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**HOUSE BILL 907**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**James G. Taylor**

**AN ACT**

**RELATING TO FINANCE; ENACTING THE MINOR LEAGUE BASEBALL STADIUM FUNDING ACT; AUTHORIZING MUNICIPALITIES TO REQUIRE VENDORS TO COLLECT A STADIUM SURCHARGE ON REVENUES ARISING FROM ACTIVITIES AT A MINOR LEAGUE BASEBALL STADIUM; PROVIDING LEGISLATIVE AUTHORIZATION FOR THE NEW MEXICO FINANCE AUTHORITY TO MAKE A LOAN FOR A MINOR LEAGUE BASEBALL STADIUM FROM THE PUBLIC PROJECT REVOLVING FUND; EXEMPTING THE STADIUM SURCHARGE FROM THE GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX; DECLARING AN EMERGENCY.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 11 of this act may be cited as the "Minor League Baseball Stadium Funding Act".**

**Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --**

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A. The legislature finds that:

(1) the costs of land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining minor league baseball stadiums have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern minor league baseball stadiums are essential in retaining and attracting minor league baseball teams to the state; and

(3) even after utilizing local financial resources, municipalities need additional means to provide complete funding for functional and modern minor league baseball stadiums.

B. The purpose of the Minor League Baseball Stadium Funding Act is to provide an additional method of accessing the capital markets with the assistance of the New Mexico finance authority to meet the need for a complete funding package for functional and modern minor league baseball stadiums.

Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the Minor League Baseball Stadium Funding Act:

A. "authority" means the New Mexico finance authority;

B. "chief executive officer" means the mayor or

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1 chief administrative officer of a municipality when designated  
2 in writing by the mayor to perform duties required by the  
3 Minor League Baseball Stadium Funding Act;

4 C. "governing body" means the council, commission  
5 or other group of elected officials of a municipality in which  
6 is vested the legislative authority of a municipality;

7 D. "loan" means a loan or other financial  
8 arrangement pursuant to which money is lent or otherwise made  
9 available by the authority to a municipality to pay for some  
10 or all of the costs of land for and designing, purchasing,  
11 constructing, remodeling, rehabilitating, renovating,  
12 improving, equipping and furnishing a minor league baseball  
13 stadium;

14 E. "loan payments" means all payments of  
15 principal, interest, premiums, charges, expenses or other  
16 obligations required to be paid by a municipality to the  
17 authority to repay the loan;

18 F. "minor league baseball stadium" means a  
19 stadium, including land, buildings and related improvements,  
20 primarily designed and intended for use by minor league  
21 baseball teams as a venue for playing baseball games;

22 G. "municipality" means a municipality located in  
23 a class A county with a population of more than two hundred  
24 thousand according to the 1990 federal decennial census;

25 H. "stadium surcharge" means a surcharge on

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1 tickets, parking, souvenirs, concessions, programs,  
2 advertising, merchandise, corporate suites or boxes, broadcast  
3 revenues and all other products or services sold at or related  
4 to the minor league baseball stadium or related to activities  
5 occurring at the stadium;

6 I. "vendor" means every person, corporation,  
7 partnership or other entity, including a division or  
8 department of a municipality, providing products or services  
9 sold at or related to the minor league baseball stadium; and

10 J. "vendor contract" means a contract, agreement  
11 or other written arrangement between a municipality and a  
12 vendor pursuant to which the vendor provides products or  
13 services sold at or related to the minor league baseball  
14 stadium.

15 Section 4. [NEW MATERIAL] AUTHORIZATION OF SURCHARGE--  
16 USE OF PROCEEDS. --

17 A. A municipality shall include a stadium  
18 surcharge in each vendor contract, and each vendor contract  
19 shall be signed by the chief executive officer.

20 B. Before establishing the amount of the stadium  
21 surcharge to be included in each vendor contract, the  
22 municipality shall notify the authority in writing of the  
23 proposed amount of the loan requested for the minor league  
24 baseball stadium and of the proposed amount of the surcharge  
25 to be included in each vendor contract. The authority shall

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1 review the proposed amount of the stadium surcharge and shall  
2 make a written recommendation to a municipality setting forth  
3 the minimum amount of the surcharge to be set forth in the  
4 loan and related documents. The minimum amount of the stadium  
5 surcharge shall never be less than five percent and may be any  
6 higher percentage recommended by the authority or otherwise  
7 established by the municipality.

8 C. After receipt of the written recommendation  
9 from the authority, a municipality shall establish the amount  
10 of the stadium surcharge to be included in each vendor  
11 contract, provided that the amount of the surcharge to be set  
12 forth in the loan and related documents shall be at least the  
13 minimum amount recommended by the authority.

14 D. The receipts from the stadium surcharge may be  
15 used by the municipality for all or any portion of:

- 16 (1) loan payments;  
17 (2) costs of constructing, renovating,  
18 operating, maintaining or improving the minor league baseball  
19 stadium; or  
20 (3) costs of collecting and otherwise  
21 administering the surcharge.

22 E. A municipality shall establish a fund for  
23 construction, renovation, operation, maintenance and  
24 improvement of a minor league baseball stadium for deposit of  
25 all receipts from the stadium surcharge that exceed the

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1 required loan payments, and all receipts deposited in that  
2 fund shall be used for such purposes and may also be used for  
3 the costs of collection and otherwise administering the  
4 surcharge.

5 Section 5. [NEW MATERIAL] COLLECTION OF SURCHARGE--  
6 REMITTANCE TO THE MUNICIPALITY. --

7 A. Every vendor shall collect the stadium  
8 surcharge on behalf of the municipality and shall act as a  
9 trustee therefor.

