

1 SENATE BILL 483

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO PUBLIC FINANCE; AMENDING THE TAX INCREMENT FOR  
12 DEVELOPMENT ACT TO IMPOSE A MORATORIUM ON CREATION OF CERTAIN  
13 TAX INCREMENT DEVELOPMENT DISTRICTS AND ON STATE BOARD OF  
14 FINANCE APPROVAL OF DEDICATION OF A STATE GROSS RECEIPTS TAX  
15 INCREMENT FOR CERTAIN BONDS; CREATING A TAX INCREMENT FINANCING  
16 TASK FORCE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
17 MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006,  
21 Chapter 75, Section 1) is amended to read:

22 "5-15-1. SHORT TITLE.--~~[Sections 1 through 27 of this~~  
23 ~~act]~~ Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax  
24 Increment for Development Act"."

25 Section 2. Section 5-15-4 NMSA 1978 (being Laws 2006,

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1 Chapter 75, Section 4) is amended to read:

2 "5-15-4. RESOLUTION FOR FORMATION OF A DISTRICT.--

3 A. Subject to the limitation in Section 5-15-29  
4 NMSA 1978, a tax increment development plan may be approved by  
5 the governing body of the municipality or county within which  
6 tax increment development projects are proposed. Upon filing  
7 with the clerk of the governing body of an approved tax  
8 increment development plan and upon receipt of a petition  
9 bearing the signatures of the owners of at least fifty percent  
10 of the real property located within a proposed tax increment  
11 development area, and subject to the limitation in Section  
12 5-15-29 NMSA 1978, the governing body may adopt a resolution  
13 declaring its intent to form a tax increment development  
14 district. Prior to the formation of a district, the owner or  
15 developer of the real property located within an area proposed  
16 to be designated as a tax increment development area may enter  
17 into an agreement with the governing body concerning the  
18 improvement of specific property within the district, and that  
19 agreement may be used to establish obligations of the owner or  
20 developer and the governing body concerning the zoning,  
21 subdivision, improvement, impact fees, financial  
22 responsibilities and other matters relating to the development,  
23 improvement and use of real property within the district.

24 B. Subject to the limitation in Section 5-15-29  
25 NMSA 1978, a governing body may adopt a resolution on its own

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1 motion upon its finding that a need exists for the formation of  
2 a district.

3 C. The resolution to form a district shall include:

4 (1) the area or areas to be included within  
5 the boundaries of the district;

6 (2) the purposes for which the district is to  
7 be formed;

8 (3) a statement that a tax increment  
9 development plan is on file with the clerk of the governing  
10 body and that the plan includes a map depicting the boundaries  
11 of the tax increment development area and the real property  
12 proposed to be included in the area;

13 (4) the rate of any proposed property tax  
14 levy;

15 (5) identification of gross receipts tax  
16 increment and property tax increment financing mechanisms  
17 proposed;

18 (6) identification of gross receipts tax  
19 increments and property tax increments proposed to secure  
20 proposed gross receipts tax increment bonds or property tax  
21 increment bonds;

22 (7) requirement of a public hearing for the  
23 formation of the district and notice of the hearing;

24 (8) a statement that formation of a district  
25 may result in the use of gross receipts tax increments or

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1 property tax increments to pay the costs of construction of  
2 public improvements made by the district; and

3 (9) a reference to the Tax Increment for  
4 Development Act.

5 D. A resolution may direct that, prior to holding a  
6 hearing on formation of a district, petitioners for the  
7 formation of a district prepare a study of the feasibility, the  
8 financing and the estimated costs of improvements, services and  
9 benefits to result from the formation of the proposed district.  
10 The governing body may require those petitioners to deposit  
11 with the clerk or treasurer of the governing body an amount  
12 equal to the estimated costs of conducting the study and other  
13 estimated formation costs. The deposit shall be reimbursed if  
14 the district is formed and if gross receipts tax increment  
15 bonds or property tax increment bonds are issued by that  
16 district pursuant to the Tax Increment for Development Act.

