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**HOUSE BILL 876**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Luciano "Lucky" Varela

**AN ACT**

**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;**

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

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

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

10          E. "qualified municipality" means an incorporated  
11 municipality that has a population of more than fifty thousand  
12 but less than seventy thousand according to the most recent  
13 federal decennial census and that is located in a class A  
14 county;

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

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

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

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

24           A. a qualified municipality if the governing body  
25 of the qualified municipality has by resolution authorized the

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1 development and construction of a civic and convention center  
2 within the qualified municipality; and

3 B. a county, provided that:

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

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

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

13 A. A local governmental entity that has met the  
14 requirements of Section 3 of the Civic and Convention Center  
15 Funding Act may impose by ordinance a fee on the use of a room  
16 at a lodging facility within the local governmental entity;  
17 provided that a fee imposed by a county shall only apply to  
18 lodging facilities located within twenty miles of the corporate  
19 limits of the qualified municipality. The fee may be referred  
20 to as the "convention center fee". The amount of the  
21 convention center fee shall not exceed one percent of the gross  
22 room revenue for each day the room is occupied by a vendee.

23 B. The convention center fee shall be imposed only  
24 for the period necessary for payment of principal and interest  
25 on revenue bonds issued to accomplish the purpose for which the

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1 revenue is dedicated, but the period shall not exceed thirty  
2 years from the date of the ordinance imposing the fee.

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

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

11 (1) the design, construction, equipping,  
12 furnishing, landscaping and other costs associated with the  
13 development of a civic and convention center and adjoining  
14 parking garage located within the qualified municipality;

15 (2) payments of principal, interest or prior  
16 redemption premiums due in connection with and any other  
17 charges pertaining to revenue bonds authorized by the Civic and  
18 Convention Center Funding Act; and

19 (3) costs of collecting and otherwise  
20 administering the convention center fee; provided that  
21 administration costs shall not be paid until all required  
22 payments on the revenue bonds issued pursuant to the Civic and  
23 Convention Center Funding Act are made and that no more than  
24 ten percent of the revenue collected in any fiscal year shall  
25 be used to pay administration costs.

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

3           A.   if a vendee:

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

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

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

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

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

17           E.   to clinics, hospitals or other medical  
18 facilities;

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

22           G.   if the vendor does not offer at least three  
23 rooms at its lodging facility. The convention center fee shall  
24 be imposed on the lodging facilities of a vendor that owns  
25 three or more lodging facilities within local governmental

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1 entities that have imposed a convention center fee, regardless  
2 of the number of rooms available for occupancy.

3 Section 6. COLLECTION OF CONVENTION CENTER FEE. --

4 A. A vendor providing rooms within a local  
5 governmental entity that has imposed a convention center fee  
6 shall collect the proceeds on behalf of the local governmental  
7 entity and shall act as a trustee for the fees collected.

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

12 Section 7. AUDIT OF VENDORS. -- A local governmental entity  
13 imposing a convention center fee shall include verification of  
14 the collection of the correct convention center fee in any  
15 audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA  
16 1978.

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

22 Section 9. ENFORCEMENT. --

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

- 25 (1) the attorney general or the district

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1 attorney in the county of jurisdiction; or

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

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

7 C. The court shall award costs and reasonable  
8 attorney fees to the prevailing party in a court action to  
9 enforce the provisions of the Civic and Convention Center  
10 Funding Act.

11 Section 10. COLLECTION OF DELINQUENCIES. --

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

23 B. The local governmental entity may bring an  
24 action in the district court of the judicial district in which  
25 the local governmental entity is located for collection of

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1 amounts due, including without limitation, penalties on the  
2 amounts due on the unpaid principal at a rate not exceeding one  
3 percent per month, the costs of collection and reasonable  
4 attorney fees incurred in connection with the court action to  
5 collect the unpaid convention center fees.

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

8 A. The convention center fee assessed by a local  
9 governmental entity constitutes a lien in favor of that local  
10 governmental entity upon the personal and real property of the  
11 vendor providing lodging facilities in that local governmental  
12 entity. The lien may be enforced as provided in Sections  
13 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be  
14 determined from the date of filing.

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

23 C. The clerk or treasurer of the local governmental  
24 entity shall furnish a certificate of lien to a person applying  
25 for a certificate showing the amount of all liens in the

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1 records of the local governmental entity against any vendor  
2 pursuant to the Civic and Convention Center Funding Act.

