

HOUSE BILL 11

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

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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AN ACT

RELATING TO BUSINESS; AMENDING DEFINITIONS IN THE LOCAL
ECONOMIC DEVELOPMENT ACT AND CONFORMING RELATED SECTIONS OF THE
ACT; PROVIDING THAT A PORTION OF STATE AND LOCAL GROSS RECEIPTS

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AND COMPENSATING TAX REVENUE IMPOSED ON CERTAIN ECONOMIC DEVELOPMENT PROJECTS MAY BE PROVIDED AS PUBLIC SUPPORT FOR THE PROJECTS; CHANGING THE NAME OF THE "LOCAL AND REGIONAL ECONOMIC DEVELOPMENT SUPPORT FUND" TO THE "LOCAL ECONOMIC DEVELOPMENT ACT FUND" AND THE PERMITTED USES OF THE FUND; CREATING A PROGRAM WITH THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE GRANTS TO CERTAIN BUSINESSES TO REIMBURSE RENT AND LEASE PAYMENTS FROM FUNDING TRANSFERRED TO THE ECONOMIC DEVELOPMENT DEPARTMENT FROM THE SEVERANCE TAX PERMANENT FUND; DECLARING AN EMERGENCY.

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;

B. "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;

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

D. "department" means the economic development department;

E. "economic development project" or "project" means the ~~[provision of public support or assistance by the state to a local or regional government or the provision of direct or indirect assistance to a qualifying entity by a local or regional government. "Economic development project":~~

~~(1) includes:~~

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

~~(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;~~

~~(d) payments for professional services~~

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~~contracts necessary for local or regional governments to implement a plan or project;~~

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

~~(f) technical assistance to cultural facilities;~~

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

~~(h) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;~~

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

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

~~(2) does not include the purchase, lease, grant or other acquisition or conveyance of water rights]~~
project of a qualifying entity for which public support may be

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provided pursuant to the Local Economic Development Act;

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

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

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

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

(1) that is primarily performed in New Mexico;

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

(3) that is:

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

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

(4) that is not directly involved with natural

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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. "public support" means the provision of assistance by the state to a local or regional government or the provision of direct or indirect assistance to a qualifying entity by a local or regional government for an economic development project. "Public support":

(1) includes the provision of:

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

(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;

(d) payments for professional services contracts necessary for local or regional governments to implement a plan or provide public support for a project;

(e) direct loans or grants for land,

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buildings or infrastructure;

(f) technical assistance to cultural facilities;

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

(h) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;

(i) land for a publicly held industrial park or a publicly owned cultural facility, by purchase; and

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

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

[K-] L. "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:

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

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

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

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

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

(8) a cultural facility; and

(9) a retail business;

[~~H.~~] M. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide public support for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and

[~~M.~~] N. "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population, according to the most recent federal decennial census, of:

(1) fifteen thousand or less; or

(2) more than fifteen thousand but less than thirty-five thousand if:

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

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

SECTION 2. Section 5-10-4 NMSA 1978 (being Laws 1993, Chapter 297, Section 4, as amended) is amended to read:

"5-10-4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON
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PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

(1) the value of any land or building contributed to any project pursuant to a project participation agreement;

(2) revenue generated through the imposition of an increment of the municipal gross receipts tax at a rate not to exceed one-fourth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for

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promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(3) revenue generated through the imposition of an increment of the county gross receipts tax at a rate not to exceed one-eighth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;

(5) the proceeds of a revenue bond issue to which the revenue from an increment of the county gross receipts tax, imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to ~~[a project]~~ provide public support for projects, is pledged; or

(6) funds donated by private entities to be used for defraying the cost of a project.

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C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

D. In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or county that has imposed a municipal or county local option infrastructure gross receipts tax for furthering or implementing economic development plans and providing public support for projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or county infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or county local

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option gross receipts tax for furthering or implementing economic development plans and providing public support for projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts and Compensating Taxes Act or the County Local Option Gross Receipts and Compensating Taxes Act for furthering or implementing economic development plans and providing public support for projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.

