

AN ACT

H  
B  
8  
7  
6  
P  
a  
g  
e  
1

RELATING TO LOCAL GOVERNMENTS; ENACTING THE CIVIC AND CONVENTION  
CENTER FUNDING ACT; AUTHORIZING CERTAIN LOCAL GOVERNMENTAL ENTITIES  
TO IMPOSE A DAILY FEE ON THE USE OF LODGING FACILITIES; AUTHORIZING  
QUALIFIED MUNICIPALITIES TO ISSUE BONDS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Civic and Convention  
Center Funding Act".

Section 2. DEFINITIONS.--As used in the Civic and Convention Center  
Funding Act:

A. "convention center fee" means the fee imposed by a local  
government entity pursuant to the Civic and Convention Center Funding Act on  
vendees for the use of lodging facilities;

B. "county" means a county within which a qualified municipality is  
located;

C. "local governmental entity" means a qualified municipality or a  
county authorized by the Civic and Convention Center Funding Act to impose  
convention center fees;

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

E. "qualified municipality" means an incorporated municipality that has  
a population of more than fifty thousand but less than seventy thousand according to

the most recent federal decennial census and that is located in a class A county;

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

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

H. "vendor" means a person or his agent who furnishes rooms for occupancy for consideration.

Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES.--The following local governmental entities are authorized to impose a convention center fee:

A. a qualified municipality if the governing body of the qualified municipality has by resolution authorized the development and construction of a civic and convention center within the qualified municipality; and

B. a county, provided that:

(1) a qualified municipality within the county has enacted an ordinance to impose a convention center fee; and

(2) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required in the Civic and Convention Center Funding Act.

Section 4. IMPOSITION OF CONVENTION CENTER FEE--USE OF PROCEEDS.--

A. A local governmental entity that has met the requirements of Section 3 of the Civic and Convention Center Funding Act may impose by ordinance a fee on the use of a room at a lodging facility within the local governmental entity; provided that a fee imposed by a county shall only apply to lodging facilities located within twenty

H  
B  
  
8  
7  
6  
P  
a  
g  
e  
  
2

miles of the corporate limits of the qualified municipality. The fee may be referred to as the "convention center fee". The amount of the convention center fee shall not exceed one percent of the gross room revenue for each day the room is occupied by a vendee.

H  
B  
8  
7  
6  
P  
a  
g  
e  
3

B. The convention center fee shall be imposed only for the period necessary for payment of principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty years from the date of the ordinance imposing the fee.

C. A local governmental entity shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fee is pledged remain outstanding.

D. A local governmental entity shall dedicate the revenue from the convention center fee at the time that the ordinance imposing the fee is enacted and limit the use of the revenue to the following:

(1) the design, construction, equipping, furnishing, landscaping and other costs associated with the development of a civic and convention center and adjoining parking garage 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 Civic and Convention Center Funding Act; and

(3) costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Civic and Convention Center Funding Act are made and that no more than ten percent of the revenue

collected in any fiscal year shall be used to pay administration costs.

H  
B

Section 5. EXEMPTIONS.--The convention center fee shall not apply:

8

A. if a vendee:

7

(1) has been a permanent resident of the lodging facility for a period of at least thirty consecutive days; or

6

P

a

g

e

(2) enters into or has entered into a written agreement for a room at a lodging facility for a period of at least thirty consecutive days;

4

B. if the consideration paid by a vendee is less than two dollars (\$2.00) a day;

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

D. to rooms at religious, charitable, educational or philanthropic institutions, including rooms at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

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

G. if the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within local governmental entities that have imposed a convention center fee, regardless of the number of rooms available for occupancy.

Section 6. COLLECTION OF CONVENTION CENTER FEE.--

A. A vendor providing rooms within a local governmental entity that has imposed a convention center fee shall collect the proceeds on behalf of the local

governmental entity and shall act as a trustee for the fees collected.

B. The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

Section 7. AUDIT OF VENDORS.--A local governmental entity imposing a convention center fee shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

Section 8. FINANCIAL REPORTING.--The chief executive officer of a local governmental entity imposing a convention center fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

Section 9. ENFORCEMENT.--

A. An action to enforce the Civic and Convention Center Funding Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Civic and Convention Center Funding Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Civic and Convention

H  
B  
8  
7  
6  
P  
a  
g  
e  
5

Center Funding Act.

H  
B

Section 10. COLLECTION OF DELINQUENCIES.--

8

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

7  
6  
P  
a  
g  
e  
6

B. The local governmental entity may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties 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 unpaid convention center fees.

Section 11. LIEN FOR CONVENTION CENTER FEE--PAYMENT --  
CERTIFICATE OF LIEN.--

A. The convention center fee assessed by a local governmental entity constitutes a lien in favor of that local governmental entity upon the personal and real property of the vendor providing lodging facilities in that local governmental entity. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the local governmental entity in which the vendor is located the amount of any convention center fees due. Convention center fees due the local governmental entity shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

H  
B  
8  
7  
6  
P  
a  
g  
e  
7

C. The clerk or treasurer of the local governmental entity shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the local governmental entity against any vendor pursuant to the Civic and Convention Center Funding Act.

Section 12. ORDINANCE REQUIREMENTS.--The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:

A. state:

- (1) the rate of the convention center fee to be imposed;
- (2) the times, place and method for the payment of the convention center fee proceeds to the local governmental entity;
- (3) the accounts and other records to be maintained in connection with the convention center fee;
- (4) a procedure for making refunds and resolving disputes relating to the convention center fee;
- (5) the procedure for preservation and destruction of records and for their inspection and investigation;
- (6) vendor audit requirements;

(7) applicable civil and criminal penalties; and  
(8) a procedure of liens, distraint and sales to satisfy those  
liens; and

B. provide other rights, privileges, powers, immunities and other details  
relating to the collection of the convention center fee and the remittance of the  
proceeds to the local governmental entity.

Section 13. REVENUE BONDS.--

A. Revenue bonds may be issued at any time by a qualified  
municipality that has imposed a convention center fee to defray wholly or in part the  
costs authorized in Paragraph (1) of Subsection D of Section 4 of the Civic and  
Convention Center Funding 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 convention center fee of the qualified  
municipality and the proceeds of the convention center fee of a county that has  
entered into a joint powers agreement with the qualified municipality to impose a  
convention center fee, the proceeds of which shall be dedicated to the payment of  
revenue bonds for a civic and convention center in the qualified municipality;

(2) a civic and convention center to which the bonds pertain,  
after provision is made for the payment of the operation and maintenance expenses of  
the civic and convention center;

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

(4) any other legal available revenues of the qualified

H  
B  
8  
7  
6  
P  
a  
g  
e  
8



municipality; or

(5) a combination of revenues from the sources designated in Paragraphs (1) through (4) of 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 Civic and Convention Center Funding Act, revenue bonds authorized in 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 as authorized in the Civic and Convention Center Funding Act may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the qualified municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.

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

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including any capitalization of any interest 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;

H  
B  
8  
7  
6  
P  
a  
g  
e  
9

(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 specified in Paragraphs (1) through (3) of 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 Civic and Convention Center Funding Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Civic and Convention Center Funding 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. PENALTIES.--A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.

HB 876

H  
B  
  
8  
7  
6  
P  
a  
g  
e  
  
1  
0