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HOUSE BILL 7

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Meredith A. Dixon and Brian Egolf

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE OPPORTUNITY ENTERPRISE ACT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE FINANCING AND LOANS AND TO ENTER INTO LEASES WITH OPPORTUNITY ENTERPRISE PARTNERS; ESTABLISHING TERMS FOR FINANCING, LOANS AND LEASES; CREATING THE OPPORTUNITY ENTERPRISE REVOLVING FUND; TRANSFERRING CERTAIN EXCESS REVENUE FROM THE OPPORTUNITY ENTERPRISE REVOLVING FUND TO THE GENERAL FUND; CREATING THE OPPORTUNITY ENTERPRISE REVIEW BOARD; PROVIDING POWERS AND DUTIES; REQUIRING REPORTS; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Opportunity Enterprise Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Opportunity Enterprise Act:

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- 1 A. "authority" means the New Mexico finance
2 authority;
- 3 B. "board" means the opportunity enterprise review
4 board;
- 5 C. "department" means the economic development
6 department;
- 7 D. "economic development opportunities" means the
8 advancement of an environmentally sustainable economic
9 development goal of the state as determined by the authority,
10 in coordination with the department, and includes the creation
11 of jobs, the provision of needed services and commodities to
12 diverse communities across the state and the increase of tax
13 and other revenue collections resulting from the enterprise
14 development project;
- 15 E. "enterprise assistance" means opportunity
16 enterprise financing, an opportunity enterprise lease or an
17 opportunity enterprise loan;
- 18 F. "enterprise development project" means the
19 purchase, planning, designing, building, surveying, improving,
20 operating, furnishing, equipping or maintaining of land,
21 buildings or infrastructure to create or expand economic
22 development opportunities within the state;
- 23 G. "fund" means the opportunity enterprise
24 revolving fund;
- 25 H. "opportunity enterprise partner" means a

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1 domestic corporation, a general partnership, a limited
2 liability company, a limited partnership, a public benefit
3 corporation, a nonprofit entity or other private business
4 entity or combination thereof that the authority determines is
5 engaged in an enterprise that creates or expands economic
6 development opportunities within the state and is eligible for
7 enterprise assistance pursuant to the Opportunity Enterprise
8 Act;

9 I. "opt-in agreement" means an agreement entered
10 into among the authority, the department and a county,
11 municipality or school district that ensures compliance with
12 all local zoning, permitting and other land use rules and that
13 provides for payments in lieu of taxes to the county,
14 municipality or school district; and

15 J. "payment in lieu of taxes" means the total
16 annual payment paid as compensation for the tax impact of an
17 enterprise development project, in an amount negotiated and
18 determined in the opt-in agreement among the authority, the
19 department and the county, school district or, if applicable,
20 municipality where the enterprise development project is
21 located in the same proportional amount as property tax
22 revenues are normally distributed to those recipients.

23 SECTION 3. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
24 POWERS--DUTIES.--To create or expand economic development
25 opportunities within the state, the authority may:

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1 A. acquire, whether by construction, purchase, gift
2 or lease, and hold title to or other interest in an enterprise
3 development project;

4 B. provide opportunity enterprise financing to
5 opportunity enterprise partners and collect costs and fees
6 associated with that financing;

7 C. enter into a contract to lease property to an
8 opportunity enterprise partner and collect rent, costs and fees
9 associated with that lease;

10 D. make loans to opportunity enterprise partners
11 and collect payments, including principal, interest costs and
12 fees associated with that loan;

13 E. sell or otherwise dispose of any property
14 obtained as a result of an enterprise development project;
15 provided that proceeds received shall be deposited in the fund;

16 F. make, execute and enforce all contracts
17 necessary to carry out the provisions of the Opportunity
18 Enterprise Act;

19 G. take legal action available to the authority to
20 recover public money or other public resources if an
21 opportunity enterprise partner defaults on its obligations to
22 the authority;

23 H. enter into joint powers agreements or other
24 agreements with a state agency or governmental entity, as the
25 authority determines to be appropriate for such purpose;

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1 I. adopt rules relating to the use of the fund
2 necessary to carry out the provisions of the Opportunity
3 Enterprise Act subject to approval of the New Mexico finance
4 authority oversight committee; and

5 J. enter into opt-in agreements where the
6 enterprise development project is located to facilitate the
7 development of an enterprise development project; provided that
8 if included in the opt-in agreement, the authority shall make
9 payments in lieu of taxes to a county, municipality or school
10 district to offset the tax impact of an enterprise development
11 project.