F. The question shall be submitted to the voters of the municipality or county as a separate question at a regular local or county election or at a special election called for that purpose by the governing body. A special local election shall be called, conducted and canvassed as provided in the Local Election Act. A special county election shall be called,

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conducted and canvassed in substantially the same manner as provided by law for general elections.

G. If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or county economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date."

SECTION 3. Section 5-10-6 NMSA 1978 (being Laws 1993, Chapter 297, Section 6, as amended) is amended to read:

"5-10-6. ECONOMIC DEVELOPMENT PLAN--CONTENTS-- PUBLICATION.--

A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component, and an economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan

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amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.

B. The economic development plan or the ordinance adopting the plan may:

(1) describe the local or regional government's economic development and community goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals;

(2) describe the types of qualifying entities and economic activities that will qualify for ~~[economic development projects]~~ public support;

(3) describe the criteria to be used to determine eligibility ~~[of an economic development project]~~ for public support and a qualifying entity to participate in an economic development project;

(4) describe the manner in which a qualifying entity may submit an ~~[economic development project]~~ application for public support pursuant to Section 5-10-8 NMSA 1978, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

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(5) describe the process the local or regional government will use to verify the information submitted on an ~~[economic development project]~~ application for public support pursuant to Section 5-10-8 NMSA 1978;

(6) if an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate ~~[its economic assistance]~~ the local or regional government's public support and recoup its investment;

(7) identify revenue sources, including those of the local or regional government, that will be used to provide public support for economic development projects;

(8) identify other resources the local or regional government is prepared to offer qualifying entities, including specific land or buildings it is willing to lease, sell or grant a qualifying entity; community infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities; and professional services contracts by local or regional governments necessary to provide these resources;

(9) detail the minimum benefit the local or regional government requires from a qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the

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qualifying entity of local or regional government-provided land, buildings or infrastructure; the public to private investment ratio; and direct local tax base expansion;

(10) describe the safeguards of public resources that will be ensured, including specific ways the local or regional government can recover any costs, land, buildings or other thing of value if a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the local or regional government; and

(11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments who are party to the agreement.

C. The economic development plan shall be printed and made available to the residents within the local or regional government area."

SECTION 4. Section 5-10-7 NMSA 1978 (being Laws 1993, Chapter 297, Section 7) is amended to read:

"5-10-7. REGIONAL PLANS--JOINT POWERS AGREEMENT--REGIONAL GOVERNMENT.--

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements

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Act to develop a regional economic development plan, which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.

B. The joint powers agreement shall require that the governing body of each local government approve public support for each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and providing public support for projects."

SECTION 5. Section 5-10-8 NMSA 1978 (being Laws 1993, Chapter 297, Section 8) is amended to read:

"5-10-8. [~~ECONOMIC DEVELOPMENT PROJECT~~] APPLICATIONS FOR PUBLIC SUPPORT.--

A. After the adoption of an economic development plan by a local or regional government, a qualifying entity shall submit to the local or regional government an [~~economic development project~~] application for public support of a qualifying entity's economic development project.

B. The application shall be on a form and require

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such information as the local or regional government deems necessary."

SECTION 6. Section 5-10-9 NMSA 1978 (being Laws 1993, Chapter 297, Section 9, as amended) is amended to read:

"5-10-9. PROJECT EVALUATION--DEPARTMENT.--

A. The local or regional government shall review each [~~project~~] application for public support submitted pursuant to Section 5-10-8 NMSA 1978, and [~~projects~~] any public support shall be approved by ordinance.

B. The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

C. The local or regional government may negotiate with a qualifying entity on the type or amount of [~~assistance~~] public support to be provided or on the scope of the economic development project."

SECTION 7. Section 5-10-11 NMSA 1978 (being Laws 1993, Chapter 297, Section 11) is amended to read:

"5-10-11. PROJECT REVENUES--SPECIAL FUND--ANNUAL AUDIT.--

A. Local or regional government revenues dedicated

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or pledged for ~~[funding or financing of]~~ public support for economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

B. In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record."

SECTION 8. Section 5-10-12 NMSA 1978 (being Laws 1993, Chapter 297, Section 12) is amended to read:

"5-10-12. PLAN AND PROJECT TERMINATION.--

A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic

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development plan and dissolving or terminating any or all public support for economic development projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

B. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination of public support for or dissolution of a project may be transferred to the general fund of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement."

