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Bill

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE ECONOMIC DEVELOPMENT CODE, INCLUDING DEFINITIONS AND STATEMENTS OF STATE ECONOMIC DEVELOPMENT POLICY; ECONOMIC DEVELOPMENT DEPARTMENT TO INTERPRET, ADMINISTER AND ENFORCE CODE; DEFINING THE DEVELOPMENT TRAINING AND ASSISTANCE ACT; RECOMPILING THE LOCAL ECONOMIC DEVELOPMENT ACT, STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT, ECONOMIC DEVELOPMENT GRANT ACT, DEVELOPMENT TRAINING AND ASSISTANCE ACT, ECONOMIC DEVELOPMENT CORPORATION ACT AND NEW MEXICO RESEARCH APPLICATIONS ACT AS COMPONENTS OF THE ECONOMIC DEVELOPMENT CODE; REPEALING SECTION 6-31-3 (BEING LAWS 2014, CHAPTER 58, SECTION 3); RECOMPILING, AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Economic Development Code,

1 Section 7A-1-1 NMSA 1978, is enacted to read:

2 "7A-1-1. [NEW MATERIAL] SHORT TITLE. --Chapter 7A NMSA 1978
3 may be cited as the "Economic Development Code".

4 **SECTION 2.** A new section of the Economic Development Code,
5 Section 7A-1-2 NMSA 1978, is enacted to read:

6 "7A-1-2. [NEW MATERIAL] PURPOSE AND INTENT. --

7 A. The purpose of the Economic Development Code is to
8 establish principles, procedures and guidelines for effective
9 planning, execution and measurement of the economic development
10 activities of procuring agents. The Code takes a three-fold
11 approach:

12 (1) Standardize key economic development terms and
13 methodologies for consistent planning, execution, reporting and
14 assessment of economic development efforts at all levels of
15 government, program theaters and geographic areas of the state;

16 (2) Institute processes by which economic
17 development activities can be reported and measured in a
18 comprehensive manner to facilitate informed public discussion and
19 evaluation of economic development directions and results and to
20 identify responsibility for, and attributes of, successes; and

21 (3) Require regular accounting and evaluation of
22 the effectiveness of economic development incentives provided by
23 state and local governments and economic development districts
24 under rigorous standards and comprehensive methodology.

25 B. Because success of our economic development

1 activities is critical to the well-being of the citizens of this
2 state, it is the intent of the Legislature that all the activities
3 related to creation or retention of economic-base jobs be
4 evaluated regularly under rigorous standards to ensure that
5 resources devoted to these activities are effectively employed and
6 that the Legislature and citizenry are fully apprised of the
7 results of these evaluations.”

8 **SECTION 3.** A new section of the Economic Development Code,
9 Section 7A-1-3 NMSA 1978, is enacted to read:

10 “7A-1-3. [NEW MATERIAL] DEFINITIONS. -- As used in the
11 Economic Development Code:

12 A. “but for” means a test to determine whether an
13 economic development deal would have happened in the absence of
14 the economic development incentive of interest; in this test,
15 would the deal not have occurred "but for" the incentive;

16 B. “commission” means the economic development
17 commi ssi on;

18 C. “community development” means the quantitative and
19 qualitative changes in the economy of a community or economic
20 development district through the sustained, concerted actions of
21 policymakers, procurement agents and private actors to improve the
22 standard of living and economic health of the community’s or
23 economic development district’s citizenry by growing and retaining
24 the number of non-economic-base jobs in the community or economic
25 development di strict;

1 D. “department”, without modification, means the
2 economic development department, the secretary of economic
3 development or any employee of the department exercising authority
4 lawfully delegated to that employee by the secretary;

5 E. “direct economic-base activity” means sales of goods
6 and services produced from locations within this state to out-of-
7 state customers or where payment for the goods and services sold
8 within this state comes directly from out-of-state customers and
9 also sales to or employment by federal government agencies within
10 New Mexico;

