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SENATE BILL 577

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO LOCAL GOVERNMENTS; ENACTING THE MUNICIPAL OFFICE
COMPLEX FINANCING 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
"Municipal Office Complex Financing Act".

Section 2. DEFINITIONS.--As used in the Municipal Office
Complex Financing Act:

A. "additional municipality" means an incorporated
municipality, not a qualified municipality, that is authorized
to impose municipal office complex fees pursuant to the
Municipal Office Complex Financing Act;

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1 B. "local governmental entity" means a qualified
2 municipality, a county or an additional municipality authorized
3 by the Municipal Office Complex Financing Act to impose
4 municipal office complex fees;

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

9 D. "municipal office complex fee" means the fee
10 imposed by a local government entity pursuant the Municipal
11 Office Complex Financing Act on vendees for the use of lodging
12 facilities;

13 E. "qualified municipality" means an incorporated
14 municipality that has a population of more than one thousand
15 but less than one thousand one hundred, according to the most
16 recent federal decennial census, and located in a class B
17 county with a population greater than eleven thousand but less
18 than fifteen thousand, according to the most recent federal
19 decennial census;

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

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

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

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1 Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES. -- The
2 following local governmental entities are authorized to impose
3 municipal office complex fees:

4 A. a qualified municipality if the governing body
5 of the qualified municipality has enacted an ordinance to
6 impose a municipal office complex fee;

7 B. a county in which a qualified municipality is
8 located, provided that:

9 (1) a qualified municipality within the county
10 has enacted an ordinance to impose a municipal office complex
11 fee;

12 (2) the board of county commissioners of the
13 county has enacted an ordinance to impose a municipal office
14 complex fee;

15 (3) the qualified municipality and the county
16 have entered into a joint powers agreement pursuant to the
17 Joint Powers Agreements Act to collect the revenue from the
18 municipal office complex fee and to expend the revenue as
19 required in the Municipal Office Complex Financing Act; and

20 (4) the fee shall only apply to lodging
21 facilities located within twenty miles of the corporate limits
22 of the qualified municipality; and

23 C. an additional municipality located within twenty
24 miles of the corporate limits of a qualified municipality in
25 the same county in which that qualified municipality is

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1 located, provided that:

2 (1) the qualified municipality has enacted an
3 ordinance imposing a municipal office complex fee;

4 (2) the additional municipality has enacted an
5 ordinance imposing a municipal office complex fee; and

6 (3) the qualified municipality and the
7 additional municipality have entered into a joint powers
8 agreement pursuant to the Joint Powers Agreements Act to
9 collect the revenue from the municipal office complex fee and
10 to expend the revenue as required by the Municipal Office
11 Complex Financing Act.

12 Section 4. IMPOSITION OF MUNICIPAL OFFICE COMPLEX
13 FEE--USE OF PROCEEDS.--

14 A. A local governmental entity may impose by
15 ordinance a fee on the use of a room within a lodging facility
16 within the local governmental entity. The fee may be referred
17 to as the "municipal office complex fee". The amount of the
18 municipal office complex fee shall not exceed two dollars fifty
19 cents (\$2.50) per room for each day the room is occupied by a
20 vendee.

21 B. A municipal office complex fee imposed pursuant
22 to this section shall be reviewed by the governing body of the
23 local governmental entity annually. The local governmental
24 entity shall adjust the amount of the municipal office complex
25 fee by ordinance to result in an amount of revenue equivalent

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1 to the following percentage of the actual operating and
2 maintenance costs for the preceding fiscal year of the
3 municipal office complex to which the revenue from the fee is
4 dedicated pursuant to Subsection E of this section:

5 (1) through fiscal year 2026, one hundred
6 twenty percent; and

7 (2) for fiscal year 2027 and subsequent fiscal
8 years, a percentage that is two percent less than the prior
9 fiscal year.

10 C. If municipal office complex fees imposed are
11 subject to the provisions of a joint powers agreement between
12 two local governmental entities, the local governmental
13 entities that are parties to the joint powers agreement shall
14 jointly determine changes in the rate of municipal office
15 complex fees to be imposed.

16 D. A qualified municipality shall not decrease the
17 municipal office complex fee while revenue bonds to which the
18 revenue of the municipal office complex fees is pledged remain
19 outstanding.

