

1                   SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2                   SENATE BILL 577

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10                   47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

11   AN ACT

12                   RELATING TO LOCAL GOVERNMENTS; ENACTING THE MUNICIPAL CULTURAL  
13                   AND CONVENTION COMPLEX FINANCING ACT; AUTHORIZING CERTAIN LOCAL  
14                   GOVERNMENTAL ENTITIES TO IMPOSE A DAILY FEE ON THE USE OF  
15                   LODGING FACILITIES; AUTHORIZING QUALIFIED MUNICIPALITIES TO  
16                   ISSUE BONDS; PROVIDING PENALTIES.

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

18                                   Section 1.   SHORT TITLE.--This act may be cited as the  
19                   "municipal cultural and convention complex financing act".

20                                   Section 2.   DEFINITIONS.--As used in the municipal  
21                   cultural and convention complex financing act:

22                                   A.   "additional municipality" means an incorporated  
23                   municipality, not a qualified municipality, that is authorized  
24                   to impose municipal cultural and convention complex fees  
25                   pursuant to the municipal cultural and convention complex

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1 Financing Act;

2 B. "local governmental entity" means a qualified  
3 municipality, a county or an additional municipality authorized  
4 by the Municipal Cultural and Convention Complex Financing Act  
5 to impose municipal cultural and convention complex fees;

6 C. "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 D. "municipal cultural and convention complex fee"  
11 means the fee imposed by a local government entity pursuant to  
12 the Municipal Cultural and Convention Complex Financing Act on  
13 vendees for the use of lodging facilities;

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

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

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

25 H. "vendor" means a person or his agent who

1 furnishes rooms for occupancy for consideration.

2 Section 3. AUTHORIZED LOCAL GOVERNMENTAL ENTITIES. -- The  
3 following local governmental entities are authorized to impose  
4 municipal cultural and convention complex fees:

5 A. a qualified municipality if the governing body  
6 of the qualified municipality has enacted an ordinance to  
7 impose a municipal cultural and convention complex fee;

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

10 (1) a qualified municipality within the county  
11 has enacted an ordinance to impose a municipal cultural and  
12 convention complex fee;

13 (2) the board of county commissioners of the  
14 county has enacted an ordinance to impose a municipal cultural  
15 and convention complex fee;

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

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

25 C. an additional municipality located within twenty

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1 miles of the corporate limits of a qualified municipality in  
2 the same county in which that qualified municipality is  
3 located, provided that:

4 (1) the qualified municipality has enacted an  
5 ordinance imposing a municipal cultural and convention complex  
6 fee;

7 (2) the additional municipality has enacted an  
8 ordinance imposing a municipal cultural and convention complex  
9 fee; and

10 (3) the qualified municipality and the  
11 additional municipality have entered into a joint powers  
12 agreement pursuant to the Joint Powers Agreements Act to  
13 collect the revenue from the municipal cultural and convention  
14 complex fee and to expend the revenue as required by the  
15 Municipal Cultural and Convention Complex Financing Act.

16 Section 4. IMPOSITION OF MUNICIPAL CULTURAL AND  
17 CONVENTION COMPLEX FEE--USE OF PROCEEDS. --

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

25 B. A municipal cultural and convention complex fee

1 imposed pursuant to this section shall be reviewed by the  
2 governing body of the local governmental entity annually. The  
3 local governmental entity shall adjust the amount of the  
4 municipal cultural and convention complex fee by ordinance to  
5 result in an amount of revenue equivalent to the following  
6 percentage of the actual operating and maintenance costs for  
7 the preceding fiscal year of the municipal cultural and  
8 convention complex to which the revenue from the municipal  
9 cultural and convention complex fee is dedicated pursuant to  
10 Subsection E of this section:

11 (1) through fiscal year 2026, one hundred  
12 twenty percent; and

13 (2) for fiscal year 2027 and subsequent fiscal  
14 years, a percentage that is two percent less than the prior  
15 fiscal year.

16 C. If municipal cultural and convention complex  
17 fees imposed are subject to the provisions of a joint powers  
18 agreement between two local governmental entities, the local  
19 governmental entities that are parties to the joint powers  
20 agreement shall jointly determine changes in the rate of  
21 municipal cultural and convention complex fees to be imposed.

22 D. A qualified municipality shall not decrease the  
23 municipal cultural and convention complex fee while revenue  
24 bonds to which the revenue of the municipal cultural and  
25 convention complex fees is pledged remain outstanding.