11 F. “economic-base business activity” includes both
12 direct economic-base activity and indirect economic-base activity;

13 G. “economic-base employer” means either:

14 (1) a direct economic-base employer, which is a
15 business organization producing goods or services at least fifty-
16 one percent of which, by dollar amount, is for sale to and use by
17 customers outside this state, sales to federal government agencies
18 within New Mexico or both; or

19 (2) an indirect economic-base employer, which is a
20 business organization producing goods and services for sale to
21 direct economic-base employers for export or use as ingredients or
22 components of the direct economic-base employer’s exported goods
23 and services;

24 H. “economic-base job” means a job within this state in
25 which at least fifty-one percent of the employee’s work results in

1 production of goods or services that either are directly or
2 indirectly exported or are paid for, directly or indirectly, by
3 out-of-state customers, including payments from the federal
4 government in excess of New Mexico's share;

5 I. "economic development" means the quantitative and
6 qualitative changes in the economy of a political jurisdiction
7 through the sustained, concerted actions of policymakers,
8 procuring agents and private actors to improve the standard of
9 living and economic health of the jurisdiction's citizenry
10 primarily by growing and retaining the number of economic-base
11 jobs in the jurisdiction;

12 J. "factor of production" means an essential input or
13 capacity required in the job creation process for the proactive
14 efforts of a community, economic development district or the state
15 to attract new economic-base jobs, such as sufficient marketing
16 and sales promotion, the quality and availability of workforce and
17 workforce housing, leadership, quality and presence of
18 infrastructure, amount of accessible capital, the tax and
19 regulatory environment and the quality and availability of real
20 estate;

21 K. "factor of production gap" means a major impediment
22 in assembling the necessary competitive inputs and conditions for
23 a particular community, economic development district, industry,
24 employer or program theater, such as a lack of marketing and sales
25 capacity, competitive disadvantage, a dearth of qualified workers

1 or a lack of suitable sites;

2 L. “factor of production gap resolution category” means
3 a discrete area of local capacity building efforts to remove
4 impediments to a community’s job creation goals; there are four
5 general categories:

- 6 (1) marketing and sales;
- 7 (2) real estate, infrastructure and capital;
- 8 (3) workforce, housing and community quality; and
- 9 (4) leadership, planning, organization and tax and
10 regulatory climate.

11 M. “full-time job” means a job in New Mexico in which
12 an individual is employed by the employer for at least forty hours
13 per week;

14 N. “full-time-equivalent jobs” or “FTE jobs” means on
15 an annual basis the sum of the hours worked by all New Mexico
16 employees of the employer in a calendar year divided by two
17 thousand eighty (2080) or, in leap years, two thousand eight-eight
18 (2088) and on a quarterly basis divided by the number of hours
19 appropriate to the quarter, as determined by the department;

20 O. “indirect economic base activity” means exchanges in
21 which the goods and services of businesses located within this
22 state are sold to other businesses within this state for export or
23 as ingredients or components of goods subsequently and directly
24 exported;

25 P. “modes of economic development” means the four

1 principal approaches to creating economic-base jobs:

2 (1) expanding an existing business or converting
3 an non-economic-base business to an economic-base business;

4 (2) attracting a new business from outside New
5 Mexico;

6 (3) starting a new business; and

7 (4) retaining an existing business that, without
8 assistance from a procuring agent, would re-locate outside New
9 Mexico or terminate;

10 Q. "new job" means a full-time equivalent job created
11 in this state after the beginning of the reporting period but
12 excludes any job transferred from another location in this state
13 or transferred from one employer to another as the result of a
14 business merger, acquisition or other change in business
15 organization;

16 R. "noneconomic-base job", "induced job" or "service
17 job" means a job other than an economic-base job;

18 S. "part-time job" means a job in which the individual
19 is employed by the employer for less than forty hours per week;