10 B. The stadium surcharge shall be collected by  
11 vendors from the users of products or services subject to the  
12 surcharge. Users shall be charged separately for the stadium  
13 surcharge from the cost of the product or service subject to  
14 the surcharge or the vendor shall institute accounting  
15 controls or procedures sufficient to identify the amount of  
16 the surcharge owed to a municipality for each sale,  
17 transaction or exchange subject to the surcharge.

18 C. All receipts from the stadium surcharge shall  
19 be remitted by vendors to the treasurer of the municipality no  
20 later than the tenth day of the month following collection of  
21 the receipts. The treasurer of the municipality shall deposit  
22 the receipts in a separate account and shall act as trustee of  
23 the receipts on behalf of the authority so long as any loan is  
24 unpaid.

25 Section 6. [NEW MATERIAL] AUDITS. -- A municipality shall

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1 provide by ordinance a method to either audit or otherwise  
2 ensure that vendors subject to the stadium surcharge collect  
3 and remit to the treasurer of the municipality the full amount  
4 of the surcharge receipts due to the municipality.

5 Section 7. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

6 A. An action to enforce the imposition and  
7 collection of a stadium surcharge by a vendor may be brought  
8 by a municipality.

9 B. A district court may issue an appropriate  
10 judgment, order or remedy to enforce the provisions of a  
11 vendor contract.

12 C. Any judgment issued by a district court  
13 requiring stadium surcharge receipts to be paid to a municipal  
14 treasurer by a vendor shall also award interest at twelve  
15 percent on past-due amounts, attorney fees and costs to a  
16 municipality.

17 Section 8. [NEW MATERIAL] AUTHORIZATION OF PROJECT.--

18 A. Pursuant to the provisions of Section 6-21-6  
19 NMSA 1978, the legislature authorizes the authority to make a  
20 loan from the public project revolving fund to a municipality  
21 to acquire land for and to design, purchase, construct,  
22 remodel, renovate, rehabilitate, improve, equip or furnish a  
23 minor league baseball stadium on terms and conditions  
24 established by the authority.

25 B. Prior to receiving the loan, the governing body

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1 shall approve the loan and related documents by an ordinance  
2 to be adopted by a majority of the members of the governing  
3 body. The ordinance shall pledge the stadium surcharge  
4 receipts to make the loan payments. In addition to pledging  
5 stadium surcharge receipts for making loan payments, the  
6 ordinance shall pledge legally available gross receipts tax  
7 revenues distributed to a municipality pursuant to Section  
8 7-1-6.4 or 7-1-6.12 NMSA 1978 in an amount satisfactory to the  
9 authority and in an amount at least sufficient to make the  
10 loan payments. No action shall be brought questioning the  
11 legality of the pledge of receipts and revenues, the  
12 ordinance, the loan, the proceedings, the stadium surcharge or  
13 any other matter concerning the loan after thirty days from  
14 the date of publication of the ordinance approving the loan  
15 and related documents and pledging stadium surcharge receipts  
16 and gross receipts tax revenues of the municipality to make  
17 the loan payments.

18 C. The legislature or a municipality shall not  
19 repeal, amend or otherwise modify any law or ordinance that  
20 adversely affects or impairs the stadium surcharge or any loan  
21 from the authority secured by a pledge of the stadium  
22 surcharge and gross receipts tax revenues, unless the loan has  
23 been paid in full or provisions have been made for full  
24 payment.

25 Section 9. [NEW MATERIAL] CUMULATIVE AND COMPLETE

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1 AUTHORITY. -- The Minor League Baseball Stadium Funding Act  
2 shall be deemed to provide an additional and alternative  
3 method for obtaining funding for a minor league baseball  
4 stadium, establishing the stadium surcharge and completing the  
5 acts authorized thereby and shall be regarded as supplemental  
6 and additional to powers conferred by other laws of the state,  
7 without reference to such other laws of the state, and shall  
8 constitute full authority for the exercise of powers granted  
9 herein, including but not limited to the pledging of stadium  
10 surcharge receipts and gross receipts tax revenues by the  
11 governing body to make loan payments to the authority.

12 Section 10. [NEW MATERIAL] LIBERAL INTERPRETATION. -- The  
13 Minor League Baseball Stadium Funding Act, being necessary for  
14 the welfare of the state and its inhabitants, shall be  
15 liberally construed to effect the purposes of the act.

16 Section 11. [NEW MATERIAL] SEVERABILITY. -- If any part or  
17 application of the Minor League Baseball Stadium Funding Act  
18 is held invalid, the remainder or its application to other  
19 situations or persons shall not be affected.

20 Section 12. A new section of the Gross Receipts and  
21 Compensating Tax Act is enacted to read:

22 "[NEW MATERIAL] EXEMPTION-- GROSS RECEIPTS TAX AND  
23 GOVERNMENTAL GROSS RECEIPTS TAX-- STADIUM SURCHARGE. -- Exempted  
24 from the gross receipts tax and from the governmental gross  
25 receipts tax are the receipts from selling tickets, parking,

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1 souvenirs, concessions, programs, advertising, merchandise,  
2 corporate suites or boxes, broadcast revenues and all other  
3 products, services or activities sold at, related to or  
4 occurring at a minor league baseball stadium on which a  
5 stadium surcharge is imposed pursuant to the Minor League  
6 Baseball Stadium Funding Act. "

7 Section 13. EMERGENCY.--It is necessary for the public  
8 peace, health and safety that this act take effect  
9 immediately.

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