17 E. A resolution adopted pursuant to this section  
18 shall direct that a public hearing on formation of the district  
19 be scheduled and that notice of the hearing be mailed and  
20 published."

21 Section 3. Section 5-15-7 NMSA 1978 (being Laws 2006,  
22 Chapter 75, Section 7) is amended to read:

23 "5-15-7. PUBLIC HEARING.--

24 A. At a public hearing conducted pursuant to the  
25 Tax Increment for Development Act, the governing body shall

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1 hear all relevant evidence and testimony and make findings. A  
2 record of the hearing shall be kept and may consist of a  
3 transcription by a court reporter, an electronic recording or  
4 minutes taken by a designated person. The record shall be  
5 preserved in the official records of the governing body and  
6 shall be open to public inspection pursuant to the Inspection  
7 of Public Records Act.

8 B. Testimony at a hearing is not required to be  
9 given under oath.

10 C. At the conclusion of a hearing, the governing  
11 body shall determine whether the tax increment development  
12 district should be formed based upon the interests, convenience  
13 or necessity of the owners, the residents of the proposed tax  
14 increment development district and the residents of the  
15 municipality or county in which the proposed tax increment  
16 development district is to be located. The governing body  
17 shall make the following findings before adopting a resolution  
18 to approve the formation of a district:

19 (1) the tax increment development plan  
20 reasonably protects the interests of the governing body in  
21 meeting its goals to support:

- 22 (a) job creation;  
23 (b) workforce housing;  
24 (c) public school facility creation and  
25 improvement, including the creation and improvement of

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1 facilities for charter schools; and

2 (d) underdeveloped area or historical  
3 area redevelopment;

4 (2) the tax increment development plan  
5 demonstrates elements of innovative planning techniques,  
6 including mixed-use transit-oriented development, traditional  
7 neighborhood design or sustainable development techniques, that  
8 are deemed by the governing body to benefit community  
9 development;

10 (3) the tax increment development plan  
11 incorporates sustainable development considerations; and

12 (4) the tax increment development plan  
13 conforms to general or long-term planning of the governing  
14 body.

15 D. Subject to the limitation in Section 5-15-29  
16 NMSA 1978, if the governing body determines that the district  
17 should be formed, it shall adopt a resolution ordering that the  
18 tax increment development district be formed and shall set the  
19 matter for an election or declare that an election is waived,  
20 as provided in the Tax Increment for Development Act."

21 Section 4. Section 5-15-15 NMSA 1978 (being Laws 2006,  
22 Chapter 75, Section 15) is amended to read:

23 "5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX  
24 INCREMENT.--

25 A. Notwithstanding any law to the contrary, but in  
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1 accordance with the provisions of the Tax Increment for  
2 Development Act, a tax increment development plan, as  
3 originally approved or as later modified, may contain a  
4 provision that a portion of certain gross receipts tax  
5 increments collected within the tax increment development area  
6 after the effective date of approval of the tax increment  
7 development plan may be dedicated for the purpose of securing  
8 gross receipts tax increment bonds pursuant to the Tax  
9 Increment for Development Act.

10 B. As to a district formed by a municipality, a  
11 portion of any of the following gross receipts tax increments  
12 may be paid by the state directly into a special fund of the  
13 district to pay the principal of, the interest on and any  
14 premium due in connection with the bonds of, loans or advances  
15 to, or any indebtedness incurred by, whether funded, refunded,  
16 assumed or otherwise, the authority for financing or  
17 refinancing, in whole or in part, a tax increment development  
18 project within the tax increment development area:

19 (1) municipal gross receipts tax authorized  
20 pursuant to the Municipal Local Option Gross Receipts Taxes  
21 Act;

22 (2) municipal environmental services gross  
23 receipts tax authorized pursuant to the Municipal Local Option  
24 Gross Receipts Taxes Act;

25 (3) municipal infrastructure gross receipts

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1 tax authorized pursuant to the Municipal Local Option Gross  
2 Receipts Taxes Act;

3 (4) municipal capital outlay gross receipts  
4 tax authorized pursuant to the Municipal Local Option Gross  
5 Receipts Taxes Act;

6 (5) municipal regional transit gross receipts  
7 tax authorized pursuant to the Municipal Local Option Gross  
8 Receipts Taxes Act;

9 (6) an amount distributed to municipalities  
10 pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

11 (7) the state gross receipts tax.