20 T. "post-performance incentive" means an economic
21 development incentive in which the benefits sought by the private
22 party or parties are not awarded until the private party or
23 parties has met the criteria for awarding the benefits;

24 U. "pre-performance incentive" means an economic
25 development incentive in which the private party or parties

1 receive all or a portion of the benefits sought prior to the
2 private party or parties having met the criteria for awarding the
3 benefits;

4 V. "procuring agent" means the governmental agency,
5 public-private partnership or private entity whose primary
6 mission, function, funding and staffing is to grow, maintain or
7 retain economic-base jobs for their jurisdiction;

8 W. "program theater" means a special economic-base
9 program area for job creation, maintenance or retention with its
10 own constituent base of organizations and stakeholders, business
11 model, program approaches, qualification standards for
12 professional staff and metrics; there are nine general program
13 theaters:

14 (1) employer theater, the traditional focus of
15 procurement agents, which involves recruiting new employers,
16 retaining or expanding existing employers and converting existing
17 non-economic-base employers to economic-base employers;

18 (2) federal government theater, which includes not
19 only employment directly with the federal government but also
20 private sector federal contractor jobs, jobs generated in
21 healthcare and higher education created as a result of certain
22 federal grants, loans and transfer payments;

23 (3) visitor theater, including tourism, business
24 travel from out-of-state, convention and visitor bureaus and
25 transit services;

1 (4) solowork theater, which describes employment
2 of New Mexico residents who work full-time from a home office,
3 workshop, studio or mobile platform either as a sole proprietor,
4 including those owning their own limited liability company or S-
5 corporation, or as an employee of a corporation if the resident
6 does not work at a centralized workplace, provided that, in either
7 case, fifty-one percent or more of the revenue from the work must
8 be generated from out of state and the level of income generated
9 must exceed two hundred percent of the federal poverty level.

10 (5) start-up theater, which focuses on helping
11 local entrepreneurs create new economic base employers;

12 (6) film and digital theater, which includes media
13 recruiting and developing the production of feature films,
14 independent films, television, regional and national commercials,
15 documentaries, animation, video games, webisodes, mobile
16 applications and post production work intended for commercial
17 exploitation and exhibitions out of state;

18 (7) agriculture theater, which covers procuring
19 economic base jobs by attracting, expanding and creating
20 enterprises that grow and distribute food and fiber, provided
21 that, any new business must have a New Mexico tax identification
22 number, gross over \$300,000 in revenue per year, earn a minimum
23 fifty-one percent of that revenue from out of state, and have at
24 least one full time employee other than the owner;

25 (8) energy and extractives theater, which

1 encompasses the extraction and processing of raw materials from
2 the land for export and the production and transmission of energy
3 for export; and

4 (9) retirement theater, which covers recruiting
5 retirees who have a combination of net worth exceeding two hundred
6 thousand dollars (\$200,000) and retirement income in excess of
7 200% of the federal poverty guidelines and includes governmental
8 or military retirees and international retirees from Canada,
9 Mexico, EB-5 programs and other countries;

10 X. "retained job" means a full-time equivalent job that
11 is at substantial and demonstrable risk of being terminated or
12 removed from this state after the beginning of the reporting
13 period but that the employer is instead induced to retain the job
14 in New Mexico by direct action of a procuring agent or an agent of
15 the taxpayer engaged in economic development;

16 Y. "secretary", without modification, means the
17 secretary of economic development and includes any deputy
18 secretary or division director of the department delegated by the
19 secretary; and

20 Z. "transaction" means that the employer has signed a
21 letter of intent or otherwise indicated readiness to embark on the
22 project and begin the employment process, all major issues have
23 been resolved, any necessary credit has been established and
24 contracts are being prepared and executed."

