

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE ARTS AND CULTURAL DISTRICT ACT; PROVIDING FOR THE CREATION OF ARTS AND CULTURAL DISTRICTS; PROVIDING FOR CULTURAL FACILITIES; CREATING TAX CREDITS FOR PRESERVATION OF CULTURAL PROPERTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Arts and Cultural District Act".

Section 2. DEFINITIONS.--As used in the Arts and Cultural District Act:

A. "arts and cultural district" means a developed district of public and private uses designated by the commission or a municipality;

B. "commission" means the New Mexico arts commission; and

C. "coordinator" means the person responsible for coordinating the main street program pursuant to Subsection B of Section 3-60B-3 NMSA 1978.

Section 3. MAIN STREET PROGRAM COORDINATOR--DUTIES.--

A. The coordinator shall:

(1) review and approve or reject applications from municipalities, citizens and nonprofit organizations to designate state-authorized arts and cultural

districts pursuant to the Arts and Cultural District Act;

(2) administer and promote an application process for the designation of state-authorized arts and cultural districts;

(3) provide financial grants or contracts for development of a state-authorized arts and cultural district, including planning, designing, construction and renovation costs; and

(4) develop policies and standards for the designation of state-authorized arts and cultural districts and for the declassification should a state-authorized arts and cultural district not comply with the policies and standards established by the commission as set forth in an approved application.

B. The coordinator shall require annual reports from each state-authorized arts and cultural district for purposes of reviewing the activities of that district, including the compliance of the district with the policies and standards of the commission and with the conditions of an approved application.

#### Section 4. ARTS AND CULTURAL DISTRICTS--CREATION.--

A. A state-authorized arts and cultural district may be created by the municipality in which the proposed arts and cultural district will be located only if the proposed district is approved by the commission.

B. A municipally authorized arts and cultural district may be created by a municipality with a population greater than fifty thousand in which the proposed arts and cultural district will be located if the proposed district meets the criteria set forth in Subsection C of this section.

C. An arts and cultural district shall:

(1) be in a geographically contiguous area that ranges in size from a portion of a municipality to a regional district with a special coherence;

(2) be distinguished by physical and cultural resources that play a vital role in the life and development, including economic and cultural development, of a community;

(3) focus on a cultural compound, a major art institution, art and entertainment businesses, an area with arts and cultural activities or cultural or artisan production; and

(4) be engaged in promotion, preservation and educational aspects of the arts and culture of that locale and contribute to the public through interpretive, educational and recreational uses.

Section 5. STATE-AUTHORIZED DISTRICTS.--

A. The coordinator shall review applications submitted by municipalities, citizens or nonprofit organizations for the purpose of designating an arts and

cultural district and make a recommendation to the commission for action on each application. Citizens and nonprofit organizations that submit an application shall include a formal endorsement of the application by the municipal government in which the proposed district is to be located.

B. After reviewing an application for the designation of an arts and cultural district, the commission shall approve or reject the application or send it back to the applicant with a request for changes or additional information.

C. The commission shall designate no more than five arts and cultural districts in a calendar year. Rejected applicants may re-apply without prejudice.

D. If the commission approves an application for the designation of an arts and cultural district, it shall notify the applicant in writing and shall specify the terms and conditions of the commission's approval, including the terms and conditions set forth in the application and as modified by written agreement between the applicant and the commission.

E. After the commission approves an application for the designation of a state-authorized arts and cultural district, the applicable municipality may pass a local ordinance to establish the state-authorized arts and cultural district pursuant to the terms and conditions specified in the

approved application. Municipalities may administer arts and cultural districts through a newly created local commission with a specific mission to oversee the district subject to review by the municipality.

Section 6. MUNICIPALLY AUTHORIZED DISTRICTS.--

Municipalities with a population greater than fifty thousand that choose to authorize their own districts shall pass a local ordinance stating minimum requirements for establishing the arts and cultural district, and any municipally authorized arts and cultural district shall meet the criteria contained in Subsection C of Section 4 of the Arts and Cultural District Act.

Section 7. ARTS AND CULTURAL DISTRICT FUND

ESTABLISHED.--The "arts and cultural district fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and bequests. The fund shall be administered by the cultural affairs department, and money in the fund is appropriated to the cultural affairs department to carry out the provisions of the Arts and Cultural District Act. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of cultural affairs or the secretary's authorized representative.

