

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 511

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

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 FOR CERTAIN PROJECTS;
PROVIDING FOR PAYMENTS IN LIEU OF TAXES TO THE STATE FOR
CERTAIN PROJECTS; ALLOWING CERTAIN CONTRIBUTIONS BY LOCAL
GOVERNMENTS TOWARD INDUSTRIAL REVENUE BOND PROJECTS; REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

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underscored material = new
[bracketed material] = delete

1 read:

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

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

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

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

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

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

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

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

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

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

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

1 B. "mortgage" includes a deed of trust and the
2 hypothecation of assets as collateral security;

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

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

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

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

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

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

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

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1 water, commonly classified as a public utility;

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

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

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

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

17 (9) for:

18 (a) a private institution of higher
19 education;

20 (b) a nonprofit corporation engaged in
21 health care services, including nursing homes;

22 (c) office facilities for physicians in
23 a municipality having a population of fewer than fifteen
24 thousand as shown by the most recent federal decennial census;

25 (d) a mass transit or other

1 transportation activity involving the movement of passengers;

2 (e) an industrial park;

3 (f) an office headquarters;

4 (g) a research and development facility;

5 or

6 (h) urban transit buses, whether or not
7 already in existence, that are: 1) manufactured or assembled
8 in New Mexico; 2) equipped to hold at least thirty passengers;
9 and 3) suitable for use by a commercial enterprise for leasing;
10 and

11 D. "501(c)(3) corporation" means a corporation that
12 demonstrates to the taxation and revenue department that it is
13 exempt from the federal income tax because it is organized as
14 provided in Section 501(c)(3) of the Internal Revenue Code of
15 1986, as amended or renumbered."

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

18 "5-20-4. [NEW MATERIAL] INDUSTRIAL REVENUE BOND
19 PROJECTS--LOCAL GOVERNMENT POWERS AND RESTRICTIONS.--

20 A. A local government may issue industrial revenue
21 bonds to acquire, whether by construction, purchase, gift or
22 lease, one or more projects, including a project of a 501(c)(3)
23 corporation, subject to the following limitations:

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

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

4 (b) if the local government, the board
5 of education of that school district and the person proposing
6 the project agree for the person to make annual payments in
7 lieu of taxes to the school district during the period that the
8 local government owns and leases the project;

9 (2) for a project or projects under common
10 ownership or control that is or are proposed to be situated in
11 more than one county, each county assessor, each local
12 government and each entity authorized to levy an ad valorem tax
13 on property on which the project or projects is or are proposed
14 to be situated may be provided with notice by certified mail
15 return receipt requested or by email with delivery receipt
16 confirming that the message was delivered to the recipient's
17 email server, from one or more of the local governments
18 proposing to issue industrial revenue bonds of the opportunity
19 to commence negotiations among the local government, each local
20 taxing entity and the person proposing the project regarding an
21 annual amount in lieu of taxes that the person will pay or
22 other consideration that the person will give to the local
23 government and each local taxing entity for the period that the
24 local government owns and leases the project; provided that, if
25 a local government, one or more of those local taxing entities

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1 and the person proposing the project fail to agree in writing
2 as described in this paragraph to that payment or giving of
3 consideration, then each local taxing entity that fails to
4 agree shall forfeit its right to that remuneration. The state
5 shall receive annual payments in lieu of taxes or other
6 consideration in the amount of five percent of the total amount
7 of payments in lieu of taxes paid to local governments and
8 other local taxing entities and five percent of the value of
9 other consideration applicable to any project for which notice
10 is provided pursuant to this paragraph. Written notice of an
11 agreement made pursuant to this paragraph shall be provided to
12 the secretary of state and the department of finance and
13 administration within thirty days of written approval of the
14 agreement by the parties;

15 (3) a municipality may acquire a project only
16 if:

17 (a) the project is situated within a
18 perimeter fifteen miles past the municipality's boundaries, as
19 those boundaries are shown in the records of the county clerk
20 of the county in which the municipality is located;

21 (b) for a project that is situated
22 outside the boundaries of the municipality proposing to issue
23 industrial revenue bonds, as those boundaries are shown in the
24 records of the county clerk, the municipality provides notice,
25 by certified mail return receipt requested or by email with

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1 delivery receipt confirming that the message was delivered to
2 the recipient's email server, to the county in which the
3 project is proposed to be situated at least sixty days prior to
4 adoption of an ordinance authorizing the issuance of industrial
5 revenue bonds. The county shall have the opportunity to submit
6 to the municipality and the person proposing the project a
7 proposal for the person proposing the project to make payments
8 in lieu of taxes or pay other consideration to the county, but
9 such payments in lieu of taxes or other consideration shall not
10 be required unless agreed to by the municipality and the person
11 proposing the proposed project; and

