

TITLE 2 PUBLIC FINANCE
CHAPTER 94 LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)
PART 1 GENERAL PROVISIONS

2.94.1.1 ISSUING AGENCY: Economic Development Department.
[2.94.1.1 NMAC – N, 6/27/2023]

2.94.1.2 SCOPE: All persons or entities applying for Local Economic Development Act funds through the Economic Development Department.
[2.94.1.2 NMAC - N, 6/27/2023]

2.94.1.3 STATUTORY AUTHORITY: The general management of the Local Economic Development Act (LEDA) program shall be the responsibility of the economic development department as prescribed by governing legislation, Section 5-10-1 NMSA 1978.
[2.94.1.3 NMAC - N, 6/27/2023]

2.94.1.4 DURATION: Permanent.
[2.94.1.4 NMAC - N, 6/27/2023]

2.94.1.5 EFFECTIVE DATE: June 27, 2023, unless a later date is cited at the end of the section.
[2.94.1.5 NMAC - N, 6/27/2023]

2.94.1.6 OBJECTIVE: Under the Local Economic Development Act, Section 5-10-1 NMSA 1978, the New Mexico economic development department is granted authority to administer grants to local governments (municipality or county) to assist expanding or relocating companies that are qualified entities that will stimulate economic development and produce public benefits pursuant to LEDA.
[2.94.1.6 NMAC - N, 6/27/2023]

2.94.1.7 DEFINITIONS:

A. “Qualifying entity” is a corporation, limited liability company, partnership, joint venture, syndicate, or association that is an economic-base employer, also referred to as “company” as defined in Subsection L of Section 5-10-3 NMSA 1978.

B. “Economic-base employer” is an employer who is a manufacturer of a product, or a non-retail service provide who derives over fifty percent of their revenue outside of the borders of New Mexico.

C. “Fiscal agent” is a local or regional government entity who serves as the agent for receipt of initial investment and subsequent disbursement/reimbursement of funds based on the approval of the economic development department.

D. “Security” is a tradable financial asset, or collateral, pledged by the qualifying entity to guarantee the LEDA investment, and may be, but is not limited to, in the form of letter of credit, surety bond, mortgage security, security agreement-escrow or lien, security interest-equipment or lien, or uniform commercial code filing.

E. “Project participation agreement (PPA)” is the agreed upon scope of work between the fiscal agent and the qualifying entity.

F. “Intergovernmental agreement (IGA)” is the agreed upon scope of work between the fiscal agent and the economic development department.

G. “Economic impact analysis (EIA)” is an analysis that addresses the economic impact to the local and state tax base using the project information provided by the qualifying entity.

H. “Project term sheet” is a document which identifies security interest that is equal to the approved amount of LEDA investment, performance metrics, claw back provisions, expected project leverage (private investment versus public funds requested), a job creation timeline and a project starting head count.

I. “LEDA summary” is a document outlining the overall scope and terms of the LEDA project.

J. “Project ordinance” is legislation enacted by a local or regional government authority that outlines the project scope and includes a PPA and IGA.

[2.94.1.7 NMAC - N, 6/27/2023]

2.94.1.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company eligibility: Companies that increase the economic base of New Mexico are eligible to be considered for LEDA funds. The company must manufacture a product in New Mexico or provide a non-retail service with at least fifty percent of total revenues generated from a client base outside of New Mexico. Eligible companies must also reside in New Mexico either through ownership or lease of a facility and be in good standing with the economic development department and all other state entities. The intent is to support companies expanding in or relocating to New Mexico.

B. Project eligibility: The project must have significant investment into permanent capital infrastructure (buildings, roads, utilities) and be an expansion or relocation that results in the creation of permanent full-time direct employment. The project must be sufficiently funded and ready to proceed. All projects funded are statutorily required to provide security equal to the LEDA public investment.

C. Reimbursable costs: Eligible costs may include, but are not limited to, the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure and public works improvements essential to the location or expansion of a company.

D. LEDA investment/funding: The level of public investment into any LEDA project is at the discretion of the executive branch and varies based on project quality and location. The main criterion of the evaluation includes total significant capital investment, total number of new job creation, and quality of new job wages. Additional consideration is given to projects that demonstrate location in rural and underserved areas of New Mexico, significant community impact and support, and environmentally sustainable outcomes. All funding decisions are made by the executive branch based upon recommendations by the secretary of the economic development department and are a formal offer to apply, go through due diligence and formal public process. All LEDA investments are funded on a strictly reimbursable basis after the company has incurred LEDA eligible expenses and met benchmarks provided in the PPA.

