

AN ACT

RELATING TO TAXATION; CREATING THE SPORTS AND RECREATION FACILITY FINANCING ACT; PROVIDING A MECHANISM TO GENERATE FUNDS TO DESIGN, CONSTRUCT, EQUIP, FURNISH, LANDSCAPE, OPERATE AND MAINTAIN A SPORTS AND RECREATION FACILITY; 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 "Sports and Recreation Facility Financing Act".

Section 2. DEFINITIONS.--As used in the Sports and Recreation Facility Financing Act:

A. "local governing body" means the governing body of a qualified municipality authorized pursuant to the provisions of the Sports and Recreation Facility Financing Act to impose sports and recreation facility fees;

B. "lodging facility" means a hotel, motel or motor hotel; a bed and breakfast facility; an inn; or any other facility offering rooms for payment of rent or other consideration;

C. "qualified municipality" means an incorporated municipality with a population of more than one thousand but less than one thousand one hundred that is located in a class B county with a population of greater than fourteen thousand but less than fifteen thousand according to the most recent

federal decennial census;

D. "room" means a unit of a lodging facility, such as a hotel room;

E. "sports and recreation facility fee" means the fee imposed by a local governing body pursuant to the Sports and Recreation Facility Financing Act on vendees for the use of lodging facilities;

F. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

G. "vendor" means a person or the person's agent who furnishes rooms for occupancy for consideration.

Section 3. AUTHORIZATION--SPORTS AND RECREATION FACILITY FEE IMPOSITION--LOCAL GOVERNING BODY.--A local governing body may impose a sports and recreation facility fee if the local governing body has enacted an ordinance to impose a sports and recreation facility fee and the ordinance has been approved by referendum as required in the Sports and Recreation Facility Financing Act.

Section 4. IMPOSITION OF SPORTS AND RECREATION FACILITY FEE--USE OF PROCEEDS--REFERENDUM.--

A. A local governing body may impose by ordinance a fee on the use of a room located within a qualified municipality. The fee may be referred to as the "sports and recreation facility fee". The amount of the sports and recreation facility fee shall not exceed two and four-tenths

percent of the gross room charge for each day the room is occupied by a vendee. The sports and recreation facility fee shall be imposed for a period of not more than twenty years from the effective date of the ordinance imposing the sports and recreation facility fee.

B. An ordinance imposing the sports and recreation facility fee shall go into effect only after a referendum on the question of imposing the sports and recreation facility fee is held and a majority of the qualified electors voting on the question votes in favor of imposition of the sports and recreation facility fee.

C. The local governing body shall adopt a resolution calling for an election, to be held within seventy-five days of the date the ordinance is adopted, on the question of imposing the sports and recreation facility fee.

D. The question of imposing the sports and recreation facility fee may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the local governing body. If a special election is called, it shall be called, conducted and canvassed in substantially the same manner as provided by law for municipal elections. If a majority of the voters voting on the question approves the question to impose the sports and recreation facility fee, the ordinance shall become effective in accordance with applicable law. If the question

of imposing the sports and recreation facility fee fails, the local governing body shall not again propose the imposition of the sports and recreation facility fee for a period of one year from the date of the election.

E. The question of imposing the sports and recreation facility fee shall include the uses for which the fee will be used.

F. A sports and recreation facility fee imposed pursuant to this section shall be reviewed by the local governing body annually.

G. A local governing body shall not decrease the sports and recreation facility fee while revenue bonds to which the revenue of the sports and recreation facility fee is pledged remain outstanding.

H. A local governing body shall dedicate the revenue from the sports and recreation facility fee at the time that the ordinance imposing the fee is enacted and limit the use of the revenue generated by the fee to the following:

(1) the design, construction, equipping, furnishing, landscaping and other costs associated with the development of a sports and recreation facility located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Sports

and Recreation Facility Financing Act, including payments into a sinking fund or reserve fund required by the revenue bond ordinance;

(3) costs of collecting and otherwise administering the sports and recreation facility fee; provided that the administrative costs shall not be paid if there are current payments due pursuant to Paragraph (2) of this subsection, and provided that no more than ten percent of the revenue collected in a fiscal year shall be used to pay administrative costs;

(4) operation costs of the sports and recreation facility designed, constructed, equipped, furnished, landscaped or otherwise developed with funding generated pursuant to the Sports and Recreation Facility Financing Act; and

(5) payments into a capital reserve fund established for the future payment for capital maintenance and improvements and equipment replacement costs of the sports and recreation facility located within the qualified municipality; provided that no payments shall be made pursuant to this paragraph if there are current payments due pursuant to Paragraph (2) of this subsection.

Section 5. EXCEPTIONS.--The sports and recreation facility fee shall not apply:

A. if the local governing body by ordinance

exempts lodging facilities whose maximum daily room charge is less than an amount stated in the ordinance;

B. to rooms at institutions of the federal government, the state or any political subdivision of the federal government or the state;

C. to rooms at religious, charitable, educational or philanthropic institutions or other nonprofit organizations, including rooms at summer camps operated by such organizations;

D. to clinics, hospitals or other medical facilities;

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

F. if the vendor does not offer at least three rooms at the vendor's lodging facility.

Section 6. COLLECTION OF SPORTS AND RECREATION FACILITY FEE.--

A. A vendor providing rooms in a qualified municipality in which the local governing body has imposed a sports and recreation facility fee shall collect the fee on behalf of the local governing body and shall remit the fees collected to the local governing body on or before the twenty-fifth day of the month following the month in which the fees are collected along with the occupancy tax also collected.

