

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1130

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

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING THAT, UNDER CERTAIN CIRCUMSTANCES, A PORTION OF THE GENERAL FUND OPERATING RESERVE AND CERTAIN GROSS RECEIPTS TAX DISTRIBUTIONS MAY BE USED AS A CONTINGENT LIABILITY FOR LOAN GUARANTEES PURSUANT TO THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT; SPECIFICALLY APPROVING A PROJECT FOR LOAN GUARANTEES PURSUANT TO SUBSECTION D OF ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO AND THE STATEWIDE ECONOMIC DEVELOPMENT FINANCE ACT; MAKING AN APPROPRIATION.

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

Section 1. Section 6-25-6 NMSA 1978 (being Laws 2003, Chapter 349, Section 6, as amended) is amended to read:

"6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

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1 A. To implement a program to assist eligible
2 entities in financing projects, the authority has the powers
3 specified in this section.

4 B. Projects receiving financing assistance with
5 money in the fund or loan guarantees pursuant to Section
6 6-25-6.2 NMSA 1978 shall first be approved by law. To protect
7 public money in the fund or other public resources, rules of
8 the authority relating to state projects shall include
9 provisions to ensure achievement of the economic development
10 goals of the state project and shall describe the means of
11 recovering public money or other public resources if an
12 eligible entity defaults on its obligations to the authority.

13 C. Standard projects shall be approved by the
14 authority pursuant to rules approved by the New Mexico finance
15 authority oversight committee.

16 D. The authority may:

17 (1) issue project revenue bonds on behalf of
18 an eligible entity, payable from the revenues of a project and
19 other revenues authorized as security for the bonds, to finance
20 a project on behalf of an eligible entity;

21 (2) make loans from the fund for projects to
22 eligible entities that establish one or more dedicated sources
23 of revenue to repay the loan from the authority;

24 (3) enter into loan participation agreements
25 from the fund for projects, whether in the form of an interest

1 rate buy-down, the purchase of loans or portions of loans
2 originated and underwritten by third-party lenders or other
3 similar arrangements;

4 (4) provide loan guarantees from the fund or
5 pursuant to Section 6-25-6.2 NMSA 1978 for projects;

6 (5) make, execute and enforce all contracts
7 necessary, convenient or desirable for purposes of the
8 authority or pertaining to project revenue bonds, economic
9 development revolving fund bonds, loans, loan participations or
10 loan guarantees and the Statewide Economic Development Finance
11 Act and pay the reasonable value of services rendered to the
12 authority pursuant to the contracts;

13 (6) purchase and hold loans and loan
14 participations in the fund at prices and in a manner determined
15 by the authority;

16 (7) sell loans and loan participations
17 acquired or held by the authority in the fund at prices and in
18 a manner determined by the authority;

19 (8) prescribe the form of application or
20 procedure required of an eligible entity to apply for financing
21 assistance;

22 (9) fix the terms and conditions of the
23 financing assistance, including the priority of lien and type
24 of collateral or other security, and enter into agreements with
25 eligible entities with respect to financing assistance;

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1 (10) fix, revise from time to time, charge and
2 collect fees and other charges in connection with the issuance
3 of bonds; the making, purchase, participation in or guarantee
4 of loans; and the review of proposed financing assistance to an
5 eligible entity, whether or not the financing assistance is
6 provided;

7 (11) employ architects, engineers, accountants
8 and attorneys; construction and financial experts; and such
9 other advisors, consultants and agents as may be necessary in
10 its judgment, and fix and pay their compensation;

11 (12) to the extent allowed under its contracts
12 with the holders of bonds of the authority, consent to
13 modification of the rate of interest, time and payment of
14 installments of principal or interest, security or any other
15 term of financing assistance;

16 (13) consider the ability of the eligible
17 entity to secure financing for a project from other sources and
18 the costs of that financing;

19 (14) acquire fee simple, leasehold,
20 mortgagor's or mortgagee's interests in real or personal
21 property and sell, mortgage, convey, lease or assign that
22 property for authority purposes; and

23 (15) in the event of default by an eligible
24 entity, enforce its rights by suit, mandamus and all other
25 remedies available under law.

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1 E. The authority shall adopt rules subject to
2 approval of the New Mexico finance authority oversight
3 committee to:

4 (1) establish procedures for applying for
5 financing assistance;

6 (2) establish credit qualifications for
7 eligible entities and establish terms and conditions for
8 financing assistance;

9 (3) establish economic development goals for
10 projects in consultation with the department;

11 (4) establish methods for determining
12 quantifiable benefits;

13 (5) provide safeguards to protect public money
14 and other public resources provided for a state project;

15 (6) establish procedures by which the
16 authority requests approval by law for projects receiving
17 financing assistance with money in the fund; and

18 (7) establish fees to pay the costs of
19 evaluating, originating and administering financing assistance.

