

**Local Government Taxing Options  
Under the  
New Mexico Local Economic Development Act**

**A Report Presented to the  
Lea County Community Improvement Corporation**

**by**

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## **Local Government Taxing Options Under the New Mexico Local Economic Development Act**

### **Introduction**

The State of New Mexico has a long history of implementing policies to enhance the state's economy. Some of the policies have been successful to some degree and others have failed. It is also known that local policies, geared to local conditions and under the direction of local leaders, can have a larger impact on the local economy than broad state policies. In recognition of the need for local governments to be involved in economic development, the Local Economic Development Act was enacted.

The purpose of this report is to provide the Lea County Community Improvement Corporation tax implementation options available under the New Mexico Local Economic Development Act (NMLEDA)[5-10-1 to 5-10-13 NMSA 1978; see Appendix 1]. The purpose of the NMLEDA is to provide a revenue stream that would allow local counties and communities to support local economic development efforts.

The first part of this report provides a summary of the NMLEDA, including taxing options and procedures for implementation. The second part provides an estimate of the amount of funds that would be generated with the full implementation of allowable tax rates. The last section provides information on how the tax revenue is being used in other parts of the state.

### **New Mexico Local Economic Development Act**

The stated purpose of the NMLEDA 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. Furthermore, the purpose of that act is to allow municipalities and counties to enter into joint powers agreement to plan and support regional economic development projects.” [5-10-2 NMSA 1978]

The NMLEDA allows municipalities and counties to expend funds on economic development projects. The law also stipulates how much can be spent, what constitutes an economic development project and what is a qualifying entity. The local government unit must also have adopted by ordinance an economic development plan or a master plan with an economic development component. The unit must follow certain procedures when pursuing economic development projects. Municipalities and counties are also allowed to enter into joint power agreements.

In general, the amount of expenditure allowed for economic development projects is limited to five percent of the annual general fund expenditures of the local government. However this limitation does not apply to a) the value of contributed land or buildings pursuant to a project participation agreement, b) revenues generated by the imposition of an infrastructure gross receipts tax, c) the proceeds of a revenue bond to which the infrastructure gross receipts tax is pledged, or d) donated funds.

An economic development project is the direct or indirect assistance by a local government unit to a qualifying business. Economic development projects can take almost any form. The local government unit can purchase, lease, grant, construct or reconstruct buildings or other infrastructure and acquire or convey land. The government unit can also provide direct loans or loan guarantees for land, buildings or infrastructure. The unit could also provide public works improvements essential to the location or expansion of a qualifying business.

In general, a qualifying entity is any business or individual who is engaged in business except for retail and farming. The business or individual must be engaged in the manufacturing, processing or assembling of agricultural or manufactured products or engaged in the storing, warehousing, distributing or selling products at the wholesale level. A commercial enterprise engaged in the distribution of products or services commonly known as public utilities cannot be a qualifying entity unless it is a telecommunications enterprise that makes most of its sales outside of New Mexico or is an Indian nation, tribe or pueblo or a federally chartered tribal corporation. The only other instance that a retail enterprise can be a qualifying entity is when it provides a facility known as a farmer's market.

In order to provide funding for an economic development project the local government unit must adopt through ordinance an economic development plan or master plan that has an economic development component. The law is not very restrictive of what must be in this plan but it suggests a list of items that may be in the plan. Items that are suggested include goals and strategies, qualifying activities and entities, application and verification procedures, the identification of revenue sources and what other resources the governmental unit may use, and safeguards against default, termination of aid and if the qualifying entity leaves the area.

Once an application for an economic development project is accepted, the governmental unit and the qualifying entity, under the NMLEDA, must enter into a project participation agreement. This agreement must specify the contributions of both parties, the security provided by the qualifying entity to the governmental unit, a schedule for project completion and provisions for performance review. All projects must be approved by ordinance.

The final part of the law that is of interest is that it allows multiple governmental units to combine under a joint powers agreement to develop a regional economic development plan. Any project must be approved by all of the governmental units participating in the joint powers agreement.

### **Gross Receipts Tax in Lea County**

Government entities are allowed to expend funds for economic development projects. However, the amount is limited to a percentage of general fund revenues. The NMLEDA allows the imposition of an infrastructure gross receipt tax (hereafter, I-GRT), the revenues of which can be used to further economic development plans and projects. The I-GRT must be imposed pursuant to the Municipal or County Local Option Gross Receipts Tax Act (Municipal: Chapter 7, Article 19D NMSA 1978; see Appendix 2; County: Chapter 7, Article 20E NMSA 1978; see Appendix 3). Municipalities are allowed to enact a  $\frac{1}{4}$  of one percent tax in two increments of  $\frac{1}{8}$  of one percent. For a county the maximum tax is one-eighth of one percent and can be enacted in one-sixteenth increments. The I-GRT must be adopted by ordinance that must be passed by majority of the voters in the county (see NMSU Exhibit 1).

