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HOUSE BILL 103

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Rob Burpo

AN ACT

RELATING TO METROPOLITAN REDEVELOPMENT; AMENDING THE TAX
INCREMENT FINANCING PROCEDURES IN THE TAX INCREMENT LAW;
AUTHORIZING THE ISSUANCE OF TAX INCREMENT BONDS TO FINANCE
METROPOLITAN REDEVELOPMENT PROJECTS; AMENDING DEFINITIONS IN
THE METROPOLITAN REDEVELOPMENT CODE AND THE LOCAL ECONOMIC
DEVELOPMENT ACT.

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

Section 1. Section 3-60A-4 NMSA 1978 (being Laws 1979,
Chapter 391, Section 4, as amended) is amended to read:

"3-60A-4. DEFINITIONS.--As used in the Metropolitan
Redevelopment Code:

A. "public body" means a municipality, board,
commission, authority, district or any other political
subdivision or public body of the state;

B. "local governing body" means the city council

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1 or city commission of a [~~charter municipality created~~
2 ~~pursuant to the provisions of Article 10, Section 6 of the~~
3 ~~constitution of New Mexico~~] city, the board of trustees of a
4 town or village, the council of an incorporated county or the
5 board of county commissioners of an H class county;

6 C. "mayor" means the mayor or the chairman of the
7 city commission or other officer or body having the duties
8 customarily imposed on the head of a municipality;

9 D. "municipality" means [~~a charter city or town~~
10 ~~created pursuant to the provisions of Article 10, Section 6~~
11 ~~of the constitution of New Mexico or a city or town having a~~
12 ~~population in excess of twenty thousand persons~~] any
13 incorporated city, town or village, whether incorporated
14 under general act, special act or special charter, an
15 incorporated county or an H class county;

16 E. "clerk" means the clerk or other official of
17 the municipality who is the chief custodian of the official
18 records of the municipality;

19 F. "federal government" includes the United States
20 of America or any agency or instrumentality, corporate or
21 otherwise, of the United States;

22 G. "state" means the state of New Mexico;

23 H. "slum area" means an area within the area of
24 operation in which numerous buildings, improvements and
25 structures, whether residential or nonresidential, which, by
reason of its dilapidation, deterioration, age, obsolescence
or inadequate provision for ventilation, light, air,

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1 sanitation or open spaces, high density of population,
2 overcrowding or the existence of conditions [~~which~~] that
3 endanger life or property by fire or other causes, is
4 conducive to ill health, transmission of disease, infant
5 mortality, juvenile delinquency or crime and is detrimental
6 to the public health, safety, morals or welfare;

7 I. "blighted area" means an area within the area
8 of operation other than a slum area [~~which, by reason~~] that,
9 because of the presence of a substantial number of
10 deteriorated or deteriorating structures, predominance of
11 defective or inadequate street layout, faulty lot layout in
12 relation to size, adequacy, accessibility or usefulness,
13 insanitary or unsafe conditions, deterioration of site or
14 other improvements, diversity of ownership, tax or special
15 assessment delinquency exceeding the fair value of the land,
16 defective or unusual conditions of title, improper
17 [~~subdivisions~~] subdivision or lack of adequate housing
18 facilities in the area or obsolete or impractical planning
19 and platting or an area where a significant number of
20 commercial or mercantile businesses have closed or
21 significantly reduced their operations due to the economic
22 losses or loss of profit due to operating in the area, low
23 levels of commercial or industrial activity or redevelopment
24 or any combination of such factors [~~which~~], substantially
25 impairs or arrests the sound growth and economic health and
well-being of a municipality or locale within a municipality
or an area [~~which~~] that retards the provisions of housing

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1 accommodations or constitutes an economic or social burden
2 and is a menace to the public health, safety, morals or
3 welfare in its present condition and use;

4 J. "metropolitan redevelopment project" or
5 "project" [~~is~~] means an activity, undertaking or series of
6 activities or undertakings designed to eliminate slums or
7 blighted areas in areas designated as metropolitan
8 redevelopment areas and [~~which~~] that conforms to an approved
9 plan for the area for slum clearance and redevelopment,
10 rehabilitation and conservation;

11 K. "slum clearance and redevelopment" means the
12 use of those powers authorized by the Metropolitan
13 Redevelopment Code for the purpose of eliminating slum areas
14 and undertaking activities authorized by the Metropolitan
15 Redevelopment Code to rejuvenate or revitalize those areas so
16 that the conditions [~~which~~] that caused those areas to be
17 designated slum areas are eliminated;

