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SENATE BILL 624

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

INTRODUCED BY

Mary Jane Garcia

AN ACT

RELATING TO MUNICIPALITIES; ENACTING THE CONVENTION CENTER FINANCING ACT; AUTHORIZING CERTAIN MUNICIPALITIES TO ASSESS A DAILY FEE ON LODGING WITHIN THE MUNICIPALITY; AUTHORIZING ISSUANCE OF BONDS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Convention Center Financing Act".

Section 2. DEFINITIONS.--As used in the Convention Center Financing Act:

A. "convention center fee" means the fee on lodging authorized in the Convention Center Financing Act;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent or other consideration valued in money uses, possesses or

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1 has the right to use or possess the rooms or other units of
2 accommodations in or at an assessable premises;

3 C. "lodgings" means the rooms or other
4 accommodations furnished by a vendor to a vendee;

5 D. "assessable premises" means a hotel, apartment,
6 apartment hotel, apartment house, lodge, lodging house,
7 rooming house, motor hotel, guest house, guest ranch, ranch
8 resort, guest resort, mobile home, motor court, auto court,
9 auto camp, trailer court, trailer camp, trailer park, tourist
10 camp, cabin or other premises used for lodging;

11 E. "vendee" means a natural person to whom
12 lodgings are furnished in the exercise of the service of
13 lodging; and

14 F. "vendor" means a person or his agent furnishing
15 lodgings in the exercise of the service of lodging.

16 Section 3. AUTHORIZATION OF CONVENTION CENTER FEE--USE
17 OF PROCEEDS.--

18 A. The governing body of a municipality that is
19 located in a class A county and that had a population of more
20 than sixty thousand but less than seventy thousand according
21 to the 1990 federal decennial census may assess by ordinance a
22 fee on lodging within the municipality. The amount of the fee
23 shall not exceed two dollars fifty cents (\$2.50) per room or
24 other unit of accommodation in or at an assessable premises
25 for each day the room or other unit of accommodations is

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1 rented by a vendor to a vendee. The fee may be referred to as
2 the "convention center fee".

3 B. A convention center fee assessed pursuant to
4 this section shall be reviewed by the governing body of the
5 municipality on or about each fifth anniversary of the
6 imposition of the convention center fee. The governing body
7 shall adjust the amount of the convention center fee to result
8 in revenues equivalent to no more than one hundred twenty
9 percent of the actual operating and maintenance costs for the
10 preceding fiscal year of the convention center to which the
11 revenue from the fee is dedicated pursuant to Subsection C of
12 this section. No adjustment in the convention center fee
13 shall be made while any revenue bonds to which the revenues of
14 the convention center fee are pledged remain outstanding.

15 C. The governing body of the municipality, at the
16 time of enacting the ordinance assessing the convention center
17 fee, shall dedicate the revenue from the fee as provided in
18 this subsection. The revenue from the fee may be dedicated
19 for all or any portion of:

20 (1) costs of acquisition of land for and the
21 design, construction, equipping, furnishing, operation and
22 maintenance of a convention center located within the
23 municipality;

24 (2) payments of principal, interest or prior
25 redemption premiums due in connection with and any other

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1 charges pertaining to revenue bonds authorized by Section 13
2 or 14 of the Convention Center Financing Act; or

3 (3) costs of collecting and otherwise
4 administering the convention center fee.

5 Section 4. EXEMPTIONS. --The convention center fee shall
6 not apply:

7 A. if a vendee:

8 (1) has been a permanent resident of the
9 assessable premises for a period of at least thirty
10 consecutive days; or

11 (2) enters into or has entered into a written
12 agreement for lodgings at the assessable premises for a period
13 of at least thirty consecutive days;

14 B. if the rent paid by a vendee is less than two
15 dollars (\$2.00) a day;

16 C. to lodging accommodations at institutions of
17 the federal government, the state or any political subdivision
18 thereof;

19 D. to lodging accommodations at religious,
20 charitable, educational or philanthropic institutions,
21 including accommodations at summer camps operated by such
22 institutions;

23 E. to clinics, hospitals or other medical
24 facilities;

25 F. to privately owned and operated convalescent

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1 homes or homes for the aged, infirm, indigent or chronically
2 ill; or

3 G. if the vendor does not offer at least three
4 rooms within or attached to an assessable premises for lodging
5 or at least three other premises for lodging or a combination
6 of these within the municipality.