[2.94.1.8 NMAC - N, 6/27/2023]

2.94.1.9 PROCEDURAL OVERVIEW:

A. Economic development department role: The economic development department determines company and project eligibility through initial project data intake and vetting prior to invitation to formally apply for LEDA investment funds. Due diligence is conducted throughout the application process. The economic development department works with the executive branch to determine an appropriate LEDA project investment based on capital expenditures, job creation, location of relocating or expanding company and other factors related to the public good.

(1) It is the responsibility of the economic development department to conduct due diligence, including a commercial credit check and fiscal analysis to determine the benefit of the LEDA project and potential investment of state funds to the local government and state.

(a) The Economic Development Department will collect qualifying entity and project information necessary to complete the Economic Impact Analysis (EIA) and an incentive analysis of all applicable incentives within New Mexico.

(b) The economic development department will confirm local government support for the project and identify any additional local incentives.

(c) The economic development department will prepare a LEDA summary which is provided to the executive branch for its consideration of LEDA investment funds.

(2) Upon the executive branch's provisional determination of the level of LEDA investment funding, the economic development department will issue an offer of LEDA investment and an invitation to formally apply for a LEDA grant to the qualifying entity. The provisional offer is subject to the formal application, additional due diligence, and local approval.

(3) The economic development department will provide access to the online application to the company representative designated to complete the LEDA application. Information collected in a LEDA application includes, but is not limited to, the following elements: company information and structure, project description, total capital investment, land, building, equipment, infrastructure, total number, and types of jobs to be created as well as projected job ramp, wages and benefits, up to three years of financial statements, proformas, and sources and uses of all funding. The economic development department reviews all LEDA applications and approves when deemed complete and ready for the public process.

B. Community role: The local government acts as the fiscal agent for the receipt of initial LEDA investment funds and subsequent disbursements/reimbursement of funds to the qualifying entity based on the economic development department's approval. The fiscal agent will keep all project funds in a separate account and obtain prior approval from the economic development department for all disbursements to the qualifying entity to ensure that all reimbursable expenses are eligible. The economic development department will work with the fiscal

agent and the qualifying entity to ensure the qualifying entity maintains the performance benchmarks for the term of the PPA. The fiscal agent is responsible for tracking any outstanding LEDA project balances. Any unused LEDA funds revert to the economic development department at the close of a project.

C. Public process: All LEDA projects are required to have a public hearing and the adoption of an ordinance by the fiscal agent's governing body. The project ordinance passed by the local community includes a PPA outlining the agreed upon scope of work between the fiscal agent and the qualifying entity, an IGA between the fiscal agent and the economic development department for the transfer and disbursement of public funds. The PPA will include job creation requirements, public investment distribution milestones (determined by established performance benchmarks) and claw back requirements.

(1) Upon adoption of the ordinance the economic development department will work with the qualifying entity and the fiscal agent to execute the PPA, IGA and security agreement.

(2) Once all LEDA project documents have been fully executed the economic development department will work with the fiscal agent to transfer LEDA investment money to the fiscal agent.

D. Reporting: All LEDA projects are required to submit quarterly job reports and annual economic impact data per the terms outlined in the PPA.

(1) The economic development department will work with the fiscal agent and the qualifying entity to ensure all reports are accurate and timely.

(2) The economic development department will provide the qualifying entity access to the online reporting system to create and submit quarterly job reports and actual annual economic impact data.

(3) The economic development department will create an annual EIA using the actual economic impact data provided by the qualifying entity to demonstrate return on investment.

E. LEDA project closeout: A LEDA project shall be closed out by passage by the fiscal agent governing body of a repealing ordinance unless the enabling ordinance includes a sunset provision.

(1) The economic development department will collect actual economic impact data from the qualifying entity to prepare a final EIA and demonstrate return on investment.

(2) The economic development department will assist the fiscal agent in closing out the LEDA project fund, returning any unexpended funds to the economic development department, and the release of any instrument of security for the LEDA project to the company.

(3) The fiscal agent is responsible for enacting an ordinance to repeal the enabling ordinance when the project is complete or all clawbacks have been received unless the enabling ordinance includes a sunset provision.

[2.94.1.9 NMAC - N, 6/27/2023]

HISTORY OF 2.94.1 NMAC: [RESERVED]