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SENATE BILL 1130

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben D. Altamirano

AN ACT

**RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE STATEWIDE
ECONOMIC DEVELOPMENT FINANCE ACT TO PROVIDE THAT, UNDER
CERTAIN CIRCUMSTANCES, A GROSS RECEIPTS TAX DISTRIBUTION MAY
BE PLEDGED FOR ECONOMIC DEVELOPMENT REVOLVING FUND BONDS
ISSUED FOR THE PURPOSE OF LOAN GUARANTEES; PROVIDING THAT THE
SEVERANCE TAX PERMANENT FUND MAY BE INVESTED IN THE BONDS;
MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.**

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

**Section 1. Section 6-25-18 NMSA 1978 (being Laws 2005,
Chapter 103, Section 15) is amended to read:**

**"6-25-18. ECONOMIC DEVELOPMENT REVOLVING FUND BONDS--
AUTHORIZATION FOR ISSUANCE--TERMS AND CONDITIONS.--**

**A. Economic development revolving fund bonds of
the authority shall be authorized by resolution of the**

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1 authority and may be issued in one or more series. The
2 economic development revolving fund bonds shall bear the
3 dates, be in the form, be issued in the denominations, have
4 terms and maturities, bear or accrete interest at rates and be
5 payable and evidenced in the manner and times as the
6 resolution of the authority or the trust agreement securing
7 the economic development revolving fund bonds provides. The
8 economic development revolving fund bonds may be redeemed with
9 or without premiums prior to maturity, may be ranked or
10 assigned priority status and may contain provisions not
11 inconsistent with this subsection.

12 B. The economic development revolving fund bonds
13 issued by the authority may be sold at any time at private or
14 public sale at prices agreed upon by the authority.

15 C. Except for economic development revolving fund
16 bonds issued pursuant to Section 6-25-18.1 NMSA 1978 for loan
17 guarantees, economic development revolving fund bonds may be
18 issued pursuant to the Statewide Economic Development Finance
19 Act without obtaining the consent of any agency of the state
20 and without any other proceeding or condition other than the
21 proceedings or conditions specified in that act.

22 D. The economic development revolving fund bonds
23 issued by the authority are negotiable instruments for all
24 purposes of the Uniform Commercial Code.

25 E. Any resolution for the issuance of economic

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1 development revolving fund bonds shall provide that each
2 economic development revolving fund bond authorized shall
3 recite that it is issued by the authority. The recital shall
4 clearly state that the economic development revolving fund
5 bonds are in full compliance with all of the provisions of the
6 Statewide Economic Development Finance Act. "

7 Section 2. A new section of the Statewide Economic
8 Development Finance Act, Section 6-25-18.1 NMSA 1978, is
9 enacted to read:

10 "6-25-18.1. [NEW MATERIAL] ECONOMIC DEVELOPMENT
11 REVOLVING FUND BONDS--GROSS RECEIPTS TAX DISTRIBUTION. --

12 A. Economic development revolving fund bonds may
13 be issued and secured by a distribution of gross receipts tax
14 revenue pursuant to the following criteria:

15 (1) the bonds shall be sold exclusively to
16 the state investment council pursuant to Section 7-27-5.27
17 NMSA 1978;

18 (2) the proceeds of the bonds shall be
19 deposited into a special account within the fund and used as a
20 loan guarantee to guarantee payment to holders of project
21 revenue bonds issued by the authority for a specific project;

22 (3) interest and other earnings of the
23 special account shall be credited to the special account and
24 used to pay debt service on the economic development revolving
25 fund bonds;

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1 (4) the distribution of gross receipts tax
2 revenue shall be made to the special account in the fund and
3 be in an amount necessary to pay the remaining debt service on
4 the economic development revolving fund bonds after taking
5 into account the debt service payable from the earnings on the
6 investment of the special account;

7 (5) the project, the amount of economic
8 development revolving fund bonds to be issued and the
9 contingent liability of the bond proceeds as a loan guarantee
10 shall be specifically approved and authorized by law;

11 (6) the authorization shall provide that,
12 pursuant to a court order or certification of the authority,
13 the amount of the guarantee or so much thereof as necessary to
14 avoid a default in project revenue bond payments shall be paid
15 to the holders of the project revenue bonds;

16 (7) the principal paid to the holders of the
17 economic development revolving fund bonds and the
18 corresponding interest shall be reduced by any unrecouped
19 amounts paid to the holders of the project revenue bonds;

20 (8) pursuant to Subsection D of Article 9,
21 Section 14 of the constitution of New Mexico, the loan
22 guarantee shall apply only to those project revenue bonds
23 issued to provide land, buildings or infrastructure for the
24 project;

25 (9) the economic development revolving fund

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1 bonds shall be issued under terms that provide that no
2 principal shall be payable to the bond holders until the term
3 of the loan guarantee has expired;

4 (10) the loan guarantee shall be for a term
5 contemporaneous with the project revenue bonds to which it
6 applies;

7 (11) no loan guarantee shall be provided and
8 no economic development revolving fund bonds shall be issued
9 unless the authority receives a mortgage on the project and
10 project property, second only to the rights of holders of the
11 project revenue bonds;

12 (12) no loan guarantee shall be entered into
13 and no economic development revolving fund bonds shall be
14 issued unless they have been approved by the state board of
15 finance and been reviewed by the legislative finance committee
16 and the New Mexico finance authority oversight committee;

17 (13) upon the defeasement of the economic
18 development revolving fund bonds, any remaining amount in the
19 special account for those bonds shall be transferred to the
20 general fund; and

21 (14) the total amount of economic development
22 revolving fund bonds outstanding at any one time pursuant to
23 this section shall not exceed one hundred million dollars
24 (\$100,000,000).