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

15 (4) 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 (5) 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 (6) a class A county with a population of less
25 than five hundred thousand according to the most recent federal

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 those
4 boundaries are shown in the records of the county clerk of the
5 county, only if:

6 (a) the county provides notice, by
7 certified mail return receipt requested or by email with
8 delivery receipt confirming that the message was delivered to
9 the recipient's email server, to the municipality of its
10 proposal to issue industrial revenue bonds at least sixty days
11 prior to the adoption of an ordinance authorizing the issuance
12 of industrial revenue bonds;

13 (b) the municipality shall have the
14 opportunity to submit to the county and the person proposing
15 the project a proposal that payments in lieu of taxes or other
16 consideration be made to the municipality during the period
17 that the county owns or leases the project, but payments in
18 lieu of taxes or other consideration shall not be required
19 unless agreed to by the county and the person proposing the
20 project; and

21 (c) the municipality certifies that the
22 project complies with the municipality's ordinances.

23 B. A local government may lease, sell or otherwise
24 dispose of a project, including a project of a 501(c)(3)
25 corporation, on terms and conditions not in conflict with the

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1 Industrial Revenue Bond Act.

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

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

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

11 F. A municipality that issues industrial revenue
12 bonds shall timely notify the board of county commissioners and
13 the county assessor of each county in which the municipality is
14 located of the bonds' maturity, expiration or replacement by
15 refunding bonds.

16 G. A county that issues industrial revenue bonds
17 shall timely notify each entity that levies a tax on property
18 in the county of the bonds' maturity, expiration or replacement
19 by refunding bonds."

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

22 "5-20-5. [NEW MATERIAL] APPROVAL NOT REQUIRED.--Except as
23 provided in the Industrial Revenue Bond Act, the notice to,
24 consent of or approval by a governmental body, public officer
25 or voters is not required as a condition of the sale or

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1 issuance of industrial revenue bonds or the making of a
2 mortgage under that act."

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

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

6 A. A local government that issues industrial
7 revenue bonds shall issue them and interest coupons, if any,
8 associated with the bonds not as a general obligation of the
9 local government, nor as an indebtedness of the local
10 government within the meaning of any state constitutional or
11 statutory provision, nor as constituting or giving rise to a
12 pecuniary liability of the local government or a charge against
13 its general credit or taxing powers, but, rather, as payable
14 solely out of the revenue derived from the projects for which
15 they are issued. The local government shall cause to have
16 plainly stated on the face of each industrial revenue bond it
17 issues the limitations required in this subsection.

18 B. Subject to the limitations of the Industrial
19 Revenue Bond Act, and as provided by the ordinance and
20 proceeding under which the issuance of the bonds is authorized,
21 a local government may:

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

24 (2) issue the bonds:

25 (a) in any form and denomination;

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- 1 (b) in any tenor;
- 2 (c) in registered or bearer form as to
- 3 principal or interest;
- 4 (d) as payable in any installment and at
- 5 any time or times equal to or less than thirty years from the
- 6 issuance date;
- 7 (e) as payable at any place;
- 8 (f) as bearing interest at any rate;
- 9 (g) as evidenced in any manner; and
- 10 (h) otherwise, as subject to any
- 11 provisions.

12 C. A local government may pay expenses, including

13 architect's, attorney's and engineer's fees, premiums and

14 commissions, it deems necessary or advantageous in connection

15 with the authorization, sale and issuance of industrial revenue

16 bonds.

17 D. A local government that issues industrial

18 revenue bonds shall ensure that the bonds and interest coupons,

19 if any, associated with the bonds are construed to be

20 negotiable."

21 SECTION 7. A new Section 5-20-7 NMSA 1978 is enacted to

22 read:

23 "5-20-7. [NEW MATERIAL] SECURITY FOR BONDS.--

24 A. A local government that issues industrial

25 revenue bonds may have the principal of and interest on them

1 secured by a mortgage covering all or part of the project for
 2 which the bonds are issued or secured by a pledge of the lease
 3 of the project. The principal of or interest on bonds issued
 4 under the authority of the Industrial Revenue Bond Act shall
 5 also be secured by a pledge of the revenues out of which the
 6 bonds shall be payable.

