

SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 49

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55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO PUBLIC FINANCES; AMENDING THE LOCAL ECONOMIC
DEVELOPMENT ACT; INCLUDING RETAIL BUSINESSES LOCATED IN
UNINCORPORATED AREAS OF A COUNTY IN THE DEFINITION OF "RETAIL
BUSINESS"; CLARIFYING THAT FUNDING MAY BE USED FOR
REHABILITATION OR REMODELING AS WELL AS CONSTRUCTION OF A
BUILDING FOR USE BY A QUALIFYING ENTITY.

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

SECTION 1. Section 5-10-3 NMSA 1978 (being Laws 1993,
Chapter 297, Section 3, as amended) 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;

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

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

17 D. "department" means the economic development
18 department;

19 E. "economic development project" or "project"
20 means the provision of public support or assistance by the
21 state to a local or regional government or the provision of
22 direct or indirect assistance to a qualifying entity by a local
23 or regional government. "Economic development project":

24 (1) includes:

25 (a) the purchase, lease, grant,

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

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

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

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

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

13 (f) technical assistance to cultural
14 facilities;

15 (g) loan guarantees securing the cost of
16 land, buildings or infrastructure in an amount not to exceed
17 the revenue that may be derived from an increment of the: 1)
18 municipal gross receipts tax imposed at a rate not to exceed
19 one-fourth percent and dedicated by the ordinance imposing the
20 increment to a project; or 2) county gross receipts tax imposed
21 at a rate not to exceed one-eighth percent and dedicated by the
22 ordinance imposing the increment to a project;

23 (h) grants for public works
24 infrastructure improvements essential to the location or
25 expansion of a qualifying entity and grants or subsidies to

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1 cultural facilities;

2 (i) the purchase of land for a publicly
3 held industrial park or a publicly owned cultural facility; and

4 (j) the construction of a building for
5 use by a qualifying entity; but

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

8 F. "governing body" means the city council, city
9 commission or board of trustees of a municipality or the board
10 of county commissioners of a county;

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

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

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

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

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

20 (3) that is:

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

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

6 (4) that is not directly involved with natural
7 resources extraction or processing, on-site services where the
8 customer is present for the delivery of the service, retail,
9 construction or agriculture except for value-added processing
10 performed on agricultural products that would then be sold for
11 wholesale or retail consumption;

12 J. "person" means an individual, corporation,
13 association, partnership or other legal entity;

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

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

21 (2) a commercial enterprise for storing,
22 warehousing, distributing or selling products of agriculture,
23 mining or industry, but, other than as provided in Paragraph
24 (5), (6) or (9) of this subsection, not including any
25 enterprise for sale of goods or commodities at retail or for

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1 distribution to the public of electricity, gas, water or
2 telephone or other services commonly classified as public
3 utilities;

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

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

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

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

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

20 (8) a cultural facility; and

21 (9) a retail business;

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

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1 and

2 M. "retail business" means a business that is
3 primarily engaged in the sale of goods or commodities at retail
4 and that is located:

5 (1) in a municipality with a population,
6 according to the most recent federal decennial census, of:

7 ~~[(1)]~~ (a) fifteen thousand or less; or

8 ~~[(2)]~~ (b) more than fifteen thousand

9 ~~[but less than thirty-five thousand] if [(a)] the economic~~
10 ~~development project is not funded or financed with state~~
11 ~~government revenues; [and (b) the business created through the~~
12 ~~project will not directly compete with an existing business~~
13 ~~that is: 1) in the municipality; and 2) engaged in the sale of~~
14 ~~the same or similar goods or commodities at retail] or~~

15 (2) in an unincorporated area of a county."

