

CHAPTER 25

CHAPTER 25, LAWS 2002

AN ACT

RELATING TO FINANCE; PROVIDING FOR 501(c)(3) CORPORATIONS TO QUALIFY FOR FINANCING FROM INDUSTRIAL REVENUE BONDS ISSUED BY MUNICIPALITIES AND COUNTIES; ALLOWING HEALTH FACILITIES PROVIDING HUMAN SERVICES TO QUALIFY FOR FINANCING FROM THE NEW MEXICO HOSPITAL EQUIPMENT LOAN COUNCIL.

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

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

"3-32-1. INDUSTRIAL REVENUE BOND ACT--DEFINITIONS.-- Wherever used in the Industrial Revenue Bond Act unless a different meaning clearly appears in the context, the following terms whether used in the singular or plural shall be given the following respective interpretations:

A. "municipality" means any city, town or village in the state of New Mexico;

B. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state of New Mexico to be relocated within or near the municipality in the state of New Mexico and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry but does not include facilities designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) any business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer but does not include establishments primarily engaged in the sale of goods or commodities at retail;

(4) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment, designed to provide water to any vineyard or winery; and

(5) any 501(c)(3) corporation;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

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

F. "health care services" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities such as hospitals, clinics, laboratories, x-ray centers and pharmacies and, for any small municipality only, office facilities for physicians;

G. "refinance a hospital or 501(c)(3) corporation project" means the issuance of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any obligations previously incurred to finance or aid in financing a project of any nonprofit corporation engaged in health care services, including nursing homes, or of any 501(c)(3) corporation, which would constitute a project under the Industrial Revenue Bond Act had it been originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond Act; and

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

Section 2. Section 3-32-5 NMSA 1978 (being Laws 1967, Chapter 84, Section 3, as amended) is amended to read:

"3-32-5. ADDITIONAL LEGISLATIVE INTENT.--It is further the legislative intent that the Industrial Revenue Bond Act authorize municipalities to refinance hospital or 501(c)(3) corporation projects and projects of any independent,

nonprofit, nonsectarian four-year college or university accredited by the north central association of colleges and schools, to acquire, own, lease or sell projects for the purpose of promoting the local economy and improving local health and the general welfare by inducing private institutions of higher education, nonprofit corporations engaged in health care services, including nursing homes, 501(c)(3) corporations and, for any small municipality only, office facilities for physicians, to provide more adequate facilities of higher education and to provide more adequate health care services in this state and by inducing mass transit or other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state. It is not intended to authorize any municipality to own or lease projects for retail business or by itself to operate any private institution of higher education; nonprofit corporation engaged in health care services, including nursing homes; 501(c)(3) corporation; industrial parks; office headquarters; or research and development facilities."

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

"3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--In addition to any other powers which it may now have, each municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects which shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality;

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

C. to issue revenue bonds for the purpose of defraying the cost of acquiring by construction and purchase or either any project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate any project as a business or in any manner except as lessor;

D. to refinance one or more hospital or 501(c)(3) corporation projects and to acquire any such hospital or 501(c)(3) corporation project whether by construction,

purchase, gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate any hospital or 501(c)(3) corporation project as a business or in any manner except as lessor; and

E. to refinance one or more projects of any private institution of higher education and to acquire any such project, whether by construction, purchase, gift or lease, provided that the project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but the project shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire any project of any private institution of higher education and to secure the payment of such bonds. No municipality shall have the power to operate any project of any private institution of higher education as a business or in any manner except as lessor."

