

ARTICLE 34

Opportunity Enterprise

6-34-1. Short title.

This act [6-34-1 to 6-34-15 NMSA 1978] may be cited as the "Opportunity Enterprise Act".

History: Laws 2022, ch. 57, § 1.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 1 effective July 1, 2022.

6-34-2. Definitions.

As used in the Opportunity Enterprise Act:

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

B. "board" means the opportunity enterprise review board;

C. "department" means the economic development department;

D. "economic development opportunities" means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project;

E. "enterprise assistance" means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan;

F. "enterprise development project" means the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state;

G. "fund" means the opportunity enterprise revolving fund;

H. "opportunity enterprise partner" means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the Opportunity Enterprise Act;

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

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

History: Laws 2022, ch. 57, § 2.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 2 effective July 1, 2022.

6-34-3. New Mexico finance authority; powers; duties.

To create or expand economic development opportunities within the state, the authority may:

- A. acquire, whether by construction, purchase, gift or lease, and hold title to or other interest in an enterprise development project;
- B. provide opportunity enterprise financing to opportunity enterprise partners and collect costs and fees associated with that financing;
- C. enter into a contract to lease property to an opportunity enterprise partner and collect rent, costs and fees associated with that lease;
- D. make loans to opportunity enterprise partners and collect payments, including principal, interest costs and fees associated with that loan;
- E. sell or otherwise dispose of any property obtained as a result of an enterprise development project; provided that proceeds received shall be deposited in the fund;
- F. make, execute and enforce all contracts necessary to carry out the provisions of the Opportunity Enterprise Act;
- G. take legal action available to the authority to recover public money or other public resources if an opportunity enterprise partner defaults on its obligations to the authority;
- H. enter into joint powers agreements or other agreements with a state agency or governmental entity, as the authority determines to be appropriate for such purpose;
- I. adopt rules relating to the use of the fund necessary to carry out the provisions of the Opportunity Enterprise Act subject to approval of the New Mexico finance authority oversight committee; and
- J. enter into opt-in agreements where the enterprise development project is located to facilitate the development of an enterprise development project; provided that if included in the opt-in agreement, the authority shall make payments in lieu of taxes to a county, municipality or school district to offset the tax impact of an enterprise development project.

History: Laws 2022, ch. 57, § 3.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 3 effective July 1, 2022.

6-34-4. Economic development department; powers; duties.

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

- (1) survey potential opportunity enterprise partners and enterprise development projects;
- (2) provide outreach services to local governments and potential opportunity enterprise partners for the purpose of making recommendations regarding enterprise assistance; and
- (3) evaluate potential opportunity enterprise partners and formulate recommendations regarding suitability for enterprise assistance.

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

History: Laws 2022, ch. 57, § 4.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 4 effective July 1, 2022.

6-34-5. Opportunity enterprise review board; created; membership.

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

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

- (1) the secretary of economic development or the secretary's designee;
- (2) the secretary of finance and administration or the secretary's designee;
- (3) the secretary of general services or the secretary's designee;
- (4) the state treasurer or the state treasurer's designee;
- (5) the state auditor or the state auditor's designee;
- (6) one representative appointed by the council of government organizations within the state; and
- (7) six public members appointed by the New Mexico legislative council who shall have experience in any one or more of the following:
 - (a) the banking and finance industry;
 - (b) commercial or industrial credit;
 - (c) private equity, venture capital or mutual fund investments;
 - (d) commercial real estate development;
 - (e) engineering, construction and construction management;
 - (f) organized labor;
 - (g) urban planning; or
 - (h) environmentally sustainable construction and development.

C. Members of the board appointed pursuant to Paragraphs (6) and (7) of Subsection B of this section shall serve for staggered terms of six years; provided that the initial term of members appointed pursuant to Paragraph (7) of Subsection B of this section may be for a term of less than six years, as determined by the New Mexico legislative council, to ensure staggered membership of the board. Members of the board shall serve until their successors are appointed. A member of the board appointed pursuant to Paragraph (6) or (7) of Subsection B of this section may be removed from the board by the appointing authority for failure to attend three consecutive meetings or other cause. A vacancy on the board of an appointed member shall be filled by appointment by the original appointing authority for the remainder of the unexpired term of office; provided that a member who is removed pursuant to this section shall be ineligible for reappointment.

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

- (1) be governed by the provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978]; and
- (2) not hold any office or employment in a political party.