B. The sports and recreation facility fee shall be collected by a vendor from vendees as a room surcharge at the time that rent is collected by the vendor and shall be accounted for separately from the rent fixed by the vendor for the rooms.

Section 7. AUDIT OF VENDORS.--A local governing body imposing a sports and recreation facility fee shall include verification of the collection of the correct sports and recreation facility fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

Section 8. FINANCIAL REPORTING.--The chief financial officer of a local governing body assessing a sports and recreation facility fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of sports and recreation facility funds.

Section 9. ENFORCEMENT.--An action to enforce the Sports and Recreation Facility Financing Act may be brought by:

A. the municipal attorney of the qualified municipality, or a person designated by the qualified municipality, as approved by the local governing body; or

B. a vendor who is collecting the proceeds of a sports and recreation facility fee in the county in which the qualified municipality is located.

Section 10. COLLECTION OF DELINQUENCIES.--

A. A local governing body shall by ordinance provide that a vendor is liable for the payment of the proceeds of sports and recreation facility fees that the vendor failed to remit to the local governing body. Failure of the vendor to collect the fee is not cause for the local governing body to forgive sports and recreation facility fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit sports and recreation facility fees in the amount due. The civil penalty shall be an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governing body or one hundred dollars (\$100).

B. The local governing body may bring an action in the district court of the judicial district in which the qualified municipality is located for collection of amounts due, including, without limitation, interest on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the delinquent sports and recreation facility fees.

Section 11. LIEN FOR SPORTS AND RECREATION FACILITY FEE PAYMENT--CERTIFICATE OF LIEN.--

A. The sports and recreation facility fee assessed by a local governing body constitutes a lien in favor of that

local governing body upon the personal and real property of the vendor providing lodging facilities in that qualified municipality. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

B. Under process or order of the court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the qualified municipality in which the vendor is located the amount of sports and recreation facility fees due. Sports and recreation facility fees due to the local governing body shall be paid from the proceeds of the sale consistent with the lien priorities set forth in Sections 3-36-1 through 3-36-7 NMSA 1978.

C. The clerk or treasurer of the qualified municipality shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the qualified municipality against any vendor pursuant to the Sports and Recreation Facility Financing Act.

Section 12. ORDINANCE REQUIREMENTS.--The ordinance imposing a sports and recreation facility fee or any ordinance amending the imposition of a sports and recreation facility fee:

A. shall state:

(1) the rate of the sports and recreation facility fee to be imposed;

(2) the time, place and method for the payment of the sports and recreation facility fee proceeds to the local governing body;

(3) the accounts and other records to be maintained in connection with the sports and recreation facility fee;

(4) a procedure for making refunds and resolving disputes relating to the sports and recreation facility fee;

(5) the procedures for preservation, destruction, inspection and investigation of records;

(6) vendor audit requirements;

(7) applicable civil penalties;

(8) a procedure for liens and sales to satisfy those liens;

(9) that the ordinance is not effective until the imposition of the sports and recreation facility fee has been approved pursuant to a referendum in which a majority of voters voting within the qualified municipality votes in favor of imposition of the sports and recreation facility fee; and

(10) that the sports and recreation facility fee shall be imposed for a period not exceeding twenty years from the effective date of the ordinance imposing the sports and recreation facility fee; and

B. shall provide other rights, privileges, powers, immunities and details relating to the collection of the sports and recreation facility fee and the remittance of the proceeds of that fee to the local governing body.

Section 13. REVENUE BONDS.--

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a sports and recreation facility fee to defray wholly or in part the costs authorized by the Sports and Recreation Facility Financing Act. The revenue bonds may be payable from, and payment may be secured by, a pledge of and lien on the revenue derived from:

(1) the proceeds of the sports and recreation facility fee of the qualified municipality dedicated to the payment of revenue bonds for a sports and recreation facility in the qualified municipality;

(2) a sports and recreation facility to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the sports and recreation facility;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of

the qualified municipality; or

(5) a combination of revenues from the sources designated in this subsection.

B. 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.

C. Except as otherwise provided in the Sports and Recreation Facility Financing Act, revenue bonds authorized pursuant to that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

Section 14. REFUNDING BONDS.--

A. A qualified municipality having issued revenue bonds may issue refunding bonds payable from pledged revenues authorized for the payment of the revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded, as the local governing body may determine, regardless of whether the revenue sources or the pledge of the revenues or both are modified at the time of the refunding.

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

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including capitalization of interest that is in arrears or

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

(4) for any combination of the purposes set forth in this subsection.

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

D. Refunding bonds for any other purpose permitted by the Sports and Recreation Facility Financing Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Sports and Recreation Facility Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Section 15. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