12 C. As to a district formed by a county, all or a  
13 portion of any of the following gross receipts tax increments  
14 may be paid by the state directly into a special fund of the  
15 district to pay the principal of, the interest on and any  
16 premium due in connection with the bonds of, loans or advances  
17 to or any indebtedness incurred by, whether funded, refunded,  
18 assumed or otherwise, the district for financing or  
19 refinancing, in whole or in part, a tax increment development  
20 project within the tax increment development area:

21 (1) county gross receipts tax authorized  
22 pursuant to the County Local Option Gross Receipts Taxes Act;

23 (2) county environmental services gross  
24 receipts tax authorized pursuant to the County Local Option  
25 Gross Receipts Taxes Act;

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1 (3) county infrastructure gross receipts tax  
2 authorized pursuant to the County Local Option Gross Receipts  
3 Taxes Act;

4 (4) county capital outlay gross receipts tax  
5 authorized pursuant to the County Local Option Gross Receipts  
6 Taxes Act;

7 (5) county regional transit gross receipts tax  
8 authorized pursuant to the County Local Option Gross Receipts  
9 Taxes Act; and

10 (6) the state gross receipts tax.

11 D. The gross receipts tax increment generated by  
12 the imposition of municipal or county local option gross  
13 receipts taxes specified by statute for particular purposes may  
14 nonetheless be dedicated for the purposes of the Tax Increment  
15 for Development Act if intent to do so is set forth in the tax  
16 increment development plan approved by the governing body, if  
17 the purpose for which the increment is intended to be used is  
18 consistent with the purposes set forth in the statute  
19 authorizing the municipal or county local option gross receipts  
20 tax.

21 E. Subject to the limitation in Section 5-15-29  
22 NMSA 1978, an imposition of a gross receipts tax increment  
23 attributable to the imposition of a gross receipts tax by a  
24 taxing entity may be dedicated for the purpose of securing  
25 gross receipts tax increment bonds with the agreement of the

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1 taxing entity, evidenced by a resolution adopted by a majority  
2 vote of that taxing entity. A taxing entity shall not agree to  
3 dedicate for the purposes of securing gross receipts tax  
4 increment bonds more than seventy-five percent of its gross  
5 receipts tax increment attributable to the imposition of gross  
6 receipts taxes by the taxing entity. A resolution of the  
7 taxing entity to dedicate a gross receipts tax increment or to  
8 increase the dedication of a gross receipts tax increment shall  
9 become effective only on January 1 or July 1 of the calendar  
10 year.

11 F. Subject to the limitation in Section 5-15-29  
12 NMSA 1978, an imposition of a gross receipts tax increment  
13 attributable to the imposition of the state gross receipts tax  
14 within a district may be dedicated for the purpose of securing  
15 gross receipts tax increment bonds with the agreement of the  
16 state board of finance, evidenced by a resolution adopted by a  
17 majority vote of the state board of finance. The state board  
18 of finance shall not agree to dedicate more than seventy-five  
19 percent of the gross receipts tax increment attributable to the  
20 imposition of the state gross receipts tax within the district.  
21 The resolution of the state board of finance shall become  
22 effective only on January 1 or July 1 of the calendar year and  
23 shall find that:

24 (1) the state board of finance has reviewed  
25 the request for the use of the state gross receipts tax;

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1                   (2) based upon review by the state board of  
2 finance of the applicable tax increment development plan, the  
3 dedication by the state board of finance of a portion of the  
4 gross receipts tax increment attributable to the imposition of  
5 the state gross receipts tax within the district for use in  
6 meeting the required goals of the tax increment plan is  
7 reasonable and in the best interest of the state; and

8                   (3) the use of the state gross receipts tax is  
9 likely to stimulate the creation of jobs, economic  
10 opportunities and general revenue for the state through the  
11 addition of new businesses to the state and the expansion of  
12 existing businesses within the state.