7 Section 5. COLLECTION OF CONVENTION CENTER FEE. --

8 A. Every vendor providing lodgings in a
9 municipality assessing a convention center fee shall collect
10 the proceeds thereof on behalf of the municipality and shall
11 act as a trustee therefor.

12 B. The convention center fee shall be collected
13 from vendees in accordance with the ordinance assessing the
14 fee and shall be charged separately from the rent fixed by the
15 vendor for the lodgings.

16 Section 6. AUDIT OF VENDORS. -- A municipality assessing a
17 convention center fee shall include verification of the
18 collection of the correct convention center fee in any audit
19 of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

20 Section 7. FINANCIAL REPORTING. -- The governing body of
21 any municipality assessing a convention center fee shall
22 report to the local government division of the department of
23 finance and administration on a quarterly basis any
24 expenditure of convention center fee funds.

25 Section 8. ENFORCEMENT. --

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1 A. An action to enforce the Convention Center
2 Financing Act may be brought by:

3 (1) the attorney general or the district
4 attorney in the county of jurisdiction; or

5 (2) a vendor who is collecting the proceeds
6 of a convention center fee in the county of jurisdiction.

7 B. A district court may issue a writ of mandamus
8 or order an injunction or other appropriate remedy to enforce
9 the provisions of the Convention Center Financing Act.

10 C. The court shall award costs and reasonable
11 attorney fees to the prevailing party in a court action to
12 enforce the provisions of the Convention Center Financing Act.

13 Section 9. COLLECTION OF DELINQUENCIES. --

14 A. The governing body of the municipality shall by
15 ordinance provide that a vendor is liable for the payment of
16 the proceeds of any convention center fee that the vendor
17 failed to remit to the municipality due to his failure to
18 collect the fee or otherwise, and shall provide for a civil
19 penalty for any such failure in an amount equal to the greater
20 of ten percent of the amount that was not duly remitted to the
21 municipality or one hundred dollars (\$100).

22 B. The municipality may bring an action in law or
23 equity in the district court for the collection of any amounts
24 due, including without limitation penalties thereon, interest
25 on the unpaid principal at a rate not exceeding one percent a

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1 month, the costs of collection and reasonable attorney fees
2 incurred in connection therewith.

3 Section 10. LIEN FOR CONVENTION CENTER FEE--PAYMENT--
4 CERTIFICATE OF LIEN.--

5 A. The convention center fee assessed by a
6 municipality constitutes a lien in favor of that municipality
7 upon the personal and real property of the vendor providing
8 lodgings in that municipality. The lien may be enforced as
9 provided in Sections 3-36-1 through 3-36-7 NMSA 1978.
10 Priority of the lien shall be determined from the date of
11 filing.

12 B. Under process or order of court, no person
13 shall sell the property of any vendor without first
14 ascertaining from the clerk or treasurer of the municipality
15 in which the vendor is located the amount of any convention
16 center fee due the municipality. Any convention center fee
17 due the municipality shall be paid from the proceeds of the
18 sale before payment is made to the judgment creditor or any
19 other person with a claim on the sale proceeds.

20 C. The clerk or treasurer of the municipality
21 shall furnish to any person applying for such a certificate a
22 certificate showing the amount of all liens in the records of
23 the municipality against any vendor pursuant to the Convention
24 Center Financing Act.

25 Section 11. ORDINANCE REQUIREMENTS.--The ordinance

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1 assessing a convention center fee or any ordinance amendatory
2 thereof or supplemental thereto, shall:

3 A. state the rate or other amount of the
4 convention center fee; the times, place and method for the
5 payment of the convention center fee proceeds to the
6 municipality; the accounts and other records to be maintained
7 in connection with the convention center fee; a procedure for
8 making refunds and resolving disputes relating to the
9 convention center fee, including exemptions pertaining
10 thereto; the procedure for preservation and destruction of
11 records and their inspection and investigation; vendor audit
12 requirements; applicable civil and criminal penalties; and a
13 procedure of liens, distraint and sales to satisfy such liens;
14 and

15 B. provide other rights, privileges, powers,
16 immunities and other details relating to the collection of the
17 convention center fee and the remittance of the proceeds
18 thereof to the municipality.

