

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 511

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO PUBLIC FINANCE; CONSOLIDATING THE INDUSTRIAL  
REVENUE BOND STATUTES APPLICABLE TO COUNTIES AND THOSE  
APPLICABLE TO MUNICIPALITIES; CHANGING THE TYPES OF PROJECTS  
ELIGIBLE FOR INDUSTRIAL REVENUE BOND FINANCING; REDEFINING THE  
AREAS IN WHICH LOCAL GOVERNMENTS MAY ACQUIRE INDUSTRIAL REVENUE  
BOND PROJECTS; PROVIDING A PROCESS FOR LOCAL GOVERNMENTS AND  
OTHER LOCAL TAXING ENTITIES TO AGREE TO RECEIVE PAYMENTS IN  
LIEU OF TAXES OR OTHER CONSIDERATION; PROVIDING FOR PAYMENTS IN  
LIEU OF TAXES TO THE STATE FOR CERTAIN PROJECTS; ALLOWING  
CERTAIN CONTRIBUTIONS BY LOCAL GOVERNMENTS TOWARD INDUSTRIAL  
REVENUE BOND PROJECTS.

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

SECTION 1. A new Section 5-20-1 NMSA 1978 is enacted to  
read:

.210910.8

underscoring material = new  
~~[bracketed material]~~ = delete

underscored material = new  
[bracketed material] = delete

1 "5-20-1. [NEW MATERIAL] SHORT TITLE.--Chapter 5, Article  
2 20 NMSA 1978 may be cited as the "Industrial Revenue Bond  
3 Act"."

4 SECTION 2. A new Section 5-20-2 NMSA 1978 is enacted to  
5 read:

6 "5-20-2. [NEW MATERIAL] PURPOSE.--The purpose of the  
7 Industrial Revenue Bond Act is:

8 A. to authorize local governments to acquire, own,  
9 lease or sell self-liquidating projects for the promotion of  
10 industry and trade by:

11 (1) inducing manufacturing, industrial and  
12 commercial enterprises to locate to or expand in the state;

13 (2) promoting the use of the state's  
14 agricultural products and natural resources; and

15 (3) promoting the balance of agricultural,  
16 commercial and industrial activity in the state; but

17 B. not to authorize a local government to operate  
18 its own manufacturing, industrial or commercial enterprise."

19 SECTION 3. A new Section 5-20-3 NMSA 1978 is enacted to  
20 read:

21 "5-20-3. [NEW MATERIAL] DEFINITIONS.--As used in the  
22 Industrial Revenue Bond Act:

23 A. "local government" means a county or  
24 municipality in New Mexico;

25 B. "mortgage" includes a deed of trust and the

underscoring material = new  
~~[bracketed material] = delete~~

1 hypothecation of assets as collateral security;

2 C. "project" means the acquisition of land and  
3 buildings or other improvements on that land and the  
4 acquisition of real and personal property for use by a  
5 manufacturing, industrial or commercial enterprise:

6 (1) for the manufacture, processing or  
7 assembly of agricultural or manufactured products;

8 (2) for the operation of a mine, not otherwise  
9 in operation, for which an operation permit from the energy,  
10 minerals and natural resources department has been issued to  
11 the enterprise;

12 (3) for the operation of an energy product  
13 refinery, treatment plant or processing plant, not otherwise in  
14 operation, for which the state permits, if any, necessary to  
15 operate have been issued to the enterprise;

16 (4) for the storing, warehousing, distribution  
17 or sale of goods:

18 (a) including a telecommunications sales  
19 enterprise that makes the majority of its sales to persons  
20 outside the state and a water service utility enterprise; but

21 (b) not including an enterprise  
22 associated with a facility designed for the sale of goods or  
23 commodities at retail or for the distribution to the public of  
24 electricity, gas, telephone or other type of service, except  
25 water, commonly classified as a public utility;

.210910.8

underscored material = new  
[bracketed material] = delete

1 (5) except as otherwise provided in this  
2 section, for a commercial enterprise in which all or part of  
3 the enterprise's activity involves the provision of  
4 entertainment to the general public or the supplying of  
5 services to the general public, governmental agencies or a  
6 specific industry or customer;