E. The members shall select a chair, vice chair and other officers that the board deems necessary, who shall serve a term of two years. The board shall maintain minutes of all meetings of the board, and all meetings shall be held pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

History: Laws 2022, ch. 57, § 5.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 5 effective July 1, 2022.

6-34-6. Opportunity enterprise review board; powers.

A. The board shall:

- (1) meet quarterly and at the call of the chair;
- (2) receive executed contracts for enterprise assistance;

- (3) recommend to the authority application forms and procedures for approval of enterprise assistance;
- (4) develop standards and procedures for the approval of proposed contracts for enterprise assistance;
- (5) make recommendations to the authority of potential enterprise development projects;
- (6) determine whether the use of enterprise assistance is a prudent expenditure of public funds and report to the legislature annually on that determination; and
- (7) make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the Opportunity Enterprise Act.

B. The board and the department shall coordinate to:

- (1) provide outreach services to local governments and potential opportunity enterprise partners;
- (2) evaluate opportunity enterprise partners and eligible enterprise development projects for suitability for enterprise assistance; and
- (3) obtain input and information relevant to carrying out the purposes of the Opportunity Enterprise Act from recipients of enterprise assistance, local governments and local communities.

History: Laws 2022, ch. 57, § 6.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 6 effective July 1, 2022.

6-34-7. Rulemaking; board.

The board shall adopt rules necessary to carry out the provisions of the Opportunity Enterprise Act to:

- A. establish procedures for applying and qualifying for enterprise assistance;
- B. establish economic development goals for the state in consultation with the department;
- C. govern the application procedures and requirements for enterprise assistance;
- D. determine how to select and prioritize applications for enterprise assistance to be funded by the authority; and
- E. provide safeguards to protect public money and other public resources subject to the Opportunity Enterprise Act.

History: Laws 2022, ch. 57, § 7.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 7 effective July 1, 2022.

6-34-8. Enterprise assistance; general requirements.

A. An application for enterprise assistance shall:

- (1) describe the scope and plans of the enterprise development project or proposed use of leased property by the applicant;
- (2) demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state;
- (3) demonstrate that the proposed enterprise development project or lease will comply with applicable state and federal law;
- (4) provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient; and

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

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

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

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

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

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

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

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

(c) other means of financing a proposed enterprise development project are unavailable or insufficient.

C. A contract to provide enterprise assistance shall:

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

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

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

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

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

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

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

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

(b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

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

E. The authority may prioritize an application for enterprise assistance for a proposed enterprise development project located in a nonurban community.

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

G. As used in this section, "nonurban community" means a municipality with a population of less than forty thousand according to the most recent federal decennial census or the unincorporated area of a county.

History: Laws 2022, ch. 57, § 8.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 8 effective July 1, 2022.

6-34-9. Opportunity enterprise financing.

A. The authority shall receive and review applications for opportunity enterprise financing. If the authority determines that an enterprise development project is eligible for financing, the authority may enter into a contract with the opportunity enterprise partner to provide

financing to that partner, which shall be used to complete that project.

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

C. Financing shall not be subject to repayment if the terms of the contract for financing are carried out by the opportunity enterprise partner. A property associated with the enterprise development project shall be the property of the authority and shall be a property available for lease as provided in Section 10 [6-34-10 NMSA 1978] of the Opportunity Enterprise Act. The authority may enter into agreements with the general services department or other state agency or entity approved by the board to administer and maintain the property as required by the Opportunity Enterprise Act.

D. As provided in rules adopted by the board, upon completion of an enterprise development project, the authority shall allow the opportunity enterprise partner responsible for the completion of that project an opportunity to obtain an opportunity enterprise lease for that property as provided in Section 10 of the Opportunity Enterprise Act; provided that any breach of the terms of the contract for opportunity enterprise financing may preclude that opportunity enterprise partner from leasing the property, and in that event, the property shall be made available for lease to other opportunity enterprise partners.

History: Laws 2022, ch. 57, § 9.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 9 effective July 1, 2022.

6-34-10. Opportunity enterprise lease; terms.

A. The authority shall receive and review applications for opportunity enterprise leases. If the authority determines that an opportunity enterprise partner is eligible for an opportunity enterprise lease, the authority may enter into a contract to lease an available property to that opportunity enterprise partner in exchange for rent payments, subject to the terms provided by this section. The authority may enter into agreements with the general services department or other state agency or entity approved by the board to administer an opportunity enterprise lease.