18 L. "rehabilitation" or "conservation" means the
19 restoration and renewal of a slum or blighted area or portion
20 thereof in accordance with any approved plan by use of powers
21 granted by the Metropolitan Redevelopment Code;

22 M. "metropolitan redevelopment area" means a slum
23 area or a blighted area or a combination thereof [~~which~~] that
24 the local governing body so finds and declares and designates
25 as appropriate for a metropolitan redevelopment project;

N. "metropolitan redevelopment plan" means a plan,
as it exists from time to time, for one or more metropolitan

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1 redevelopment areas or for a metropolitan redevelopment
2 project, which plan shall:

3 (1) seek to eliminate the problems created
4 by a slum area or blighted area;

5 (2) conform to the general plan for the
6 municipality as a whole; and

7 (3) be sufficient to indicate the proposed
8 activities to be carried out in the area, including but not
9 limited to any proposals for land acquisition; proposals for
10 demolition and removal of structures; redevelopment;
11 proposals for improvements, rehabilitation and conservation;
12 zoning and planning changes; land uses, maximum densities,
13 building restrictions and requirements; and the plan's
14 relationship to definite local objectives respecting land
15 uses, improved traffic patterns and controls, public
16 transportation, public utilities, recreational and community
17 facilities, housing facilities, commercial activities or
18 enterprises, industrial or manufacturing use and other public
19 improvements;

20 O. "real property" includes all lands, including
21 improvements and fixtures thereon, and property of any nature
22 appurtenant thereto or used in connection therewith and every
23 estate, interest, right and use, legal or equitable, therein,
24 including terms for years and liens by way of judgment,
25 mortgage or otherwise;

P. "bonds" means any bonds, including refunding
bonds, notes, interim certificates, certification of

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1 indebtedness, debentures, metropolitan redevelopment bonds or
2 other securities evidencing an obligation and issued under
3 the provisions of the Metropolitan Redevelopment Code or
4 other obligations;

5 Q. "obligee" includes any bondholder, agent or
6 trustee for any bondholder or lessor demising to the
7 municipality property used in connection with a metropolitan
8 redevelopment project or any assignee or assignees of such
9 lessor's interest or any part thereof;

10 R. "person" means any individual, firm,
11 partnership, corporation, company, association, joint stock
12 association or body politic or the state or any political
13 subdivision thereof and shall further include any trustee,
14 receiver, assignee or other person acting in a similar
15 representative capacity;

16 S. "area of operation" means the area within the
17 corporate limits of the municipality and the area outside of
18 the corporate limits but within five miles of such limits or
19 otherwise on municipally owned property wherever located,
20 except that it shall not include any area ~~[which]~~ that lies
21 within the territorial boundaries of another municipality
22 unless an ordinance has been adopted by the governing body of
23 the other municipality declaring a need therefor;

24 T. "board" or "commission" means a board,
25 commission, department, division, office, body or other unit
of the municipality designated by the local governing body to
perform functions authorized by the Metropolitan

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1 Redevelopment Code as directed by the local governing body;
2 and

3 U. "public officer" means any person who is in
4 charge of any department or branch of government of the
5 municipality."

6 Section 2. Section 3-60A-21 NMSA 1978 (being Laws 1979,
7 Chapter 391, Section 21, as amended) is amended to read:

8 "3-60A-21. TAX INCREMENT PROCEDURES.--The procedures to
9 be used in the tax increment method are:

10 A. the local governing body of the municipality
11 shall, at the time after approval of a metropolitan
12 redevelopment project, notify the county assessor and the
13 taxation and revenue department of the taxable parcels of
14 property within the project;

15 B. upon receipt of notification pursuant to
16 Subsection A of this section, the county assessor and the
17 taxation and revenue department shall identify the parcels of
18 property within the metropolitan redevelopment project within
19 their respective jurisdictions and certify to the county
20 treasurer the net taxable value of the property at the time
21 of notification as the base value for the distribution of
22 property tax revenues authorized by the Property Tax Code.
23 If because of acquisition by the municipality the property
24 becomes tax exempt, the county assessor and the taxation and
25 revenue department shall note that fact on their respective
records and so notify the county treasurer, but the county
assessor, the taxation and revenue department and the county

