

HOUSE BILL 50

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Nathan P. Small

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO INDUSTRIAL REVENUE BONDS; AMENDING THE INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC TRANSMISSION FACILITIES AS ELIGIBLE PROJECTS; AMENDING THE COUNTY INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC TRANSMISSION FACILITIES AS ELIGIBLE PROJECTS; REQUIRING PAYMENTS TO THE STATE FOR CERTAIN PROJECTS Hf11→; **REQUIRING PAYMENTS TO SCHOOL DISTRICTS FOR CERTAIN PROJECTS**←Hf11.

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

SECTION 1. Section 3-32-1 NMSA 1978 (being Laws 1965,

.216331.1AIC February 9, 2020 (12:55pm)

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Chapter 300, Section 14-31-1, as amended by Laws 2002, Chapter 25, Section 1 and by Laws 2002, Chapter 37, Section 1) is amended to read:

"3-32-1. INDUSTRIAL REVENUE BOND ACT--DEFINITIONS.--

Wherever used in the Industrial Revenue Bond Act unless a different meaning clearly appears in the context, the following terms whether used in the singular or plural shall be given the following respective interpretations:

A. "municipality" means [~~any~~] a city, town or village in [~~the state of~~] New Mexico;

B. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state [~~of New Mexico~~] to be relocated within or near the municipality in the state [~~of New Mexico~~] and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) [~~any~~] an industry for the manufacturing, processing or assembling of [~~any~~] agricultural or manufactured products;

(2) [~~any~~] a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry but does not include [~~facilities~~] a facility

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designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) [~~any~~] a business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer but does not include [~~establishments~~] an establishment primarily engaged in the sale of goods or commodities at retail;

(4) [~~any~~] a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment, designed to provide water to [~~any~~] a vineyard or winery;

(5) [~~any~~] an electric generation or transmission facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [~~and Electric Utility Industry Restructuring Act of 1999~~]; and

(6) [~~any~~] a 501(c)(3) corporation;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon,

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buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

E. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "health care [~~services~~] service" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities such as hospitals, clinics, laboratories, x-ray centers and pharmacies and, for any small municipality only, office facilities for physicians;

G. "refinance a hospital or 501(c)(3) corporation project" means the issuance of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any obligations previously incurred to finance or aid in financing a project of [~~any~~] a nonprofit corporation engaged in health care services, including nursing homes, or of [~~any~~] a 501(c)(3) corporation, which would constitute a project under the Industrial Revenue Bond Act had it been originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond Act; and

H. "501(c)(3) corporation" means a corporation that

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demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered."

SECTION 2. Section 3-32-6 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-31-3, as amended) is amended to read:

"3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--

In addition to any other powers that it may now have, a municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality; provided that:

(1) urban transit buses qualifying as a project pursuant to Subsection B of Section 3-32-3 NMSA 1978 need not be continuously located within this state, but the commercial enterprise using the urban transit buses for leasing shall meet the location requirement of this subsection; and

(2) a municipality shall not acquire any electricity generation or transmission facility project unless Hfll → ~~the acquisition is approved by the local school board of the school district in which [a] the project is located and the~~

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~~governing body, the local school board and the person proposing the project negotiate and determine the amount of an annual in-lieu tax payment to be made to the school district by the person proposing the project, for the period that the municipality owns and leases the project, and provided such approval shall not be unreasonably withheld;~~←Hf11 Hf11→the school district in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes for the fully developed project had the project not been acquired;←Hf11

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of the Industrial Revenue Bond Act;

C. to issue revenue bonds for the purpose of defraying the cost of acquiring by construction and purchase, or either, any project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate any project as a business or in any manner except as lessor;

D. to refinance one or more hospital or 501(c)(3) corporation projects and to acquire any such hospital or 501(c)(3) corporation project whether by construction, purchase, gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and may

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be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. A municipality shall not have the power to operate a hospital or 501(c)(3) corporation project as a business or in any manner except as lessor; and

E. to refinance one or more projects of any private institution of higher education and to acquire any such project, whether by construction, purchase, gift or lease; provided that the project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but the project shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire any project of any private institution of higher education and to secure the payment of such bonds. A municipality shall not have the power to operate a project of a private institution of higher education as a business or in any manner except as lessor."

