

1 HOUSE BILL 374

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Micaela Lara Cadena and Joshua N. Hernandez
5 and Alan T. Martinez and Jason C. Harper and Doreen Y. Gallegos
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10 AN ACT

11 RELATING TO ECONOMIC DEVELOPMENT PROJECTS; AMENDING MUNICIPAL
12 POPULATION REQUIREMENTS FOR CERTAIN PROJECTS THAT THE ECONOMIC
13 DEVELOPMENT DEPARTMENT MAY PARTICIPATE IN WITH LOCAL OR
14 REGIONAL GOVERNMENTS.
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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 5-10-15 NMSA 1978 (being Laws 2020,
18 Chapter 74, Section 2, as amended) is amended to read:

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

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

24 (1) provide for:

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

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

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

21 (i) technical assistance to cultural
22 facilities; or

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

25 (2) that also:

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

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

12 (c) provide extensions or improvements
13 to infrastructure, excluding buildings, on government owned
14 land not obtained through the issuance of industrial revenue
15 bonds pursuant to the Industrial Revenue Bond Act or the County
16 Industrial Revenue Bond Act in a municipality with a population
17 of less than ~~[sixty]~~ two hundred thousand according to the most
18 recent federal decennial census or in an unincorporated area
19 not located within ten miles of the external boundaries of a
20 municipality with a population of ~~[sixty]~~ two hundred thousand
21 or more according to the most recent federal decennial census;
22 provided that the project shall not include a participating
23 qualifying entity; and provided further that the department
24 shall prioritize participation in a project pursuant to this
25 subparagraph based on: 1) the likelihood of creating jobs; 2)

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1 the economic impact on the local economy; and 3) contributions
2 from the local or regional government or other New Mexico
3 governmental entity, the federal government or private
4 entities; but

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

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

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

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

23 E. The qualifying entity shall provide security to
24 the state and each local or regional government or any other
25 New Mexico governmental entity providing public support for the

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

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

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

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

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

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

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

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

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

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