B. An opportunity enterprise lease shall:

- (1) require that the property be used solely to create and expand economic development opportunities;
- (2) provide, based on the fair market value of the property, for:
 - (a) sufficient rent; and
 - (b) other securities to ensure the maintenance and protection of the property;
- (3) require that the property be properly insured for the duration of the lease; and
- (4) be bound only by the terms of the lease and any rules promulgated pursuant to the provisions of the Opportunity Enterprise Act.

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

History: Laws 2022, ch. 57, § 10.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 10 effective July 1, 2022.

6-34-11. Opportunity enterprise loans; terms; repayment.

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

- (1) funding is available;

- (2) the opportunity enterprise partner meets credit and identification criteria, as determined by the authority;
- (3) the opportunity enterprise partner certifies that the proceeds of the loan will be used for an enterprise development project; and
- (4) the opportunity enterprise partner meets any other requirement for an opportunity enterprise loan.

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

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

D. Beginning no later than the third anniversary of the funding date of the loan, payment on the outstanding principal of the loan shall be due on a schedule determined by the authority for the remainder of the loan period.

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

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

G. The authority may provide a guarantee to a federally insured financial institution on behalf of a person who would otherwise be eligible as an opportunity enterprise partner; provided that the proceeds of any guaranteed loan are used for an enterprise development project. A guarantee pursuant to this subsection shall be provided subject to terms approved by the board.

History: Laws 2022, ch. 57, § 11.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 11 effective July 1, 2022.

6-34-12. Opportunity enterprise revolving fund; created; permitted uses.

A. The "opportunity enterprise revolving fund" is created within the authority. The fund consists of appropriations, distributions, transfers, gifts, grants, donations, bequests, fees collected, payments of principal and interest on opportunity enterprise loans, income from rents paid on opportunity enterprise leases, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of a fiscal year shall not revert to the general fund except as provided in Section 13 [6-34-13 NMSA 1978] of the Opportunity Enterprise Act. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

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

- (1) pay the reasonably necessary administrative costs, payments in lieu of taxes and other costs and fees incurred by the authority in carrying out the provisions of that act;
- (2) provide opportunity enterprise financing; and
- (3) make opportunity enterprise loans.

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

History: Laws 2022, ch. 57, § 12.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 12 effective July 1, 2022.

6-34-13. Excess revenue to the general fund; opportunity enterprise revolving fund; transfer.

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

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

History: Laws 2022, ch. 57, § 13.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 13 effective July 1, 2022.

6-34-14. Reports.

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

- (1) the total amount of enterprise assistance provided for enterprise development projects and state revenue derived from each enterprise development project;
 - (2) the total number of loans made pursuant to the Opportunity Enterprise Act; the amount of those loans; the number of loan recipients in a delinquent status, in default or in the process of filing or that have filed for bankruptcy;
 - (3) an overview of the industries and types of business entities operating pursuant to an enterprise development project or lease;
 - (4) the total number of employees currently employed directly or indirectly related to an enterprise development project or lease;
- and
- (5) any recommended changes to the Opportunity Enterprise Act to ensure proper safeguards for public money and to ensure enterprise assistance is able to efficiently advance the economic development interests of the state.

B. Information obtained by the authority regarding applicants for enterprise financing is confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that nothing shall prevent the authority from disclosing:

- (1) information required in the report pursuant to this section;
- (2) public information pursuant to Paragraphs (1) and (2) of Subsection B of Section 8 [6-34-8 NMSA 1978] of the Opportunity Enterprise Act; and
- (3) the names of persons that have received enterprise assistance and the amount of enterprise assistance provided pursuant to the Opportunity Enterprise Act.

History: Laws 2022, ch. 57, § 14.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 14 effective July 1, 2022.

6-34-15. Conflict of interest.

A. If a member of the board or an employee of the authority has an interest, either direct or indirect, in an application or contract relating to enterprise assistance, that interest shall be disclosed to the authority and the board in writing. The person having such interest shall not participate in actions by the board or the authority with respect to that conflict.

B. A person who has a conflict of interest and participates in an action involving that conflict of interest or knowingly fails to notify the authority and the board in writing of that conflict is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2022, ch. 57, § 15.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 57, § 16 made Laws 2022, ch. 57, § 15 effective July 1, 2022.