

1 HOUSE (SENATE) BILL _____

2 54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC FINANCE; AMENDING THE INDUSTRIAL REVENUE BOND
12 ACT AND THE COUNTY INDUSTRIAL REVENUE BOND ACT TO INCLUDE ELECTRIC
13 TRANSMISSION FACILITIES THAT ARE NOT PUBLIC UTILITIES AS ELIGIBLE
14 PROJECTS; PROVIDING FOR PAYMENTS IN LIEU OF TAXES TO THE STATE FOR
15 CERTAIN PROJECTS.

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

18 SECTION 1. Section 3-32-1 NMSA 1978 (being Laws 1969, Chapter 201, Section 1, as
19 amended) is amended to read:

20 "3-32-1. DEFINITIONS. -- Wherever used in the Industrial Revenue Bond Act
21 unless a different meaning clearly appears in the context, the following terms whether used in the
22 singular or plural shall be given the following respective interpretations:

1 A. “municipality” means any city, town or village in the state of New
2 Mexico;

3 B. “project” means any land and building or other improvements thereon, the
4 acquisition by or for a New Mexico corporation of the assets or stock of an existing business or
5 corporation located outside the state of New Mexico to be relocated within or near the
6 municipality in the state of New Mexico and all real and personal properties deemed necessary in
7 connection therewith, whether or not now in existence, which shall be suitable for use by the
8 following or by any combination of two or more thereof:

9 (1) any industry for the manufacturing, processing or assembling of
10 any agricultural or manufactured products;

11 (2) any commercial enterprise in storing, warehousing, distributing or
12 selling products of agriculture, mining or industry but does not include facilities designed for the
13 sale of goods or commodities at retail or distribution to the public of electricity, gas, water or
14 telephone or other services commonly classified as public utilities;

15 (3) any business in which all or part of the activities of the business
16 involve the supplying of services to the general public or to governmental agencies or to a
17 specific industry or customer but does not include establishments primarily engaged in the sale
18 of goods or commodities at retail;

19 (4) any water distribution or irrigation system, including without
20 limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and
21 equipment, designed to provide water to any vineyard or winery;

22 (5) any electric generation or transmission facility other than one for
23 which both location approval and a certificate of convenience and necessity are required prior to

1 commencing construction or operation of the facility, pursuant to the Public Utility Act ~~and~~
2 ~~Electric Utility Industry Restructuring Act of 1999~~; and

3 (6) any 501(c)(3) corporation;

4 C. “governing body” means the board or body in which the legislative
5 powers of the municipality are vested;

6 D. “property” means any land, improvements thereon, buildings and any
7 improvements thereto, machinery and equipment of any and all kinds necessary to the project,
8 operating capital and any other personal properties deemed necessary in connection with the
9 project;

10 E. “mortgage” means a mortgage or a mortgage and deed of trust or the
11 pledge and hypothecation of any assets as collateral security;

12 F. “health care services” means the diagnosis or treatment of sick or injured
13 persons or medical research and includes the ownership, operation, maintenance, leasing and
14 disposition of health care facilities such as hospitals, clinics, laboratories, x-ray centers and
15 pharmacies and, for any small municipality only, office facilities for physicians;

16 G. “refinance a hospital or 501(c)(3) corporation project” means the issuance
17 of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any
18 obligations previously incurred to finance or aid in financing a project of any nonprofit
19 corporation engaged in health care services, including nursing homes, or of any 501(c)(3)
20 corporation, which would constitute a project under the Industrial Revenue Bond Act had it been
21 originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond
22 Act; and

1 H. "501(c)(3) corporation" means a corporation that demonstrates to the
2 taxation and revenue department that it has been granted exemption from the federal income tax
3 as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as
4 amended or renumbered."

5 SECTION 2. Section 3-32-6 NMSA 1978 (being Laws 1997, Chapter 335, Section 3, as
6 amended) is amended to read:

7 "3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.-- In
8 addition to any other powers that it may now have, a municipality shall have the following
9 powers:

10 A. to acquire, whether by construction, purchase, gift or lease, one or more
11 projects that shall be located within this state and may be located within or without the
12 municipality or partially within or partially without the municipality, but which shall not be
13 located more than fifteen miles outside of the corporate limits of the municipality as such
14 corporate limits are shown in the records of the county clerk of the county in which the
15 municipality is located; provided that:

16 (1) urban transit buses qualifying as a project pursuant to Subsection B
17 of Section 3-32-3 NMSA 1978 need not be continuously located within this state but the
18 commercial enterprise using the urban transit buses for leasing shall meet the location
19 requirement of this subsection; and

20 (2) a municipality shall not acquire any electricity generation or
21 transmission facility project unless the acquisition is approved by the local school board of the
22 school district in which a project is located and the governing body, the local school board and
23 the person proposing the project negotiate and determine the amount of an annual in-lieu tax