20 E. A local governmental entity shall dedicate the
21 revenue from the municipal office complex fee as provided in
22 this subsection at the time that the ordinance imposing the fee
23 is enacted. A local governmental entity that is a party to a
24 joint powers agreement regarding the imposition of a municipal
25 office complex fee shall enact an ordinance that includes the

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1 provisions stated in the joint powers agreement and limits the
2 use of the revenue to the following:

3 (1) costs of acquisition of land for and the
4 design, construction, equipping, furnishing, landscaping,
5 operation and maintenance of a municipal office complex located
6 within the qualified municipality;

7 (2) payments of principal, interest or prior
8 redemption premiums due in connection with and any other
9 charges pertaining to revenue bonds authorized by the Municipal
10 Office Complex Financing Act; and

11 (3) costs of collecting and otherwise
12 administering the municipal office complex fee; provided that
13 administration costs shall not be paid until all required
14 payments on the revenue bonds issued pursuant to the Municipal
15 Office Complex Financing Act are made and that no more than
16 five percent of the revenue collected in any fiscal year shall
17 be used to pay administration costs.

18 Section 5. EXEMPTIONS. -- The municipal office complex fee
19 shall not apply:

20 A. if a vendee:

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

24 (2) enters into or has entered into a written
25 agreement for a room at a lodging facility for a period of at

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1 least thirty consecutive days;

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

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

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

9 E. to clinics, hospitals or other medical
10 facilities;

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

14 G. if the vendor does not offer at least three
15 rooms at its lodging facility, provided that the municipal
16 office complex fee shall be imposed on the lodging facilities
17 of a vendor that owns three or more lodging facilities within
18 local governmental entities that have imposed a municipal
19 office complex fee, regardless of the number of rooms available
20 for occupancy.

21 Section 6. COLLECTION OF MUNICIPAL OFFICE COMPLEX FEE. --

22 A. A vendor providing rooms in a local governmental
23 entity that has imposed a municipal office complex fee shall
24 collect the proceeds on behalf of the local governmental entity
25 and shall act as a trustee for the fees collected.

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1 B. The municipal office complex fee shall be
2 collected from vendees in accordance with the ordinance
3 imposing the municipal office complex fee and shall be
4 accounted for separately from the rent fixed by the vendor for
5 rooms.

6 Section 7. AUDIT OF VENDORS.--A local governmental entity
7 assessing a municipal office complex fee shall include
8 verification of the collection of the correct municipal office
9 complex fee in any audit of a vendor conducted pursuant to
10 Section 3-38-17.1 NMSA 1978.

11 Section 8. FINANCIAL REPORTING.--The chief executive
12 officer of a local governmental entity assessing a municipal
13 office complex fee shall report to the local government
14 division of the department of finance and administration on a
15 quarterly basis any expenditure of municipal office complex fee
16 funds.

17 Section 9. ENFORCEMENT.--

18 A. An action to enforce the Municipal Office
19 Complex Financing Act may be brought by:

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

22 (2) a vendor who is collecting the proceeds of
23 a municipal office complex fee in the county of jurisdiction.

24 B. A district court may issue a writ of mandamus or
25 order an injunction or other appropriate remedy to enforce the

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1 provisions of the Municipal Office Complex Financing Act.

2 C. The court shall award costs and reasonable
3 attorney fees to the prevailing party in a court action to
4 enforce the provisions of the Municipal Office Complex
5 Financing Act.

6 Section 10. COLLECTION OF DELINQUENCIES. --

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

18 B. The local governmental entity may bring an
19 action in the district court of the judicial district in which
20 the local governmental entity is located for collection of
21 amounts due, including penalties on the amounts due on the
22 unpaid principal at a rate not exceeding one percent per month,
23 the costs of collection and reasonable attorney fees incurred
24 in connection with the court action to collect the unpaid
25 municipal office complex fees.

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1 Section 11. LIEN FOR MUNICIPAL OFFICE COMPLEX FEE--
2 PAYMENT--CERTIFICATE OF LIEN.--

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

10 B. Under process or order of court, a person shall
11 not sell the property of a vendor without first ascertaining
12 from the clerk or treasurer of the local governmental entity in
13 which the vendor is located the amount of any municipal office
14 complex fees due. Municipal office complex fees due the local
15 governmental entity shall be paid from the proceeds of the sale
16 before payment is made to the judgment creditor or any other
17 person with a claim on the sale proceeds.

18 C. The clerk or treasurer of the local governmental
19 entity shall furnish a certificate of lien to a person applying
20 for a certificate showing the amount of all liens in the
21 records of the local governmental entity against any vendor
22 pursuant to the Municipal Office Complex Financing Act.