20 F. The authority shall coordinate with the
21 department to provide staffing and other assistance to the
22 department in carrying out the department's responsibilities
23 and activities pursuant to the Statewide Economic Development
24 Finance Act."

25 Section 2. A new section of the Statewide Economic

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1 Development Finance Act, Section 6-25-6.2 NMSA 1978, is enacted
2 to read:

3 "6-25-6.2. [NEW MATERIAL] LOAN GUARANTEES--CONTINGENT
4 LIABILITY OF GENERAL FUND OPERATING RESERVE.--

5 A. A loan guarantee, secured by a contingent
6 appropriation from the general fund operating reserve and gross
7 receipts tax distributions, may be provided by the authority
8 for a project pursuant to the following criteria:

9 (1) the project, the amount of the loan
10 guarantee and the amount of contingent liability of the general
11 fund operating reserve shall be specifically approved and
12 authorized by law;

13 (2) a special account shall be created in the
14 fund into which a distribution shall be made that is equal to
15 the amount of gross receipts tax revenue and compensating tax
16 revenue attributable to the project and that would otherwise be
17 distributed to the general fund, provided that no additional
18 distribution shall be made:

19 (a) when the balance of the special
20 account plus the total amount of any loan guarantee payments
21 made equals the total amount of the loan guarantee; or

22 (b) upon payment of the total debt
23 service due on the project revenue bonds;

24 (3) interest and other earnings of the special
25 account shall be credited to the special account;

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1 (4) the amount of the contingent liability of
2 the general fund operating reserve shall initially be equal to
3 the amount of the loan guarantee but shall be decreased by the
4 amount of tax revenue distributed to the special account;

5 (5) the loan guarantee shall consist of the
6 contingent liability of the general fund operating reserve and
7 the balance of the special account;

8 (6) the loan guarantee shall guarantee payment
9 to holders of project revenue bonds issued by the authority;

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

15 (8) any payments from the loan guarantee shall
16 be recouped from future project revenues in excess of debt
17 service due on the project revenue bonds, provided that loan
18 guarantees recouped shall be deposited into the general fund
19 operating reserve and the special account in the same
20 proportion as the loan guarantee payments were made;

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

25 (10) the loan guarantee shall be for a term

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1 contemporaneous with the project revenue bonds to which it
2 applies;

3 (11) no loan guarantee shall be provided
4 unless the authority receives a mortgage on the project and
5 project property, second only to the rights of holders of the
6 project revenue bonds;

7 (12) upon payment of the debt service of the
8 project revenue bonds, any remaining amount in the special
9 account shall be transferred to the general fund;

10 (13) no loan guarantee shall be entered into
11 unless it has been approved by the state board of finance and
12 been reviewed by the legislative finance committee and the New
13 Mexico finance authority oversight committee; and

14 (14) the total amount of loan guarantees
15 outstanding at any one time pursuant to this section shall not
16 exceed thirty million dollars (\$30,000,000).

17 B. The state pledges to the holders of the project
18 revenue bonds that are secured by the loan guarantee that the
19 authorized amount of the loan guarantee shall be a contingent
20 liability of the general fund operating reserve and the special
21 account of the fund until the bonds are paid and shall not be
22 expended or dedicated to another purpose in a manner that will
23 impair the rights or remedies of the bond holders. The state
24 further pledges to the holders of the project revenue bonds
25 that are secured by the loan guarantee that any law authorizing

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1 the distribution of tax revenues shall not be amended or
2 repealed or otherwise modified so as to impair the bonds.

3 C. After adoption of a resolution authorizing a
4 loan guarantee pursuant to this section, the authority shall
5 publish notice of the adoption of the resolution once in a
6 newspaper of general statewide circulation. After the passage
7 of thirty days from the publication, any action attacking the
8 validity of the proceedings taken by the authority preliminary
9 to and in the authorization and issuance of the loan guarantee
10 described in the notice is perpetually barred."

11 Section 3. Section 6-4-2.1 NMSA 1978 (being Laws 1987,
12 Chapter 184, Section 1) is amended to read:

13 "6-4-2.1. GENERAL FUND OPERATING RESERVE CREATED--
14 AUTHORIZING EXPENDITURES.--

15 A. There is hereby created within the general fund
16 the "general fund operating reserve". [~~Notwithstanding any~~
17 ~~other provision of law to the contrary, there shall be~~
18 ~~deposited to the general fund operating reserve cash balances~~
19 ~~in the fund existing pursuant to Laws 1966, Chapter 66, Section~~
20 ~~16; Laws 1968, Chapter 71, Section 13; Laws 1970, Chapter 89,~~
21 ~~Section 4; Laws 1971, Chapter 327, Section 6; Laws 1972,~~
22 ~~Chapter 98, Section 6; Laws 1973, Chapter 403, Section 6; Laws~~
23 ~~1974 (S.S.), Chapter 3, Section 6; Laws 1975 (S.S.), Chapter~~
24 ~~17, Section 6; Laws 1976, Chapter 58, Section 7; Laws 1979,~~
25 ~~Chapter 404, Section 7; Laws 1981, Chapter 38, Section 7; Laws~~