12 SECTION 4. [NEW MATERIAL] ECONOMIC DEVELOPMENT
13 DEPARTMENT--POWERS--DUTIES.--

14 A. For the purpose of recommending enterprise
15 development projects to the board for enterprise assistance,
16 the department and the board shall coordinate to:

17 (1) survey potential opportunity enterprise
18 partners and enterprise development projects;

19 (2) provide outreach services to local
20 governments and potential opportunity enterprise partners for
21 the purpose of making recommendations regarding enterprise
22 assistance; and

23 (3) evaluate potential opportunity enterprise
24 partners and formulate recommendations regarding suitability
25 for enterprise assistance.

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1 B. The department may, when applicable, enter into
2 opt-in agreements with the authority and the county, school
3 district or, if applicable, municipality where the enterprise
4 development project is located for the purpose of facilitating
5 the development of the enterprise development project.

6 SECTION 5. [NEW MATERIAL] OPPORTUNITY ENTERPRISE REVIEW
7 BOARD--CREATED--MEMBERSHIP.--

8 A. The "opportunity enterprise review board" is
9 created. The authority shall provide necessary administrative
10 services to the board.

11 B. The board is composed of the following twelve
12 members:

13 (1) the secretary of economic development or
14 the secretary's designee;

15 (2) the secretary of finance and
16 administration or the secretary's designee;

17 (3) the secretary of general services or the
18 secretary's designee;

19 (4) the state treasurer or the state
20 treasurer's designee;

21 (5) the state auditor or the state auditor's
22 designee;

23 (6) one representative appointed by the
24 council of government organizations within the state; and

25 (7) six public members appointed by the New

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1 Mexico legislative council who shall have experience in any one
2 or more of the following:

- 3 (a) the banking and finance industry;
- 4 (b) commercial or industrial credit;
- 5 (c) private equity, venture capital or
6 mutual fund investments;
- 7 (d) commercial real estate development;
- 8 (e) engineering, construction and
9 construction management;
- 10 (f) organized labor;
- 11 (g) urban planning; or
- 12 (h) environmentally sustainable
13 construction and development.

14 C. Members of the board appointed pursuant to
15 Paragraphs (6) and (7) of Subsection B of this section shall
16 serve for staggered terms of six years; provided that the
17 initial term of members appointed pursuant to Paragraph (7) of
18 Subsection B of this section may be for a term of less than six
19 years, as determined by the New Mexico legislative council, to
20 ensure staggered membership of the board. Members of the board
21 shall serve until their successors are appointed. A member of
22 the board appointed pursuant to Paragraph (6) or (7) of
23 Subsection B of this section may be removed from the board by
24 the appointing authority for failure to attend three
25 consecutive meetings or other cause. A vacancy on the board of

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1 an appointed member shall be filled by appointment by the
2 original appointing authority for the remainder of the
3 unexpired term of office; provided that a member who is removed
4 pursuant to this section shall be ineligible for reappointment.

5 D. Members of the board appointed pursuant to
6 Paragraphs (6) and (7) of Subsection B of this section shall:

7 (1) be governed by the provisions of the
8 Governmental Conduct Act; and

9 (2) not hold any office or employment in a
10 political party.

11 E. The members shall select a chair, vice chair and
12 other officers that the board deems necessary, who shall serve
13 a term of two years. The board shall maintain minutes of all
14 meetings of the board, and all meetings shall be held pursuant
15 to the Open Meetings Act.

