

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 763

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO MUNICIPALITIES; ENACTING THE LOCAL OPTION MINOR
LEAGUE BASEBALL STADIUM ACT; AUTHORIZING CERTAIN MUNICIPALITIES
TO IMPOSE A DAILY FEE ON LODGING WITHIN THE MUNICIPALITY;
AUTHORIZING THE ISSUANCE OF BONDS; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Local Option Minor League Baseball Stadium Act".

Section 2. DEFINITIONS. -- As used in the Local Option
Minor League Baseball Stadium Act:

A. "gross taxable rent" means the total amount of
rent paid for lodging, not including the state gross receipts
tax or local sales taxes;

B. "lodging" means the transaction of furnishing

rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;

C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;

D. "minor league baseball stadium fee" means the fee on lodging authorized by the Local Option Minor League Baseball Stadium Act;

E. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;

F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to a minor league baseball stadium fee authorized in the Local Option Minor League Baseball Stadium Act;

1 G. "taxable premises" means a hotel, apartment,
2 apartment hotel, apartment house, lodge, lodging house,
3 rooming house, motor hotel, guest house, guest ranch, ranch
4 resort, guest resort, mobile home, motor court, auto court,
5 auto camp, trailer court, trailer camp, trailer park, tourist
6 camp, cabin or other premises used for lodging;

7 H. "tourist" means a person who travels for the
8 purpose of business, pleasure or culture to a municipality
9 imposing a minor league baseball stadium fee;

10 I. "tourist-related events" means events that are
11 planned for, promoted to and attended by tourists;

12 J. "tourist-related facilities and attractions"
13 means facilities and attractions that are intended to be used
14 by or visited by tourists;

15 K. "vendee" means a natural person to whom lodgings
16 are furnished in the exercise of the taxable service of
17 lodging; and

18 L. "vendor" means a person or his agent furnishing
19 lodgings in the exercise of the taxable service of lodging.

20 Section 3. AUTHORIZATION OF MINOR LEAGUE BASEBALL STADIUM
21 FEE--USE OF PROCEEDS. --

22 A. The governing body of a municipality that is
23 located in a class A county and that had a population of more
24 than two hundred thousand according to the most recent federal
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1 decennial census may impose by ordinance a minor league
2 baseball stadium fee on lodging within the municipality. The
3 fee shall not exceed one and twenty-five hundredths percent of
4 the gross taxable rent.

5 B. Every vendor who is furnishing lodgings within a
6 municipality is exercising a taxable privilege.

7 Section 4. EXEMPTIONS. -- The minor league baseball stadium
8 fee shall not apply:

9 A. if a vendee:

10 (1) has been a permanent resident of the
11 taxable premises for a period of at least thirty consecutive
12 days; or

13 (2) enters into or has entered into a written
14 agreement for lodgings at the taxable premises for a period of
15 at least thirty consecutive days;

16 B. if the rent paid by a vendee is less than two
17 dollars (\$2.00) a day;

18 C. to lodging accommodations at institutions of the
19 federal government, the state or any political subdivision
20 thereof;

21 D. to lodging accommodations at religious,
22 charitable, educational or philanthropic institutions,
23 including accommodations at summer camps operated by such
24 institutions;

1 E. to clinics, hospitals or other medical
2 facilities;

3 F. to privately owned and operated convalescent
4 homes or homes for the aged, infirm, indigent or chronically
5 ill; or

6 G. if the vendor does not offer at least three
7 rooms within or attached to a taxable premises for lodging or
8 at least three other premises for lodging or a combination of
9 these within the taxing jurisdiction.

10 Section 5. COLLECTION OF MINOR LEAGUE BASEBALL STADIUM
11 FEE. --

12 A. Every vendor providing lodgings in a
13 municipality imposing a minor league baseball stadium fee shall
14 collect the proceeds thereof on behalf of the municipality and
15 shall act as a trustee therefor.

16 B. The minor league baseball stadium fee shall be
17 collected from vendees in accordance with the ordinance
18 imposing the tax and shall be charged separately from the rent
19 fixed by the vendor for the lodgings.

