

AN ACT

RELATING TO TAX INCREMENT DEVELOPMENT DISTRICTS; INCREASING THE STATE'S ROLE IN DEVELOPMENT, REGULATION AND OVERSIGHT OF CREATION AND IMPLEMENTATION OF TAX INCREMENT DEVELOPMENT DISTRICTS.

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

Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006, Chapter 75, Section 1) is amended to read:

"5-15-1. SHORT TITLE.--Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax Increment for Development Act"."

Section 2. Section 5-15-4 NMSA 1978 (being Laws 2006, Chapter 75, Section 4) is amended to read:

"5-15-4. RESOLUTION FOR FORMATION OF A DISTRICT.--

A. A tax increment development plan may be approved by the governing body of the municipality or county within which tax increment development projects are proposed. Upon filing with the clerk of the governing body of an approved tax increment development plan and upon receipt of a petition bearing the signatures of the owners of at least fifty percent of the real property located within a proposed tax increment development area, the governing body may adopt a resolution declaring its intent to form a tax increment development district. Prior to the formation of a district, the owner or developer of the real property located within an

area proposed to be designated as a tax increment development area may enter into an agreement with the governing body concerning the improvement of specific property within the district, and that agreement may be used to establish obligations of the owner or developer and the governing body concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within the district.

B. A governing body may adopt a resolution on its own motion upon its finding that a need exists for the formation of a district.

C. The resolution to form a district shall include:

(1) the area or areas to be included within the boundaries of the district;

(2) the purposes for which the district is to be formed;

(3) a statement that a tax increment development plan is on file with the clerk of the governing body and that the plan includes a map depicting the boundaries of the tax increment development area and the real property proposed to be included in the area;

(4) the rate of any proposed property tax levy;

(5) identification of gross receipts tax increment and property tax increment financing mechanisms proposed;

(6) identification of gross receipts tax increments and property tax increments proposed to secure proposed gross receipts tax increment bonds or property tax increment bonds;

(7) requirement of a public hearing for the formation of the district and notice of the hearing;

(8) a statement that formation of a district may result in the use of gross receipts tax increments or property tax increments to pay the costs of construction of public improvements made by the district; and

(9) a reference to the Tax Increment for Development Act.

D. A resolution may direct that, prior to holding a hearing on formation of a district, petitioners for the formation of a district prepare a study of the feasibility, the financing and the estimated costs of improvements, services and benefits to result from the formation of the proposed district. The governing body may require those petitioners to deposit with the clerk or treasurer of the governing body an amount equal to the estimated costs of conducting the study and other estimated formation costs. The deposit shall be reimbursed from the proceeds from the sale of

bonds issued by the tax increment development district if the district is formed and if gross receipts tax increment bonds or property tax increment bonds are issued by that district pursuant to the Tax Increment for Development Act.

E. A resolution adopted pursuant to this section shall direct that a public hearing on formation of the district be scheduled and that notice of the hearing be mailed and published.

F. A governing body of the municipality or county within which tax increment development projects are proposed that adopts a resolution to form a district shall notify the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee of the governing body's action within ten days following the date on which the resolution was adopted. A copy of the adopted resolution shall be included in the notice sent pursuant to this subsection. All resolution materials, including fiscal and economic studies, shall also be available electronically to the public."

Section 3. Section 5-15-6 NMSA 1978 (being Laws 2006, Chapter 75, Section 6) is amended to read:

"5-15-6. NOTICE OF PUBLIC HEARING.--

A. Upon adoption of a resolution indicating an intent to form a tax increment development district, a governing body shall set a date no sooner than thirty days and

no later than sixty days after the adoption of the resolution for a public hearing regarding the formation of the district.

B. Notice of the hearing shall be provided by the governing body by:

(1) publication once each week for two consecutive weeks in a newspaper of general circulation in the municipality or county in which the proposed district is located;

(2) posting in a prominent location on property located within the proposed tax increment development area for fourteen days prior to the hearing; and

(3) written notice via registered or certified United States mail, postage prepaid, no later than ten days prior to the hearing to:

(a) all owners of real property within the proposed tax increment development area; and

(b) the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee.

C. The notice of the hearing shall contain:

(1) the date, time and place of the hearing;

(2) information regarding alternative methods for submission of objects or comments;

(3) a statement that the formation of a district is proposed;

(4) a map showing the boundaries of the proposed district;

(5) a statement that a tax increment development plan is on file with the clerk of the governing body and may be reviewed upon request;

(6) a summary of the resolution as set forth in Subsection D of this section; and

(7) a copy of the application.

D. A summary of the resolution declaring the governing body's intent to form a tax increment development district shall be attached to a notice issued pursuant to this section. The clerk of the governing body shall mail a copy of the notice to each owner of real property within the proposed tax increment development area and to all other persons claiming an interest in the property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution. The clerk of the governing body shall publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed tax increment development district is located. The clerk of the governing body shall obtain an affidavit from that newspaper after each publication is made. The clerk of the governing body shall cause the affidavits to be placed in the official records of the municipality or

county. The affidavits are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

E. A clerk of a governing body who is informed of a transfer of ownership of real property within a proposed district and who obtains the name and address of the current property owner shall mail a copy of the notice and resolution as soon as practicable after learning of the transfer."