25 **SECTION 4.** A new section of the Economic Development Code,

1 Section 7A-1-4 NMSA 1978, is enacted to read:

2 "7A-1-4. [NEW MATERIAL] INTERPRETATION, ADMINISTRATION AND
3 ENFORCEMENT OF CODE. --The department exclusively shall interpret
4 the provisions of the Economic Development Code and, except where
5 administration or enforcement is specifically assigned to another
6 agency, shall administer and enforce the provisions of the
7 Economic Development Code."

8 **SECTION 5.** A new section of the Economic Development Code,
9 Section 7A-1-5 NMSA 1978, is enacted to read:

10 "7A-1-5. [NEW MATERIAL] ECONOMIC DEVELOPMENT POLICIES. --It
11 is the economic development policy of the state of New Mexico to:

12 A. vigorously create, pursue and complete opportunities
13 for increasing the number of our economic-base jobs through
14 assisting existing businesses to enlarge operations here,
15 establishing a fertile environment for new businesses to start up
16 in New Mexico, facilitating the movement of businesses elsewhere
17 to relocate or expand in New Mexico and to reinvigorate
18 possibilities for those New Mexico economic-base businesses
19 considering shutting down or moving to or expanding in other
20 states. Effective and lasting economic development requires that
21 our employment base grow faster than our population. This in turn
22 requires expansion of the number of economic-base jobs in this
23 state.

24 B. conserve resources and to effectively target
25 economic development opportunities. Accordingly, incentives

1 should be granted:

2 (1) only when the economic development goal
3 reasonably is determined not to be achievable but for the granting
4 of the incentive; and

5 (2) on a post-performance basis to the extent
6 practicable;

7 C. build sufficient capacity at the local and economic
8 development district level to sustain economic development
9 activities at a level which will ensure that economic-base job
10 growth in New Mexico exceeds the state's population growth over
11 time;

12 D. employ state economic development incentives to
13 enlarge economic opportunities and the number of economic-base
14 jobs in New Mexico as a whole, not to shuffle jobs from one New
15 Mexico locality to another.

16 E. welcome private parties as partners in the efforts
17 of the state, economic development districts and communities to
18 promote and secure economic and community development.

19 F. favor job growth and preservation of existing
20 employment opportunities in rural areas; and

21 G. adhere to the principle that promoting and enabling
22 strong economic development is a general duty and function of
23 every state agency and instrumentality. Agencies and
24 instrumentalities not specifically funded for direct economic
25 development activity should stand ready to cooperate with and

1 assist the agencies which are. State agencies and
2 instrumentalities should also support the community development
3 efforts of our communities and economic development districts.”

4 **SECTION 6.** Section 5-10-1 NMSA 1978 (being Laws 1993,
5 Chapter 297, Section 1, as amended) is recompiled as Section 7A-2-
6 1 NMSA 1978 and amended to read:

7 “7A-2-1. SHORT TITLE. [~~Chapter 5, Article 10~~] Chapter 7A,
8 Article 2 NMSA 1978 may be cited as the "Local Economic
9 Development Act".”

10 **SECTION 7.** Section 6-25-3 NMSA 1978 (being Laws 2003,
11 Chapter 349, Section 3, as amended) is recompiled as Section 7A-3-
12 3 NMSA 1978 as amended and is amended to read:

13 “7A-3-3. DEFINITIONS. --As used in the Statewide Economic
14 Development Finance Act:

15 A. "authority" means the New Mexico finance authority;

16 B. [~~"department" means the economic development~~
17 ~~department;~~

18 ~~C.] "community development entity" means an entity~~

19 designed to take advantage of the federal new markets tax credit
20 program;

21 ~~D.]~~ C. "economic development assistance provisions"
22 means the economic development assistance provisions of Subsection
23 D of Article 9, Section 14 of the constitution of New Mexico;

24 ~~E.]~~ D. "project revenue bonds" means bonds, notes or
25 other instruments authorized in Section 6-25-7 NMSA 1978 and

1 issued by the authority pursuant to the Statewide Economic
2 Development Finance Act on behalf of eligible entities;