16 SECTION 6. [NEW MATERIAL] OPPORTUNITY ENTERPRISE REVIEW
17 BOARD--POWERS.--

18 A. The board shall:

19 (1) meet quarterly and at the call of the
20 chair;

21 (2) receive executed contracts for enterprise
22 assistance;

23 (3) recommend to the authority application
24 forms and procedures for approval of enterprise assistance;

25 (4) develop standards and procedures for the

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1 approval of proposed contracts for enterprise assistance;

2 (5) make recommendations to the authority of
3 potential enterprise development;

4 (6) determine whether the use of enterprise
5 assistance is a prudent expenditure of public funds and report
6 to the legislature annually on that determination; and

7 (7) make recommendations to the authority of
8 potential rulemaking, application or lending changes to ensure
9 transparent and efficient processes for carrying out the
10 provisions of the Opportunity Enterprise Act.

11 B. The board and the department shall coordinate
12 to:

13 (1) provide outreach services to local
14 governments and potential opportunity enterprise partners;

15 (2) evaluate opportunity enterprise partners
16 and eligible enterprise development projects for suitability
17 for enterprise assistance; and

18 (3) obtain input and information relevant to
19 carrying out the purposes of the Opportunity Enterprise Act
20 from recipients of enterprise assistance, local governments and
21 local communities.

22 SECTION 7. [NEW MATERIAL] RULEMAKING--BOARD.--The board
23 shall adopt rules necessary to carry out the provisions of the
24 Opportunity Enterprise Act to:

25 A. establish procedures for applying and qualifying

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1 for enterprise assistance;

2 B. establish economic development goals for the
3 state in consultation with the department;

4 C. govern the application procedures and
5 requirements for enterprise assistance;

6 D. determine how to select and prioritize
7 applications for enterprise assistance to be funded by the
8 authority; and

9 E. provide safeguards to protect public money and
10 other public resources subject to the Opportunity Enterprise
11 Act.

12 SECTION 8. [NEW MATERIAL] ENTERPRISE ASSISTANCE--GENERAL
13 REQUIREMENTS.--

14 A. An application for enterprise assistance shall:

15 (1) describe the scope and plans of the
16 enterprise development project or proposed use of leased
17 property by the applicant;

18 (2) demonstrate that the enterprise
19 development project or lease will create or expand economic
20 development opportunities within the state;

21 (3) demonstrate that the proposed enterprise
22 development project or lease will comply with applicable state
23 and federal law;

24 (4) provide sufficient evidence that other
25 means of financing a proposed enterprise development project

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1 are unavailable or insufficient; and

2 (5) include other documentation or
3 certifications that the authority deems necessary.

4 B. The authority, in coordination with the
5 department, shall:

6 (1) make the application publicly available,
7 including a description of the scope and plans of the proposed
8 enterprise development project or lease;

9 (2) ensure that all information relating to
10 the enterprise development project or lease and the evaluation
11 of the application is made publicly available, unless the
12 information includes trade secrets or information that is
13 otherwise unable to be disclosed as provided by law;

14 (3) prioritize applications for enterprise
15 assistance that demonstrate local support and financial need;
16 and

17 (4) prior to providing enterprise assistance,
18 determine that:

19 (a) the proposed enterprise development
20 project or lease will create or expand economic development
21 opportunities within the state;

22 (b) the proposed enterprise development
23 project or lease will comply with applicable state and federal
24 law; and

25 (c) other means of financing a proposed

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1 enterprise development project are unavailable or insufficient.

2 C. A contract to provide enterprise assistance
3 shall:

4 (1) define the roles and responsibilities of
5 the authority and the opportunity enterprise partner;

6 (2) provide clawback or recapture provisions
7 that protect the public investment in the event of a default on
8 the contract;

9 (3) provide a finance plan detailing the
10 financial contributions and obligations of the authority and
11 opportunity enterprise partner;

12 (4) require an opportunity enterprise partner
13 to provide guarantees, letters of credit or other acceptable
14 forms of security, as determined by the authority;

15 (5) specify how rents, if applicable, will be
16 collected and accounted for;

17 (6) specify how debts incurred on behalf of
18 the opportunity enterprise partner will be repaid; and

19 (7) provide that, in the event of a default,
20 the authority may:

21 (a) elect to take possession of the
22 property, including the succession of all right, title and
23 interest in the enterprise development project; and

24 (b) terminate the lease or cease any
25 further funding and exercise any other rights and remedies that

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1 may be available.