20 Section 6. AUDIT OF VENDORS. -- A municipality imposing a
21 minor league baseball stadium fee shall include verification of
22 the collection of the correct minor league baseball stadium fee
23 in any audit of a vendor conducted pursuant to Section 3-38-
24 17.1 NMSA 1978.

1 Section 7. FINANCIAL REPORTING. --The governing body of
2 any municipality imposing a minor league baseball stadium fee
3 shall report to the local government division of the department
4 of finance and administration on a quarterly basis any
5 expenditure of minor league baseball stadium fee funds.

6 Section 8. ENFORCEMENT. --

7 A. An action to enforce the Local Option Minor
8 League Baseball Stadium Act may be brought by:

9 (1) the attorney general, the district
10 attorney in the county of jurisdiction or an attorney
11 representing a municipality that has imposed the minor league
12 baseball stadium fee; or

13 (2) a vendor who is collecting the proceeds of
14 an occupancy tax in the county of jurisdiction.

15 B. A district court may issue a writ of mandamus or
16 order an injunction or other appropriate remedy to enforce the
17 provisions of the Local Option Minor League Baseball Stadium
18 Act.

19 C. The court shall award costs and reasonable
20 attorney fees to the prevailing party in a court action to
21 enforce the provisions of the Local Option Minor League
22 Baseball Stadium Act.

23 Section 9. COLLECTION OF DELINQUENCIES. --

24 A. The governing body of the municipality shall, by
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1 ordinance, provide that a vendor is liable for the payment of
2 the proceeds of any minor league baseball stadium fee that the
3 vendor failed to remit to the municipality, due to his failure
4 to collect the fee or otherwise, and shall provide for a civil
5 penalty for any such failure in an amount equal to the greater
6 of ten percent of the amount that was not duly remitted to the
7 municipality or one hundred dollars (\$100).

8 B. The municipality may bring an action in law or
9 equity in the district court for the collection of any amounts
10 due, including without limitation penalties thereon, interest
11 on the unpaid principal at a rate of not exceeding one percent
12 a month, the costs of collection and reasonable attorney fees
13 incurred in connection therewith.

14 Section 10. LIEN FOR MINOR LEAGUE BASEBALL STADIUM FEE--
15 PAYMENT--CERTIFICATE OF LIEN.--

16 A. The minor league baseball stadium fee imposed by
17 a municipality constitutes a lien in favor of that municipality
18 upon the personal and real property of the vendor providing
19 lodgings in that municipality. The lien may be enforced as
20 provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority
21 of the lien shall be determined from the date of filing.

22 B. Under process or order of court, no person shall
23 sell the property of any vendor without first ascertaining from
24 the clerk or treasurer of the municipality in which the vendor
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is located the amount of any minor league baseball stadium fee due the municipality. Any minor league baseball stadium fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the municipality shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the municipality against any vendor pursuant to the Local Option Minor League Baseball Stadium Act.

Section 11. PENALTIES. --The governing body of the municipality may, by ordinance, provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the minor league baseball stadium fee ordinance for a failure to pay the fee, to remit the proceeds thereof to the municipality or to account properly for any lodging and the fee proceeds pertaining thereto.

Section 12. ORDINANCE REQUIREMENTS. --The ordinance imposing a minor league baseball stadium fee or any ordinance amendatory thereof or supplemental thereto, except as limited by or otherwise provided in the Local Option Minor League Baseball Stadium Act, shall:

1 A. state the rate or other amount of the minor
2 league baseball stadium fee; the times, place and method for
3 the payment of the minor league baseball stadium fee proceeds
4 to the municipality; the accounts and other records to be
5 maintained in connection with the minor league baseball stadium
6 fee; a procedure for making refunds and resolving disputes
7 relating to the minor league baseball stadium fee, including
8 exemptions pertaining thereto; the procedure for preservation
9 and destruction of records and their inspection and
10 investigation; vendor audit requirements; applicable civil and
11 criminal penalties; and a procedure of liens, distraint and
12 sales to satisfy such liens;

13 B. provide other rights, privileges, powers,
14 immunities and other details relating to the collection of the
15 minor league baseball stadium fee and the remittance of the
16 proceeds thereof to the municipality; and

17 C. include provisions permitting vendors to fulfill
18 the collection, remittance, reporting and record-keeping
19 responsibilities pursuant to the Local Option Minor League
20 Baseball Stadium Act in conjunction with similar
21 responsibilities pursuant to the Lodgers' Tax Act.

