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**SENATE BILL 354**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Joseph A. Fidel**

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**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**

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1 in the state of New Mexico;

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

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

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

20 (3) any business in which all or part of the  
21 activities of ~~[such]~~ the business involve the supplying of  
22 services to the general public or to governmental agencies or  
23 to a specific industry or customer but does not include  
24 establishments primarily engaged in the sale of goods or  
25 commodities at retail; ~~[and]~~

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

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

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

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

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

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

24 G. "refinance a hospital or 501(c)(3) corporation  
25 project" means the issuance of bonds by a municipality and the

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1 use of all or substantially all of the proceeds to liquidate  
2 any obligations previously incurred to finance or aid in  
3 financing a project of any nonprofit corporation engaged in  
4 health care services, including nursing homes, or of any  
5 501(c)(3) corporation, which would constitute a project under  
6 the Industrial Revenue Bond Act had it been originally  
7 undertaken and financed by a municipality pursuant to the  
8 Industrial Revenue Bond Act; and

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

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

16 "3-32-5. ADDITIONAL LEGISLATIVE INTENT. --It is further  
17 the legislative intent that the Industrial Revenue Bond Act  
18 authorize municipalities to refinance hospital or 501(c)(3)  
19 corporation projects and projects of any independent,  
20 nonprofit, nonsectarian four-year college or university  
21 accredited by the north central association of colleges and  
22 schools, to acquire, own, lease or sell projects for the  
23 purpose of promoting the local economy and improving local  
24 health and the general welfare by inducing private  
25 institutions of higher education, [~~and~~] nonprofit corporations

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1 engaged in health care services, including nursing homes,  
2 501(c)(3) corporations and, for any small municipality only,  
3 office facilities for physicians, to provide more adequate  
4 facilities of higher education and to provide more adequate  
5 health care services in this state and by inducing mass  
6 transit or other transportation activities, industrial parks,  
7 office headquarters and research and development activities to  
8 locate or expand in this state. It is not intended to  
9 authorize any municipality to own or lease projects for retail  
10 business or by itself to operate any private institution of  
11 higher education; [~~or any~~] nonprofit corporation engaged in  
12 health care services, including nursing homes; 501(c)(3)  
13 corporation; [~~or~~] industrial parks; office headquarters; or  
14 research and development facilities."

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

17 "3-32-6. ADDITIONAL POWERS CONFERRED ON  
18 MUNICIPALITIES. --In addition to any other powers which it may  
19 now have, each municipality shall have the following powers:  
20 A. to acquire, whether by construction, purchase,  
21 gift or lease, one or more projects which shall be located  
22 within this state and may be located within or without the  
23 municipality or partially within or partially without the  
24 municipality, but which shall not be located more than fifteen  
25 miles outside of the corporate limits of the municipality;

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

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

11           D. to refinance one or more hospital or 501(c)(3)  
12 corporation projects and to acquire any such hospital or  
13 501(c)(3) corporation project whether by construction,  
14 purchase, gift or lease, which hospital or 501(c)(3)  
15 corporation project shall be located within this state and may  
16 be located within or without the municipality or partially  
17 within or partially without the municipality, but which shall  
18 not be located more than fifteen miles outside of the  
19 corporate limits of the municipality, and to issue revenue  
20 bonds to refinance and acquire a hospital or 501(c)(3)  
21 corporation project and to secure the payment of such bonds,  
22 all as provided in the Industrial Revenue Bond Act. No  
23 municipality shall have the power to operate any hospital or  
24 501(c)(3) corporation project as a business or in any manner  
25 except as lessor; and

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

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

16 "4-59-2. DEFINITIONS. --As used in the County Industrial  
17 Revenue Bond Act, unless the context clearly indicates  
18 otherwise:

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

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

23 C. "501(c)(3) corporation" means a corporation  
24 that demonstrates to the taxation and revenue department that  
25 it has been granted exemption from the federal income tax as

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1 an organization described in Section 501(c)(3) of the Internal  
2 Revenue Code of 1986, as amended or renumbered;

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

8 ~~[D-]~~ E. "mortgage" means a mortgage or a mortgage  
9 and deed of trust or the pledge and hypothecation of any  
10 assets as collateral security;

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

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

24 (2) any commercial enterprise in storing,  
25 warehousing, distributing or selling products of agriculture,