7 (6) for the operation of a water distribution  
8 or irrigation system;

9 (7) for the operation of an electricity  
10 generation or transmission facility, except for one for which  
11 location approval and a certificate of convenience and  
12 necessity are, under the Public Utility Act, prerequisites to  
13 the facility's construction or operation; and

14 (8) for the operation of a 501(c)(3)  
15 corporation; and

16 D. "501(c)(3) corporation" means a corporation that  
17 demonstrates to the taxation and revenue department that it is  
18 exempt from the federal income tax because it is organized as  
19 provided in Section 501(c)(3) of the Internal Revenue Code of  
20 1986, as amended or renumbered."

21 SECTION 4. A new Section 5-20-4 NMSA 1978 is enacted to  
22 read:

23 "5-20-4. [NEW MATERIAL] INDUSTRIAL REVENUE BOND  
24 PROJECTS--LOCAL GOVERNMENT POWERS AND RESTRICTIONS.--

25 A. A local government may issue industrial revenue

.210910.8

underscoring material = new  
~~[bracketed material]~~ = delete

1 bonds to acquire, whether by construction, purchase, gift or  
2 lease, one or more projects, including a project of a 501(c)(3)  
3 corporation, subject to the following limitations:

4 (1) a local government may acquire an  
5 electricity generation or transmission facility only:

6 (a) with the approval, which shall not  
7 be unreasonably withheld, of the board of education of the  
8 school district in which the project is situated; and

9 (b) if the local government, the board  
10 of education of that school district and the person proposing  
11 the project agree for the person to make annual payments in  
12 lieu of taxes to the school district during the period that the  
13 local government owns and leases the project;

14 (2) a local government may acquire a project  
15 only if the local government and each other entity authorized  
16 to levy an ad valorem tax on property on which the project is  
17 proposed to be situated and the person proposing the project  
18 agree in writing, within sixty days after the local government,  
19 by certified mail, return receipt requested, notifies the  
20 county assessor of each county in which the project is proposed  
21 to be situated and each entity authorized to levy an ad valorem  
22 tax on property on which the project is proposed to be situated  
23 of the need to commence negotiations among the local  
24 government, each local taxing entity and the person proposing  
25 the project, regarding an annual amount in lieu of taxes that

.210910.8

underscoring material = new  
~~[bracketed material]~~ = delete

1 the person will pay, or other consideration that the person  
2 will give to the local government and each local taxing entity  
3 for the period that the local government owns and leases the  
4 project; provided that, if a local government, one or more of  
5 those local taxing entities and the person proposing the  
6 project fail to agree in writing as described in this paragraph  
7 to that payment or giving of consideration, then each local  
8 taxing entity that fails to agree shall forfeit its right to  
9 that remuneration;

10 (3) for a project or projects under common  
11 ownership or control that is or are proposed to be situated in  
12 more than one local government, each local government and each  
13 entity authorized to levy an ad valorem tax on property on  
14 which the project or projects is or are proposed to be situated  
15 may be provided with notice as provided in Paragraph (2) of  
16 this subsection, and each of the parties shall conduct joint  
17 negotiations upon receipt of the notification and may agree in  
18 writing to payments in lieu of taxes or other consideration  
19 applicable to all projects for which notice is provided  
20 pursuant to this paragraph, subject to the requirements of  
21 Paragraph (2) of this subsection. The state shall receive  
22 annual payments in lieu of taxes in the amount of five percent  
23 of the total amount of payments in lieu of taxes paid to local  
24 governments and other local taxing entities and five percent of  
25 the value of other consideration applicable to any project for

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 which notice is provided pursuant to this paragraph. Written  
2 notice of an agreement made pursuant to this paragraph shall be  
3 provided to the secretary of state and the department of  
4 finance and administration within thirty days of written  
5 approval of the agreement by the parties;

6 (4) a municipality may acquire a project only  
7 if:

8 (a) the project is situated within a  
9 perimeter fifteen miles past the municipality's boundaries, as  
10 those boundaries are shown in the records of the county clerk  
11 of the county in which the municipality is located; and

12 (b) each county in which the project is  
13 situated certifies that the project complies with the county's  
14 ordinances;

15 (5) a class B or an H class county may acquire  
16 a project only if the project is situated entirely within the  
17 county and not situated within the boundaries of a  
18 municipality, as those boundaries are shown in the records of  
19 the county clerk of the county;

20 (6) a class A county with a population of five  
21 hundred thousand or more according to the most recent federal  
22 decennial census may acquire a project only if the project is  
23 situated entirely within the county; and

24 (7) a class A county with a population of less  
25 than five hundred thousand according to the most recent federal

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 decennial census may acquire a project only if the project is  
2 situated entirely within the county and, if the project is  
3 situated within the boundaries of a municipality as such  
4 boundaries are shown in the records of the county clerk of the  
5 county, only if the municipality certifies that the project  
6 complies with the municipality's ordinances.

7 B. A local government may lease, sell or otherwise  
8 dispose of a project, including a project of a 501(c)(3)  
9 corporation, on terms and conditions not in conflict with the  
10 Industrial Revenue Bond Act.

11 C. A local government shall not operate a project,  
12 including a project of a 501(c)(3) corporation, in any way  
13 except as lessor.

14 D. A local government may refinance one or more  
15 projects of 501(c)(3) corporations.

16 E. As used in this section, "refinance" means  
17 issuing bonds and using all or substantially all of the  
18 proceeds from that issuance to liquidate the obligations  
19 incurred in financing or aiding in the finance of a project.

20 F. A municipality that issues industrial revenue  
21 bonds shall timely notify the board of county commissioners and  
22 the county assessor of each county in which the municipality is  
23 located of the bonds' maturity, expiration or replacement by  
24 refunding bonds.

25 G. A county that issues industrial revenue bonds

.210910.8

underscored material = new  
~~[bracketed material] = delete~~

1 shall timely notify each entity that levies a tax on property  
2 in the county of the bonds' maturity, expiration or replacement  
3 by refunding bonds."

4 SECTION 5. A new Section 5-20-5 NMSA 1978 is enacted to  
5 read:

6 "5-20-5. [NEW MATERIAL] APPROVAL NOT REQUIRED.--Except as  
7 provided in the Industrial Revenue Bond Act, the notice to,  
8 consent of or approval by a governmental body, public officer  
9 or voters is not required as a condition of the sale or  
10 issuance of industrial revenue bonds or the making of a  
11 mortgage under that act."

12 SECTION 6. A new Section 5-20-6 NMSA 1978 is enacted to  
13 read:

14 "5-20-6. [NEW MATERIAL] ISSUANCE OF BONDS.--

15 A. A local government that issues industrial  
16 revenue bonds shall issue them and interest coupons, if any,  
17 associated with the bonds not as a general obligation of the  
18 local government, nor as an indebtedness of the local  
19 government within the meaning of any state constitutional or  
20 statutory provision, nor as constituting or giving rise to a  
21 pecuniary liability of the local government or a charge against  
22 its general credit or taxing powers, but, rather, as payable  
23 solely out of the revenue derived from the projects for which  
24 they are issued. The local government shall cause to have  
25 plainly stated on the face of each industrial revenue bond it

.210910.8

underscored material = new  
~~[bracketed material] = delete~~

1 issues that the bond:

2 (1) is not issued as:

3 (a) a general obligation of the local  
4 government; or

5 (b) an indebtedness of the local  
6 government within the meaning of any state constitutional or  
7 statutory provision; and

8 (2) does not constitute or give rise to a  
9 pecuniary liability of the local government or a charge against  
10 its general credit or taxing powers.

