

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

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

D. "assessable premises" means a hotel, apartment hotel, motor hotel, bed and breakfast accommodation, resort or recreational vehicle park;

E. "vendee" means a natural person to whom

lodgings are furnished in the exercise of the service of lodging; and

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

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

A. The governing body of a municipality that is located in a class A county and that had a population of more than seventy thousand but less than one hundred thousand according to the 2000 federal decennial census may assess by ordinance a fee on lodging within the municipality. The amount of the fee shall not exceed two dollars fifty cents (\$2.50) per room or other unit of accommodation in or at an assessable premises for each day the room or other unit of accommodation is rented by a vendor to a vendee. The fee may be referred to as the "convention center fee".

B. A convention center fee assessed pursuant to this section shall be reviewed by the governing body of the municipality on or about each fifth anniversary of the imposition of the convention center fee. The governing body shall adjust the amount of the convention center fee to result in an amount of revenue equivalent to the following percentage of the actual operating and maintenance costs for

the preceding fiscal year of the convention center to which the revenue from the fee is dedicated pursuant to Subsection D of this section:

(1) for fiscal years through 2025, one hundred twenty percent;

(2) for fiscal year 2026, one hundred percent; and

(3) for fiscal year 2027 and subsequent fiscal years, a percentage that is two percent less than the prior fiscal year.

C. No adjustment in the convention center fee shall be made while any revenue bonds to which the revenues of the convention center fee are pledged remain outstanding.

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

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

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by

Section 13 or 14 of the Convention Center Financing Act; or  
(3) costs of collecting and otherwise administering the convention center fee; provided that no such costs shall be paid until all required payments on revenue bonds are made and that no more than ten percent of the revenue collected in any fiscal year shall be used to pay such costs.

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

A. if a vendee:

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

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

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

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

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

E. to clinics, hospitals or other medical facilities;

F. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

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

Section 5. COLLECTION OF CONVENTION CENTER FEE. --

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

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

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

Section 7. FINANCIAL REPORTING. -- The governing body of any municipality assessing a convention center fee shall

report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

Section 8. ENFORCEMENT. --

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

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

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

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

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

Section 9. COLLECTION OF DELINQUENCIES. --

A. The governing body of the municipality shall by ordinance provide that a vendor is liable for the payment of the proceeds of any convention center fee that the vendor failed to remit to the municipality due to his failure to collect the fee or otherwise, and shall provide for a civil penalty for any such failure in an amount equal to the

greater of ten percent of the amount that was not duly remitted to the municipality or one hundred dollars (\$100).

B. The municipality may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent a month, the costs of collection and reasonable attorney fees incurred in connection therewith.

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

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

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

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

Section 11. ORDINANCE REQUIREMENTS. --The ordinance assessing a convention center fee or any ordinance amendatory thereof or supplemental thereto, shall:

A. state the rate or other amount of the convention center fee; the times, place and method for the payment of the convention center fee proceeds to the municipality; the accounts and other records to be maintained in connection with the convention center fee; a procedure for making refunds and resolving disputes relating to the convention center fee; the procedure for preservation and destruction of records and for their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, distraint and sales to satisfy such liens; and

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

Section 12. PENALTIES. --The governing body of the municipality shall by ordinance provide for penalties by



creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the municipality.

Section 13. REVENUE BONDS. --

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

(1) the proceeds of the convention center fee of the municipality;

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

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

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

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

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

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

Section 14. REFUNDING BONDS. --

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

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

issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

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

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

(4) for any combination of the foregoing purposes.

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

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

E. Except as otherwise provided in the Convention Center Financing Act, refunding bonds authorized in the Convention Center Financing Act shall be issued in

accordance

with the provisions of Sections 3-31-10 and 3-31-11 NMSA

1978.

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