16 SECTION 2. Section 5-10-15 NMSA 1978 (being Laws 2020,
17 Chapter 74, Section 2) is amended to read:

18 "5-10-15. STATE PARTICIPATION IN ECONOMIC DEVELOPMENT
19 PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND
20 REQUIREMENTS--ECONOMIC DEVELOPMENT DEPARTMENT.--

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

23 (1) provide for:

24 (a) the purchase, lease, grant,

25 construction, reconstruction, improvement or other acquisition

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1 or conveyance of land, buildings or other infrastructure;

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

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

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

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

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

14 (g) grants for public works
15 infrastructure improvements essential to the location or
16 expansion of a qualifying entity and grants or subsidies to
17 cultural facilities;

18 (h) the purchase of land for a publicly
19 held industrial park or a publicly owned cultural facility;

20 (i) technical assistance to cultural
21 facilities; ~~and~~ or

22 (j) the construction, rehabilitation or
23 remodeling of a building for use by a qualifying entity; and

24 (2) that also:

25 (a) provide new full-time economic base

1 jobs;

2 (b) are primarily engaged in the sale of
3 goods or commodities at retail if: 1) the department has
4 determined that the retail project would not substantially
5 compete with a specific business already in operation in the
6 state; and 2) the business is located outside a class A county
7 and is located in a municipality with a population of fifteen
8 thousand or less according to the most recent federal decennial
9 census or is located [~~more than ten miles from the closest~~
10 ~~municipality with a population greater than fifteen thousand~~
11 ~~according to the most recent federal decennial census~~] within
12 the unincorporated portion of a county; or

13 (c) provide extensions or improvements
14 to infrastructure, excluding buildings, on government owned
15 land not obtained through the issuance of industrial revenue
16 bonds pursuant to the Industrial Revenue Bond Act or the County
17 Industrial Revenue Bond Act in a municipality with a population
18 of less than sixty thousand according to the most recent
19 federal decennial census or in an unincorporated area not
20 located within ten miles of the external boundaries of a
21 municipality with a population of sixty thousand or more
22 according to the most recent federal decennial census; provided
23 that the project shall not include a participating qualifying
24 entity; and provided further that the department shall
25 prioritize participation in a project pursuant to this

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1 subparagraph based on: 1) the likelihood of creating jobs; 2)
2 the economic impact on the local economy; and 3) contributions
3 from the local or regional government or other New Mexico
4 governmental entity, the federal government or private
5 entities; but

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

8 B. If the department participates in an economic
9 development project in which a qualifying entity participates,
10 the department, the local or regional government and the
11 qualifying entity shall enter into a project participation
12 agreement pursuant to this section.

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

19 D. The project participation agreement shall
20 require that public support provided for the economic
21 development project shall be in exchange for a substantive
22 contribution from the qualifying entity as determined by the
23 department.

24 E. The qualifying entity shall provide security to
25 the state and each local or regional government or any other

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1 New Mexico governmental entity providing public support for the
2 economic development project. The security shall secure the
3 qualifying entity's obligations based on terms stated in the
4 project participation agreement with the department and the
5 local or regional government and shall reflect a proportional
6 decline in security as the substantive contribution
7 requirements are met by the qualifying entity. The department
8 at the discretion of the secretary of economic development may
9 release at any time the security for that portion of the public
10 support provided by the state.

11 F. If a qualifying entity fails to perform its
12 substantive contribution, the state, local, regional or other
13 participating New Mexico governmental entity may enforce the
14 project participation agreement to recover its proportional
15 share of that portion of the public support for which the
16 qualifying entity failed to provide a substantive contribution;
17 provided that the recovery shall be:

18 (1) limited to the amount of public support
19 provided by the governmental entity enforcing the project
20 participation agreement, unless otherwise authorized by another
21 participating governmental entity; and

22 (2) proportional to the failed performance of
23 the substantive contribution and shall take into account all
24 previous substantive contributions for the economic development
25 project performed by the qualifying entity, based on the terms

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1 stated in the project participation agreement.

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

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

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

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

18 (4) provisions for performance review and
19 actions to be taken upon a determination that project
20 performance is unsatisfactory; and

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

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1 SECTION 3. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2021.

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