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1 mining or industry, but does not include facilities designed  
2 for the sale or distribution to the public of electricity,  
3 gas, telephone or other services commonly classified as public  
4 utilities, except for:

5 (a) water utilities; and

6 (b) electricity generation facilities

7 in any class B county with: 1) a population of more than  
8 forty-seven thousand but less than sixty thousand according to  
9 the 1990 federal decennial census and with a net taxable value  
10 for property taxation purposes for the 1999 property tax year  
11 of more than five hundred fifty million dollars

12 (\$550,000,000); 2) a population of less than twenty thousand  
13 according to the 1990 federal decennial census and with a net  
14 taxable value for property taxation purposes for the 1999  
15 property tax year of more than two hundred ten million dollars  
16 (\$210,000,000) but less than four hundred million dollars

17 (\$400,000,000); 3) a population of more than fifteen thousand  
18 but less than nineteen thousand according to the 1990 federal  
19 decennial census and with a net taxable value for property  
20 taxation purposes for the 1999 property tax year of more than  
21 one hundred eighty million dollars (\$180,000,000) but less  
22 than two hundred forty million dollars (\$240,000,000); 4) a  
23 population of more than forty-two thousand but less than  
24 forty-five thousand according to the 1990 federal decennial  
25 census and with a net taxable value for property taxation

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1 purposes for the 1999 property tax year of more than three  
2 hundred million dollars (\$300,000,000) but less than four  
3 hundred million dollars (\$400,000,000); 5) a population of  
4 less than six thousand according to the 1990 federal decennial  
5 census and with a net taxable value for property taxation  
6 purposes for the 1999 property tax year of more than one  
7 hundred million dollars (\$100,000,000); or 6) a population of  
8 less than thirty-five thousand according to the 1990 federal  
9 decennial census and with a net taxable value for property  
10 taxation purposes for the 1999 property tax year of more than  
11 seven hundred million dollars (\$700,000,000);

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

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

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

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

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

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1                   [F-] G. "property" means any land, improvements  
2 thereon, buildings and any improvements thereto, machinery and  
3 equipment of any and all kinds necessary to the project,  
4 operating capital and any other personal properties deemed  
5 necessary in connection with the project. "

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

8                   "4-59-3. LEGISLATIVE INTENT.--It is the intent of the  
9 legislature by the passage of the County Industrial Revenue  
10 Bond Act to authorize counties to acquire, own, lease or sell  
11 projects for the purpose of promoting industry and trade by  
12 inducing manufacturing, industrial and commercial enterprises  
13 to locate or expand in this state, promoting the use of the  
14 agricultural products and natural resources of this state and  
15 promoting a sound and proper balance in this state between  
16 agriculture, commerce and industry. Further, it is the intent  
17 of the legislature that counties may be able to promote the  
18 local health and general welfare by inducing nonprofit  
19 corporations engaged in health care services and 501(c)(3)  
20 corporations to locate, relocate, modernize or expand in this  
21 state and by inducing mass transit or other transportation  
22 activities, industrial parks, office headquarters and research  
23 and development activities to locate or expand in this state.  
24 It is intended that each project be self-liquidating. It is  
25 not intended that any county itself be authorized to operate

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

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

7 "58-23-3. DEFINITIONS. --As used in the Hospital  
8 Equipment Loan Act:

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

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

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

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

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

25 (3) the cost of architectural, engineering,

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1 planning, drafting, legal and any incidental or related  
2 services necessary for acquisition of the health-related  
3 equipment;

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

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

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

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

21 E. "health facility" means any ~~[entity providing~~  
22 ~~health-related services which]~~ person that:

23 (1) is licensed by the ~~[health and~~  
24 ~~environment department and all customary and necessary~~  
25 ~~supporting services]~~ department of health to provide health-

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1 related services, assisted living support or long-term care;  
2 (2) provides health-related research; or  
3 (3) is properly accredited or certified and  
4 eligible to receive medicare or medicaid reimbursement for all  
5 or part of its activities providing mental health services,  
6 developmental disabilities services or related specialized  
7 support to or on behalf of persons or a defined group of  
8 persons;

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

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

25 H. "program" means the New Mexico hospital

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1 equipment loan program created by the Hospital Equipment Loan  
2 Act and administered by the council. "

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