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SENATE BILL 114

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Mary Jane Garcia

AN ACT

RELATING TO MUNICIPALITIES; ENACTING THE CONVENTION CENTER FINANCING ACT; AUTHORIZING CERTAIN MUNICIPALITIES TO ASSESS A DAILY FEE ON LODGING WITHIN THE MUNICIPALITY; AUTHORIZING ISSUANCE OF BONDS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Convention Center Financing Act".

Section 2. DEFINITIONS.--As used in the Convention Center Financing Act:

A. "convention center fee" means the fee on lodging authorized in the Convention Center Financing Act;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent or other consideration valued in money uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at an assessable premises;

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

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1 D. "assessable premises" means a hotel, apartment
2 hotel, motor hotel, bed and breakfast accommodation, resort or
3 recreational vehicle park;

4 E. "vendee" means a natural person to whom
5 lodgings are furnished in the exercise of the service of
6 lodging; and

7 F. "vendor" means a person or his agent furnishing
8 lodgings in the exercise of the service of lodging.

9 Section 3. AUTHORIZATION OF CONVENTION CENTER FEE--USE
10 OF PROCEEDS.--

11 A. The governing body of a municipality that is
12 located in a class A county and that had a population of more
13 than seventy thousand but less than one hundred thousand
14 according to the 2000 federal decennial census may assess by
15 ordinance a fee on lodging within the municipality. The
16 amount of the fee shall not exceed two dollars fifty cents
17 (\$2.50) per room or other unit of accommodation in or at an
18 assessable premises for each day the room or other unit of
19 accommodation is rented by a vendor to a vendee. The fee may
20 be referred to as the "convention center fee".

21 B. A convention center fee assessed pursuant to
22 this section shall be reviewed by the governing body of the
23 municipality on or about each fifth anniversary of the
24 imposition of the convention center fee. The governing body
25 shall adjust the amount of the convention center fee to result
in an amount of revenue equivalent to the following percentage
of the actual operating and maintenance costs for the
preceding fiscal year of the convention center to which the
revenue from the fee is dedicated pursuant to Subsection D of

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1 this section:

2 (1) for fiscal years through 2025, one
3 hundred twenty percent;

4 (2) for fiscal year 2026, one hundred
5 percent; and

6 (3) for fiscal year 2027 and subsequent
7 fiscal years, a percentage that is two percent less than the
8 prior fiscal year.

9 C. No adjustment in the convention center fee
10 shall be made while any revenue bonds to which the revenues of
11 the convention center fee are pledged remain outstanding.

12 D. The governing body of the municipality, at the
13 time of enacting the ordinance assessing the convention center
14 fee, shall dedicate the revenue from the fee as provided in
15 this subsection. The revenue from the fee may be dedicated
16 for all or any portion of:

17 (1) costs of acquisition of land for and the
18 design, construction, equipping, furnishing, operation and
19 maintenance of a convention center located within the
20 municipality;

21 (2) payments of principal, interest or prior
22 redemption premiums due in connection with and any other
23 charges pertaining to revenue bonds authorized by Section 13
24 or 14 of the Convention Center Financing Act; or

25 (3) costs of collecting and otherwise
administering the convention center fee; provided that no such
costs shall be paid until all required payments on revenue
bonds are made and that no more than ten percent of the
revenue collected in any fiscal year shall be used to pay such

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costs.

Section 4. EXEMPTIONS.--The convention center fee shall not apply:

A. if a vendee:

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

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

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

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

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

E. to clinics, hospitals or other medical facilities;

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

G. if the vendor does not offer at least three rooms within or attached to an assessable premises for lodging or at least three other premises for lodging or a combination of these within the municipality.

Section 5. COLLECTION OF CONVENTION CENTER FEE.--

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1 A. Every vendor providing lodgings in a
2 municipality assessing a convention center fee shall collect
3 the proceeds thereof on behalf of the municipality and shall
4 act as a trustee therefor.

5 B. The convention center fee shall be collected
6 from vendees in accordance with the ordinance assessing the
7 fee and shall be charged separately from the rent fixed by the
8 vendor for the lodgings.

9 Section 6. AUDIT OF VENDORS.--A municipality assessing a
10 convention center fee shall include verification of the
11 collection of the correct convention center fee in any audit
12 of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

13 Section 7. FINANCIAL REPORTING.--The governing body of
14 any municipality assessing a convention center fee shall
15 report to the local government division of the department of
16 finance and administration on a quarterly basis any
17 expenditure of convention center fee funds.

18 Section 8. ENFORCEMENT.--

19 A. An action to enforce the Convention Center
20 Financing Act may be brought by:

21 (1) the attorney general or the district
22 attorney in the county of jurisdiction; or

23 (2) a vendor who is collecting the proceeds
24 of a convention center fee in the county of jurisdiction.

25 B. A district court may issue a writ of mandamus
or order an injunction or other appropriate remedy to enforce
the provisions of the Convention Center Financing Act.

 C. The court shall award costs and reasonable
attorney fees to the prevailing party in a court action to

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1 enforce the provisions of the Convention Center Financing Act.