3 ~~[F.]~~ E. "economic development goal" means:

4 (1) assistance to rural and underserved areas
5 designed to increase business activity;

6 (2) retention and expansion of existing economic-
7 base business enterprises;

8 (3) attraction of new economic-base business
9 enterprises; or

10 (4) creation and promotion of an environment
11 suitable for the support of economic-base start-up, solo worker
12 and emerging business enterprises within the state;

13 ~~[G.]~~ F. "economic development revolving fund bonds"
14 means bonds, notes or other instruments payable from the fund and
15 issued by the authority pursuant to the Statewide Economic
16 Development Finance Act;

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

22 ~~[I.]~~ H. "federal new markets tax credit program" means
23 the tax credit program codified as Section 45D of the Internal
24 Revenue Code, as that section may be amended or renumbered, and
25 regulations issued pursuant to that section;

1 ~~[J.]~~ I. "financing assistance" means project revenue
2 bonds, loans, loan participations or loan guarantees provided by
3 the authority to or for eligible entities pursuant to the
4 Statewide Economic Development Finance Act;

5 ~~[K.]~~ J. "fund" means the economic development revolving
6 fund;

7 ~~[L.]~~ K. "mortgage" means a mortgage, deed of trust or
8 pledge of any assets as a collateral security;

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

18 ~~[N.]~~ M. "payment in lieu of taxes" means the total
19 annual payment, including any state in-lieu payment, paid as
20 compensation for the tax impact of a project, in an amount
21 negotiated and determined in the opt-in agreement between the
22 department and the qualifying county, the school district and, if
23 applicable, the qualifying municipality, which payment shall be
24 distributed to the county, municipality and school district in the
25 same proportion as property tax revenues are normally distributed

1 to those recipients;

2 ~~[O.]~~ N. "standard project" means land, buildings,
3 improvements, machinery and equipment, operating capital and other
4 personal property for which financing assistance is provided for
5 adequate consideration, taking into account the anticipated
6 quantifiable benefits of the standard project, for use by an
7 eligible entity as:

8 (1) industrial or manufacturing facilities;

9 (2) commercial facilities, including facilities
10 for wholesale sales and services;

11 (3) health care facilities, including hospitals,
12 clinics, laboratory facilities and related office facilities;

13 (4) educational facilities, including schools;

14 (5) arts, entertainment or cultural facilities,
15 including museums, theaters, arenas or assembly halls; ~~and~~

16 (6) recreational and tourism facilities, including
17 parks, pools, trails, open space and equestrian facilities; and

18 (7) solowork program facilities.

19 ~~[P.]~~ O. "project" means a standard project or a state
20 project;

21 ~~[Q.]~~ P. "qualifying municipality or county" means a
22 municipality or county that enters into an opt-in agreement;

23 ~~[R.]~~ Q. "quantifiable benefits" means a project's
24 advancement of an economic development goal as measured by a
25 variety of factors, including:

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

4 (2) other benefits such as the total number of
5 direct and indirect jobs created by the project, total amount of
6 annual salaries to be paid as a result of the project, total gross
7 receipts and occupancy tax collections, total property tax
8 collections, total state corporate and personal income tax
9 collections and other fee and revenue collections resulting from
10 the project;

11 [~~S.~~] R. "school district" means a school district where
12 a project is located that is exempt from property taxes pursuant
13 to the Statewide Economic Development Finance Act;

14 [~~T.~~] S. "state in-lieu payment" means an annual
15 payment, in an amount determined by the department, that will be
16 distributed to a qualifying county, a school district and, if
17 applicable, a qualifying municipality in the same proportion as
18 property tax revenues are normally distributed to those
19 recipients;

20 [~~U.~~] T. "state project" means land, buildings or
21 infrastructure for facilities to support new or expanding eligible
22 entities for which financing assistance is provided pursuant to
23 the economic development assistance provisions; and

24 [~~V.~~] U. "tax impact of a project" means the annual
25 reduction in property tax revenue to affected property tax revenue

1 recipients directly resulting from the conveyance of a project to
2 the department.”