The gross receipts tax (GRT) is an important source of funds for local government in Lea County, as is typical for local governments in New Mexico. NMSU Exhibits 2 displays basic information about GRT in Lea County by taxing unit. Panel A of NMSU Exhibit 2 indicates the number of tax payers. During FY2005, an average of

9,786 entities submitted GRT tax forms each quarter. The majority, 51.7 percent were located in Hobbs. The unincorporated portion of the county accounts for 17.1 percent of tax payers; Lovington accounts for 16.7. The remaining 14.3 percent of tax payers is divided among Eunice, Lovington Industrial Park, Jal, and Tatum. Panel B gives data on taxable gross receipts. The interesting fact apparent from Panel B is that, while the number of filers is 17.1 percent in the unincorporated county, 30.0 percent of taxable gross receipts come from the unincorporated part of the county. Hobbs accounts for 54.7 percent of taxable gross receipt and Lovington accounts for 8.6 percent. Lovington Industrial Park, Eunice, Jal, and Tatum together account for the remaining 6.7 percent. Panel C, which reports GRT collections, tells a similar story to taxable gross receipts. The unincorporated portion of the county accounts for slightly more while the incorporated portions of the county account for slightly more of tax revenue than would be predicted by looking at taxable gross receipts. This reflects differences in tax rates between the unincorporated and incorporated portions of the county and among the incorporated areas.

NMSU Exhibit 3 indicates the tax revenue that would have occurred had an I-GRT been in effect for Lea County and its component municipalities during FY2005. The Table shows the effect of implementation of each step for each taxing unit. For example, implementing the second step a Municipal I-GRT would generate an additional \$1,245,498 in Hobbs, while if all four steps were implemented, \$3,736,494 would be collected in Hobbs. Overall, the calculations indicate that more than \$5.4 million could have been raised by full implementation of local government I-GRT.

Due to recent changes in New Mexico GRT, simply applying the I-GRT to taxable gross receipts will result in an overstatement of revenues that would be generated. Starting January 1, 2005, most GRT generated from groceries sales, medical services, and pharmaceuticals are refundable. The structure of the law is such that taxable gross receipt is unaffected by the new deductions, but revenues generated are reduced. (This is not true of most GRT deductions and credits, which typically reduce taxable gross receipts as well as tax revenue proportionately.) An adjustment factor was calculated as a percentage of the grocery and medical deduction relative to taxable gross receipt. Unfortunately, only two quarters of data is available under the new law. At the same time, the state has granted an automatic extension to all tax payers filing under the new law. So the adjustment factors in NMSU Exhibit 3 should be used with caution. Adjusted tax collections should all I-GRT be implemented would be slightly more than \$5.2 million.

### **Implementation of the Infrastructure Gross Receipt Tax: A Survey of Current Practices**

Local governments can use revenue from the I-GRT for a number of purposes, only one of which is economic development. To determine current practices among local governments in regard to I-GRT, the New Mexico Department of Revenue and Taxation was contracted. From them, a list of local option taxes was obtained, which was used to develop a list of local governments using the I-GRT for economic development. Currently, eighty-five New Mexico municipalities have implemented an I-GRT statewide. Of these, eight list economic development as a use of I-GRT funds. Six New Mexico counties have implemented an I-GRT. All fourteen local governments using I-GRT for economic development were contracted. (For a list of the local governments contracted see NMSU Exhibit 4). The results of this survey are summarized in NMSU Exhibit 5. It was found that a wide variety of projects funded by the I-GRT. These are outlined in NMSU Exhibit 5. In Appendix 2, detailed economic development plans for the City of Alamogordo and for the County of San Miguel are included to give a more detailed idea of economic development plans for these two local governments.

