand
4 according to the most recent federal decennial census; or

5 (c) provide new, or improvements to,
6 water supply systems, wastewater treatment, power transmission,
7 internet connectivity, roads, highways or rail infrastructure
8 on government owned property in a municipality with a
9 population of less than sixty thousand according to the most
10 recent federal decennial census or in an unincorporated area
11 not located within ten miles of the external boundaries of a
12 municipality with a population of sixty thousand or more
13 according to the most recent federal decennial census; provided
14 that the department shall prioritize participation in a project
15 pursuant to this subparagraph based on: 1) the likelihood of
16 creating jobs; 2) the economic impact on the local economy; and
17 3) contributions from the local or regional government or other
18 New Mexico governmental entity, the federal government or
19 private entities; but

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

22 B. If the department participates in an economic
23 development project, the department, the local or regional
24 government and the qualifying entity shall enter into a project
25 participation agreement pursuant to this section.

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1 C. The project participation agreement shall
2 require that public support provided for the economic
3 development project shall be in exchange for a substantive
4 contribution from the qualifying entity as determined by the
5 department.

6 D. The qualifying entity shall provide security to
7 the state and each local or regional government or any other
8 New Mexico governmental entity providing public support for the
9 economic development project. The security shall secure the
10 qualifying entity's obligations based on terms stated in the
11 project participation agreement with the department and the
12 local or regional government and shall reflect a proportional
13 decline in security as the substantive contribution
14 requirements are met by the qualifying entity. The department
15 at the discretion of the secretary of economic development may
16 release at any time the security for that portion of the public
17 support provided by the state.

18 E. If a qualifying entity fails to perform its
19 substantive contribution, the state, local, regional or other
20 participating New Mexico governmental entity may enforce the
21 project participation agreement to recover its proportional
22 share of that portion of the public support for which the
23 qualifying entity failed to provide a substantive contribution;
24 provided that the recovery shall be:

25 (1) limited to the amount of public support

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1 provided by the governmental entity enforcing the project
2 participation agreement, unless otherwise authorized by another
3 participating governmental entity; and

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

9 F. The project participation agreement shall at a
10 minimum set out:

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

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

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

25 (4) provisions for performance review and

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1 actions to be taken upon a determination that project
2 performance is unsatisfactory; and

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

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

12 "5-10-3. DEFINITIONS.--As used in the Local Economic
13 Development Act:

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

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

25 C. "cultural facility" means a facility that is

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1 owned by the state, a county, a municipality or a qualifying
2 entity that serves the public through preserving, educating and
3 promoting the arts and culture of a particular locale,
4 including theaters, museums, libraries, galleries, cultural
5 compounds, educational organizations, performing arts venues
6 and organizations, fine arts organizations, studios and media
7 laboratories and live-work housing facilities;

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

10 E. "economic development project" or "project"
11 means the provision of direct or indirect assistance to a
12 qualifying entity by a local or regional government. [~~and~~]
13 "Economic development project":

14 (1) includes:

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

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

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

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

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

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

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

14 [~~(8)~~] (h) grants for public works
15 infrastructure improvements essential to the location or
16 expansion of a qualifying entity; grants or subsidies to
17 cultural facilities;

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

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

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

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

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

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

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

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

8 (1) that is primarily performed in New Mexico;

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

12 (3) that is:

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

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

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

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

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

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

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

13 (2) a commercial enterprise for storing,
14 warehousing, distributing or selling products of agriculture,
15 mining or industry, but, other than as provided in Paragraph
16 (5), (6) or (9) of this subsection, not including any
17 enterprise for sale of goods or commodities at retail or for
18 distribution to the public of electricity, gas, water or
19 telephone or other services commonly classified as public
20 utilities;

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

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

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

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

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

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

12 (8) a cultural facility; ~~and~~

13 (9) a retail business; and

14 (10) a commercial enterprise that provides
15 new, or improvements to, water supply systems, wastewater
16 treatment, power transmission, internet connectively, roads,
17 highways or rail infrastructure;

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

23 ~~[L-]~~ M. "retail business" means a business that is
24 primarily engaged in the sale of goods or commodities at retail
25 and that is located in a municipality with a population,

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1 according to the most recent federal decennial census, of:

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

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

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

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

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

13 "5-10-10. LOCAL OR REGIONAL GOVERNMENT PARTICIPATION IN
14 ECONOMIC DEVELOPMENT PROJECTS--PROJECT PARTICIPATION
15 AGREEMENT--DUTIES AND REQUIREMENTS.--

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

21 B. The local or regional government shall require a
22 substantive contribution from the qualifying entity for each
23 economic development project. Public support provided for an
24 economic development project shall be in exchange for a
25 substantive contribution from the qualifying entity. The

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1 contribution shall be of value and may be paid in money, in-
2 kind services, jobs, expanded tax base, property or other thing
3 or service of value for the expansion of the economy.

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

13 D. If a qualifying entity fails to perform its
14 substantive contribution, the local or regional government
15 shall enforce the project participation agreement to recover
16 that portion of the public support for which the qualifying
17 entity failed to provide a substantive contribution. The
18 recovery shall be proportional to the failed performance of the
19 substantive contribution and shall take into account all
20 previous substantive contributions for the economic development
21 project performed by the qualifying entity, based on the terms
22 stated in the project participation agreement. [~~The project~~
23 ~~participation agreement for an economic development project~~
24 ~~that uses public support provided by the state to a local or~~
25 ~~regional government shall include a recapture agreement for the~~

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1 ~~state.]~~

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

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

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

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

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