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1 treasurer shall preserve a record of the net taxable value at
2 the time of inclusion of the property within the metropolitan
3 redevelopment project as the base value for the purpose of
4 distribution of property tax revenues when the parcel again
5 becomes taxable. The county assessor is not required by this
6 section to preserve the new taxable value at the time of
7 inclusion of the property within the metropolitan
8 redevelopment project as the base value for the purposes of
9 valuation of the property;

10 C. if because of acquisition by the municipality
11 the property becomes tax exempt, when the parcel again
12 becomes taxable, the local governing body of the municipality
13 shall notify the county assessor and the taxation and revenue
14 department of the parcels of property ~~[which]~~ that because of
15 their rehabilitation or other improvement are to be revalued
16 for property tax purposes. A new taxable value of this
17 property shall then be determined by the county assessor or
18 by the taxation and revenue department if the property is
19 within the valuation jurisdiction of that department. If no
20 acquisition by the municipality occurs, improvement or
21 rehabilitation of property subject to valuation by the
22 assessor shall be reported to the assessor as required by the
23 Property Tax Code, and the new taxable value shall be
24 determined as of January 1 of the tax year following the year
25 in which the improvement or rehabilitation is completed;

D. current tax rates shall then be applied to the
new taxable value. The amount by which the revenue received

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1 exceeds that which would have been received by application of
2 the same rates to the base value before inclusion in the
3 metropolitan redevelopment project shall be credited to the
4 municipality and deposited in the metropolitan redevelopment
5 fund. This transfer shall take place only after the county
6 treasurer has been notified to apply the tax increment method
7 to a specific property included in a metropolitan
8 redevelopment area. Unless the entire metropolitan
9 redevelopment area is specifically included by the
10 municipality for purposes of tax increment financing, the
11 payment by the county treasurer to the municipality shall be
12 limited to those properties specifically included. The
13 remaining revenue shall be distributed to participating units
14 of government as authorized by the Property Tax Code; and

15 E. the procedures and methods specified in this
16 section shall be followed annually for a maximum period of
17 ~~[ten]~~ twenty years following the date of notification of
18 inclusion of property as coming under the transfer provisions
19 of this section."

20 Section 3. Section 3-60A-23 NMSA 1978 (being Laws 1979,
21 Chapter 391, Section 23, as amended) is amended to read:

22 "3-60A-23. TAX INCREMENT METHOD APPROVAL.--The tax
23 increment method shall be applicable only to the units of
24 government participating in property tax revenue derived from
25 property within a metropolitan redevelopment project and
approving the use of the tax increment method for that
property and only to the extent of the approval. An approval

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1 may be restricted to certain types or sources of tax revenue.
2 The local governing body of each municipality shall request
3 such approval for up to a twenty-year period for property
4 included in the tax increment funding. The governor or his
5 authorized representative shall approve, partially approve or
6 disapprove the use of the method for state government; the
7 governing body of each other participating unit shall
8 approve, partially approve or disapprove by ordinance or
9 resolution the use of the method for their respective units.
10 At the request of a participating unit of government, made
11 within ten days of receipt of the request by the
12 municipality, the municipality shall make a presentation to
13 the governor or his authorized representative and to the
14 governing bodies of all participating units of government,
15 which presentation shall include a description of the
16 metropolitan redevelopment project and the parcels in the
17 project to which the tax increment method will apply, and an
18 estimate of the general effect of the project and the
19 application of the tax increment method on property values
20 and tax revenues. All participating units shall notify the
21 local governing body of the municipality seeking approval
22 within thirty days of receipt of the municipality's request.
23 At the expiration of that time, the alternative method of
24 financing set forth in this section shall be effective for a
25 period of up to twenty tax years."

Section 4. A new section of the Metropolitan
Redevelopment Code is enacted to read:

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1 "[NEW MATERIAL] TAX INCREMENT BONDS.--

2 A. For the purpose of financing metropolitan
3 redevelopment projects, in whole or in part, a municipality
4 may issue tax increment bonds or tax increment bond
5 anticipation notes that are payable from and secured by real
6 property taxes, in whole or in part, allocated to the
7 metropolitan redevelopment fund pursuant to the provisions of
8 Sections 3-60A-21 and 3-60A-23 NMSA 1978. The principal of,
9 premium, if any, and interest on the bonds or notes shall be
10 payable from and secured by a pledge of such revenues, and
11 the municipality shall irrevocably pledge all or part of such
12 revenues to the payment of the bonds or notes. The revenues
13 deposited in the metropolitan redevelopment fund or the
14 designated part thereof may thereafter be used only for the
15 payment of the principal of, premium, if any, and interest on
16 the bonds or notes, and a holder of the bonds or notes shall
17 have a first lien against the revenues deposited in the
18 metropolitan redevelopment fund or the designated part
19 thereof for the payment of principal of, premium, if any, and
20 interest on such bonds or notes. To increase the security
21 and marketability of the tax increment bonds or notes, the
22 municipality may:

- 23 (1) create a lien for the benefit of the
24 bondholders on any public improvements or public works used
25 solely by the metropolitan redevelopment project or portion
of a project financed by the bonds or notes, or on the
revenues of such improvements or works;

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(2) provide that the proceeds from the sale of real and personal property acquired with the proceeds from the sale of bonds or notes issued pursuant to the Tax Increment Law shall be deposited in the metropolitan redevelopment fund and used for the purposes of repayment of principal of, premium, if any, and interest on such bonds or notes; and

(3) make covenants and do any and all acts not inconsistent with law as may be necessary, convenient or desirable in order to additionally secure the bonds or notes or make the bonds or notes more marketable in the exercise of the discretion of the local governing body.

B. Bonds and notes issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of tax increment bonds or tax increment bond anticipation notes. Bonds and notes issued pursuant to the Tax Increment Law are declared to be issued for an essential public and governmental purpose and, together with interest thereon, shall be exempted from all taxes by the state.

C. The bonds or notes shall be authorized by an ordinance of the municipality; shall be in such denominations, bear such date and mature, in the case of bonds, at such time not exceeding twenty years from their date, and in the case of notes, not exceeding five years from

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1 the date of the original note; bear interest at a rate or
2 have appreciated principal value not exceeding the maximum
3 net effective interest rate permitted by the Public
4 Securities Act; and be in such form, carry such registration
5 privileges, be executed in such manner, be payable in such
6 place within or without the state, be payable at intervals or
7 at maturity and be subject to such terms of redemption as the
8 authorizing ordinance or supplemental resolution or
9 resolutions of the municipality may provide.

10 D. The bonds or notes may be sold in one or more
11 series at, below or above par, at public or private sale, in
12 such manner and for such price as the municipality, in its
13 discretion, shall determine; provided that the price at which
14 the bonds or notes are sold shall not result in a net
15 effective interest rate that exceeds the maximum permitted by
16 the Public Securities Act. As an incidental expense of a
17 metropolitan redevelopment project or portion thereof
18 financed with the bonds or notes, the municipality in its
19 discretion may employ financial and legal consultants with
20 regard to the financing of the project.

21 E. In case any of the public officials of the
22 municipality whose signatures appear on any bonds or notes
23 issued pursuant to the Tax Increment Law shall cease to be
24 public officials before the delivery of the bonds or notes,
25 the signatures shall, nevertheless, be valid and sufficient
for all purposes, the same as if the officials had remained
in office until delivery. Any provision of law to the

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1 contrary notwithstanding, any bonds or notes issued pursuant
2 to the Tax Increment Law shall be fully negotiable.

3 F. In any suit, action or proceeding involving the
4 validity or enforceability of any bond or note issued
5 pursuant to the Tax Increment Law or the security therefor,
6 any bond or note reciting in substance that it has been
7 issued by the municipality in connection with a metropolitan
8 redevelopment project shall be conclusively deemed to have
9 been issued for such purpose and the project shall be
10 conclusively deemed to have been planned, located and carried
11 out in accordance with the provisions of the Metropolitan
12 Redevelopment Code.

13 G. The proceedings under which tax increment bonds
14 or tax increment bond anticipation notes are authorized to be
15 issued and any mortgage, deed of trust, trust indenture or
16 other lien or security device on real and personal property
17 given to secure the same may contain provisions customarily
18 contained in instruments securing bonds and notes and
19 constituting a covenant with the bondholders.

20 H. A municipality may issue bonds or notes
21 pursuant to this section with the proceeds from the bonds or
22 notes to be used as other money is authorized to be used in
23 the Metropolitan Redevelopment Code.

24 I. The municipality shall have the power to issue
25 renewal notes, to issue bonds to pay notes and whenever it
deems refunding expedient, to refund any bonds by the
issuance of new bonds, whether the bonds to be refunded have

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1 or have not matured, and to issue bonds partly to refund
2 bonds then outstanding and partly for other purposes in
3 connection with financing metropolitan redevelopment
4 projects, in whole or in part. Refunding bonds issued
5 pursuant to the Tax Increment Law to refund outstanding tax
6 increment bonds shall be payable from real property tax
7 revenues, out of which the bonds to be refunded thereby are
8 payable or from other lawfully available revenues.