**Exhibits**

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**NMSU Exhibit 1 Major Features of New Mexico Law**

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**Local Economic Development Act**

Authorizes up to 5% of General Revenue funds may be used for economic development

Authorizes use of revenue generated through the imposition of a infrastructure gross receipts tax for furthering or implementing economic development plans; revenue from an infrastructure gross receipts tax is in addition to the 5% limit mentioned above

Defines entities that qualify for economic development assistance

Requires development of an economic development plan or a comprehensive plan with an economic development component before expenditures on an economic development are allowed

Allows local governments to form a regional economic development authority via entry into a joint powers agreement

Allows pledging of economic development funds against a revenue bonds

**Municipal and County Infrastructure Gross Receipt Tax**

Municipal and County I-GRT acts use nearly identical language

Authorizes implementation of local infrastructure gross receipts tax

Requires passage of a ordinance by county governing body and a majority vote in an election prior to implementation of a county infrastructure gross receipts tax

Defines the allowed uses of infrastructure gross receipts tax to include economic development

Restricts promotional and administrative cost to not more than the greater of 10% of development fund or \$50,000

Allows implementation of county gross receipts tax in two steps of 1/16 of one percent

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Source: New Mexico State Acts 5-10-1 to 5-10-13, 7-19D-11, and 7-20E-19. See appendices.

**NMSU Exhibit 2: Gross Receipt Collection by Location, Lea County, NM**

**Fiscal Year 2005**

	Panel A: Number of Tax Filers				Average	Share
	Quarter 2, 2004	Quarter 4, 2004	Quarter 1, 2005	Quarter 2, 2005		
<b>Unincorporated</b>	1,650	1,563	1,746	1,716	1,669	17.1%
<b>Hobbs</b>	4,947	4,745	5,272	5,288	5,063	51.7%
<b>Lovington</b>	1,621	1,546	1,712	1,720	1,650	16.9%
<b>Lovington Industrial Park</b>	37	45	47	38	42	0.4%
<b>Eunice</b>	615	589	642	673	630	6.4%
<b>Jal</b>	411	431	432	466	435	4.4%
<b>Tatum</b>	<u>302</u>	<u>294</u>	<u>297</u>	<u>297</u>	<u>298</u>	3.0%
<b>Total</b>	9,583	9,213	10,148	10,198	9,786	100.0%

	Panel B: Taxable Gross Receipts				Total	Share
	Quarter 2, 2004	Quarter 4, 2004	Quarter 1, 2005	Quarter 2, 2005		
<b>Unincorporated</b>	\$135,575,382	\$123,898,657	\$141,258,808	\$145,772,559	\$546,505,406	30.0%
<b>Hobbs</b>	\$234,817,904	\$232,043,591	\$257,415,433	\$272,121,578	\$996,398,506	54.7%
<b>Lovington</b>	\$38,121,325	\$39,177,139	\$35,683,917	\$43,046,961	\$156,029,341	8.6%
<b>Lovington Industrial Park</b>	\$3,949,103	\$5,049,513	\$3,201,325	\$4,610,991	\$16,810,931	0.9%
<b>Eunice</b>	\$15,357,560	\$16,133,606	\$15,566,117	\$17,542,889	\$64,600,172	3.5%
<b>Jal</b>	\$6,361,252	\$6,656,133	\$5,815,553	\$5,081,502	\$23,914,441	1.3%
<b>Tatum</b>	<u>\$3,723,817</u>	<u>\$4,261,786</u>	<u>\$4,108,626</u>	<u>\$4,180,583</u>	<u>\$16,274,811</u>	0.9%
<b>Total</b>	\$437,906,343	\$427,220,424	\$463,049,779	\$492,357,063	\$1,820,533,609	100.0%

	Panel C: Gross Receipt Tax Collections				Total	Share
	Quarter 2, 2004	Quarter 4, 2004	Quarter 1, 2005	Quarter 2, 2005		
<b>Unincorporated</b>	\$7,225,274	\$6,672,432	\$7,588,977	\$7,834,382	\$29,321,065	26.6%
<b>Hobbs</b>	\$14,374,519	\$14,219,793	\$16,656,202	\$18,158,442	\$63,408,956	57.5%
<b>Lovington</b>	\$2,333,251	\$2,398,085	\$2,291,033	\$2,840,267	\$9,862,636	9.0%
<b>Lovington Industrial Park</b>	\$210,451	\$269,906	\$173,550	\$247,840	\$901,749	0.8%
<b>Eunice</b>	\$949,704	\$997,773	\$1,012,079	\$1,171,895	\$4,131,451	3.7%
<b>Jal</b>	\$393,252	\$411,590	\$375,473	\$337,715	\$1,518,030	1.4%
<b>Tatum</b>	<u>\$230,170</u>	<u>\$263,618</u>	<u>\$268,517</u>	<u>\$279,567</u>	<u>\$1,041,872</u>	0.9%
<b>Total</b>	\$25,716,620	\$25,233,196	\$28,365,833	\$30,870,109	\$110,185,759	100.0%