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1           E. A local governmental entity shall dedicate the  
2 revenue from the municipal cultural and convention complex fee  
3 as provided in this subsection at the time that the ordinance  
4 imposing the fee is enacted. A local governmental entity that  
5 is a party to a joint powers agreement regarding the imposition  
6 of a municipal cultural and convention complex fee shall enact  
7 an ordinance that includes the provisions stated in the joint  
8 powers agreement and limits the use of the revenue to the  
9 following:

10                   (1) costs of acquisition of land for and the  
11 design, construction, equipping, furnishing, landscaping,  
12 operation and maintenance of a municipal cultural and  
13 convention complex located within the qualified municipality;

14                   (2) payments of principal, interest or prior  
15 redemption premiums due in connection with and any other  
16 charges pertaining to revenue bonds authorized by the Municipal  
17 Cultural and Convention Complex Financing Act; and

18                   (3) costs of collecting and otherwise  
19 administering the municipal cultural and convention complex  
20 fee; provided that administration costs shall not be paid until  
21 all required payments on the revenue bonds issued pursuant to  
22 the Municipal Cultural and Convention Complex Financing Act are  
23 made and that no more than five percent of the revenue  
24 collected in any fiscal year shall be used to pay  
25 administration costs.

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1           Section 5.   EXEMPTIONS. -- The municipal cultural and  
2 convention complex fee shall 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, provided that the municipal  
24 cultural and convention complex fee shall be imposed on the  
25 lodging facilities of a vendor that owns three or more lodging

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1 facilities within local governmental entities that have imposed  
2 a municipal cultural and convention complex fee, regardless of  
3 the number of rooms available for occupancy.

4 Section 6. COLLECTION OF MUNICIPAL CULTURAL AND  
5 CONVENTION COMPLEX FEE. --

6 A. A vendor providing rooms in a local governmental  
7 entity that has imposed a municipal cultural and convention  
8 complex fee shall collect the proceeds on behalf of the local  
9 governmental entity and shall act as a trustee for the fees  
10 collected.

11 B. The municipal cultural and convention complex  
12 fee shall be collected from vendees in accordance with the  
13 ordinance imposing the municipal cultural and convention  
14 complex fee and shall be accounted for separately from the rent  
15 fixed by the vendor for rooms.

16 Section 7. AUDIT OF VENDORS. --A local governmental entity  
17 assessing a municipal cultural and convention complex fee shall  
18 include verification of the collection of the correct municipal  
19 cultural and convention complex fee in any audit of a vendor  
20 conducted pursuant to Section 3-38-17.1 NMSA 1978.

21 Section 8. FINANCIAL REPORTING. --The chief executive  
22 officer of a local governmental entity assessing a municipal  
23 cultural and convention complex fee shall report to the local  
24 government division of the department of finance and  
25 administration on a quarterly basis any expenditure of

1 municipal cultural and convention complex fee funds.

2 Section 9. ENFORCEMENT. --

3 A. An action to enforce the Municipal Cultural and  
4 Convention Complex Financing Act may be brought by:

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

7 (2) a vendor who is collecting the proceeds of  
8 a municipal cultural and convention complex fee in the county  
9 of jurisdiction.

10 B. A district court may issue a writ of mandamus or  
11 order an injunction or other appropriate remedy to enforce the  
12 provisions of the Municipal Cultural and Convention Complex  
13 Financing Act.

14 C. The court shall award costs and reasonable  
15 attorney fees to the prevailing party in a court action to  
16 enforce the provisions of the Municipal Cultural and Convention  
17 Complex Financing Act.

18 Section 10. COLLECTION OF DELINQUENCIES. --

19 A. A local governmental entity shall by ordinance  
20 provide that a vendor is liable for the payment of the proceeds  
21 of municipal cultural and convention complex fees that the  
22 vendor failed to remit to the local governmental entity.  
23 Failure of the vendor to collect the fee is not cause for the  
24 local governmental entity to forgive municipal cultural and  
25 convention complex fees due and owed by the vendor. The

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1 ordinance shall provide for a civil penalty for each occurrence  
2 of failure to remit municipal cultural and convention complex  
3 fees in an amount equal to the greater of ten percent of the  
4 amount that was not duly remitted to the local governmental  
5 entity or one hundred dollars (\$100).

6 B. The local governmental entity may bring an  
7 action in the district court of the judicial district in which  
8 the local governmental entity is located for collection of  
9 amounts due, including penalties on the amounts due on the  
10 unpaid principal at a rate not exceeding one percent per month,  
11 the costs of collection and reasonable attorney fees incurred  
12 in connection with the court action to collect the unpaid  
13 municipal cultural and convention complex fees.

14 Section 11. LIEN FOR MUNICIPAL CULTURAL AND CONVENTION  
15 COMPLEX FEE--PAYMENT--CERTIFICATE OF LIEN.--

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

23 B. Under process or order of court, a person shall  
24 not sell the property of a vendor without first ascertaining  
25 from the clerk or treasurer of the local governmental entity in

1 which the vendor is located the amount of any municipal  
 2 cultural and convention complex fees due. Municipal cultural  
 3 and convention complex fees due the local governmental entity  
 4 shall be paid from the proceeds of the sale before payment is  
 5 made to the judgment creditor or any other person with a claim  
 6 on the sale proceeds.

