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SENATE BILL 26

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO STATEWIDE ECONOMIC DEVELOPMENT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO SEEK CERTIFICATION TO BE A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO DETERMINE ELIGIBILITY FOR CERTAIN ECONOMIC DEVELOPMENT FUNDING.

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

SECTION 1. A new section of Chapter 6, Article 25 NMSA 1978 is enacted to read:

"~~[NEW MATERIAL]~~ ADDITIONAL POWERS--FEDERAL COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAMS.--In addition to other powers granted to the authority, the authority may form one or more nonprofit or for-profit financing entities for the purpose of participation in the federal community development financial institutions fund programs and, pursuant

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1 to participation in the federal community development financial
2 institutions fund programs, may:

3 A. apply for and obtain one or more certifications
4 for community development financial institutions fund status;

5 B. provide financial products to one or more target
6 markets;

7 C. provide development services to one or more
8 target markets; and

9 D. take all actions necessary or convenient to
10 carry out the purposes of a certified community development
11 financial institution or to participate in the federal
12 community development financial institutions fund programs."

13 SECTION 2. Section 6-25-3 NMSA 1978 (being Laws 2003,
14 Chapter 349, Section 3, as amended) is amended to read:

15 "6-25-3. DEFINITIONS.--As used in the Statewide Economic
16 Development Finance Act:

17 A. "authority" means the New Mexico finance
18 authority;

19 B. "department" means the economic development
20 department;

21 C. "community development entity" means an entity
22 designed to take advantage of the federal new markets tax
23 credit program;

24 D. "economic development assistance provisions"
25 means the economic development assistance provisions of

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1 Subsection D of Article 9, Section 14 of the constitution of
2 New Mexico;

3 E. "project revenue bonds" means bonds, notes or
4 other instruments authorized in Section 6-25-7 NMSA 1978 and
5 issued by the authority pursuant to the Statewide Economic
6 Development Finance Act on behalf of eligible entities;

7 F. "economic development goal" means:

8 (1) assistance to rural and underserved areas
9 designed to increase business activity;

10 (2) retention and expansion of existing
11 business enterprises;

12 (3) attraction of new business enterprises; or

13 (4) creation and promotion of an environment
14 suitable for the support of start-up and emerging business
15 enterprises within the state;

16 G. "economic development revolving fund bonds"
17 means bonds, notes or other instruments payable from the fund
18 and issued by the authority pursuant to the Statewide Economic
19 Development Finance Act;

20 H. "eligible entity" means a for-profit or not-for-
21 profit business enterprise, including a corporation, limited
22 liability company, partnership or other entity, determined by
23 the ~~[department]~~ authority to be engaged in an enterprise that
24 serves an economic development goal and is suitable for
25 financing assistance;

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1 I. "federal new markets tax credit program" means
2 the tax credit program codified as Section 45D of the Internal
3 Revenue Code, as that section may be amended or renumbered, and
4 regulations issued pursuant to that section;

5 J. "financing assistance" means project revenue
6 bonds, loans, loan participations or loan guarantees provided
7 by the authority to or for eligible entities pursuant to the
8 Statewide Economic Development Finance Act;

9 K. "fund" means the economic development revolving
10 fund;

11 L. "mortgage" means a mortgage, deed of trust or
12 pledge of any assets as a collateral security;

13 M. "opt-in agreement" means an agreement entered
14 into between the department and a qualifying county, a school
15 district and, if applicable, a qualifying municipality that
16 provides for county, school district and, if applicable,
17 municipal approval of a project, subject to compliance with all
18 local zoning, permitting and other land use rules, and for
19 payments in lieu of taxes to the qualifying county, school
20 district and, if applicable, qualifying municipality as
21 provided by the Statewide Economic Development Finance Act;

22 N. "payment in lieu of taxes" means the total
23 annual payment, including any state in-lieu payment, paid as
24 compensation for the tax impact of a project, in an amount
25 negotiated and determined in the opt-in agreement between the

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1 department and the qualifying county, the school district and,
2 if applicable, the qualifying municipality, which payment shall
3 be distributed to the county, municipality and school district
4 in the same proportion as property tax revenues are normally
5 distributed to those recipients;

6 O. "standard project" means land, buildings,
7 improvements, machinery and equipment, operating capital and
8 other personal property for which financing assistance is
9 provided for adequate consideration, taking into account the
10 anticipated quantifiable benefits of the standard project, for
11 use by an eligible entity as:

12 (1) industrial or manufacturing facilities;

13 (2) commercial facilities, including
14 facilities for wholesale sales and services;

15 (3) health care facilities, including
16 hospitals, clinics, laboratory facilities and related office
17 facilities;

18 (4) educational facilities, including schools;

19 (5) arts, entertainment or cultural
20 facilities, including museums, theaters, arenas or assembly
21 halls; and

22 (6) recreational and tourism facilities,
23 including parks, pools, trails, open space and equestrian
24 facilities;