7 B. Except as otherwise provided in the Industrial
 8 Revenue Bond Act:

9 (1) the ordinance and proceedings under which
 10 a local government authorizes the issuance of industrial
 11 revenue bonds or a mortgage securing the bonds may contain
 12 agreements and provisions customarily contained in instruments
 13 securing bonds, including agreements and provisions concerning
 14 the:

15 (a) collection of revenue from the
 16 project;

17 (b) lease of the project;

18 (c) maintenance and insurance of the
 19 project;

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

22 (e) rights and remedies available in the
 23 event of default to the bondholders or, under a mortgage, the
 24 trustee;

25 (2) in making those agreements and provisions,

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1 the local government shall not obligate itself except with
2 respect to the project and the application of the revenue from
3 the project, and its obligation shall be limited as provided in
4 Subsection A of Section 5-20-6 NMSA 1978; and

5 (3) in the proceedings under which a local
6 government authorizes the issuance of industrial revenue bonds
7 or a mortgage securing the bonds, the local government may
8 provide the procedure and remedies available in the event of
9 default in payment of the principal of or interest on the bonds
10 or in the performance of an agreement, but it shall not provide
11 in the agreement that a breach of the agreement imposes a
12 pecuniary liability on the local government or a charge on its
13 general credit or against its taxing powers."

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

16 "5-20-8. [NEW MATERIAL] PROJECT LEASING OR SALE.--

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

19 (1) the amount necessary each year to pay the
20 principal of and interest on the bonds issued to finance the
21 project; and

22 (2) the amount necessary each year to pay into
23 reserve funds, if any, the local government establishes in
24 connection with the retirement of the bonds and, unless the
25 terms of the project lease require the lessee to maintain the

1 project and assume the responsibility for having the project
 2 properly insured, the estimated costs of maintaining the
 3 project in good condition and having it properly insured.

4 B. A local government shall set forth the
 5 determinations it makes in accordance with Subsection A of this
 6 section in the proceedings under which it issues industrial
 7 revenue bonds. Before issuing those bonds, the local
 8 government shall lease or sell the project to a lessee or
 9 purchaser under an agreement conditioned on the completion of
 10 the project and providing for payment to the local government
 11 of rentals or payments in amounts based on the local
 12 government's determinations and sufficient to:

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

15 (2) build and maintain the reserve, if any,
 16 the local government establishes in connection with the
 17 retirement of the bonds; and

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

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

24 "5-20-9. [NEW MATERIAL] SALE OF BONDS--USE OF
 25 PROCEEDS.--A local government shall apply the proceeds from the

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1 sale of industrial revenue bonds only as follows:

2 A. to the extent that the proceeds constitute
3 accrued interest and premiums, then to the payment of the
4 principal of and interest on the bonds sold;

5 B. for the purpose for which the bonds were issued;
6 and

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

9 (1) the payment of the principal and interest
10 on the bonds; or

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

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

15 "5-20-10. [NEW MATERIAL] REFUNDING OF BONDS.--

16 A. A local government may have industrial revenue
17 bonds it has issued refunded through its issuance of refunding
18 bonds:

19 (1) whose principal amount is equal to, less
20 than or greater than the principal amount of the original
21 bonds;

22 (2) regardless of whether the original bonds
23 have matured; and

24 (3) either by sale, the application of the
25 proceeds of which are applied to the payment of the original

1 bonds, or by exchange of the original bonds, but only if the
2 holders of the original bonds are not compelled to surrender
3 their bonds for payment or exchange before the date on which
4 they are payable or, if they are called for redemption, before
5 the date on which, by their terms, they are subject to
6 redemption.

7 B. In issuing industrial revenue refunding bonds, a
8 local government:

9 (1) may:

10 (a) pay all unpaid accrued and unaccrued
11 interest on the original bonds to the normal maturity date of
12 the bonds or to selected prior redemption dates;

13 (b) pay redemption premiums, commissions
14 and estimated costs incidental to the issuance of the original
15 and refunding bonds; and

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

18 (2) shall:

19 (a) have the bonds payable solely from
20 the revenue out of which other industrial revenue bonds are
21 payable or solely from those amounts derived from an escrow as
22 provided in this section, including amounts derived from the
23 investment of refunding bond proceeds and other legally
24 available amounts also as provided in this section or from any
25 combination of those sources; and

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

3 C. A local government that issues industrial
4 revenue refunding bonds shall immediately apply the proceeds of
5 the refunding bonds to the retirement of the original bonds or
6 place the proceeds, which, notwithstanding any other provision
7 of law to the contrary, may be invested in short-term
8 securities, long-term securities or both, in escrow in a
9 commercial bank or trust company that possesses and exercises
10 trust powers. Except as otherwise provided expressly by the
11 Industrial Revenue Bond Act, the ordinance and proceedings
12 under which a local government authorizes the issuance of
13 industrial revenue refunding bonds or a mortgage securing the
14 refunding bonds govern the establishment of escrow, if any,
15 connected with the refunding bonds and the investment or
16 reinvestment of escrowed proceeds, if any."