7 C. The clerk or treasurer of the local governmental  
 8 entity shall furnish a certificate of lien to a person applying  
 9 for a certificate showing the amount of all liens in the  
 10 records of the local governmental entity against any vendor  
 11 pursuant to the Municipal Cultural and Convention Complex  
 12 Financing Act.

13 Section 12. ORDINANCE REQUIREMENTS. --The ordinance  
 14 imposing a municipal cultural and convention complex fee or any  
 15 ordinance amending the imposition of a municipal cultural and  
 16 convention complex fee shall:

17 A. state:

18 (1) the rate of the municipal cultural and  
 19 convention complex fee to be imposed;

20 (2) the times, place and method for the  
 21 payment of the municipal cultural and convention complex fee  
 22 proceeds to the local governmental entity;

23 (3) the accounts and other records to be  
 24 maintained in connection with the municipal cultural and  
 25 convention complex fee;

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1 (4) a procedure for making refunds and  
2 resolving disputes relating to the municipal cultural and  
3 convention complex fee;

4 (5) the procedure for preservation and  
5 destruction of records and for their inspection and  
6 investigation;

7 (6) vendor audit requirements;

8 (7) applicable civil and criminal penalties;

9 and

10 (8) a procedure of liens, distraint and sales  
11 to satisfy those liens; and

12 B. provide other rights, privileges, powers,  
13 immunities and other details relating to the collection of the  
14 municipal cultural and convention complex fee and the  
15 remittance of the proceeds thereof to the local governmental  
16 entity.

17 Section 13. REVENUE BONDS. --

18 A. Revenue bonds may be issued at any time by a  
19 qualified municipality that has imposed a municipal cultural  
20 and convention complex fee to defray wholly or in part the  
21 costs authorized in Paragraph (1) of Subsection E of Section 4  
22 of the Municipal Cultural and Convention Complex Financing Act.  
23 The revenue bonds may be payable from and payment may be  
24 secured by a pledge of and lien on the revenue derived from:

25 (1) the proceeds of the municipal cultural and

1 convention complex fee of the qualified municipality and the  
 2 proceeds of the municipal cultural and convention complex fee  
 3 of a local governmental entity that has entered into a joint  
 4 powers agreement with the qualified municipality to impose a  
 5 municipal cultural and convention complex fee, the proceeds of  
 6 which shall be dedicated to the payment of revenue bonds for a  
 7 municipal cultural and convention complex in the qualified  
 8 municipality;

9 (2) a municipal cultural and convention  
 10 complex to which the bonds pertain, after provision is made for  
 11 the payment of the operation and maintenance expenses of the  
 12 municipal cultural and convention complex;

13 (3) any other legal available revenues of the  
 14 qualified municipality; or

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

17 B. The bonds shall bear interest at a rate or rates  
 18 as authorized in the Public Securities Act, and the first  
 19 interest payment may be for any period authorized in the Public  
 20 Securities Act.

21 C. Except as otherwise provided in the Municipal  
 22 Cultural and Convention Complex Financing Act, revenue bonds  
 23 authorized in that act shall be issued in accordance with the  
 24 provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

25 Section 14. REFUNDING BONDS. --

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1           A. A qualified municipality having issued revenue  
2 bonds as authorized in the Municipal Cultural and Convention  
3 Complex Financing Act may issue refunding revenue bonds payable  
4 from pledged revenues authorized for the payment of revenue  
5 bonds at the time of the refunding or at the time of the  
6 issuance of the bonds being refunded as the governing body of  
7 the qualified municipality may determine, notwithstanding that  
8 the revenue sources or the pledge of such revenues or both are  
9 thereby modified.

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

13                   (1) for the acceleration, deceleration or  
14 other modification of the payment of the obligations, including  
15 any capitalization of any interest in arrears or about to  
16 become due for any period not exceeding one year from the date  
17 of the refunding bonds;

18                   (2) for the purpose of reducing interest costs  
19 or effecting other economies;

20                   (3) for the purpose of modifying or  
21 eliminating restrictive contractual limitations pertaining to  
22 the issuance of additional bonds or otherwise concerning the  
23 outstanding bonds; or

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

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1 C. The interest on a bond refunded shall not be  
 2 increased to a rate in excess of the rate authorized in the  
 3 Public Securities Act and shall be paid as authorized in that  
 4 act.

5 D. Refunding bonds for any other purpose permitted  
 6 by the Municipal Cultural and Convention Complex Financing Act  
 7 may be issued separately or issued in combination in one series  
 8 or more.

9 E. Except as otherwise provided in the Municipal  
 10 Cultural and Convention Complex Financing Act, refunding bonds  
 11 authorized in that act shall be issued in accordance with the  
 12 provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

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

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