11 B. Subject to the limitations of the Industrial  
12 Revenue Bond Act, and as provided by the ordinance and  
13 proceeding under which the issuance of the bonds is authorized,  
14 a local government may:

15 (1) have industrial revenue bonds executed and  
16 delivered at any time and sold at public or private sale; and

17 (2) issue the bonds:

18 (a) in any form and denomination;

19 (b) in any tenor;

20 (c) in registered or bearer form as to  
21 principal or interest;

22 (d) as payable in any installment and at  
23 any time or times equal to or less than thirty years from the  
24 issuance date;

25 (e) as payable at any place;

.210910.8

underscoring material = new  
[bracketed material] = delete

1 (f) as bearing interest at any rate;  
2 (g) as evidenced in any manner; and  
3 (h) otherwise, as subject to any  
4 provisions.

5 C. A local government may pay expenses, including  
6 architect's, attorney's and engineer's fees, premiums and  
7 commissions, it deems necessary or advantageous in connection  
8 with the authorization, sale and issuance of industrial revenue  
9 bonds.

10 D. A local government that issues industrial  
11 revenue bonds shall ensure that the bonds and interest coupons,  
12 if any, associated with the bonds are construed to be  
13 negotiable."

14 SECTION 7. A new Section 5-20-7 NMSA 1978 is enacted to  
15 read:

16 "5-20-7. [NEW MATERIAL] SECURITY FOR BONDS.--

17 A. A local government that issues industrial  
18 revenue bonds may have the principal of and interest on them  
19 secured by a mortgage covering all or part of the project for  
20 which the bonds are issued or secured by a pledge of the lease  
21 of the project.

22 B. Except as otherwise provided in the Industrial  
23 Revenue Bond Act:

24 (1) the ordinance and proceedings under which  
25 a local government authorizes the issuance of industrial

.210910.8

underscored material = new  
~~[bracketed material] = delete~~

1 revenue bonds or a mortgage securing the bonds may contain  
2 agreements and provisions customarily contained in instruments  
3 securing bonds, including agreements and provisions concerning  
4 the:

5 (a) collection of revenue from the  
6 project;

7 (b) lease of the project;

8 (c) maintenance and insurance of the  
9 project;

10 (d) creation and maintenance of special  
11 funds in which to deposit revenue from the project; and

12 (e) rights and remedies available in the  
13 event of default to the bondholders or, under a mortgage, the  
14 trustee;

15 (2) in making those agreements and provisions,  
16 the local government shall not obligate itself except with  
17 respect to the project and the application of the revenue from  
18 the project, and it shall not incur a pecuniary liability or a  
19 charge on its general credit or against its taxing powers; and

20 (3) in the proceedings under which a local  
21 government authorizes the issuance of industrial revenue bonds  
22 or a mortgage securing the bonds, the local government may  
23 provide the procedure and remedies available in the event of  
24 default in payment of the principal of or interest on the bonds  
25 or in the performance of an agreement, but it shall not provide

.210910.8

underscored material = new  
[bracketed material] = delete

1 in the agreement that a breach of the agreement imposes a  
2 pecuniary liability on the local government or a charge on its  
3 general credit or against its taxing powers."

4 SECTION 8. A new Section 5-20-8 NMSA 1978 is enacted to  
5 read:

6 "5-20-8. [NEW MATERIAL] PROJECT LEASING OR SALE.--

7 A. Before a local government leases a project  
8 financed with industrial revenue bonds, it shall determine:

9 (1) the amount necessary each year to pay the  
10 principal of and interest on the bonds issued to finance the  
11 project; and

12 (2) the amount necessary each year to pay into  
13 reserve funds, if any, the local government establishes in  
14 connection with the retirement of the bonds and, unless the  
15 terms of the project lease require the lessee to maintain the  
16 project and assume the responsibility for having the project  
17 properly insured, the estimated costs of maintaining the  
18 project in good condition and having it properly insured.

19 B. A local government shall set forth the  
20 determinations it makes in accordance with Subsection A of this  
21 section in the proceedings under which it issues industrial  
22 revenue bonds. Before issuing those bonds, the local  
23 government shall lease or sell the project to a lessee or  
24 purchaser under an agreement conditioned on the completion of  
25 the project and providing for payment to the local government

.210910.8

underscored material = new  
[bracketed material] = delete

1 of rentals or payments in amounts based on the local  
2 government's determinations and sufficient to:

3 (1) pay the principal of and interest on the  
4 bonds issued to finance the project;

5 (2) build and maintain the reserve, if any,  
6 the local government establishes in connection with the  
7 retirement of the bonds; and

8 (3) if the terms of the project lease do not  
9 require the lessee to pay the costs of maintaining the project  
10 in good condition and having it properly insured, pay for that  
11 maintenance and insurance."