**NMSU Exhibit 3: Infrastructure Gross Receipt Tax Collections**

	County Infrastructure GRT		Municipal Infrastructure GRT		Total	Adjustment Factor	Adjusted Total
	First 1/16% Step	Second 1/16% Step	First 1/8% Step	Second 1/8 Step			
<b>Unincorporated</b>	\$341,566	\$341,566	NA	NA	\$683,132	0.12%	\$682,310
<b>Hobbs</b>	\$622,749	\$622,749	\$1,245,498	\$1,245,498	\$3,736,494	4.32%	\$3,575,023
<b>Lovington</b>	\$97,518	\$97,518	\$195,037	\$195,037	\$585,110	5.87%	\$550,759
<b>Lovington Industrial Park</b>	\$10,507	\$10,507	NA	NA	\$21,014	0.00%	\$21,014
<b>Eunice</b>	\$40,375	\$40,375	\$80,750	\$80,750	\$242,251	2.43%	\$236,367
<b>Jal</b>	\$14,947	\$14,947	\$29,893	\$29,893	\$89,679	7.50%	\$82,954
<b>Tatum</b>	<u>\$10,172</u>	<u>\$10,172</u>	<u>\$20,344</u>	<u>\$20,344</u>	<u>\$61,031</u>	3.82%	<u>\$58,697</u>
<b>Total</b>	\$1,137,834	\$1,137,834	\$1,571,522	\$1,571,522	\$5,418,710	3.90%	\$5,207,124

Source: Authors' calculations



**NMSU Exhibit 4 Uses of Municipal and County Infrastructure Gross Receipts Tax**

<b>Cities</b>	<b>Money Used for Economic Development</b>	<b>Money Used for Other Purposes</b>	<b>Notes</b>
Alamogordo	Yes as provisioned in the Economic Development Act. Typically the OCEDC provides cash incentives for businesses moving into the area. They have not yet given or developed land for business use however they recently received a gift of land for future use.		
Artesisa	Yes as provisioned in the Economic Development Plan		
Aztec		Money is being used for infrastructure needs, chiefly sewer and water plant construction and maintenance.	
Carrizozo		Money was to be used for new construction, not for economic development. However, this money was not used in this manner, and is currently idle.	The city clerks office is currently moving and will not reopen until 7/4/05. Leanne, the city clerk, is attempting to locate the information but it will most likely be after they reopen.
Clovis	Money is used on a case by case basis as allowed by Clovis Industrial Development Inc. agency.		Chase Gentry, the director of the CIDC, wrote the Clovis ordinance and plan also wrote the Portales plan and ordinance. He commented that they are very similar in scope and construction.

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Portales	Money is typically used for land purchases, running utilities to site, tax abatement, and utility abatement as needed by businesses		Copies of plan and ordinance were mailed 7/13/05
Taos Ski Valley		Money is being used for infrastructure needs. Specifically on paying for a loan for construction of a new sewer treatment plant, and other related water and sewer projects.	
Tucumcari	Money is used for permitting assistance, building assistance, leasing and buying of property, employee training and as otherwise deemed necessary by the Tucumcari Economic Development Corporation.		

Counties	Ordinance Used for Economic Development	Money Used for Other Purposes	Notes
Cibola County		Money is being used for infrastructure needs in the county, and not for economic development	
Guadalupe County		Money is used for repayment of bonds that were previously issued.	
Harding County	Used on a case by case basis as allowed by the Economic Development Plan		
San Miguel County	The county economic development plan was just passed. There currently is no ordinance to fund this plan but it is in the works and they are hoping to get it passed soon. Expecting an email for copy of plan.		The city of Las Vegas does have an infrastructure tax, however the money from this was used to pay for a civic center and there is no remainder for economic development
Santa Fe County	The Santa Fe Economic Development Corp, and county are trying to form a Certified Community Initiative to establish a broad set of economic development goals. The county will focus on land grants for businesses in the county development complex.		The plan for the Community Development Corp, is being submitted at the end of the month for board approval(Community Business Plan) Copies of plan and ordinance should be available by 07/05/05
Sandoval County		Money is being used for construction and maintenance of a landfill project and not for economic development.	

**Appendix 1: New Mexico Local Economic Development Act  
Chapter 5, Section 10, NMSA 1978**

[Local Economic Development, 5-10-1 through 5-10-13.](#)

5-10-1. Short title.

This act [5-10-1 to 5-10-13 NMSA 1978] may be cited as the "Local Economic Development Act".

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 [5-10-1 to 5-10-13 NMSA 1978] 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.

5-10-3. Definitions.