Section 4. Section 5-15-9 NMSA 1978 (being Laws 2006, Chapter 75, Section 9) is amended to read:

"5-15-9. FORMATION OF A DISTRICT.--

A. If the formation of the tax increment development district is approved by a majority of the voters casting votes at the election, or if an election is held by vote of the owners of property within the district or proposed district, the governing body shall deliver a copy of the resolution ordering formation of the tax increment development district to each of the following persons or entities:

(1) the county assessor and the clerk of the county in which the district is located;

(2) the school district within which any portion of the property located within a tax increment development area lies;

(3) any other taxing entities within which any portion of the property located within a tax increment

development area lies;

(4) the taxation and revenue department;

(5) the local government division of the department of finance and administration; and

(6) the director of the legislative finance committee.

B. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the clerk of the county in which the district is located.

C. A tax increment development district shall be a political subdivision of the state, separate and apart from a municipality or county."

Section 5. Section 5-15-10 NMSA 1978 (being Laws 2006, Chapter 75, Section 10) is amended to read:

"5-15-10. GOVERNANCE OF THE DISTRICT.--

A. Following formation of a tax increment development district, a district board shall administer in a reasonable manner the implementation of the tax increment development plan as approved by the governing body.

B. The district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and



administration or the secretary's designee with full voting privileges.

C. Two of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year terms. If a vacancy occurs on the district board because of the death, resignation or inability of the director to discharge the duties of the director, the governing body shall appoint a director to fill the vacancy, and the director shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

D. A director may be a director of more than one district.

E. In the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors in accordance with the Tax Increment for Development Act. Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner."

Chapter 75, Section 15) is amended to read:

"5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX INCREMENT.--

A. Notwithstanding any law to the contrary, but in accordance with the provisions of the Tax Increment for Development Act, a tax increment development plan, as originally approved or as later modified, may contain a provision that a portion of certain gross receipts tax increments collected within the tax increment development area after the effective date of approval of the tax increment development plan may be dedicated for the purpose of securing gross receipts tax increment bonds pursuant to the Tax Increment for Development Act.

B. As to a district formed by a municipality, a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to, or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) municipal gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(2) municipal environmental services gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(3) municipal infrastructure gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(4) municipal capital outlay gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(5) municipal regional transit gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(6) an amount distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

(7) the state gross receipts tax.

C. As to a district formed by a county, all or a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the district for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) county gross receipts tax authorized

pursuant to the County Local Option Gross Receipts Taxes Act;

(2) county environmental services gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(3) county infrastructure gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(4) county capital outlay gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(5) county regional transit gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(6) the amount distributed to counties pursuant to Section 7-1-6.47 NMSA 1978; and

(7) the state gross receipts tax.

D. The gross receipts tax increment generated by the imposition of municipal or county local option gross receipts taxes specified by statute for particular purposes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax increment development plan approved by the governing body, if the purpose for which the increment is intended to be used is consistent with the purposes set forth in the statute authorizing the municipal or county local

option gross receipts tax.

E. An imposition of a gross receipts tax increment attributable to the imposition of a gross receipts tax by a taxing entity may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the taxing entity, evidenced by a resolution adopted by a majority vote of that taxing entity. A taxing entity shall not agree to dedicate for the purposes of securing gross receipts tax increment bonds more than seventy-five percent of its gross receipts tax increment attributable to the imposition of gross receipts taxes by the taxing entity. A resolution of the taxing entity to dedicate a gross receipts tax increment or to increase the dedication of a gross receipts tax increment shall become effective only on January 1 or July 1 of the calendar year.

F. An imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district less the distributions made pursuant to Section 7-1-6.4 NMSA 1978 may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the state board of finance, evidenced by a resolution adopted by a majority vote of the state board of finance. The state board of finance shall not agree to dedicate more than seventy-five percent of the gross receipts tax increment attributable to the imposition of the state gross receipts tax

within the district. The resolution of the state board of finance shall become effective only on January 1 or July 1 of the calendar year and shall find that:

(1) the state board of finance has reviewed the request for the use of the state gross receipts tax;

(2) based upon review by the state board of finance of the applicable tax increment development plan, the dedication by the state board of finance of a portion of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district for use in meeting the required goals of the tax increment plan is reasonable and in the best interest of the state; and

(3) the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state.

G. The governing body of the jurisdiction in which a tax increment development district has been established shall timely notify the assessor of the county in which the district has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a tax increment development plan has been approved that contains a provision for the allocation of

a gross receipts tax increment;

(2) any outstanding bonds of the district have been paid off; and

(3) the purposes of the district have otherwise been achieved."

Section 7. Section 5-15-21 NMSA 1978 (being Laws 2006, Chapter 75, Section 21) is amended to read:

"5-15-21. APPROVAL REQUIRED FOR ISSUANCE OF BONDS AGAINST STATE GROSS RECEIPTS TAX INCREMENTS.--In addition to all other requirements of the Tax Increment for Development Act, prior to a district board issuing bonds that are issued in whole or in part against a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district:

A. the New Mexico finance authority shall review the proposed issuance of the bonds and determine that the proceeds of the bonds will be used for a tax increment development project in accordance with the district's tax increment development plan and present the proposed issuance of the bonds to the legislature for approval; and

B. the issuance of the bonds and the maximum amount of bonds to be issued shall be specifically authorized by law."

Section 8. A new section of the Tax Increment for Development Act is enacted to read:

"DEBT SERVICE RESERVE ACCOUNT.--After the retirement of all bonds issued pursuant to the tax increment development plan, any balance in a debt service reserve account established for the payment of those bonds shall be paid to the governments that have dedicated a tax increment to the district in proportion to the amount of tax increment attributable to their dedication."

---