23 Section 12. ORDINANCE REQUIREMENTS.--The ordinance
24 imposing a municipal office complex fee or any ordinance
25 amending the imposition of a municipal office complex fee

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1 shall:

2 A. state:

3 (1) the rate of the municipal office complex
4 fee to be imposed;

5 (2) the times, place and method for the
6 payment of the municipal office complex fee proceeds to the
7 local governmental entity;

8 (3) the accounts and other records to be
9 maintained in connection with the municipal office complex fee;

10 (4) a procedure for making refunds and
11 resolving disputes relating to the municipal office complex
12 fee;

13 (5) the procedure for preservation and
14 destruction of records and for their inspection and
15 investigation;

16 (6) vendor audit requirements;

17 (7) applicable civil and criminal penalties;

18 and

19 (8) a procedure of liens, distraint and sales
20 to satisfy those liens; and

21 B. provide other rights, privileges, powers,
22 immunities and other details relating to the collection of the
23 municipal office complex fee and the remittance of the proceeds
24 thereof to the local governmental entity.

25 Section 13. REVENUE BONDS. --

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1 A. Revenue bonds may be issued at any time by a
2 qualified municipality that has imposed a municipal office
3 complex fee to defray wholly or in part the costs authorized in
4 Paragraph (1) of Subsection E of Section 4 of the Municipal
5 Office Complex Financing Act. The revenue bonds may be payable
6 from and payment may be secured by a pledge of and lien on the
7 revenue derived from:

8 (1) the proceeds of the municipal office
9 complex fee of the qualified municipality and the proceeds of
10 the municipal office complex fee of a local governmental entity
11 that has entered into a joint powers agreement with the
12 qualified municipality to impose a municipal office complex
13 fee, the proceeds of which shall be dedicated to the payment of
14 revenue bonds for a municipal office complex in the qualified
15 municipality;

16 (2) a municipal office complex to which the
17 bonds pertain, after provision is made for the payment of the
18 operation and maintenance expenses of the municipal office
19 complex;

20 (3) any other legal available revenues of the
21 qualified municipality; or

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

24 B. The bonds shall bear interest at a rate or rates
25 as authorized in the Public Securities Act, and the first

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1 interest payment may be for any period authorized in the Public
2 Securities Act.

3 C. Except as otherwise provided in the Municipal
4 Office Complex Financing Act, revenue bonds authorized in that
5 act shall be issued in accordance with the provisions of
6 Sections 3-31-2 through 3-31-6 NMSA 1978.

7 Section 14. REFUNDING BONDS. --

8 A. A qualified municipality having issued revenue
9 bonds as authorized in the Municipal Office Complex Financing
10 Act may issue refunding revenue bonds payable from pledged
11 revenues authorized for the payment of revenue bonds at the
12 time of the refunding or at the time of the issuance of the
13 bonds being refunded as the governing body of the qualified
14 municipality may determine, notwithstanding that the revenue
15 sources or the pledge of such revenues or both are thereby
16 modified.

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

20 (1) for the acceleration, deceleration or
21 other modification of the payment of the obligations, including
22 any capitalization of any interest in arrears or about to
23 become due for any period not exceeding one year from the date
24 of the refunding bonds;

25 (2) for the purpose of reducing interest costs

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1 or effecting other economies;

2 (3) for the purpose of modifying or
3 eliminating restrictive contractual limitations pertaining to
4 the issuance of additional bonds or otherwise concerning the
5 outstanding bonds; or

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

8 C. The interest on a bond refunded shall not be
9 increased to a rate in excess of the rate authorized in the
10 Public Securities Act and shall be paid as authorized in that
11 act.

12 D. Refunding bonds for any other purpose permitted
13 by the Municipal Office Complex Financing Act may be issued
14 separately or issued in combination in one series or more.

15 E. Except as otherwise provided in the Municipal
16 Office Complex Financing Act, refunding bonds authorized in
17 that act shall be issued in accordance with the provisions of
18 Sections 3-31-10 and 3-31-11 NMSA 1978.

19 Section 15. PENALTIES.--A local governmental entity shall
20 by ordinance provide for penalties by creating a misdemeanor
21 and imposing a fine of not more than five hundred dollars
22 (\$500) or imprisonment for not more than ninety days or both
23 for a violation by any person of the provisions of the
24 municipal office complex fee ordinance for a failure to pay the
25 fee or to remit the proceeds thereof to the local governmental

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