9 J. The proceeds from the sale of any bonds or
10 notes shall be applied only for the purpose for which the
11 bonds or notes were issued and if, for any reason, any
12 portion of the proceeds are not needed for the purpose for
13 which the bonds or notes were issued, the unneeded portion of
14 the proceeds shall be applied to the payment of the principal
15 of or the interest on the bonds or notes.

16 K. The cost of financing a metropolitan
17 redevelopment project shall be deemed to include the actual
18 cost of acquiring a site and the cost of the construction of
19 any part of a project, including architects' and engineers'
20 fees, the purchase price of any part of a project that may be
21 acquired by purchase and all expenses in connection with the
22 authorization, sale and issuance of the bonds or notes to
23 finance the acquisition, and any related costs incurred by
24 the municipality.

25 L. No action shall be brought questioning the
legality of any contract, mortgage, deed of trust, trust
indenture or other lien or security device, proceeding or

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1 bonds or notes executed in connection with any project
2 authorized by the Metropolitan Redevelopment Code on and
3 after thirty days from the effective date of the ordinance
4 authorizing the issuance of such bonds or notes."

5 Section 5. Section 5-10-3 NMSA 1978 (being Laws 1993,
6 Chapter 297, Section 3, as amended) is amended to read:

7 "5-10-3. DEFINITIONS.--As used in the Local Economic
8 Development Act:

9 A. "department" means the economic development
10 department;

11 B. "economic development project" or "project"
12 means the provision of direct or indirect assistance to a
13 qualifying business by a local or regional government and
14 includes the purchase, lease, grant, construction,
15 reconstruction, improvement or other acquisition or
16 conveyance of land, buildings or other infrastructure; public
17 works improvements essential to the location or expansion of
18 a qualifying business; payments for professional services
19 contracts necessary for local or regional governments to
20 implement a plan or project; the provision of direct loans or
21 grants for land, buildings or infrastructure; loan guarantees
22 securing the cost of land, buildings or infrastructure in an
23 amount not to exceed the revenue that may be derived from the
24 municipal infrastructure gross receipts tax or the county
25 infrastructure gross receipts tax; grants for public works
infrastructure improvements essential to the location or
expansion of a qualifying business; purchase of land for a

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1 publicly held industrial park; and the construction of a
2 building for use by a qualifying business;

3 C. "governing body" means the city council or city
4 commission of a city, the board of trustees of a town or
5 village or the board of county commissioners of a county;

6 D. "local government" means a municipality or
7 county;

8 E. "municipality" means ~~[any]~~ an incorporated
9 city, town or village;

10 F. "person" means an individual, corporation,
11 association, partnership or other legal entity;

12 G. "qualifying entity" means a corporation,
13 limited liability company, partnership, joint venture,
14 syndicate, association or other person that is one or a
15 combination of two or more of the following:

16 (1) an industry for the manufacturing,
17 processing or assembling of agricultural or manufactured
18 products;

19 (2) a commercial enterprise for storing,
20 warehousing, distributing or selling products of agriculture,
21 mining or industry, but, other than as provided in Paragraph
22 (5) or (6) of this subsection, not including any enterprise
23 for sale of goods or commodities at retail or for
24 distribution to the public of electricity, gas, water or
25 telephone or other services commonly classified as public
utilities;

(3) a business in which all or part of the

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1 activities of the business involves the supplying of services
2 to the general public or to governmental agencies or to a
3 specific industry or customer, but, other than as provided in
4 Paragraph (5) of this subsection, not including businesses
5 primarily engaged in the sale of goods or commodities at
6 retail;

7 (4) an Indian nation, tribe or pueblo or a
8 federally chartered tribal corporation;

9 (5) a telecommunications sales enterprise
10 that makes the majority of its sales to persons outside
11 New Mexico; ~~[or]~~

12 (6) a facility for the direct sales by
13 growers of agricultural products, commonly known as farmers'
14 markets; ~~[and]~~ or

15 (7) a business that is the developer of a
16 metropolitan redevelopment project; and

17 H. "regional government" means any combination of
18 municipalities and counties that enter into a joint powers
19 agreement to provide for economic development projects
20 pursuant to a plan adopted by all parties to the joint powers
21 agreement."