1 payment to be made to the school district by the person proposing the project, for the period that
2 the municipality owns and leases the project, and provided such approval shall not be
3 unreasonably withheld;

4 B. to sell or lease or otherwise dispose of any or all of its projects upon such
5 terms and conditions as the governing body may deem advisable and as shall not conflict with
6 the provisions of the Industrial Revenue Bond Act;

7 C. to issue revenue bonds for the purpose of defraying the cost of acquiring
8 by construction and purchase or either any project and to secure the payment of such bonds, all
9 as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate
10 any project as a business or in any manner except as lessor;

11 D. to refinance one or more hospital or 501(c)(3) corporation projects and to
12 acquire any such hospital or 501 (c)(3) corporation project whether by construction, purchase,
13 gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and
14 may be located within or without the municipality or partially within or partially without the
15 municipality, but which shall not be located more than fifteen miles outside of the corporate
16 limits of the municipality as such corporate limits are shown in the records of the county clerk of
17 the county in which the municipality is located, and to issue revenue bonds to refinance and
18 acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all
19 as provided in the Industrial Revenue Bond Act. A municipality shall not have the power to
20 operate a hospital or 501(c)(3) corporation project as a business or in any manner except as
21 lessor; and

22 E. to refinance one or more projects of any private institution of higher
23 education and to acquire any such project, whether by construction, purchase, gift or lease;

1 provided that the project shall be located within this state and may be located within or without
2 the municipality or partially within or partially without the municipality, but the project shall not
3 be located more than fifteen miles outside of the corporate limits of the municipality as such
4 corporate limits are shown in the records of the county clerk of the county in which the
5 municipality is located, and to issue revenue bonds to refinance and acquire any project of any
6 private institution of higher education and to secure the payment of such bonds. A municipality
7 shall not have the power to operate a project of a private institution of higher education as a
8 business or in any manner except as lessor.

9 SECTION 3. Section 3-32-6.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 2,
10 as amended) is amended to read:

11 “3-32-6.1. NOTICE TO COUNTY.-- A. Prior to adopting an ordinance issuing
12 industrial revenue bonds, the municipality shall give notice to the board of county commissioners
13 and the county assessor of its intent to consider the matter. The board and the county assessor
14 shall be notified at least thirty days prior to the meeting at which final action is to be taken so
15 that comments can be transmitted to the municipality.

16 B. The board of county commissioners and the county assessor shall be able
17 to forward their comments and any concerns to the city council, but there is no approval required
18 from the board or the county assessor and they do not have veto over the proposed industrial
19 revenue bond issuance.

20 C. The municipality and county shall jointly develop criteria for issuance of
21 industrial revenue bonds by either government; provided, however, that industrial revenue bonds
22 may be authorized and issued before development of the criteria is completed.

1 D. The state of New Mexico shall receive annual payments in lieu of taxes
2 equal to five percent (5%) of the total amount of payments in lieu of taxes paid to counties,
3 municipalities and other local taxing entities to which this section is applicable and five percent
4 (5%) of the value of any other consideration applicable to all such projects. A copy of any
5 agreement approved pursuant to this subsection shall be provided to the secretary of the state
6 department of finance and administration within thirty days of written approval of such
7 agreement by all of the parties.

8 ~~D~~E. The municipality shall notify the board of county commissioners and the county
9 assessor when an industrial revenue bond has matured, expired or been replaced by a refunding
10 bond.”

11 SECTION 4. Section 4-59-2 NMSA 1978 (being Laws 1975, Chapter 286, Section 2, as
12 amended) is amended to read:

13 “4-59-2. DEFINITIONS. --As used in the County Industrial Revenue Bond Act,
14 unless the context clearly indicates otherwise:

15 A. “commission” means the governing body of a county;
16 B. “county” means a county organized or incorporated in New Mexico;
17 C. “501(c)(3) corporation” means a corporation that demonstrates to the
18 taxation and revenue department that it has been granted exemption from the federal income tax
19 as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as
20 amended or renumbered;

21 D. “health care service” means the diagnosis or treatment of sick or injured
22 persons or medical research and includes the ownership, operation, maintenance, leasing and

1 disposition of health care facilities, such as hospitals, clinics, laboratories, x-ray centers and
2 pharmacies;

3 E. "mortgage" means a mortgage or a mortgage and deed of trust or the
4 pledge and hypothecation of any assets as collateral security;

5 F. "project" means any land and building or other improvements thereon, the
6 acquisition by or for a New Mexico corporation of the assets or stock of an existing business or
7 corporation located outside the state to be relocated within a county but, except as provided in
8 Paragraph (1) of Subsection A of Section 4-59-4 NMSA 1978, not within the boundaries of any
9 incorporated municipality in the state, and all real and personal properties deemed necessary in
10 connection therewith, whether or not now in existence, which shall be suitable for use by the
11 following or by any combination of two or more thereof:

12 (1) an industry for the manufacturing, processing or assembling of
13 agricultural or manufactured products;

14 (2) a commercial enterprise that has received a permit from the
15 energy, minerals and natural resources department for a mine that has not been in operation prior
16 to the issuance of bonds for the project for which the enterprise will be involved;

17 (3) a commercial enterprise that has received any necessary state
18 permit for a refinery, treatment plant or processing plant of energy products that was not in
19 operation prior to the issuance of bonds for the project for which the enterprise will be involved;

20 (4) a commercial enterprise in storing, warehousing, distributing or
21 selling products of agriculture, mining or industry, but does not include a facility designed for
22 the sale or distribution to the public of electricity, gas, telephone or other services commonly
23 classified as public utilities, except for:

1 (a) water utilities; and

2 (b) any electric generation or transmission facility other than
3 one for which both location approval and a certificate of convenience and necessity are required
4 prior to commencing construction or operation of the facility, pursuant to the Public Utility Act;

5 (5) a business in which all or part of the activities of the business
6 involve the supplying of services to the general public or to governmental agencies or to a
7 specific industry or customer;

8 (6) a nonprofit corporation engaged in health care services;

9 (7) a mass transit or other transportation activity involving the
10 movement of passengers, an industrial park, an office headquarters and a research facility;

11 (8) a water distribution or irrigation system, including without
12 limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and
13 equipment; and

14 (9) a 501(c)(3) corporation; and

15 G. “property” means any land, improvements thereon, buildings and any
16 improvements thereto, machinery and equipment of any and all kinds necessary to the project,
17 operating capital and any other personal properties deemed necessary in connection with the
18 project.”

19 SECTION 5. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as
20 amended) is amended to read:

21 “4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In addition to
22 any other powers that it may now have, each county shall have the following powers:

1 A. to acquire, whether by construction, purchase, gift or lease, one or more
2 projects, which shall be located within this state and shall be located within the county outside
3 the boundaries of any incorporated municipality as shown in the records of the county clerk of
4 the county in which the municipality is located; provided, however, that:

5 (1) a class A county with a population of more than three hundred
6 thousand may acquire projects located anywhere in the county; and

7 (2) a county shall not acquire any electricity generation or
8 transmission facility project unless the acquisition is approved by the local school board of the
9 school district in which a project is located and the board of county commissioners, the local
10 school board and the person proposing the project negotiate and determine the amount of an
11 annual in-lieu tax payment to be made to the school district by the person proposing the project,
12 for the period that the county owns and leases the project, and provided such approval shall not
13 be unreasonably withheld;

14 B. to sell or lease or otherwise dispose of any or all of its projects upon such
15 terms and conditions as the commission may deem advisable and as shall not conflict with the
16 provisions of the County Industrial Revenue Bond Act; and

17 C. to issue revenue bonds for the purpose of defraying the cost of acquiring,
18 by construction and purchase or either, any project and to secure the payment of such bonds, all
19 as provided in the County Industrial Revenue Bond Act. No county shall have the power to
20 operate any project as a business or in any manner except as lessor thereof.”

21 SECTION 6. Section 4-59-4.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 4,
22 as amended) is amended to read:

1 “4-59-4.1. NOTICE.--A. Prior to adopting an ordinance issuing county industrial
2 revenue bonds, a county shall give notice to the county assessor and any entity located within the
3 county authorized to levy taxes on property in the county of its intent to consider the matter. The
4 county assessor and entities authorized to levy taxes shall be notified by certified mail, return
5 receipt requested, at least thirty calendar days prior to the meeting at which final action is to be
6 taken so that comments can be transmitted to the county. The notice shall include the amount, the
7 purpose and the time period of the proposed industrial revenue bonds.

8 B. The county assessor and entities authorized to levy taxes shall be able to
9 forward their comments and any concerns to the board of county commissioners, but there is no
10 approval required from the county assessor or entities authorized to levy taxes and they do not
11 have veto over the proposed county industrial revenue bond issuance.

12 C. The county and entities authorized to levy taxes shall jointly develop
13 criteria for issuance of industrial revenue bonds; provided, however, that county industrial
14 revenue bonds may be authorized and issued before development of the criteria is completed.

15 D. The state of New Mexico shall receive annual payments in lieu of taxes
16 equal to five percent (5%) of the total amount of payments in lieu of taxes paid to counties,
17 municipalities and other local taxing entities to which this subsection is applicable and five
18 percent (5%) of the value of any other consideration applicable to all such projects. A copy of
19 any agreement approved pursuant to this subsection shall be provided to the secretary of the state
20 department of finance and administration within thirty days of written approval of such
21 agreement by all of the parties.

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~~D~~E. The county shall notify the board of county commissioners, the county assessor and any entity levying taxes on property in the county when an industrial revenue bond has matured, expired or been replaced by a refunding bond.”

SECTION 7. Effective Date. –The effective date of the provisions of this act is July 1, 2020.