SECTION 9. Section 5-10-14 NMSA 1978 (being Laws 2020, Chapter 74, Section 1) is amended to read:

"5-10-14. LOCAL [~~AND REGIONAL~~] ECONOMIC DEVELOPMENT [~~SUPPORT~~] ACT FUND [~~ECONOMIC DEVELOPMENT DEPARTMENT~~].--

A. The "Local [~~and regional~~] Economic Development [~~support~~] Act 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 the fund shall be credited to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. [~~B.~~] The department shall administer the

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fund, and money in the fund is appropriated to the department to pay the cost of administering the fund and for ~~[participation in local and regional]~~ economic development projects ~~[as determined by the department]~~ pursuant to the Local Economic Development Act. [G.] Money in the fund shall be expended on warrants of the department of finance and administration pursuant to vouchers signed by the secretary of economic development.

B. The following may be used to provide public support for economic development projects of qualifying entities pursuant HCEDC→to←HCEDC Section 10 of this 2021 act:

(1) up to HCEDC→seventy-five←HCEDC HCEDC→fifty-six and twenty-five hundredths←HCEDC percent of the tax revenue attributable to the state gross receipts tax and HCEDC→the←HCEDC compensating tax, as determined pursuant to Subsection A of Section 10 of this 2021 act, and distributed pursuant to Subsection A of Section 14 of this 2021 act; and

(2) that portion of the tax revenue attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality dedicated pursuant to Subsection B of Section 10 of this 2021 act and distributed pursuant to Subsection B of Section 14 of this 2021 act."

SECTION 10. A new section of the Local Economic

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Development Act is enacted to read:

"[NEW MATERIAL] GROSS RECEIPTS TAX AND COMPENSATING TAX REVENUE AS PUBLIC SUPPORT FOR CERTAIN PROJECTS.--

A. A qualifying entity that meets the following requirements may receive public support for the qualifying entity's economic development project from funds in the Local Economic Development Act fund pursuant to Subsection B of Section 5-10-14 NMSA 1978 in an amount determined by the department but not to exceed HCEDC→~~seventy-five~~←HCEDC HCEDC→~~fifty-six and twenty-five hundredths~~←HCEDC percent of the net receipts attributable to the HCEDC→~~state~~←HCEDC gross receipts tax and compensating tax imposed on the expenses related to the construction of the qualifying entity's project, as determined by the department, related to the economic development project and the amount dedicated pursuant to Subsection B of this section; provided that the public support shall be provided for a period of no more than ten years, beginning on the date the applicable project participation agreement with the qualifying entity is executed:

(1) the qualifying entity signs a project participation agreement with the governing body of each local government that has jurisdiction of the area in which the qualifying entity's economic development project is located and the local government has passed an ordinance dedicating local government gross receipts tax revenue pursuant to Subsection B

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of this section;

(2) the qualifying entity signs a project participation agreement with the department; provided that the department shall not sign the agreement unless the applicable local governments have signed a project participation agreement pursuant to Paragraph (1) of this subsection;

(3) the economic development project has a reasonable expectation to incur, within ten years of the date the project participation agreement with the local government and the department is executed, at least three hundred fifty million dollars (\$350,000,000) in expenses related to the construction and infrastructure of the project in the state;

(4) the qualifying entity and the economic development project meet all other requirements to receive public support pursuant to the Local Economic Development Act; and

(5) prior to the end of each month, the qualifying entity submits the appropriate documents, including tax documents of the qualifying entity and its contractors submitted to the taxation and revenue department, to the department and to the local governments with which the qualifying entity signed a project participation agreement, on forms and in a manner determined by the department, of the taxable expenses related to the construction of the economic development project for the previous month.

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B. A local government may dedicate, by ordinance, fifty-six and twenty-five hundredths percent of the tax revenue attributable to the gross receipts and compensating taxes imposed by the local government on the qualifying entity's receipts for construction-related expenses, as determined by the department, related to the economic development project to the Local Economic Development Act fund for the purposes provided in Subsection B of Section 5-10-14 NMSA 1978.

