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HOUSE BILL 1190

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Manuel G. Herrera

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE STATEWIDE  
ECONOMIC DEVELOPMENT FINANCE ACT TO PROVIDE THAT, UNDER CERTAIN  
CIRCUMSTANCES, A GROSS RECEIPTS TAX DISTRIBUTION MAY BE PLEDGED  
FOR ECONOMIC DEVELOPMENT REVOLVING FUND BONDS ISSUED FOR THE  
PURPOSE OF LOAN GUARANTEES; PROVIDING THAT THE SEVERANCE TAX  
PERMANENT FUND MAY BE INVESTED IN THE BONDS; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 6-25-18 NMSA 1978 (being Laws 2005,  
Chapter 103, Section 15) is amended to read:

"6-25-18. ECONOMIC DEVELOPMENT REVOLVING FUND BONDS--  
AUTHORIZATION FOR ISSUANCE--TERMS AND CONDITIONS.--

A. Economic development revolving fund bonds of the  
authority shall be authorized by resolution of the authority

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1 and may be issued in one or more series. The economic  
2 development revolving fund bonds shall bear the dates, be in  
3 the form, be issued in the denominations, have terms and  
4 maturities, bear or accrete interest at rates and be payable  
5 and evidenced in the manner and times as the resolution of the  
6 authority or the trust agreement securing the economic  
7 development revolving fund bonds provides. The economic  
8 development revolving fund bonds may be redeemed with or  
9 without premiums prior to maturity, may be ranked or assigned  
10 priority status and may contain provisions not inconsistent  
11 with this subsection.

12 B. The economic development revolving fund bonds  
13 issued by the authority may be sold at any time at private or  
14 public sale at prices agreed upon by the authority.

15 C. Except for economic development revolving fund  
16 bonds issued pursuant to Section 6-25-18.1 NMSA 1978 for loan  
17 guarantees, economic development revolving fund bonds may be  
18 issued pursuant to the Statewide Economic Development Finance  
19 Act without obtaining the consent of any agency of the state  
20 and without any other proceeding or condition other than the  
21 proceedings or conditions specified in that act.

22 D. The economic development revolving fund bonds  
23 issued by the authority are negotiable instruments for all  
24 purposes of the Uniform Commercial Code.

25 E. Any resolution for the issuance of economic

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1 development revolving fund bonds shall provide that each  
2 economic development revolving fund bond authorized shall  
3 recite that it is issued by the authority. The recital shall  
4 clearly state that the economic development revolving fund  
5 bonds are in full compliance with all of the provisions of the  
6 Statewide Economic Development Finance Act."

7 Section 2. A new section of the Statewide Economic  
8 Development Finance Act, Section 6-25-18.1 NMSA 1978, is  
9 enacted to read:

10 "6-25-18.1. [NEW MATERIAL] ECONOMIC DEVELOPMENT REVOLVING  
11 FUND BONDS--GROSS RECEIPTS TAX DISTRIBUTION.--

12 A. Economic development revolving fund bonds may be  
13 issued and secured by a distribution of gross receipts tax  
14 revenue pursuant to the following criteria:

15 (1) the bonds shall be sold exclusively to the  
16 state investment council pursuant to Section 7-27-5.27 NMSA  
17 1978;

18 (2) the proceeds of the bonds shall be  
19 deposited into a special account within the fund and used as a  
20 loan guarantee to guarantee payment to holders of project  
21 revenue bonds issued by the authority for a specific project;

22 (3) interest and other earnings of the special  
23 account shall be credited to the special account and used to  
24 pay debt service on the economic development revolving fund  
25 bonds;

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1 (4) the distribution of gross receipts tax  
2 revenue shall be made to the special account in the fund and be  
3 in an amount necessary to pay the remaining debt service on the  
4 economic development revolving fund bonds after taking into  
5 account the debt service payable from the earnings on the  
6 investment of the special account;

7 (5) the project, the amount of economic  
8 development revolving fund bonds to be issued and the  
9 contingent liability of the bond proceeds as a loan guarantee  
10 shall be specifically approved and authorized by law;

11 (6) the authorization shall provide that,  
12 pursuant to a court order or certification of the authority,  
13 the amount of the guarantee or so much thereof as necessary to  
14 avoid a default in project revenue bond payments shall be paid  
15 to the holders of the project revenue bonds;

16 (7) the principal paid to the holders of the  
17 economic development revolving fund bonds and the corresponding  
18 interest shall be reduced by any unrecouped amounts paid to the  
19 holders of the project revenue bonds;

20 (8) pursuant to Subsection D of Article 9,  
21 Section 14 of the constitution of New Mexico, the loan  
22 guarantee shall apply only to those project revenue bonds  
23 issued to provide land, buildings or infrastructure for the  
24 project;

25 (9) the economic development revolving fund

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1 bonds shall be issued under terms that provide that no  
2 principal shall be payable to the bond holders until the term  
3 of the loan guarantee has expired;

4 (10) the loan guarantee shall be for a term  
5 contemporaneous with the project revenue bonds to which it  
6 applies;

7 (11) no loan guarantee shall be provided and  
8 no economic development revolving fund bonds shall be issued  
9 unless the authority receives a mortgage on the project and  
10 project property, second only to the rights of holders of the  
11 project revenue bonds;

12 (12) no loan guarantee shall be entered into  
13 and no economic development revolving fund bonds shall be  
14 issued unless they have been approved by the state board of  
15 finance and been reviewed by the legislative finance committee  
16 and the New Mexico finance authority oversight committee;

17 (13) upon the defeasement of the economic  
18 development revolving fund bonds, any remaining amount in the  
19 special account for those bonds shall be transferred to the  
20 general fund; and

21 (14) the total amount of economic development  
22 revolving fund bonds outstanding at any one time pursuant to  
23 this section shall not exceed one hundred million dollars  
24 (\$100,000,000).