25 B. The state pledges to the holders of the project

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1 revenue bonds that are secured by the loan guarantee that the
2 authorized amount of the loan guarantee shall be a contingent
3 liability of the fund until the bonds are paid and shall not
4 be expended or dedicated to another purpose in a manner that
5 will impair the rights or remedies of the bond holders. The
6 state further pledges to the holders of the economic
7 development revolving fund bonds issued pursuant to this
8 section that the earnings credited to the bond proceeds shall
9 be used solely for paying debt service and that any law
10 authorizing the distribution of taxes or other revenues for
11 the purpose of paying debt service shall not be amended or
12 repealed or otherwise modified so as to impair the bonds. "

13 Section 3. A new section of the Tax Administration Act
14 is enacted to read:

15 " [NEW MATERIAL] DISTRIBUTION-- ECONOMIC DEVELOPMENT
16 REVOLVING FUND BONDS--GROSS RECEIPTS TAX.--A distribution
17 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
18 economic development revolving fund from the net receipts
19 attributable to the gross receipts tax imposed by the Gross
20 Receipts and Compensating Tax Act in an amount necessary to
21 make the required bond debt service payments pursuant to
22 Section 6-25-18.1 NMSA 1978 as determined by the New Mexico
23 finance authority. The distribution shall be made:

24 A. after the required distribution pursuant to
25 Section 7-1-6.4 NMSA 1978;

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1 B. contemporaneously with other distributions of
2 net receipts attributable to the gross receipts tax for
3 payment of debt service on outstanding bonds or to a fund
4 dedicated for that purpose; and

5 C. prior to any other distribution of net receipts
6 attributable to the gross receipts tax. "

7 Section 4. Section 7-27-5 NMSA 1978 (being Laws 1983,
8 Chapter 306, Section 7, as amended) is amended to read:

9 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. --
10 The severance tax permanent fund shall be invested in separate
11 differential rate and market rate investment classes.
12 "Differential rate investments" are permitted in Sections
13 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17,
14 7-27-5.22, [and] 7-27-5.24, [through] 7-27-5.26 and 7-27-5.27
15 NMSA 1978 and are intended to stimulate the economy of New
16 Mexico and to provide income to the severance tax permanent
17 fund. "Market rate investments" are investments that are not
18 differential rate investments and are intended to provide
19 income to the severance tax permanent fund. All market rate
20 investments and differential rate investments shall be
21 invested in accordance with the Uniform Prudent Investor Act
22 and shall be accounted for in accordance with generally
23 accepted accounting principles. "

24 Section 5. A new section of the Severance Tax Bonding
25 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

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1 "7-27-5.27. [NEW MATERIAL] SEVERANCE TAX PERMANENT FUND-
2 -INVESTMENT IN ECONOMIC DEVELOPMENT REVOLVING FUND BONDS. --
3 Subject to the approval of the council, the severance tax
4 permanent fund may be invested in economic development
5 revolving fund bonds issued by the New Mexico finance
6 authority for loan guarantees pursuant to Section 6-25-18.1
7 NMSA 1978. The amount invested shall not exceed one hundred
8 million dollars (\$100,000,000). "

9 Section 6. TEMPORARY PROVISION--PROJECT APPROVAL--LOAN
10 GUARANTEE AUTHORIZATION. --

11 A. Pursuant to the provisions of Subsection D of
12 Article 9, Section 14 of the constitution of New Mexico and
13 the Statewide Economic Development Finance Act, the state
14 grants its approval and authorizes loan guarantees for a
15 project to be developed by the New Mexico tilapia corporation
16 for a tilapia aquaculture and hydroponic vegetable production
17 project in Hidalgo county.

18 B. Pursuant to Section 6-25-18.1 NMSA 1978, the
19 New Mexico finance authority may issue economic development
20 revolving fund bonds in an amount not to exceed thirty million
21 dollars (\$30,000,000) for the purpose of a loan guarantee for
22 paying the holders of project revenue bonds issued to pay for
23 land, buildings or infrastructure for the project as approved
24 in Subsection A of this section; provided that the loan
25 guarantee shall be released only upon the order of a court or

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1 upon certification by the New Mexico finance authority that
2 revenue from the project is insufficient to make the bond
3 payments and that, without the bond payments, the project
4 would be in default on the project revenue bonds.

5 C. If, on July 1, 2010, the economic development
6 revolving funds bonds authorized by Section B of this section
7 have not been issued and sold, the approval and authorization
8 granted by this section is void.

9 Section 7. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect
11 immediately.