3 **SECTION 8.** Section 6-31-1 NMSA 1978 (being Laws 2014,
4 Chapter 58, Section 1) is recompiled as Section 7A-4-1 NMSA 1978
5 and is amended to read:

6 “7A-4-1. SHORT TITLE. ~~–[Sections 1 through 6 of this act]~~
7 Chapter 7A, Article 4 NMSA 1978 may be cited as the "Economic
8 Development Grant Act".”

9 **SECTION 9.** A new section of Development Training and
10 Assistance Act, Section 7A-5-1 NMSA 1978, is enacted to read:

11 “7A-5-1. [NEW MATERIAL] SHORT TITLE. -- Chapter 7A, Article 5
12 NMSA 1978 may be cited as the “Development Training and Assistance
13 Act”.”

14 **SECTION 10.** Section 53-7A-1 (being Laws 2003, Chapter 183,
15 Section 1) is recompiled as Section 7A-6-1 NMSA 1978 and is
16 amended to read:

17 “7A-6-1. SHORT TITLE. ~~–[This act]~~ Chapter 7A, Article 6 NMSA
18 1978 may be cited as the "Economic Development Corporation Act".”

19 **SECTION 11.** Section 53-7B-1 NMSA 1978 (being Laws 2009,
20 Chapter 66, Section 1) is recompiled as Section 7A-7-1 NMSA 1978
21 and is amended to read:

22 “7A-7-1. SHORT TITLE. ~~–[Sections 1 through 10 of this act]~~
23 Chapter 7A, Article 7 NMSA 1978 may be cited as the "New Mexico
24 Research Applications Act".”

25 **SECTION 12.** TEMPORARY PROVISION-- RECOMPILATION. --

1 A. Sections 5-10-2 through 5-10-13 (being Laws 1993,
2 Chapter 297, Sections 2 through 13, as amended) are recompiled as
3 Sections 7A-2-2 through 7A-2-13 NMSA 1978.

4 B. Sections 6-25-1, 6-25-2 and 6-25-4 through 6-25-29
5 NMSA 1978 (being Laws 2003, Chapter 349, Sections 1, 2, 4 and 5,
6 Laws 2011, Chapter 150, Section 2, Laws 2006, Chapter 64, Section
7 2, as repealed and reenacted by Laws 2016, Chapter 38, Section 1,
8 Laws 2003, Chapter 349, Sections 7 through 11 and 13 through 16
9 and Laws 2005, Chapter 103, Sections 14 through 26, as amended)
10 are recompiled as Sections 7A-3-1, 7A-3-2 and 7A-3-4 through 7A-3-
11 29 NMSA 1978.

12 C. Sections 6-31-2 and 6-31-4 through 6-31-6 (being
13 Laws 2014, Chapter 58, Sections 2 and 4 through 6) are recompiled
14 as Sections 7A-4-2 through 7A-4-5 NMSA 1978.

15 D. Sections 21-19-7, 21-19-7.1 and 21-19-10 through 21-
16 19-13 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, Laws
17 2003, Chapter 353, Section 2 and Laws 1983, Chapter 299, Sections
18 4 and 5, Laws 1997, Chapter 71, Section 3 and Laws 2005, Chapter
19 102, Section 3, as amended) are recompiled as Sections 7A-5-2
20 through 7A-5-7 NMSA 1978.

21 E. Sections 53-7A-2 through 53-7A-6 NMSA 1978 (being
22 Laws 2003, Chapter 183, Sections 2 through 6) are recompiled as
23 Section 7A-6-2 through 7A-6-6 NMSA 1978.

24 F. Sections 53-7B-2 through 53-7B-10 NMSA 1978 (beings
25 Laws 2009, Chapter 66, Sections 2 through 10) are recompiled as