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1 ~~1983, Chapter 46, Section 8; Laws 1984 (S.S.), Chapter 7,~~
2 ~~Section 7; and Laws 1986, Chapter 116, Section 1.]~~

3 B. The general fund operating reserve may be
4 expended only upon specific authorization by the legislature in
5 an amount authorized by the legislature and only:

6 (1) in the event general fund revenues and
7 balances, including all other transfers to the general fund
8 authorized by law, are insufficient to meet the level of
9 appropriations authorized; or

10 (2) pursuant to a contingent appropriation as
11 a loan guarantee provided pursuant to Subsection D of Article
12 9, Section 14 of the constitution of New Mexico and Section
13 6-25-6.2 NMSA 1978."

14 Section 4. A new section of the Tax Administration Act is
15 enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--ECONOMIC DEVELOPMENT
17 REVOLVING FUND--GROSS RECEIPTS TAX.--A distribution pursuant to
18 Section 7-1-6.1 NMSA 1978 shall be made to the economic
19 development revolving fund from the net receipts attributable
20 to the gross receipts tax imposed by the Gross Receipts and
21 Compensating Tax Act. The distribution shall be made:

22 A. to each special account of the economic
23 development revolving fund created pursuant to Section 6-25-6.2
24 NMSA 1978 in an amount equal to the sum of an amount equal to
25 five percent of the taxable gross receipts attributable to the
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1 sale of services or property to be used in the project for
 2 which the special account was created plus an amount equal to
 3 eighty percent of the compensating tax attributable to that
 4 project and paid by the owner or operator of the project or an
 5 agent or contractor of the owner or operator, as determined by
 6 the department after consultation with the economic development
 7 department; provided that no additional distribution shall be
 8 made to a special account when the New Mexico finance authority
 9 certifies to the secretary that:

10 (1) the balance of the special account plus
 11 the amount of any loan guarantee payments made from the account
 12 equals the total amount of the loan guarantee; or

13 (2) the total debt service due on the project
 14 revenue bonds subject to the loan guarantee has been paid;

15 B. after the required distribution pursuant to
 16 Section 7-1-6.4 NMSA 1978;

17 C. contemporaneously with other distributions of
 18 net receipts attributable to the gross receipts tax for payment
 19 of debt service on outstanding bonds or to a fund dedicated for
 20 that purpose; and

21 D. prior to any other distribution of net receipts
 22 attributable to the gross receipts tax."

23 Section 5. TEMPORARY PROVISION--PROJECT APPROVAL--LOAN
 24 GUARANTEE AUTHORIZATION--CONTINGENT APPROPRIATION.--

25 A. Pursuant to the provisions of Subsection D of
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1 Article 9, Section 14 of the constitution of New Mexico and the
2 Statewide Economic Development Finance Act, the state grants
3 its approval and authorizes loan guarantees for a project to be
4 developed by the New Mexico Tilapia corporation for a tilapia
5 aquaculture and hydroponic vegetable production project in
6 Hidalgo county.

7 B. Pursuant to Section 6-25-6.2 NMSA 1978, up to
8 thirty million dollars (\$30,000,000) is appropriated from the
9 general fund operating reserve to the New Mexico finance
10 authority as a loan guarantee for the purpose of paying the
11 holders of project revenue bonds issued to pay for land,
12 buildings or infrastructure for the project approved in
13 Subsection A of this section; provided that the appropriation
14 is contingent upon the order of a court or upon certification
15 by the New Mexico finance authority that revenue from the
16 project is insufficient to make the bond payments and that,
17 without the bond payments, the project would be in default on
18 the project revenue bonds.

19 C. The approval and authorization granted by this
20 section are contingent upon the filing by the New Mexico
21 Tilapia corporation or its agent of a letter of credit or other
22 security satisfactory to the New Mexico finance authority in
23 the amount of ten million dollars (\$10,000,000) to guarantee
24 the repayment of any unrecouped loan guarantee payments made
25 from the general fund operating reserve or from the special

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1 account created for the project in the economic development
2 revolving fund to holders of project revenue bonds.

3 D. If, on July 1, 2010, project revenue bonds have
4 not been issued for the project approved in Subsection A of
5 this section, the approval and authorization granted by this
6 section are void.