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AN	ACT

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

(1) includes:

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project":

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

local or regional government. "Economic development

(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;

1	(d) payments for professional services
2	contracts necessary for local or regional governments to
3	implement a plan or project;
4	(e) the provision of direct loans or
5	grants for land, buildings or infrastructure;
6	(f) technical assistance to cultural
7	facilities;
8	(g) loan guarantees securing the cost
9	of land, buildings or infrastructure in an amount not to
10	exceed the revenue that may be derived from an increment of
11	the: l) municipal gross receipts tax imposed at a rate not
12	to exceed one-fourth percent and dedicated by the ordinance
13	imposing the increment to a project; or 2) county gross
14	receipts tax imposed at a rate not to exceed one-eighth
15	percent and dedicated by the ordinance imposing the increment
16	to a project;
17	(h) grants for public works
18	infrastructure improvements essential to the location or
19	expansion of a qualifying entity and grants or subsidies to
20	cultural facilities;
21	(i) the purchase of land for a publicly
22	held industrial park or a publicly owned cultural facility;
23	and
24	(j) the construction of a building for
25	use by a qualifying entity; but

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1	(2) does not include the purchase, lease,	
2	grant or other acquisition or conveyance of water rights;	
3	F. "governing body" means the city council, city	
4	commission or board of trustees of a municipality or the	
5	board of county commissioners of a county;	
6	G. "local government" means a municipality or	
7	county;	
8	H. "municipality" means an incorporated city, town	
9	or village;	
10	I. "new full-time economic base job" means a job:	
11	(1) that is primarily performed in	
12	New Mexico;	
13	(2) that is held by an employee who is hired	
14	to work an average of at least thirty-two hours per week for	
15	at least forty-eight weeks per year;	
16	(3) that is:	
17	(a) involved, directly or in a	
18	supervisory capacity, with the production of: 1) a service;	
19	provided that the majority of the revenue generated from the	
20	service is from sources outside the state; or 2) tangible or	
21	intangible personal property for sale; or	
22	(b) held by an employee who is employed	
23	at a regional, national or international headquarters	
24	operation or at an operation that primarily provides services	
25	for other operations of the qualifying entity that are	STBTC/SHPAC/SB 49 Page 4

- (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, construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;
- J. "person" means an individual, corporation, association, partnership or other legal entity;
- 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

1	lodging establishment, in which all or part of the activities
2	of the business involves the supplying of services to the
3	general public or to governmental agencies or to a specific
4	industry or customer, but, other than as provided in
5	Paragraph (5) or (9) of this subsection, not including
6	businesses primarily engaged in the sale of goods or
7	commodities at retail;
8	(4) an Indian nation, tribe or pueblo or a
9	federally chartered tribal corporation;
10	(5) a telecommunications sales enterprise
11	that makes the majority of its sales to persons outside
12	New Mexico;
13	(6) a facility for the direct sales by
14	growers of agricultural products, commonly known as farmers'
15	markets;
16	(7) a business that is the developer of a
17	metropolitan redevelopment project;
18	(8) a cultural facility; and
19	(9) a retail business;
20	L. "regional government" means any combination of
21	municipalities and counties that enter into a joint powers
22	agreement to provide for economic development projects
23	pursuant to a plan adopted by all parties to the joint powers
24	agreement; and

1	primarily engaged in the sale of goods or commodities at
2	retail and that is located:
3	(1) in a municipality with a population,
4	according to the most recent federal decennial census, of:
5	(a) fifteen thousand or less; or
6	(b) more than fifteen thousand if the
7	economic development project is not funded or financed with
8	state government revenues; or
9	(2) in an unincorporated area of a county."
10	SECTION 2. Section 5-10-15 NMSA 1978 (being Laws 2020,
11	Chapter 74, Section 2) is amended to read:
12	"5-10-15. STATE PARTICIPATION IN ECONOMIC DEVELOPMENT
13	PROJECTSPROJECT PARTICIPATION AGREEMENTDUTIES AND
14	REQUIREMENTS ECONOMIC DEVELOPMENT DEPARTMENT
15	A. The department may participate with local or
16	regional governments in economic development projects that:
17	(1) provide for:
18	(a) the purchase, lease, grant,
19	construction, reconstruction, improvement or other
20	acquisition or conveyance of land, buildings or other
21	infrastructure;
22	(b) rights-of-way infrastructure,
23	including trenching and conduit, for the placement of new
24	broadband telecommunications network facilities;
25	(c) public works improvements essential STBTC/SHPAC/SB 49

1	to the location or expansion of a qualifying entity;
2	(d) payments for professional services
3	contracts necessary for local or regional governments to
4	implement a plan or project;
5	(e) the provision of direct loans or
6	grants for land, buildings or infrastructure;
7	(f) loan guarantees securing the cost
8	of land, buildings or infrastructure;
9	(g) grants for public works
١0	infrastructure improvements essential to the location or
١1	expansion of a qualifying entity and grants or subsidies to
l 2	cultural facilities;
١3	(h) the purchase of land for a publicly
۱4	held industrial park or a publicly owned cultural facility;
١5	(i) technical assistance to cultural
۱6	facilities; or
۱7	(j) the construction, rehabilitation or
18	remodeling of a building for use by a qualifying entity; and
١9	(2) that also:
20	(a) provide new full-time economic base
21	jobs;
22	(b) are primarily engaged in the sale
23	of goods or commodities at retail if: 1) the department has
24	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 within the unincorporated

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portion of a county; or

provide extensions or improvements to infrastructure, excluding buildings, on government owned land not obtained through the issuance of industrial revenue bonds pursuant to the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in an 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; provided that the project shall not include a participating qualifying entity; and provided further 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 in which a qualifying entity participates, the department, the local or regional government and the qualifying entity shall enter into a project participation agreement pursuant to this section.
- 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.
- D. The project participation 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.
- E. 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.

- F. 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 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.
- G. 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

1	each local or regional government or other New Mexico
2	governmental entity by the qualifying entity in the form of a
3	letter of credit, lien, mortgage or other indenture and the
4	pledge of the qualifying entity's financial or material
5	participation and cooperation to guarantee the qualifying
6	entity's performance pursuant to the project participation
7	agreement;
8	(3) a schedule for project development and
9	completion, including measurable goals and time limits for
10	those goals;
11	(4) provisions for performance review and
12	actions to be taken upon a determination that project
13	performance is unsatisfactory; and
14	(5) provisions allowing the department and
15	the local or regional government or other New Mexico
16	governmental entity to recover that portion of the public
17	support for which the qualifying entity failed to provide a
18	substantive contribution as determined by the department."
19	SECTION 3. EFFECTIVE DATEThe effective date of the
20	provisions of this act is July 1, 2021STBTC/SHPAC/SB 49
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