As used in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978]:

A. "department" means the economic development department;

B. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business 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 business; 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; 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 business; purchase of land for a publicly held industrial park; and the construction of a building for use by a qualifying business;

C. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a county;

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

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

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

G. "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; or

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

H. "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.

#### 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 [5-10-1 NMSA 1978] 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 [5-10-1 NMSA 1978] 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 [Chapter 7, Article 19D NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [6-25-1 to 6-25-16 NMSA 1978]; 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 [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [6-25-1 to 6-25-16 NMSA 1978]; 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 [5-10-1 NMSA 1978] or the Statewide Economic Development Finance Act [6-25-1 NMSA 1978].

#### 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.

#### 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. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies. 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 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.

5-10-7. Regional plans; joint powers agreement; regional government.

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional economic development plan which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978].

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

5-10-8. Economic development project applications.

A. After the adoption of an economic development plan by a local or regional government, a qualifying entity shall submit to the local or regional government an economic development project application.

B. The application shall be on a form and require such information as the local or regional government deems necessary.

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 business on the type or amount of assistance to be provided or on the scope of the economic development project.

5-10-10. Project participation agreement; duties and requirements.

A. The local or regional government and the qualifying entity shall enter into a project participation agreement.

B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

C. The participation agreement at a minimum shall set out:

- (1) the contributions to be made by each party to the participation agreement;
- (2) the security provided to the local or regional government by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and

cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

(3) a schedule for project development and completion, including measurable goals and time limits for those goals; and

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

#### 5-10-11. Project revenues; special fund; annual audit.

A. Local or regional government revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

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

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-14 NMSA 1978] of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

#### 5-10-12. Plan and project termination.

A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

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

#### 5-10-13. Limitations.

Nothing in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

**Appendix 2: Municipal Infrastructure Gross Receipts Tax**  
**Chapter 7, Article 19D, Section 11**

**7-19D-11. Municipal infrastructure gross receipts tax; authority by municipality to impose; ordinance requirements; election.**

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-fourth of one percent of the gross receipts of the person engaging in business and may be imposed in one-sixteenth of one percent increments by separate ordinances. Any ordinance enacting any increment of the first one-eighth of one percent of the tax is not subject to a referendum of any kind, notwithstanding any requirement of any charter municipality, except that an increment that is imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall be subject to a referendum as provided in Subsection D of this section.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal infrastructure gross receipts tax".

C. The governing body of a municipality, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, may dedicate the revenue for:

- (1) payment of special obligation bonds issued pursuant to a revenue bond act;
- (2) repair, replacement, construction or acquisition of infrastructure improvements, including sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights of way, easements, international ports of entry and land within the municipality or within the extraterritorial zone of the municipality;
- (3) municipal general purposes;
- (4) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities; and
- (5) Furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [[5-10-1](#) to [5-10-13](#) NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [[6-25-1](#) to [6-25-16](#) NMSA 1978], and use of not more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing any increment of the municipal infrastructure gross receipts tax in excess of the first one-eighth of one percent or any increment imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. 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 imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular municipal 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 [[Chapter 3, Articles 8 and 9](#) NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the municipal infrastructure gross receipts tax, then the ordinance

shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If the question of imposing the municipal infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax in excess of the first one-eighth of one percent for a period of one year from the date of the election.

**Appendix 3: County Infrastructure Gross Receipts Tax**  
**Chapter 7, Article 20E, Section 19**

**7-20E-19. County infrastructure gross receipts tax; authority to impose rate; use of funds; election.**

A. The majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county infrastructure gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for:

- (1) county general purposes;
- (2) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978;
- (3) repair, replacement, construction or acquisition of any county infrastructure improvements;
- (4) acquisition, construction, operation or maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities;
- (5) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities;
- (6) planning, design, construction, equipping, maintenance or operation of a county jail or juvenile detention facility; planning, assessment, design or operation of a regional system of juvenile services, including secure detention and nonsecure alternatives, that serves multiple contiguous counties; planning, design, construction, maintenance or operation of multipurpose regional adult jails or juvenile detention facilities; housing of county prisoners or juvenile offenders in any county jail or detention facility; or substance abuse, mental health or other programs for county prisoners or other inmates in county jails or for juvenile offenders in county or regional detention facilities; and
- (7) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [6-25-1 NMSA 1978], and use of not more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing the county infrastructure gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of imposing the tax. 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 imposing the tax. The question shall be submitted to the voters of the county area as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act [7-20E-1 NMSA 1978]. If the

question of imposing the county infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.