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

19 "5-20-11. [NEW MATERIAL] CONTRIBUTION BY A LOCAL
20 GOVERNMENT.--

21 A. Except as allowed by the Local Economic
22 Development Act, a local government shall not have the power to
23 pay out of its general funds or otherwise contribute part of
24 the costs to acquire a project, nor shall it have the power to
25 use any part of property it owns or in which it has an equity

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1 for the construction of any part of a project unless the local
2 government is fully reimbursed for the value of that property,
3 as determined by a current appraisal, or unless the local
4 government leases the property at an annual rental fee of at
5 least five percent of the appraised value. A local government
6 that acquires a project shall pay the cost of that acquisition
7 out of the proceeds from the sale of industrial revenue bonds
8 it issues. This section shall not be construed as prohibiting
9 a local government from accepting donations of property for use
10 in any part of a project or money for use in defraying the cost
11 of a project.

12 B. As used in this section:

13 (1) "cost of that acquisition" includes:

- 14 (a) for a constructed project, the
15 actual cost of the project's construction, including
16 architect's, attorney's and engineer's fees;
- 17 (b) for a project acquired by purchase,
18 the project's purchase price;
- 19 (c) the actual cost of the extension of
20 any utility to the project site and all expenses connected with
21 the authorization, sale and issuance of the bonds to finance
22 the acquisition; and
- 23 (d) the interest on the bonds for a
24 reasonable time before construction, during construction and
25 for no more than six months after the completion of

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1 construction; and

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

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

8 "5-20-12. [NEW MATERIAL] INDUSTRIAL REVENUE BONDS--LEGAL
9 INVESTMENTS.--Industrial revenue bonds issued under the
10 Industrial Revenue Bond Act are legal investments for savings
11 banks and insurance companies organized under the laws of the
12 state."

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

15 "5-20-13. [NEW MATERIAL] EXEMPTION FROM TAXATION.--
16 Industrial revenue bonds issued under the Industrial Revenue
17 Bond Act and the income from them, all mortgages or other
18 security instrument executed as security for the bonds, all
19 lease agreements made under that act and revenue derived from a
20 lease or sale by a local government of a project are exempt
21 from all taxation by the state and its subdivisions."

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

24 "5-20-14. [NEW MATERIAL] CONSTRUCTION OF ACT.--The
25 Industrial Revenue Bond Act shall be construed liberally to

1 promote its purpose."

2 **SECTION 15. TEMPORARY PROVISION.**--The repeal of and
3 changes made by this 2019 act to the Industrial Revenue Bond
4 Act and the County Industrial Revenue Bond Act shall not impair
5 the validity of or otherwise apply to outstanding bonds issued
6 under the Industrial Revenue Bond Act or the County Industrial
7 Revenue Bond Act or impair the validity of or otherwise apply
8 to proceedings of any local government that has adopted
9 resolutions or ordinances with respect to an industrial revenue
10 bond project prior to the effective date of this 2019 act.

11 **SECTION 16. REPEAL.**--Sections 3-32-1 through 3-32-16 and
12 4-59-1 through 4-59-16 NMSA 1978 (being Laws 1965, Chapter 300,
13 Section 14-31-1; Laws 1967, Chapter 84, Sections 1 and 2; Laws
14 1965, Chapter 300, Section 14-31-2; Laws 1967, Chapter 84,
15 Section 3; Laws 1981, Chapter 45, Section 4; Laws 1965, Chapter
16 300, Section 14-31-3; Laws 1997, Chapter 216, Section 2 and
17 Laws 1997, Chapter 226, Section 2; Laws 1965, Chapter 300,
18 Sections 14-31-4 through 14-31-13; Laws 1975, Chapter 286,
19 Sections 1 through 4; Laws 1997, Chapter 216, Section 4 and
20 Laws 1997, Chapter 226, Section 4; Laws 1975, Chapter 286,
21 Sections 5 through 9; Laws 1992, Chapter 11, Section 2; and
22 Laws 1975, Chapter 286, Sections 10 through 16, as amended) are
23 repealed.

24 **SECTION 17. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2019.

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