SECTION 3. A new section of the Industrial Revenue Bond Act is enacted to read:

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"[NEW MATERIAL] ELECTRIC TRANSMISSION PROJECTS--PAYMENTS

TO THE STATE.--The state shall receive annual payments equal to five percent of the total amount of in-lieu tax payments made by a person proposing an electric transmission project to counties, municipalities and other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 3-32-6 NMSA 1978, and five percent of the value of any other consideration paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. A copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to local taxing entities. Each annual payment shall be made to the department of finance and administration for deposit to the general fund."

SECTION 4. Section 4-59-2 NMSA 1978 (being Laws 1975, Chapter 286, Section 2, as amended) is amended to read:

"4-59-2. DEFINITIONS.--As used in the County Industrial Revenue Bond Act, unless the context clearly indicates otherwise:

- A. "commission" means the governing body of a

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county;

B. "county" means a county organized or incorporated in New Mexico;

C. "501(c)(3) corporation" means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered;

D. "health care service" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities, such as hospitals, clinics, laboratories, x-ray centers and pharmacies;

E. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county but, except as provided in Paragraph (1) of Subsection A of Section 4-59-4 NMSA 1978, not within the boundaries of any incorporated municipality in the state, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, [~~which~~] that shall be suitable

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for use by the following or by any combination of two or more thereof:

(1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;

(2) a commercial enterprise that has received a permit from the energy, minerals and natural resources department for a mine that has not been in operation prior to the issuance of bonds for the project for which the enterprise will be involved;

(3) a commercial enterprise that has received any necessary state permit for a refinery, treatment plant or processing plant of energy products that was not in operation prior to the issuance of bonds for the project for which the enterprise will be involved;

(4) a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include a facility designed for the sale or distribution to the public of electricity, gas, telephone or other services commonly classified as public utilities, except for:

(a) water utilities; and

(b) any electric generation or transmission facility other than one for which both location approval and a certificate of convenience and necessity are

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required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act;

(5) a business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

(6) a nonprofit corporation engaged in health care services;

(7) a mass transit or other transportation activity involving the movement of passengers, an industrial park, an office headquarters and a research facility;

(8) a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and

(9) a 501(c)(3) corporation; and

G. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project."

SECTION 5. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as amended) is amended to read:

"4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In addition to any other powers that it may now have, each county

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shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects, which shall be located within this state and shall be located within the county outside the boundaries of any incorporated municipality; provided, however, that:

(1) a class A county with a population of more than three hundred thousand may acquire projects located anywhere in the county; and

(2) a county shall not acquire any electricity generation or transmission facility project unless the

Hf11→~~acquisition is approved by the local school board of the school district in which a project is located and the board of county commissioners, the local school board and the person proposing the project negotiate and determine the amount of an annual in-lieu tax payment to be made to the school district by the person proposing the project, for the period that the county owns and leases the project, and provided such approval shall not be unreasonably withheld;~~←Hf11 Hf11→school district in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes for the fully developed project had the project not been acquired;←Hf11

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the

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commission may deem advisable and as shall not conflict with the provisions of the County Industrial Revenue Bond Act; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase or either, any project and to secure the payment of such bonds, all as provided in the County Industrial Revenue Bond Act. No county shall have the power to operate any project as a business or in any manner except as lessor thereof."

SECTION 6. A new section of the County Industrial Revenue Bond Act is enacted to read:

"[NEW MATERIAL] ELECTRIC TRANSMISSION PROJECTS--PAYMENTS TO THE STATE.--The state shall receive annual payments equal to five percent of the total amount of in-lieu tax payments made to counties, municipalities and other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 4-59-4 NMSA 1978, and five percent of the value of any other consideration paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. A copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to

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local taxing entities. Each annual payment shall be made to the department of finance and administration for deposit to the general fund."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.

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