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

6 A. state:

7 (1) the rate of the convention center fee to  
8 be imposed;

9 (2) the times, place and method for the  
10 payment of the convention center fee proceeds to the local  
11 governmental entity;

12 (3) the accounts and other records to be  
13 maintained in connection with the convention center fee;

14 (4) a procedure for making refunds and  
15 resolving disputes relating to the convention center fee;

16 (5) the procedure for preservation and  
17 destruction of records and for their inspection and  
18 investigation;

19 (6) vendor audit requirements;

20 (7) applicable civil and criminal penalties;

21 and

22 (8) a procedure of liens, distraint and sales  
23 to satisfy those liens; and

24 B. provide other rights, privileges, powers,  
25 immunities and other details relating to the collection of the

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1 convention center fee and the remittance of the proceeds to the  
2 local governmental entity.

3 Section 13. REVENUE BONDS. --

4 A. Revenue bonds may be issued at any time by a  
5 qualified municipality that has imposed a convention center fee  
6 to defray wholly or in part the costs authorized in Paragraph  
7 (1) of Subsection D of Section 4 of the Civic and Convention  
8 Center Funding Act. The revenue bonds may be payable from and  
9 payment may be secured by a pledge of and lien on the revenue  
10 derived from:

11 (1) the proceeds of the convention center fee  
12 of the qualified municipality and the proceeds of the  
13 convention center fee of a county that has entered into a joint  
14 powers agreement with the qualified municipality to impose a  
15 convention center fee, the proceeds of which shall be dedicated  
16 to the payment of revenue bonds for a civic and convention  
17 center in the qualified municipality;

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

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

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1 (4) any other legal available revenues of the  
2 qualified municipality; or

3 (5) a combination of revenues from the sources  
4 designated in Paragraphs (1) through (4) of this subsection.

5 B. The bonds shall bear interest at a rate or rates  
6 as authorized in the Public Securities Act, and the first  
7 interest payment may be for any period authorized in the Public  
8 Securities Act.

9 C. Except as otherwise provided in the Civic and  
10 Convention Center Funding Act, revenue bonds authorized in that  
11 act shall be issued in accordance with the provisions of  
12 Sections 3-31-2 through 3-31-6 NMSA 1978.

13 Section 14. REFUNDING BONDS. --

14 A. A qualified municipality having issued revenue  
15 bonds as authorized in the Civic and Convention Center Funding  
16 Act may issue refunding revenue bonds payable from pledged  
17 revenues authorized for the payment of revenue bonds at the  
18 time of the refunding or at the time of the issuance of the  
19 bonds being refunded as the governing body of the qualified  
20 municipality may determine, notwithstanding that the revenue  
21 sources or the pledge of such revenues or both are thereby  
22 modified.

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

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1 (1) for the acceleration, deceleration or  
2 other modification of the payment of the obligations, including  
3 any capitalization of any interest in arrears or about to  
4 become due for any period not exceeding one year from the date  
5 of the refunding bonds;

6 (2) for the purpose of reducing interest costs  
7 or effecting other economies;

8 (3) for the purpose of modifying or  
9 eliminating restrictive contractual limitations pertaining to  
10 the issuance of additional bonds or otherwise concerning the  
11 outstanding bonds; or

12 (4) for any combination of the purposes  
13 specified in Paragraphs (1) through (3) of this subsection.

14 C. The interest on a bond refunded shall not be  
15 increased to a rate in excess of the rate authorized in the  
16 Public Securities Act and shall be paid as authorized in that  
17 act.

18 D. Refunding bonds for any other purpose permitted  
19 by the Civic and Convention Center Funding Act may be issued  
20 separately or issued in combination in one series or more.

21 E. Except as otherwise provided in the Civic and  
22 Convention Center Funding Act, refunding bonds authorized in  
23 that act shall be issued in accordance with the provisions of  
24 Sections 3-31-10 and 3-31-11 NMSA 1978.

25 Section 15. PENALTIES.--A local governmental entity shall  
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1 by ordinance provide for penalties by creating a misdemeanor  
2 and imposing a fine of not more than five hundred dollars  
3 (\$500) or imprisonment for not more than ninety days or both  
4 for a violation by any person of the provisions of the  
5 convention center fee ordinance for a failure to pay the fee or  
6 to remit the proceeds thereof to the local governmental entity.