13                   G. The governing body of the jurisdiction in which  
14 a tax increment development district has been established shall  
15 timely notify the assessor of the county in which the district  
16 has been established, the taxation and revenue department and  
17 the local government division of the department of finance and  
18 administration when:

19                   (1) a tax increment development plan has been  
20 approved that contains a provision for the allocation of a  
21 gross receipts tax increment;

22                   (2) any outstanding bonds of the district have  
23 been paid off; and

24                   (3) the purposes of the district have  
25 otherwise been achieved."

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1 Section 5. A new section of the Tax Increment for  
2 Development Act, Section 5-15-29 NMSA 1978, is enacted to read:

3 "5-15-29. [NEW MATERIAL] MORATORIUM--GREENFIELD TAX  
4 INCREMENT DEVELOPMENT DISTRICTS.--

5 A. From the effective date of this 2009 act until  
6 March 31, 2011, there shall be a moratorium on approval of tax  
7 increment development plans for greenfield tax increment  
8 development districts, on formation of greenfield tax increment  
9 development districts and on approval by the state board of  
10 finance of dedication of gross receipts tax increments for  
11 greenfield tax increment development districts. During this  
12 time period:

13 (1) a governing body shall not approve  
14 pursuant to the provisions of Section 5-15-4 NMSA 1978 a tax  
15 increment development plan for a greenfield tax increment  
16 development district;

17 (2) a governing body shall not adopt a  
18 resolution pursuant to the provisions of Section 5-15-4 NMSA  
19 1978 declaring its intent to form a tax increment development  
20 district that is a greenfield tax increment development  
21 district;

22 (3) a governing body shall not adopt a  
23 resolution pursuant to Subsection D of Section 5-15-7 NMSA 1978  
24 ordering that a tax increment development district that is a  
25 greenfield tax increment development district be formed;

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1 (4) a taxing entity shall not adopt a  
2 resolution pursuant to Subsection E of Section 5-15-15 NMSA  
3 1978 approving dedication of a gross receipts tax increment for  
4 bonds for a greenfield tax increment development district; and

5 (5) the state board of finance shall not adopt  
6 a resolution pursuant to Subsection F of Section 5-15-15 NMSA  
7 1978 approving dedication of a gross receipts tax increment for  
8 bonds for a greenfield tax increment development district.

9 B. The moratorium pursuant to this section shall  
10 not apply to a tax increment development district with respect  
11 to which a governing body, prior to January 1, 2009, adopted a  
12 resolution ordering the formation of the district and for  
13 which, prior to January 1, 2009, the state board of finance  
14 adopted a resolution dedicating a gross receipts tax increment  
15 attributable to the imposition of the state gross receipts tax  
16 within the district.

17 C. For the purposes of this section, "greenfield  
18 tax increment development district" means a tax increment  
19 development district:

20 (1) consisting of land the majority of which  
21 has not been previously developed and is not currently served  
22 by municipal or county public infrastructure adequate to serve  
23 the proposed development; and

24 (2) for which the tax increment development  
25 plan primarily relies on the development of new residential or

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1 commercial structures and the infrastructure required to  
2 support them, rather than the redevelopment of existing  
3 residential or commercial structures and their infrastructure."

4 Section 6. [NEW MATERIAL] TAX INCREMENT FINANCING TASK  
5 FORCE CREATED--MEMBERSHIP--DUTIES.--

6 A. The "tax increment financing task force" is  
7 created. The task force shall function from the date of its  
8 appointment until June 30, 2010.