12 SECTION 9. A new Section 5-20-9 NMSA 1978 is enacted to  
13 read:

14 "5-20-9. [NEW MATERIAL] SALE OF BONDS--USE OF  
15 PROCEEDS.--A local government shall apply the proceeds from the  
16 sale of industrial revenue bonds only as follows:

17 A. to the extent that the proceeds constitute  
18 accrued interest and premiums, then to the payment of the  
19 principal of and interest on the bonds sold;

20 B. for the purpose for which the bonds were issued;  
21 and

22 C. to the extent that the proceeds are not needed  
23 for the purpose for which the bonds were issued, then to:

24 (1) the payment of the principal and interest  
25 on the bonds; or

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 (2) investment in short-term, interest-bearing  
2 securities."

3 SECTION 10. A new Section 5-20-10 NMSA 1978 is enacted to  
4 read:

5 "5-20-10. [NEW MATERIAL] REFUNDING OF BONDS.--

6 A. A local government may have industrial revenue  
7 bonds it has issued refunded through its issuance of refunding  
8 bonds:

9 (1) whose principal amount is equal to, less  
10 than or greater than the principal amount of the original  
11 bonds;

12 (2) regardless of whether the original bonds  
13 have matured; and

14 (3) either by sale, the application of the  
15 proceeds of which are applied to the payment of the original  
16 bonds, or by exchange of the original bonds, but only if the  
17 holders of the original bonds are not compelled to surrender  
18 their bonds for payment or exchange before the date on which  
19 they are payable or, if they are called for redemption, before  
20 the date on which, by their terms, they are subject to  
21 redemption.

22 B. In issuing industrial revenue refunding bonds, a  
23 local government:

24 (1) may:

25 (a) pay all unpaid accrued and unaccrued

underscored material = new  
~~[bracketed material] = delete~~

1 interest on the original bonds to the normal maturity date of  
2 the bonds or to selected prior redemption dates;

3 (b) pay redemption premiums, commissions  
4 and estimated costs incidental to the issuance of the original  
5 and refunding bonds; and

6 (c) have the bonds secured in accordance  
7 with Section 5-20-7 NMSA 1978; and

8 (2) shall:

9 (a) have the bonds payable solely from  
10 the revenue out of which other industrial revenue bonds are  
11 payable or solely from those amounts derived from an escrow as  
12 provided in this section, including amounts derived from the  
13 investment of refunding bond proceeds and other legally  
14 available amounts also as provided in this section or from any  
15 combination of those sources; and

16 (b) make the bonds compliant with  
17 Section 5-20-6 NMSA 1978.

18 C. A local government that issues industrial  
19 revenue refunding bonds shall immediately apply the proceeds of  
20 the refunding bonds to the retirement of the original bonds or  
21 place the proceeds, which, notwithstanding any other provision  
22 of law to the contrary, may be invested in short-term  
23 securities, long-term securities or both, in escrow in a  
24 commercial bank or trust company that possesses and exercises  
25 trust powers. Except as otherwise provided expressly by the

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 Industrial Revenue Bond Act, the ordinance and proceedings  
2 under which a local government authorizes the issuance of  
3 industrial revenue refunding bonds or a mortgage securing the  
4 refunding bonds govern the establishment of escrow, if any,  
5 connected with the refunding bonds and the investment or  
6 reinvestment of escrowed proceeds, if any."