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

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

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

B. "county" means those counties organized or incorporated in New Mexico;

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

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

E. "mortgage" means a mortgage or a mortgage and

deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county, but not within the boundaries of any incorporated municipality, in the state, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include facilities designed for the sale or distribution to the public of electricity, gas, telephone or other services commonly classified as public utilities, except for:

(a) water utilities; and

(b) electricity generation facilities in any class B county with: 1) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars (\$550,000,000); 2) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars (\$210,000,000) but less than four hundred million dollars (\$400,000,000); 3) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars (\$180,000,000) but less than two hundred forty million dollars (\$240,000,000); 4) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars (\$300,000,000) but less than four hundred million dollars (\$400,000,000); 5) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million

dollars (\$100,000,000); or 6) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars (\$700,000,000);

(3) any business in which all or part of the activities of such business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

(4) any nonprofit corporation engaged in health care services;

(5) any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research facility;

(6) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and

(7) any 501(c)(3) corporation; and

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

Section 5. Section 4-59-3 NMSA 1978 (being Laws 1975, Chapter 286, Section 3) is amended to read:

"4-59-3. LEGISLATIVE INTENT.--It is the intent of the legislature by the passage of the County Industrial Revenue Bond Act to authorize counties to acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state, promoting the use of the agricultural products and natural resources of this state and promoting a sound and proper balance in this state between agriculture, commerce and industry. Further, it is the intent of the legislature that counties may be able to promote the local health and general welfare by inducing nonprofit corporations engaged in health care services and 501(c)(3) corporations to locate, relocate, modernize or expand in this state and by inducing mass transit or other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state. It is intended that each project be self-liquidating. It is not intended that any county itself be authorized to operate any

manufacturing, industrial or commercial enterprise or any nonprofit corporation engaged in health care services or any 501(c)(3) corporation or industrial parks, office headquarters or research and development facilities."

Section 6. Section 58-23-3 NMSA 1978 (being Laws 1983, Chapter 290, Section 3, as amended) is amended to read:

"58-23-3. DEFINITIONS.--As used in the Hospital Equipment Loan Act:

A. "board" means the board of directors of the council;

B. "bonds" means bonds, notes, interim certificates, bond anticipation notes or other evidences of indebtedness of the council issued pursuant to the Hospital Equipment Loan Act, including refunding bonds;

C. "cost" as applied to health-related equipment means any and all costs of equipment, including but not limited to the following:

(1) all direct or indirect costs of the acquisition, including repair, restoration, reconditioning, financing and refinancing or installation of the health-related equipment;

(2) the cost of any property interest in the health-related equipment, including an option to purchase or a lease-hold interest;

(3) the cost of architectural, engineering, planning, drafting, legal and any incidental or related services necessary for acquisition of the health-related equipment;

(4) the cost of all financing charges and interest accrued prior to the acquisition or refinancing of the health-related equipment for a maximum of two years after or prior to such acquisition or refinancing;

(5) all direct and indirect costs incurred in connection with the financing of the health-related equipment, including out-of-pocket expenses; the cost of financing; legal, accounting, financial, advisory and consulting expenses; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and costs associated with any trust indenture; and

(6) any costs incurred by the council for the administration of any program for the purchase, sale or lease of or the making of loans for health-related equipment to any participating health-care provider;

D. "council" means the New Mexico hospital equipment loan council;

E. "health facility" means any person that:

(1) is licensed by the department of health to provide health-related services, assisted living support or long-term care;

(2) provides health-related research; or

(3) is properly accredited or certified and eligible to receive medicare or medicaid reimbursement for all or part of its activities providing mental health services, developmental disabilities services or related specialized support to or on behalf of persons or a defined group of persons;

F. "health-related equipment" means any real or personal property, instrument, service or operational necessity that is found and determined by the council to be needed, directly or indirectly, for medical care, treatment or research or other equipment as otherwise might be needed to operate the health facility;

G. "participating health facility" means a public or private nonprofit or for-profit corporation, association, foundation, trust, cooperative, agency or other person or organization that operates or proposes to operate a health facility in New Mexico and contracts with the council for the financing or refinancing of the lease or acquisition of health-related equipment. Public, district, county, city, county-municipal or other municipal hospitals and hospitals affiliated with an institution of higher education in New Mexico are participating health-care facilities; and

H. "program" means the New Mexico hospital equipment loan program created by the Hospital Equipment Loan Act and administered by the council."