22 Section 13. USE OF TAX PROCEEDS. -- A municipality imposing
23 a minor league baseball stadium fee shall use the proceeds in
24 the following manner:
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1 A. not less than one-half of the proceeds from the
2 minor league baseball stadium fee shall be used for
3 advertising, publicizing and promoting tourist-related
4 facilities and attractions and tourist-related events; and

5 B. the proceeds from the minor league baseball
6 stadium fee in excess of the amount required to be used
7 pursuant to Subsection A of this section may be used to defray
8 the costs of:

9 (1) acquiring land for, designing,
10 constructing, improving, renovating, operating, maintaining or
11 making capitol improvements to a minor league baseball stadium
12 in the municipality;

13 (2) payment of the principal, interest or
14 prior redemption premiums due in connection with and any other
15 charges pertaining to revenue bonds authorized by Section 14 or
16 15 of the Local Option Minor League Baseball Stadium Act;

17 (3) advertising, publicizing and promoting
18 tourist-related facilities and attractions and tourist-related
19 events;

20 (4) collecting and otherwise administering the
21 fee; or

22 (5) any combination of the purposes or
23 transactions stated in this subsection.

24 Section 14. REVENUE BONDS--

1 A. Revenue bonds may be issued at any time or from
2 time to time by a municipality that has imposed the minor
3 league baseball stadium fee to defray wholly or in part the
4 costs of the purposes authorized in Paragraph (1) of Subsection
5 B of Section 13 of the Local Option Minor League Baseball
6 Stadium Act.

7 B. The revenue bonds may be payable from and
8 payment may be secured by a pledge of and lien on the revenues
9 derived from:

10 (1) the proceeds of the minor league baseball
11 stadium fee of the municipality after the deduction of those
12 amounts required to be expended pursuant to Subsection A of
13 Section 13 of the Local Option Minor League Baseball Stadium
14 Act and the administration costs pertaining to the tax in an
15 amount not to exceed ten percent of the minor league baseball
16 stadium fee receipts collected by the municipality in any
17 fiscal year;

18 (2) a minor league baseball stadium to which
19 the bonds pertain, after provision is made for the payment of
20 the operation and maintenance expenses of the stadium;

21 (3) any other legal available revenues of the
22 municipality; or

23 (4) a combination of such net revenues from
24 the sources designated in Paragraphs (1) through (3) of this
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subsection.

C. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.

D. Except as otherwise provided in the Local Option Minor League Baseball Stadium Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

Section 15. REFUNDING BONDS. --

A. Any municipality having issued revenue bonds as authorized in the Local Option Minor League Baseball Stadium Act may issue refunding revenue bonds payable from pledged revenues therein authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality may determine, notwithstanding the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations,

1 including without limitation any capitalization of any interest
2 thereon in arrears or about to become due for any period not
3 exceeding one year from the date of the refunding bonds;

4 (2) for the purpose of reducing interest costs
5 or effecting other economies;

6 (3) for the purpose of modifying or
7 eliminating restrictive contractual limitations pertaining to
8 the issuance of additional bonds, otherwise concerning the
9 outstanding bonds, or to any facilities relating thereto; or

10 (4) for any combination of the foregoing
11 purposes.

12 C. The interest on any bond refunded shall not be
13 increased to any rate in excess of the rate authorized in the
14 Public Securities Act and shall be paid as authorized in that
15 act.

16 D. Bonds for refunding any bonds for any other
17 purpose permitted by the Local Option Minor League Baseball
18 Stadium Act may be issued separately or issued in combination
19 in one series or more.

20 E. Except as otherwise provided in the Local Option
21 Minor League Baseball Stadium Act, refunding bonds authorized
22 in that act shall be issued in accordance with the provisions
23 of Sections 3-31-10 and 3-31-11 NMSA.

24 Section 16. EMERGENCY.--It is necessary for the public
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peace, health and safety that this act take effect immediately.

- 14 -

underscored material = new
[bracketed material] = delete