

1 SENATE BILL 238

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Steven P. Neville

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10 AN ACT

11 RELATING TO PUBLIC FINANCE; REQUIRING CERTAIN AGREEMENTS AND
12 CERTIFICATIONS WITH RESPECT TO INDUSTRIAL REVENUE BOND-FUNDED
13 PROJECTS ACQUIRED BY MUNICIPALITIES OR COUNTIES WITHIN CERTAIN
14 BOUNDARIES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 3-32-6 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-31-3, as amended) is amended to read:

19 "3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--

20 In addition to any other powers that it may now have, a
21 municipality shall have the following powers:

22 A. to acquire, whether by construction, purchase,
23 gift or lease, one or more projects [~~that shall be located~~
24 ~~within this state and may be located within or without the~~
25 ~~municipality or partially within or partially without the~~

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1 ~~municipality, but which shall not be located more than fifteen~~
2 ~~miles outside of the corporate limits of the municipality];~~
3 provided that:

4 (1) urban transit buses qualifying as a
5 project pursuant to Subsection B of Section 3-32-3 NMSA 1978
6 need not be continuously located within this state, but the
7 commercial enterprise using the urban transit buses for leasing
8 shall meet the location requirement of this subsection; ~~and~~

9 (2) a municipality shall not acquire ~~any~~ an
10 electricity generation facility project unless the acquisition
11 is approved by the ~~[local school]~~ board of education of the
12 school district in which ~~[a]~~ the project is located and the
13 governing body, the ~~[local school]~~ board of education and the
14 person proposing the project negotiate and determine ~~[the~~
15 ~~amount of]~~ an annual ~~[in-lieu tax payment to be made]~~ amount in
16 lieu of taxes that the person will pay to the school district
17 ~~[by the person proposing the project]~~ for the period that the
18 municipality owns and leases the project, and provided such
19 approval shall not be unreasonably withheld; and

20 (3) a municipality shall not acquire a project
21 located outside the corporate limits of a municipality unless:

22 (a) the project is located entirely
23 within an area that does not extend more than fifteen miles
24 beyond the corporate limits of the municipality; and

25 (b) the governing body of each county

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1 within which the project is located certifies the project's
2 compliance with that county's ordinances and enters into an
3 agreement with the person proposing the project for: 1) an
4 annual amount in lieu of taxes that the person will pay to the
5 county for the period that the municipality owns and leases the
6 project; or 2) other consideration that the person will provide
7 to the county instead of an annual payment in lieu of taxes for
8 the period that the municipality owns and leases the project;

9 B. to sell or lease or otherwise dispose of any or
10 all of its projects upon such terms and conditions as the
11 governing body may deem advisable and as shall not conflict
12 with the provisions of the Industrial Revenue Bond Act;

13 C. to issue revenue bonds for the purpose of
14 defraying the cost of acquiring by construction and purchase,
15 or either, any project and to secure the payment of such bonds,
16 all as provided in the Industrial Revenue Bond Act. [No] A
17 municipality shall not have the power to operate [~~any~~] a
18 project as a business or in any manner except as lessor;

19 D. to refinance one or more hospital or 501(c)(3)
20 corporation projects and to acquire any such hospital or
21 501(c)(3) corporation project whether by construction,
22 purchase, gift or lease [~~which hospital or 501(c)(3)~~
23 ~~corporation project shall be located within this state and may~~
24 ~~be located within or without the municipality or partially~~
25 ~~within or partially without the municipality, but which shall~~

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1 ~~not be located more than fifteen miles outside of the corporate~~
2 ~~limits of the municipality~~], and to issue revenue bonds to
3 refinance and acquire a hospital or 501(c)(3) corporation
4 project and to secure the payment of such bonds, all as
5 provided in the Industrial Revenue Bond Act. A municipality
6 shall not have the power to operate a hospital or 501(c)(3)
7 corporation project as a business or in any manner except as
8 lessor; and

9 E. to refinance one or more projects of ~~[any]~~ a
10 private institution of higher education and to acquire any such
11 project, whether by construction, purchase, gift or lease;
12 ~~[provided that the project shall be located within this state~~
13 ~~and may be located within or without the municipality or~~
14 ~~partially within or partially without the municipality, but the~~
15 ~~project shall not be located more than fifteen miles outside of~~
16 ~~the corporate limits of the municipality, and]~~ to issue revenue
17 bonds to refinance and acquire ~~[any]~~ a project of ~~[any]~~ a
18 private institution of higher education; and to secure the
19 payment of such bonds. A municipality shall not have the power
20 to operate a project of a private institution of higher
21 education as a business or in any manner except as lessor."

22 SECTION 2. Section 4-59-2 NMSA 1978 (being Laws 1975,
23 Chapter 286, Section 2, as amended) is amended to read:

24 "4-59-2. DEFINITIONS.--As used in the County Industrial
25 Revenue Bond Act, unless the context clearly indicates

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1 otherwise:

2 A. "commission" means the governing body of a
3 county;

4 B. "county" means a county organized or
5 incorporated in New Mexico;

6 C. "501(c)(3) corporation" means a corporation that
7 demonstrates to the taxation and revenue department that it has
8 been granted exemption from the federal income tax as an
9 organization described in Section 501(c)(3) of the Internal
10 Revenue Code of 1986, as amended or renumbered;

11 D. "health care service" means the diagnosis or
12 treatment of sick or injured persons or medical research and
13 includes the ownership, operation, maintenance, leasing and
14 disposition of health care facilities, such as hospitals,
15 clinics, laboratories, x-ray centers and pharmacies;