25 P. "project" means a standard project or a state

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1 project;

2 Q. "qualifying municipality or county" means a
3 municipality or county that enters into an opt-in agreement;

4 R. "quantifiable benefits" means a project's
5 advancement of an economic development goal as measured by a
6 variety of factors, including:

7 (1) the benefits an eligible entity contracts
8 to provide, such as local hiring quotas, job training
9 commitments and installation of public facilities or
10 infrastructure; and

11 (2) other benefits such as the total number of
12 direct and indirect jobs created by the project, total amount
13 of annual salaries to be paid as a result of the project, total
14 gross receipts and occupancy tax collections, total property
15 tax collections, total state corporate and personal income tax
16 collections and other fee and revenue collections resulting
17 from the project;

18 S. "school district" means a school district where
19 a project is located that is exempt from property taxes
20 pursuant to the Statewide Economic Development Finance Act;

21 T. "state in-lieu payment" means an annual payment,
22 in an amount determined by the department, that will be
23 distributed to a qualifying county, a school district and, if
24 applicable, a qualifying municipality in the same proportion as
25 property tax revenues are normally distributed to those

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1 recipients;

2 U. "state project" means land, buildings or
3 infrastructure for facilities to support new or expanding
4 eligible entities for which financing assistance is provided
5 pursuant to the economic development assistance provisions; and

6 V. "tax impact of a project" means the annual
7 reduction in property tax revenue to affected property tax
8 revenue recipients directly resulting from the conveyance of a
9 project to the department."

10 SECTION 3. Section 6-25-5 NMSA 1978 (being Laws 2003,
11 Chapter 349, Section 5, as amended) is amended to read:

12 "6-25-5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT
13 DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN
14 AGREEMENTS.--

15 A. ~~[For the purpose of recommending projects to the~~
16 ~~authority for financing assistance]~~ The department and the
17 authority shall coordinate to:

18 (1) survey potential eligible entities and
19 projects and provide outreach services to local governments and
20 eligible entities, for the purpose of identifying and
21 recommending projects to the authority for financing
22 assistance;

23 (2) evaluate potential projects for
24 suitability for financing assistance;

25 (3) formulate recommendations of projects that

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1 are suitable for financing assistance; and

2 (4) obtain input and information relevant to
3 the establishment and implementation of criteria for evaluating
4 potential projects.

5 B. The department, with such staffing and other
6 assistance from the authority as the department may request,
7 shall propose to enter into opt-in agreements with counties,
8 school districts and municipalities for the purpose of
9 facilitating local government approvals necessary to permit
10 projects to proceed. Opt-in agreements shall provide:

11 (1) for project compliance with all applicable
12 local land use regulations;

13 (2) for payments in lieu of taxes to
14 qualifying counties, school districts and, if applicable,
15 qualifying municipalities to mitigate the tax impact of a
16 project;

17 (3) that financing assistance is conditioned
18 upon compliance with:

19 (a) all applicable ordinances,
20 regulations and codes of a local government concerning
21 planning, zoning and development permitting; and

22 (b) such other requirements as the
23 department and the county, school district and municipality may
24 agree to include;

25 (4) that the payments in lieu of taxes shall

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1 be distributed in a manner and in amounts calculated in
2 accordance with the provisions of Section 6-25-14 NMSA 1978;
3 and

4 (5) that the county, school district or
5 municipality reserves the right to withdraw from the agreement
6 if it determines that the project subject to the agreement does
7 not satisfy the requirements enumerated in the opt-in
8 agreement.

9 C. The department shall adopt rules for the
10 exercise of its powers and responsibilities pursuant to the
11 Statewide Economic Development Finance Act."

12 SECTION 4. Section 6-25-27 NMSA 1978 (being Laws 2005,
13 Chapter 103, Section 24) is amended to read:

14 "6-25-27. PROPRIETARY INFORMATION--CONFIDENTIALITY--
15 PENALTY.--

16 A. Information obtained by the department or the
17 authority that is proprietary technical or business information
18 or related to the possible relocation or expansion of an
19 eligible entity or that is of a business enterprise applying
20 for eligible entity status shall be confidential and not
21 subject to inspection pursuant to the Inspection of Public
22 Records Act.

23 B. It is unlawful for any employee of the
24 department or the authority, or any former employee of the
25 department or the authority, to reveal to any person other than

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1 another employee of the department or the authority any
2 confidential information obtained by the department or the
3 authority that is proprietary technical or business information
4 or related to the possible relocation or expansion of an
5 eligible entity or that is of a business enterprise applying
6 for eligible entity status, and not available from public
7 sources, except in response to an order of a district court, an
8 appellate court or a federal court.

9 C. Any employee or former employee of the
10 department or the authority who reveals to another person any
11 information that ~~[he]~~ the employee or former employee is
12 prohibited from lawfully revealing is guilty of a misdemeanor
13 and shall be sentenced in accordance with the provisions of
14 Section 31-19-1 NMSA 1978."