Section 8. Section 5-10-2 NMSA 1978 (being Laws 1993,

Chapter 297, Section 2) is amended to read:

"5-10-2. FINDINGS AND PURPOSE OF ACT.--

A. The legislature finds that:

(1) development of the New Mexico economy is vital to the well-being of the state and its residents;

(2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;

(3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;

(4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and

(5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.

B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of

public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act."

Section 9. 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. "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;

C. "department" means the economic development department;

D. "economic development project" or "project" means the provision of direct or indirect assistance to a

qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;

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

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

G. "municipality" means an incorporated city, town



or village;

H. "person" means an individual, corporation, association, partnership or other legal entity;

I. "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:

(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) or (6) 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 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) 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;

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

(8) a cultural facility; and

J. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement."

Section 10. 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 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 five 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 the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act for 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;

(3) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act for 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 county infrastructure gross receipts tax revenue is pledged; or

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

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 or cultural facilities, 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 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 June 30, 2007 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 as a qualifying entity before any revenue generated by the municipal or county local option gross receipts tax for 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, can be expended from the economic development fund for arts and cultural district purposes or cultural facilities.

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 as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for 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.

F. The question shall be submitted to the voters of the municipality or county as a separate question at a regular municipal or county election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code. A special county election shall be called, 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 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 11. Section 5-10-5 NMSA 1978 (being Laws 1993, Chapter 297, Section 5) is amended to read:

"5-10-5. ECONOMIC DEVELOPMENT DEPARTMENT--TECHNICAL ASSISTANCE.--At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic development project or technical assistance to cultural facilities with respect to economic development projects."

Section 12. 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 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;

(3) describe the criteria to be used to determine eligibility of an economic development project 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, 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;

(5) describe the process the local or regional government will use to verify the information



submitted on an economic development project application;

(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 and recoup its investment;

(7) identify revenue sources, including those of the local or regional government, that will be used to support 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 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 13. Section 5-10-9 NMSA 1978 (being Laws 1993, Chapter 297, Section 9) is amended to read:

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

A. The local or regional government shall review each project application, and projects 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 to be provided or on the scope of the economic development project."

Section 14. Section 7-2-18.2 NMSA 1978 (being Laws 1984, Chapter 34, Section 1) is amended to read:

"7-2-18.2. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY--REFUND.--

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) To encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with the taxpayer's consent, may claim a credit not to exceed a maximum aggregate of twenty-five thousand dollars (\$25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of a cultural property listed on the official New Mexico register; or

(2) if a cultural property, whose owner may

otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district certified by the state or a municipality pursuant to the Arts and Cultural District Act, the owner of that cultural property may claim a credit not to exceed fifty thousand dollars (\$50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) the taxpayer submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) the taxpayer received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in

this section for each taxable year in which restoration, rehabilitation or preservation is carried out. Except as provided in Subsection F of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) in the aggregate if governed

by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register.

G. The historic preservation division shall promulgate regulations for the implementation of Subsection B of this section.

H. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs

department created in Section 18-6-8 NMSA 1978."

Section 15. Section 7-2A-8.6 NMSA 1978 (being Laws 1984, Chapter 34, Section 2, as amended) is amended to read:

"7-2A-8.6. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY--CORPORATE INCOME TAX CREDIT.--

A. Tax credits for the preservation of cultural property may be claimed as follows:

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer that files a corporate income tax return and that is the owner of a cultural property listed on the official New Mexico register of cultural properties, with its consent, may claim a credit not to exceed twenty-five thousand dollars (\$25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district designated by the state or a municipality pursuant to the Arts and Cultural District Act, the owner of that cultural property may claim a credit not to exceed fifty thousand dollars (\$50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or

preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) it received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which preservation, restoration or rehabilitation is carried out. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration,



rehabilitation or preservation project certified by the committee for any cultural property listed on the official New Mexico register. No single project may extend beyond a period of more than two years.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, in the aggregate for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register approved by the committee.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or

fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register.

F. The historic preservation division shall promulgate regulations for the implementation of this section.

G. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978."

Section 16. APPLICABILITY.--The provisions of this act shall apply to taxable years beginning on or after January 1, 2009.

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. \_\_\_\_\_