16 E. "mortgage" means a mortgage or a mortgage and
17 deed of trust or the pledge and hypothecation of any assets as
18 collateral security;

19 F. "project" means any land and building or other
20 improvements thereon, the acquisition by or for a New Mexico
21 corporation of the assets or stock of an existing business or
22 corporation located outside the state to be relocated within a
23 county but, except as provided in [~~Paragraph (1) of~~] Subsection
24 A of Section 4-59-4 NMSA 1978, not within the boundaries of
25 [~~any~~] an incorporated municipality in the state, and all real

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1 and personal properties deemed necessary in connection
2 therewith, whether or not now in existence, [~~which~~] that shall
3 be suitable for use by the following or by any combination of
4 two or more thereof:

5 (1) an industry for the manufacturing,
6 processing or assembling of agricultural or manufactured
7 products;

8 (2) a commercial enterprise that has received
9 a permit from the energy, minerals and natural resources
10 department for a mine that has not been in operation prior to
11 the issuance of bonds for the project for which the enterprise
12 will be involved;

13 (3) a commercial enterprise that has received
14 any necessary state permit for a refinery, treatment plant or
15 processing plant of energy products that was not in operation
16 prior to the issuance of bonds for the project for which the
17 enterprise will be involved;

18 (4) a commercial enterprise in storing,
19 warehousing, distributing or selling products of agriculture,
20 mining or industry, but does not include a facility designed
21 for the sale or distribution to the public of electricity, gas,
22 telephone or other services commonly classified as public
23 utilities, except for:

24 (a) water utilities; and

25 (b) any electric generation facility

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1 other than one for which both location approval and a
2 certificate of convenience and necessity are required prior to
3 commencing construction or operation of the facility, pursuant
4 to the Public Utility Act;

5 (5) a business in which all or part of the
6 activities of the business involve the supplying of services to
7 the general public or to governmental agencies or to a specific
8 industry or customer;

9 (6) a nonprofit corporation engaged in health
10 care services;

11 (7) a mass transit or other transportation
12 activity involving the movement of passengers, an industrial
13 park, an office headquarters and a research facility;

14 (8) a water distribution or irrigation system,
15 including without limitation, pumps, distribution lines,
16 transmission lines, towers, dams and similar facilities and
17 equipment; and

18 (9) a 501(c)(3) corporation; and

19 G. "property" means any land, improvements thereon,
20 buildings and any improvements thereto, machinery and equipment
21 of any and all kinds necessary to the project, operating
22 capital and any other personal properties deemed necessary in
23 connection with the project."

24 SECTION 3. Section 4-59-4 NMSA 1978 (being Laws 1975,
25 Chapter 286, Section 4, as amended) is amended to read:

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1 "4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In
2 addition to any other powers that it may now have, each county
3 shall have the following powers:

4 A. to acquire, whether by construction, purchase,
5 gift or lease, one or more projects, which shall be located
6 within this state and shall be located within the county
7 outside the boundaries of ~~[any]~~ an incorporated municipality;
8 provided, however, that:

9 (1) a class A county with a population of
10 ~~[more than three]~~ five hundred thousand or more, according to
11 the most recent federal decennial census, may acquire a
12 ~~[projects]~~ project located anywhere in the county; ~~[and]~~

13 (2) a class A county with a population of less
14 than five hundred thousand, according to the most recent
15 federal decennial census, may acquire a project located within
16 the boundaries of an incorporated municipality if the governing
17 body of each municipality within which the project is located
18 certifies the project's compliance with that municipality's
19 ordinances and enters into an agreement with the person
20 proposing the project for: 1) an annual amount in lieu of
21 taxes that the person will pay to the municipality for the
22 period that the county owns and leases the project; or 2) other
23 consideration that the person will provide to the municipality
24 instead of an annual payment in lieu of taxes for the period
25 that the county owns and leases the project; and

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1 [~~(2)~~] (3) a county shall not acquire [~~any~~] an
2 electricity generation facility project unless the acquisition
3 is approved by the [~~local school~~] board of education of the
4 school district in which [~~a~~] the project is located and the
5 board of county commissioners, the [~~local school~~] board of
6 education and the person proposing the project negotiate and
7 determine [~~the amount of~~] an annual [~~in lieu tax payment to be~~
8 ~~made~~] amount in lieu of taxes that the person will pay to the
9 school district [~~by the person proposing the project~~] for the
10 period that the county owns and leases the project, and
11 provided such approval shall not be unreasonably withheld;

12 B. to sell or lease or otherwise dispose of any or
13 all of its projects upon such terms and conditions as the
14 commission may deem advisable and as shall not conflict with
15 the provisions of the County Industrial Revenue Bond Act; and

16 C. to issue revenue bonds for the purpose of
17 defraying the cost of acquiring, by construction and purchase,
18 or either, any project and to secure the payment of such bonds,
19 all as provided in the County Industrial Revenue Bond Act. No
20 county shall have the power to operate any project as a
21 business or in any manner except as lessor thereof."

22 SECTION 4. SAVING CLAUSE.--The provisions of this 2018
23 act do not apply to a project for which a notice of intent to
24 consider an ordinance issuing industrial revenue bonds has been
25 issued prior to July 1, 2018 pursuant to Section 3-32-6.1 NMSA

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1 1978 by a municipality with a population of less than one
2 hundred fifty according to the most recent federal decennial
3 census.

4 SECTION 5. APPLICABILITY.--Except as provided in Section
5 4 of this act, the provisions of this act apply to projects for
6 which industrial revenue bonds are issued on or after July 1,
7 2018.

8 SECTION 6. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2018.