2 D. The authority may require any document,
3 guarantee or certification from a recipient of enterprise
4 assistance that the authority determines is necessary to ensure
5 economic development opportunities are advanced by the
6 enterprise assistance.

7 E. Enterprise assistance shall only be provided if
8 compliant with the Opportunity Enterprise Act. All contracts
9 for enterprise assistance shall be provided to the board no
10 later than thirty days from the execution of that contract.

11 SECTION 9. [NEW MATERIAL] OPPORTUNITY ENTERPRISE
12 FINANCING.--

13 A. The authority shall receive and review
14 applications for opportunity enterprise financing. If the
15 authority determines that an enterprise development project is
16 eligible for financing, the authority may enter into a contract
17 with the opportunity enterprise partner to provide financing to
18 that partner, which shall be used to complete that project.

19 B. The authority shall ensure that all zoning,
20 permitting and other regulatory requirements will be met by the
21 enterprise development project and that the enterprise
22 development project will create or expand economic development
23 opportunities within the state.

24 C. Financing shall not be subject to repayment if
25 the terms of the contract for financing are carried out by the

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1 opportunity enterprise partner. A property associated with the
2 enterprise development project shall be the property of the
3 authority and shall be a property available for lease as
4 provided in Section 10 of the Opportunity Enterprise Act. The
5 authority may enter into agreements with the general services
6 department or other state agency or entity approved by the
7 board to administer and maintain the property as required by
8 the Opportunity Enterprise Act.

9 D. Upon completion of an enterprise development
10 project, the authority shall allow the opportunity enterprise
11 partner responsible for the completion of that project an
12 opportunity to obtain an opportunity enterprise lease for that
13 property as provided in Section 10 of the Opportunity
14 Enterprise Act; provided that any breach of the terms of the
15 contract for opportunity enterprise financing shall preclude
16 that opportunity enterprise partner from leasing the property,
17 and that property shall be made available for lease to other
18 opportunity enterprise partners.

19 SECTION 10. [NEW MATERIAL] OPPORTUNITY ENTERPRISE LEASE--
20 TERMS.--

21 A. The authority shall receive and review
22 applications for opportunity enterprise leases. If the
23 authority determines that an opportunity enterprise partner is
24 eligible for an opportunity enterprise lease, the authority may
25 enter into a contract to lease an available property to that

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1 opportunity enterprise partner in exchange for rent payments,
2 subject to the terms provided by this section. The authority
3 may enter into agreements with the general services department
4 or other state agency or entity approved by the board to
5 administer an opportunity enterprise lease.

6 B. An opportunity enterprise lease shall:

7 (1) require that the property be used solely
8 to create and expand economic development opportunities;

9 (2) provide for sufficient rent and other
10 securities to ensure the maintenance and protection of the
11 property based on the fair market value of that property;

12 (3) require that the property be properly
13 insured for the duration of the lease; and

14 (4) be bound only by the terms of the lease
15 and any rules promulgated pursuant to the provisions of the
16 Opportunity Enterprise Act.

17 C. Receipts from the payment of rent owed pursuant
18 to an opportunity enterprise lease shall be deposited in the
19 fund.

20 SECTION 11. [NEW MATERIAL] OPPORTUNITY ENTERPRISE LOANS--
21 TERMS--REPAYMENT.--

22 A. The authority shall receive and review
23 applications for opportunity enterprise loans. The authority
24 may make loans to opportunity enterprise partners if:

25 (1) funding is available;

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1 (2) the opportunity enterprise partner meets
2 credit and identification criteria, as determined by the
3 authority;

4 (3) the opportunity enterprise partner
5 certifies that the proceeds of the loan will be used for an
6 enterprise development project; and

7 (4) the opportunity enterprise partner meets
8 any other requirement for an opportunity enterprise loan.

9 B. The opportunity enterprise partner shall provide
10 the authority with ongoing information requested by the
11 authority.

12 C. Opportunity enterprise loans shall be made for
13 loan periods of no less than fifteen years and no more than
14 thirty years, as determined by the authority. The loans shall
15 bear an annual interest rate of zero percent.