C. If the requirements of Subsection A of this section have been met, the department and the local governments that signed a project participation agreement with the qualifying entity shall:

(1) review the documents submitted by a qualifying entity pursuant to Paragraph (5) of Subsection A of this section;

(2) estimate the amount equal to seventy-five percent of the tax revenue attributable to the gross receipts tax and compensating tax imposed on the taxable expenses related to the construction of the economic development project appropriate to:

(a) the local government's gross receipts and compensating taxes if a local government; and

(b) the state gross receipts and compensating taxes if the department;

(3) if a local government, on the first

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business day of each month, submit the estimated amount and the supporting documents to the department; and

(4) if the department, on or before the twenty-fifth day of December, March, June and September, provide the estimates and any supporting documentation to the taxation and revenue department, on forms and in a manner determined by that department.

D. The taxation and revenue department shall review the estimated amounts for accuracy and computation, make any necessary corrections or adjustments and make a final determination of the amounts to be distributed ~~HCEDC~~ **from the relevant tax revenue** ~~←HCEDC~~ pursuant to Section 14 of this 2021 act. The taxation and revenue department shall provide notice of the final determination, including the reasoning for any corrections or adjustments made, prior to making the distribution."

SECTION 11. A new section of the Local Economic Development Act is enacted to read:

"**[NEW MATERIAL]** GRANTS TO REIMBURSE RENT OR LEASE PAYMENTS FOR CERTAIN BUSINESSES.--

A. Prior to January 1, 2023, the department may use funds transferred pursuant to Section 15 of this 2021 act or other funds appropriated by the legislature to the department for the purpose of transferring those funds to the authority to provide recovery grants to recovery entities pursuant to this

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section.

B. The department and the authority shall enter into a memorandum of understanding to develop a program for the authority to accept a transfer of funds from the department pursuant to Subsection A of this section, to provide recovery grants to recovery entities, to accept and review applications for recovery grants and to disburse recovery grants to recovery entities. The authority shall require documentation from applicants of tax obligations and payments, employment levels and rent and lease payments for taxable years 2020 through 2022. The authority shall prioritize funding to applicants that had the greatest decline in business revenues from taxable year 2019 to taxable year 2020. The department shall provide oversight of the program and may set policies and promulgate rules in accordance with this section. The authority shall adopt rules in consultation with the department to govern the application procedures and requirements for disbursing recovery grants, including requirements consistent with the purpose of this section for determining the eligibility of recovery entities for grants; provided that the authority shall not create additional requirements for eligibility other than those provided by this section.

C. To receive a recovery grant, a recovery entity shall agree to:

- (1) use the proceeds of the recovery grant for

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reimbursement of rent or lease obligations of the recovery entity for its business locations within the state of New Mexico;

(2) provide a written certification signed by an appropriate officer of the recovery entity that certifies that:

(a) the officer understands that the recovery entity receiving a recovery grant shall provide documentation that tax payments made to the state in each taxable year during the term of the agreement exceed the sum of the recovery entity's tax payments during taxable year 2020 plus the amount of recovery grants received in each taxable year;

(b) the officer understands that, pursuant to the Local Economic Development Act, the recovery grant shall be accompanied by new job creation in accordance with department rules and policies and the terms of the agreement issued by the authority to the recovery entity in advance of disbursement of the recovery grant;

(c) all documents submitted in support of the recovery grant application are true and accurate to the best of the officer's knowledge;

(d) the officer has a reasonable basis to believe that, as of the date of a recovery grant application and receipt of any recovery grant, the recovery entity does not

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expect to permanently cease business operations or file for bankruptcy;

(e) as of the date of a recovery grant application and of receipt of a recovery grant, the recovery entity is current on all obligations pursuant to the Income Tax Act, the Corporate Income and Franchise Tax Act, the Withholding Tax Act, the Gross Receipts and Compensating Tax Act and the Unemployment Compensation Law applicable to the recovery entity's business operations; and

(f) all recovery grant proceeds will be used for the purpose of payment of rent or lease payments of the recovery entity pursuant to the Local Economic Development Act;

(3) upon request, provide the department and the authority with information relevant to the reporting requirements of the department and the authority pursuant to Subsection H of this section; and

(4) submit an application to the authority for a recovery grant pursuant to rules established by the authority, but no later than HCEDC→December 31, 2021←HCEDC
HCEDC→June 30, 2022←HCEDC .