25 B. The state pledges to the holders of the project

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1 revenue bonds that are secured by the loan guarantee that the  
2 authorized amount of the loan guarantee shall be a contingent  
3 liability of the fund until the bonds are paid and shall not be  
4 expended or dedicated to another purpose in a manner that will  
5 impair the rights or remedies of the bond holders. The state  
6 further pledges to the holders of the economic development  
7 revolving fund bonds issued pursuant to this section that the  
8 earnings credited to the bond proceeds shall be used solely for  
9 paying debt service and that any law authorizing the  
10 distribution of taxes or other revenues for the purpose of  
11 paying debt service shall not be amended or repealed or  
12 otherwise modified so as to impair the bonds."

13 Section 3. A new section of the Tax Administration Act is  
14 enacted to read:

15 "[NEW MATERIAL] DISTRIBUTION--ECONOMIC DEVELOPMENT  
16 REVOLVING FUND BONDS--GROSS RECEIPTS TAX.--A distribution  
17 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the  
18 economic development revolving fund from the net receipts  
19 attributable to the gross receipts tax imposed by the Gross  
20 Receipts and Compensating Tax Act in an amount necessary to  
21 make the required bond debt service payments pursuant to  
22 Section 6-25-18.1 NMSA 1978 as determined by the New Mexico  
23 finance authority. The distribution shall be made:

24 A. after the required distribution pursuant to  
25 Section 7-1-6.4 NMSA 1978;

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1           B. contemporaneously with other distributions of  
2 net receipts attributable to the gross receipts tax for payment  
3 of debt service on outstanding bonds or to a fund dedicated for  
4 that purpose; and

5           C. prior to any other distribution of net receipts  
6 attributable to the gross receipts tax."

7           Section 4. Section 7-27-5 NMSA 1978 (being Laws 1983,  
8 Chapter 306, Section 7, as amended) is amended to read:

9           "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The  
10 severance tax permanent fund shall be invested in separate  
11 differential rate and market rate investment classes.

12 "Differential rate investments" are permitted in Sections  
13 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,  
14 7-27-5.22, [and] 7-27-5.24, [~~through~~] 7-27-5.26 and 7-27-5.27  
15 NMSA 1978 and are intended to stimulate the economy of New  
16 Mexico and to provide income to the severance tax permanent  
17 fund. "Market rate investments" are investments that are not  
18 differential rate investments and are intended to provide  
19 income to the severance tax permanent fund. All market rate  
20 investments and differential rate investments shall be invested  
21 in accordance with the Uniform Prudent Investor Act and shall  
22 be accounted for in accordance with generally accepted  
23 accounting principles."

24           Section 5. A new section of the Severance Tax Bonding  
25 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

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1           "7-27-5.27. [NEW MATERIAL] SEVERANCE TAX PERMANENT FUND--  
2 INVESTMENT IN ECONOMIC DEVELOPMENT REVOLVING FUND BONDS.--  
3 Subject to the approval of the council, the severance tax  
4 permanent fund may be invested in economic development  
5 revolving fund bonds issued by the New Mexico finance authority  
6 for loan guarantees pursuant to Section 6-25-18.1 NMSA 1978.  
7 The amount invested shall not exceed one hundred million  
8 dollars (\$100,000,000)."

9           Section 6. TEMPORARY PROVISION--PROJECT APPROVAL--LOAN  
10 GUARANTEE AUTHORIZATION.--

11           A. Pursuant to the provisions of Subsection D of  
12 Article 9, Section 14 of the constitution of New Mexico and the  
13 Statewide Economic Development Finance Act, the state grants  
14 its approval and authorizes loan guarantees for a project to be  
15 developed by the New Mexico tilapia corporation for a tilapia  
16 aquaculture and hydroponic vegetable production project in  
17 Hidalgo county.

18           B. Pursuant to Section 6-25-18.1 NMSA 1978, the New  
19 Mexico finance authority may issue economic development  
20 revolving fund bonds in an amount not to exceed thirty million  
21 dollars (\$30,000,000) for the purpose of a loan guarantee for  
22 paying the holders of project revenue bonds issued to pay for  
23 land, buildings or infrastructure for the project as approved  
24 in Subsection A of this section; provided that the loan  
25 guarantee shall be released only upon the order of a court or

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1 upon certification by the New Mexico finance authority that  
2 revenue from the project is insufficient to make the bond  
3 payments and that, without the bond payments, the project would  
4 be in default on the project revenue bonds.

5 C. If, on July 1, 2010, the economic development  
6 revolving funds bonds authorized by Section B of this section  
7 have not been issued and sold, the approval and authorization  
8 granted by this section is void.

9 Section 7. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.