16 D. Beginning on the third anniversary of the
17 funding date of the loan, payment on the outstanding principal
18 of the loan shall be due on a schedule determined by the
19 authority for the remainder of the loan period.

20 E. Receipts from the repayment of opportunity
21 enterprise loans shall be deposited in the fund.

22 F. No provision in an opportunity enterprise loan
23 or the evidence of indebtedness of the loan shall include a
24 penalty or premium for prepayment of the balance of the
25 indebtedness.

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1 SECTION 12. ~~[NEW MATERIAL]~~ OPPORTUNITY ENTERPRISE

2 REVOLVING FUND--CREATED--PERMITTED USES.--

3 A. The "opportunity enterprise revolving fund" is
4 created within the authority. The fund consists of
5 appropriations, distributions, transfers, gifts, grants,
6 donations, bequests, fees collected, payments of principal on
7 opportunity enterprise loans, income from rents paid on
8 opportunity enterprise leases, income from investment of the
9 fund and any other money distributed or otherwise allocated to
10 the fund. Balances in the fund at the end of a fiscal year
11 shall not revert to the general fund except as provided in
12 Section 13 of the Opportunity Enterprise Act. The fund shall
13 be administered by the authority as a separate account and may
14 consist of such subaccounts as the authority deems necessary to
15 carry out the purposes of the fund.

16 B. Money in the fund shall be used by the authority
17 to carry out the provisions of the Opportunity Enterprise Act,
18 including to:

19 (1) pay the reasonably necessary
20 administrative costs, payments in lieu of taxes and other costs
21 and fees incurred by the authority in carrying out the
22 provisions of that act;

23 (2) provide opportunity enterprise financing;

24 and

25 (3) make opportunity enterprise loans.

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1 C. Money in the fund that is not needed for
2 immediate disbursement may be deposited or invested in the same
3 manner as other funds administered by the authority.

4 SECTION 13. [NEW MATERIAL] EXCESS REVENUE TO THE GENERAL
5 FUND--OPPORTUNITY ENTERPRISE REVOLVING FUND--TRANSFER.--

6 A. If, on June 30, 2028 and by June 30 of each
7 fiscal year thereafter, the balance in the fund for that fiscal
8 year exceeds the annual average amount by an amount greater
9 than six percent, the amount in excess of six percent shall be
10 transferred to the general fund. If there is not an excess
11 amount pursuant to this section, no transfer shall be made from
12 the fund.

13 B. As used in this section, "annual average amount"
14 means the total balance of the fund in the immediately
15 preceding five fiscal years, divided by five.

16 SECTION 14. [NEW MATERIAL] REPORTS.--

17 A. Prior to October 1, 2023 and each succeeding
18 October 1 thereafter, the authority shall submit a report to
19 the governor, the legislature, the legislative finance
20 committee, the New Mexico finance authority oversight
21 committee, the revenue stabilization and tax policy committee
22 and other appropriate legislative interim committees. The
23 report shall provide details regarding enterprise assistance
24 provided pursuant to the Opportunity Enterprise Act. The
25 report shall include:

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1 (1) the total amount of enterprise assistance
2 provided for enterprise development projects and state revenue
3 derived from each enterprise development project;

4 (2) the total number of loans made pursuant to
5 the Opportunity Enterprise Act; the amount of those loans; the
6 number of loan recipients in a delinquent status, in default or
7 in the process of filing or that have filed for bankruptcy;

8 (3) an overview of the industries and types of
9 business entities operating pursuant to an enterprise
10 development project or lease;

11 (4) the total number of employees currently
12 employed directly or indirectly related to an enterprise
13 development project or lease; and

14 (5) any recommended changes to the Opportunity
15 Enterprise Act to ensure proper safeguards for public money and
16 to ensure enterprise assistance is able to efficiently advance
17 the economic development interests of the state.

18 B. Information obtained by the authority regarding
19 applicants for enterprise financing is confidential and not
20 subject to inspection pursuant to the Inspection of Public
21 Records Act; provided that nothing shall prevent the authority
22 from disclosing information required by this section, the names
23 of persons that have received enterprise assistance and the
24 amount of enterprise assistance provided pursuant to the
25 Opportunity Enterprise Act.

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