2 Section 9. COLLECTION OF DELINQUENCIES.--

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

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

17 Section 10. LIEN FOR CONVENTION CENTER FEE--PAYMENT--
18 CERTIFICATE OF LIEN.--

19 A. The convention center fee assessed by a
20 municipality constitutes a lien in favor of that municipality
21 upon the personal and real property of the vendor providing
22 lodgings in that municipality. The lien may be enforced as
23 provided in Sections 3-36-1 through 3-36-7 NMSA 1978.
24 Priority of the lien shall be determined from the date of
25 filing.

B. Under process or order of court, no person
shall sell the property of any vendor without first
ascertaining from the clerk or treasurer of the municipality
in which the vendor is located the amount of any convention

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1 center fee due the municipality. Any convention center fee
2 due the municipality shall be paid from the proceeds of the
3 sale before payment is made to the judgment creditor or any
4 other person with a claim on the sale proceeds.

5 C. The clerk or treasurer of the municipality
6 shall furnish to any person applying for such a certificate a
7 certificate showing the amount of all liens in the records of
8 the municipality against any vendor pursuant to the Convention
9 Center Financing Act.

10 Section 11. ORDINANCE REQUIREMENTS.--The ordinance
11 assessing a convention center fee or any ordinance amendatory
12 thereof or supplemental thereto, shall:

13 A. state the rate or other amount of the
14 convention center fee; the times, place and method for the
15 payment of the convention center fee proceeds to the
16 municipality; the accounts and other records to be maintained
17 in connection with the convention center fee; a procedure for
18 making refunds and resolving disputes relating to the
19 convention center fee; the procedure for preservation and
20 destruction of records and for their inspection and
21 investigation; vendor audit requirements; applicable civil and
22 criminal penalties; and a procedure of liens, distraint and
23 sales to satisfy such liens; and

24 B. provide other rights, privileges, powers,
25 immunities and other details relating to the collection of the
convention center fee and the remittance of the proceeds
thereof to the municipality.

Section 12. PENALTIES.--The governing body of the
municipality shall by ordinance provide for penalties by

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1 creating a misdemeanor and imposing a fine of not more than
2 five hundred dollars (\$500) or imprisonment for not more than
3 ninety days or both for a violation by any person of the
4 provisions of the convention center fee ordinance for a
5 failure to pay the fee or to remit the proceeds thereof to the
6 municipality.

7 Section 13. REVENUE BONDS.--

8 A. Revenue bonds may be issued at any time or from
9 time to time by a municipality that has assessed a convention
10 center fee to defray wholly or in part the costs authorized in
11 Paragraph (1) of Subsection D of Section 3 of the Convention
12 Center Financing Act. The revenue bonds may be payable from
13 and payment may be secured by a pledge of and lien on the
14 revenue derived from:

15 (1) the proceeds of the convention center fee
16 of the municipality;

17 (2) a convention center to which the bonds
18 pertain, after provision is made for the payment of the
19 operation and maintenance expenses of the convention center;

20 (3) that portion of the proceeds of the
21 occupancy tax of the municipality available for payment of
22 revenue bonds pursuant to Paragraph (1) of Subsection B of
23 Section 3-38-23 NMSA 1978;

24 (4) any other legal available revenues of the
25 municipality; or

(5) a combination of revenues from the
sources designated in Paragraphs (1) through (4) of this
subsection.

B. The bonds shall bear interest at a rate or

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1 rates as authorized in the Public Securities Act, and the
2 first interest payment may be for any period authorized in the
3 Public Securities Act.

4 C. Except as otherwise provided in the Convention
5 Center Financing Act, revenue bonds authorized in the
6 Convention Center Financing Act shall be issued in accordance
7 with the provisions of Sections 3-31-2 through 3-31-6 NMSA
8 1978.

9 Section 14. REFUNDING BONDS.--

10 A. Any municipality having issued revenue bonds as
11 authorized in the Convention Center Financing Act may issue
12 refunding revenue bonds payable from pledged revenues therein
13 authorized for the payment of revenue bonds at the time of the
14 refunding or at the time of the issuance of the bonds being
15 refunded as the governing body of the municipality may
16 determine, notwithstanding that the revenue sources or the
17 pledge of such revenues or both are thereby modified.

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

22 (1) for the acceleration, deceleration or
23 other modification of the payment of such obligations,
24 including any capitalization of any interest in arrears or
25 about to become due for any period not exceeding one year from
the date of the refunding bonds;

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

(3) for the purpose of modifying or

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1 eliminating restrictive contractual limitations pertaining to
2 the issuance of additional bonds or otherwise concerning the
3 outstanding bonds; or

4 (4) for any combination of the foregoing
5 purposes.

6 C. The interest on any bond refunded shall not be
7 increased to any rate in excess of the rate authorized in the
8 Public Securities Act and shall be paid as authorized in that
9 act.

10 D. Bonds for refunding any bonds for any other
11 purpose permitted by the Convention Center Financing Act may
12 be issued separately or issued in combination in one series or
13 more.

14 E. Except as otherwise provided in the Convention
15 Center Financing Act, refunding bonds authorized in the
16 Convention Center Financing Act shall be issued in accordance
17 with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

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