9 B. The task force is composed of the following  
10 members:

11 (1) the secretary of finance and  
12 administration or the secretary's designee;

13 (2) the secretary of taxation and revenue or  
14 the secretary's designee;

15 (3) the chief executive officer of the New  
16 Mexico finance authority or the chief executive officer's  
17 designee;

18 (4) the secretary of public education or the  
19 secretary's designee;

20 (5) the chair of the legislative finance  
21 committee or the chair's designee;

22 (6) the chair of the legislative education  
23 study committee or the chair's designee;

24 (7) the director of the bureau of business and  
25 economic research of the university of New Mexico or the

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1 director's designee; and

2 (9) the chief executive officer of the  
3 arrowhead center of New Mexico state university or the chief  
4 executive officer's designee.

5 C. Vacancies on the task force shall be filled by  
6 appointment by the original appointing authority.

7 D. Members of the task force are entitled to per  
8 diem and mileage as provided in the Per Diem and Mileage Act  
9 and shall receive no other compensation, perquisite or  
10 allowance.

11 E. Staff for the task force shall be provided by  
12 the legislative council service, the legislative finance  
13 committee, the department of finance and administration and the  
14 taxation and revenue department.

15 F. The task force shall solicit input from a wide  
16 variety of organizations and private citizens, including:

17 (1) public interest advocacy groups concerned  
18 with growth and development issues, economic and social justice  
19 issues, the interests of low-income children and families and  
20 environmental issues; and

21 (2) business and industry associations,  
22 professional associations, economic development organizations,  
23 labor unions, municipal and county governments, municipal and  
24 county organizations, private and public land use planners and  
25 tax research organizations.

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1           G. Meetings of the task force shall be open to the  
2 public. The task force shall maintain a web site with  
3 information about past and upcoming meetings and shall post all  
4 written materials provided to the task force members. Notice  
5 of meetings, including posting on the web site, shall be given  
6 at least seven days in advance of a meeting date. The task  
7 force shall hold meetings at least quarterly at which public  
8 input is solicited.

9           H. The task force shall evaluate the implementation  
10 and effect of the Tax Increment for Development Act to date and  
11 the consequences of the creation of additional tax increment  
12 development districts, including at a minimum, examination of  
13 the following issues:

14                   (1) the long-term fiscal impact on the general  
15 fund;

16                   (2) the long-term fiscal impact on municipal  
17 and county funding for recurring programs;

18                   (3) the amount of state and local gross  
19 receipts taxes and property taxes committed to existing tax  
20 increment development districts;

21                   (4) the experience of other states with tax  
22 increment financing, especially the inclusion of state-level  
23 taxes in tax increment financing;

24                   (5) what the consequences have been of  
25 permitting tax increment development districts to enter into

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1 contracts for public improvements without regard to the  
2 provisions of the Procurement Code or local procurement  
3 regulations;

4 (6) the availability of other economic  
5 development incentives in existing tax increment development  
6 districts;

7 (7) what the consequences would be if tax  
8 increment revenues prove insufficient to cover debt service on  
9 tax increment development district bonds;

10 (8) whether approval by the local governing  
11 body that approved the district's tax increment development  
12 plan should be added as an explicit requirement for changes to  
13 tax increment development district boundaries and tax increment  
14 development district board membership; and

15 (9) other possible alternatives for providing  
16 financing for public infrastructure for new developments.

17 I. The task force shall report its findings and  
18 recommendations, including recommendations for legislation, to  
19 the governor, the legislative finance committee and other  
20 appropriate interim legislative committees by June 30, 2010.  
21 Prior to submitting this report of its findings and  
22 recommendations, the task force shall make a draft report  
23 available and provide an opportunity for public comment.

24 Section 7. APPROPRIATION.--One hundred thousand dollars  
25 (\$100,000) is appropriated from the general fund to the

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1 legislative council service for expenditure in fiscal years  
2 2009 and 2010 to pay costs associated with the tax increment  
3 financing task force. Any unexpended or unencumbered balance  
4 remaining at the end of fiscal year 2010 shall revert to the  
5 general fund.

6 Section 8. EMERGENCY.--It is necessary for the public  
7 peace, health and safety that this act take effect immediately.