7 SECTION 11. A new Section 5-20-11 NMSA 1978 is enacted to  
8 read:

9 "5-20-11. [NEW MATERIAL] CONTRIBUTION BY A LOCAL  
10 GOVERNMENT.--

11 A. Except as allowed by the Local Economic  
12 Development Act, a local government shall not use its general  
13 funds or otherwise contribute its property to acquire a  
14 project, nor shall it use any part of land it owns or in which  
15 it has an equity for the construction of any part of a project  
16 unless the local government is fully reimbursed for the value,  
17 as determined by a current appraisal, of the land or unless the  
18 local government leases the land at an annual rental fee of at  
19 least five percent of the appraised value. A local government  
20 that acquires a project shall pay the cost of that acquisition  
21 out of the proceeds from the sale of industrial revenue bonds  
22 it issues. This section shall not be construed as prohibiting  
23 a local government from accepting donations of property for use  
24 in any part of a project or money for use in defraying the cost  
25 of a project.

.210910.8

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

B. As used in this section:

(1) "cost of that acquisition" includes:

(a) for a constructed project, the actual cost of the project's construction, including architect's, attorney's and engineer's fees;

(b) for a project acquired by purchase, the project's purchase price;

(c) the actual cost of the extension of any utility to the project site and all expenses connected with the authorization, sale and issuance of the bonds to finance the acquisition; and

(d) the interest on the bonds for a reasonable time before construction, during construction and for no more than six months after the completion of construction; and

(2) "property" means the land, improvements on the land, buildings, improvements to the buildings, machinery, equipment, operating capital and other types of personal property necessary to a project."

SECTION 12. A new Section 5-20-12 NMSA 1978 is enacted to read:

"5-20-12. [NEW MATERIAL] INDUSTRIAL REVENUE BONDS--LEGAL INVESTMENTS.--Industrial revenue bonds issued under the Industrial Revenue Bond Act are legal investments for savings banks and insurance companies organized under the laws of the

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 state."

2 SECTION 13. A new Section 5-20-13 NMSA 1978 is enacted to  
3 read:

4 "5-20-13. [NEW MATERIAL] EXEMPTION FROM TAXATION.--  
5 Industrial revenue bonds issued under the Industrial Revenue  
6 Bond Act and the income from them, all mortgages or other  
7 security instrument executed as security for the bonds, all  
8 lease agreements made under that act and revenue derived from a  
9 lease or sale by a local government of a project are exempt  
10 from all taxation by the state and its subdivisions."

11 SECTION 14. A new Section 5-20-14 NMSA 1978 is enacted to  
12 read:

13 "5-20-14. [NEW MATERIAL] CONSTRUCTION OF ACT.--The  
14 Industrial Revenue Bond Act shall be construed liberally to  
15 promote its purpose."

16 SECTION 15. TEMPORARY PROVISION.--The repeal of and  
17 changes made by this 2019 act to the Industrial Revenue Bond  
18 Act and the County Industrial Revenue Bond Act shall not impair  
19 or otherwise apply to outstanding bonds issued under the  
20 Industrial Revenue Bond Act or the County Industrial Revenue  
21 Bond Act.

22 SECTION 16. REPEAL.--Sections 3-32-1 through 3-32-16 and  
23 4-59-1 through 4-59-16 NMSA 1978 (being Laws 1965, Chapter 300,  
24 Section 14-31-1; Laws 1967, Chapter 84, Sections 1 and 2; Laws  
25 1965, Chapter 300, Section 14-31-2; Laws 1967, Chapter 84,

.210910.8

underscoring material = new  
~~[bracketed material] = delete~~

1 Section 3; Laws 1981, Chapter 45, Section 4; Laws 1965, Chapter  
2 300, Section 14-31-3; Laws 1997, Chapter 216, Section 2 and  
3 Laws 1997, Chapter 226, Section 2; Laws 1965, Chapter 300,  
4 Sections 14-31-4 through 14-31-13; Laws 1975, Chapter 286,  
5 Sections 1 through 4; Laws 1997, Chapter 216, Section 4 and  
6 Laws 1997, Chapter 226, Section 4; Laws 1975, Chapter 286,  
7 Sections 5 through 9; Laws 1992, Chapter 11, Section 2; and  
8 Laws 1975, Chapter 286, Sections 10 through 16, as amended) are  
9 repealed.

10 SECTION 17. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2019.