19 Section 12. PENALTIES. --The governing body of the
20 municipality shall by ordinance provide for penalties by
21 creating a misdemeanor and imposing a fine of not more than
22 five hundred dollars (\$500) or imprisonment for not more than
23 ninety days or both for a violation by any person of the
24 provisions of the convention center fee ordinance for a
25 failure to pay the fee or to remit the proceeds thereof to the

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1 municipality.

2 Section 13. REVENUE BONDS. --

3 A. Revenue bonds may be issued at any time or from
4 time to time by a municipality that has assessed a convention
5 center fee to defray wholly or in part the costs authorized in
6 Paragraph (1) of Subsection C of Section 3 of the Convention
7 Center Financing Act. The revenue bonds may be payable from
8 and payment may be secured by a pledge of and lien on the
9 revenue derived from:

10 (1) the proceeds of the convention center fee
11 of the municipality after the deduction of the administration
12 costs pertaining to the convention center fee in an amount not
13 to exceed ten percent of the convention center fee receipts
14 collected by the municipality in any fiscal year;

15 (2) a convention center to which the bonds
16 pertain, after provision is made for the payment of the
17 operation and maintenance expenses of the convention center;

18 (3) that portion of the proceeds of the
19 occupancy tax of the municipality available for payment of
20 revenue bonds pursuant to Paragraph (1) of Subsection B of
21 Section 3-38-23 NMSA 1978;

22 (4) any other legal available revenues of the
23 municipality; or

24 (5) a combination of revenues from the
25 sources designated in Paragraphs (1) through (4) of this

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1 subsection.

2 B. The bonds shall bear interest at a rate or
3 rates as authorized in the Public Securities Act, and the
4 first interest payment may be for any period authorized in the
5 Public Securities Act.

6 C. Except as otherwise provided in the Convention
7 Center Financing Act, revenue bonds authorized in the
8 Convention Center Financing Act shall be issued in accordance
9 with the provisions of Sections 3-31-2 through 3-31-6 NMSA
10 1978.

11 Section 14. REFUNDING BONDS. --

12 A. Any municipality having issued revenue bonds as
13 authorized in the Convention Center Financing Act may issue
14 refunding revenue bonds payable from pledged revenues therein
15 authorized for the payment of revenue bonds at the time of the
16 refunding or at the time of the issuance of the bonds being
17 refunded as the governing body of the municipality may
18 determine, notwithstanding the revenue sources or the pledge
19 of such revenues or both are thereby modified.

20 B. Refunding bonds may be issued for the purpose
21 of refinancing, paying and discharging all or any part of such
22 outstanding bonds of any one or more or all outstanding
23 issues:

24 (1) for the acceleration, deceleration or
25 other modification of the payment of such obligations,

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1 including without limitation any capitalization of any
2 interest thereon in arrears or about to become due for any
3 period not exceeding one year from the date of the refunding
4 bonds;

5 (2) for the purpose of reducing interest
6 costs or effecting other economies;

7 (3) for the purpose of modifying or
8 eliminating restrictive contractual limitations pertaining to
9 the issuance of additional bonds, otherwise concerning the
10 outstanding bonds, or to any facilities relating thereto; or

11 (4) for any combination of the foregoing
12 purposes.

13 C. The interest on any bond refunded shall not be
14 increased to any rate in excess of the rate authorized in the
15 Public Securities Act and shall be paid as authorized in that
16 act.

17 D. Bonds for refunding any bonds for any other
18 purpose permitted by the Convention Center Financing Act may
19 be issued separately or issued in combination in one series or
20 more.

21 E. Except as otherwise provided in the Convention
22 Center Financing Act, refunding bonds authorized in the
23 Convention Center Financing Act shall be issued in accordance
24 with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.