D. Up to one hundred thousand dollars (\$100,000) in a recovery grant may be provided to each recovery entity in quarterly payments in an amount of up to twenty-five percent of the total amount of the recovery grant awarded to the recovery

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entity. HCEDC→~~To determine the amount of a recovery grant, each full-time-equivalent employee added to the payroll of a recovery entity in each quarter shall qualify for five thousand dollars (\$5,000), not to exceed twenty-five thousand dollars (\$25,000) per quarter.~~←HCEDC HCEDC→The department shall promulgate rules to determine the amount of a recovery grant; provided that, for each quarterly payment a recovery entity may be awarded a specified amount for each job created depending on the wages provided and the relative decline in business revenues for taxable year 2020, not to exceed a total of twenty-five thousand dollars (\$25,000) per quarter.←HCEDC To remain eligible for additional quarterly payments, a recovery entity shall provide documentation to the department and to the authority demonstrating the following:

- (1) the recovery entity remains active and open with new full-time-equivalent employees added to the payroll in the prior quarter, as submitted quarterly to the workforce solutions department from the date of application to the date of receipt of a recovery grant payment;
- (2) the recovery entity is current on rent and lease obligations and those obligations were equal to or greater than the amount of any prior recovery grant payments disbursed to the recovery entity;
- (3) the recovery entity is current on state and local tax obligations; and

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(4) taxes paid to the state in each HCEDC→fiscal←HCEDC HCEDC→taxable←HCEDC year during the agreement pursuant to Subsection C of this section exceed HCEDC→the total amount of←HCEDC taxes paid to the state in taxable year 2020 HCEDC→and the value of the grants received during each taxable year of the agreement←HCEDC , and the excess is due to a result of business activity and hiring of employees during the time frame of the agreement. The excess shall be deemed to meet the state's requirement to invest money in the severance tax permanent fund pursuant to Article 8, Section 10 of the constitution of New Mexico.

E. If, on the effective date of this 2021 act, there remains in effect a public health order that requires businesses to remain closed, the department and the authority shall set aside a portion of the funds available for recovery grants until such time as the public health order ceases to be in effect or is changed to permit all businesses subject to the public health order to be open. The portion set aside shall be estimated, at the discretion of the department and the authority, to represent the number of recovery entities and employees impacted by the public health order, but in no case shall exceed twenty percent of the total funds transferred pursuant to Section 15 of this 2021 act.

F. Upon the effective date of this 2021 act, the department and the state investment council shall coordinate to

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develop a funding schedule to ensure that sufficient funding is made available to the department to carry out the provisions of this section.

G. Information obtained by the department and the authority regarding individual recovery entity grant applicants shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act; provided that nothing in this section shall prevent the department and the authority from disclosing broad demographic information and information relating to the total amount of recovery grants made, the total outstanding balance of recovery grants made and the names of the recovery entities that received recovery grants.

H. The department and the authority shall submit an annual report in each year of 2021 through 2023 to the legislature, the legislative finance committee, the New Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and the interim legislative committee concerning economic and rural development. The report shall provide information regarding recovery grants made pursuant to this section. The report shall include:

(1) the total dollar value of recovery grants made to date, along with breakouts of disbursements by quarterly payment number;

(2) the number of recovery entities assisted,

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in total and by county;

(3) the total number of new jobs created and the total number of employees currently employed by recovery entities that received grants;

(4) the total projected annual payroll for the jobs created;

(5) the state tax revenues generated by the recovery entities that have received and are receiving recovery grants, in total, and the estimated increase in state tax revenues in excess of state tax revenues in taxable year 2020 that are attributable to recovery entities that received recovery grants;

(6) the total number of recovery grant applications;

(7) the number of recovery entities, if any, that received initial payments but were determined to be ineligible for additional quarterly payments; and

(8) an overview of the industries and types of business entities represented by recovery entities that received recovery grants.

I. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "recovery entity" means a corporation, limited liability company, partnership, joint venture,

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syndicate, association or other person that:

(a) is a business operating in New Mexico with one or more employees but with fewer than seventy-five people employed at any of the business's business locations;

(b) filed tax returns to the taxation and revenue department demonstrating a decline in business revenues for taxable year 2020 greater than or equal to twenty-five percent from revenues for taxable year 2019; and

(c) is current on all state or local tax obligations;

(3) "recovery grant" means a grant disbursed to a recovery entity by the authority from funds provided by the department from a transfer from the severance tax permanent fund for the purpose of reimbursement of rent or lease payments of the recovery entity pursuant to the Local Economic Development Act; and

(4) "taxable year" means "taxable year" as that term is used in the Income Tax Act or the Corporate Income and Franchise Tax Act, as applicable to a recovery entity."

SECTION 12. Section 7-1-6.12 NMSA 1978 (being Laws 1983, Chapter 211, Section 17, as amended) is amended to read:

"7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION GROSS RECEIPTS AND COMPENSATING TAXES.--

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978

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shall be made to each municipality for which the department is collecting a local option gross receipts tax and municipal compensating tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and municipal compensating tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and municipal compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act.

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund pursuant to Section 14 of this 2021 act and with respect to the amount dedicated by a municipality pursuant to Subsection B of Section 10 of this 2021 act."

SECTION 13. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION

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GROSS RECEIPTS AND COMPENSATING TAXES.--

A. [~~Except as provided in Subsection B of this section~~] A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax and county compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and county compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act.

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund pursuant to Section 14 of this 2021 act and with respect to the amount dedicated by a county pursuant to Subsection B of Section 10 of this 2021 act."

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SECTION 14. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--LOCAL ECONOMIC DEVELOPMENT ACT FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the Local Economic Development Act fund equal to the following amounts of the following taxes imposed and paid on the expenses related to the construction of the qualifying entity's economic development project, as determined pursuant to Section 10 of this 2021 act:

(1) seventy-five percent of the net receipts attributable to HCEDC→the state←HCEDC gross receipts tax and the HCEDC→state←HCEDC compensating tax; and

(2) fifty-six and twenty-five hundredths HCEDC→percent←HCEDC of the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality.

B. As used in this section:

(1) "economic development project" means "economic development project" as used in the Local Economic Development Act; and

(2) "qualifying entity" means "qualifying entity" as used in the Local Economic Development Act."

SECTION 15. A new section of the Severance Tax Bonding .218469.6GLGAIC February 3, 2021 (11:01am)

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Act is enacted to read:

"[NEW MATERIAL] TRANSFER TO THE ECONOMIC DEVELOPMENT DEPARTMENT FOR RECOVERY GRANTS TO CERTAIN BUSINESSES.--Within thirty days of the effective date of this 2021 act, the state investment officer shall make a commitment to the economic development department to invest two hundred million dollars (\$200,000,000) of the severance tax permanent fund for the purpose of providing recovery grants pursuant to Section 11 of this 2021 act. The state investment office shall transfer from the commitment to the economic development department amounts necessary to provide the recovery grants, as determined by the economic development department. The economic development department may expend no more than one percent of the funding transferred to it pursuant to this section for administering the provisions of this section. Any of the transferred funds not encumbered for recovery grants at the end of fiscal year 2023 shall revert to the severance tax permanent fund."

HCEDC→SECTION 16. Section 7-27-5 NMSA 1978 (being Laws 1983, Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

A. The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes. "Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA 1978

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and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act and shall be accounted for in accordance with generally accepted accounting principles.

B. In addition to the investment classes described in Subsection A of this section, the severance tax permanent fund shall be invested in:

(1) loans to provide emergency economic relief to local governments as provided by Section ~~[8 of this 2020 act]~~ 7-27-5.27 NMSA 1978; and

(2) the economic development department to provide recovery grants as provided by Section 15 of this 2021 act." ← HCEDC

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 10 and 12 through 14 of this act is July 1, 2021.

SECTION 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.