

1 SENATE BILL 434

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO PUBLIC FINANCE; AMENDING THE TAX INCREMENT FOR
12 DEVELOPMENT ACT TO IMPOSE A MORATORIUM ON CREATION OF CERTAIN
13 TAX INCREMENT DEVELOPMENT DISTRICTS AND ON STATE BOARD OF
14 FINANCE APPROVAL OF DEDICATION OF A STATE GROSS RECEIPTS TAX
15 INCREMENT FOR CERTAIN BONDS; CREATING A TAX INCREMENT FINANCING
16 TASK FORCE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
17 MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006,
21 Chapter 75, Section 1) is amended to read:

22 "5-15-1. SHORT TITLE.--~~[Sections 1 through 27 of this~~
23 ~~act]~~ Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax
24 Increment for Development Act"."

25 Section 2. Section 5-15-4 NMSA 1978 (being Laws 2006,

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1 Chapter 75, Section 4) is amended to read:

2 "5-15-4. RESOLUTION FOR FORMATION OF A DISTRICT.--

3 A. Subject to the limitation in Section 5-15-29
4 NMSA 1978, a tax increment development plan may be approved by
5 the governing body of the municipality or county within which
6 tax increment development projects are proposed. Upon filing
7 with the clerk of the governing body of an approved tax
8 increment development plan and upon receipt of a petition
9 bearing the signatures of the owners of at least fifty percent
10 of the real property located within a proposed tax increment
11 development area, and subject to the limitation in Section
12 5-15-29 NMSA 1978, the governing body may adopt a resolution
13 declaring its intent to form a tax increment development
14 district. Prior to the formation of a district, the owner or
15 developer of the real property located within an area proposed
16 to be designated as a tax increment development area may enter
17 into an agreement with the governing body concerning the
18 improvement of specific property within the district, and that
19 agreement may be used to establish obligations of the owner or
20 developer and the governing body concerning the zoning,
21 subdivision, improvement, impact fees, financial
22 responsibilities and other matters relating to the development,
23 improvement and use of real property within the district.

24 B. Subject to the limitation in Section 5-15-29
25 NMSA 1978, a governing body may adopt a resolution on its own

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1 motion upon its finding that a need exists for the formation of
2 a district.

3 C. The resolution to form a district shall include:

4 (1) the area or areas to be included within
5 the boundaries of the district;

6 (2) the purposes for which the district is to
7 be formed;

8 (3) a statement that a tax increment
9 development plan is on file with the clerk of the governing
10 body and that the plan includes a map depicting the boundaries
11 of the tax increment development area and the real property
12 proposed to be included in the area;

13 (4) the rate of any proposed property tax
14 levy;

15 (5) identification of gross receipts tax
16 increment and property tax increment financing mechanisms
17 proposed;

18 (6) identification of gross receipts tax
19 increments and property tax increments proposed to secure
20 proposed gross receipts tax increment bonds or property tax
21 increment bonds;

22 (7) requirement of a public hearing for the
23 formation of the district and notice of the hearing;

24 (8) a statement that formation of a district
25 may result in the use of gross receipts tax increments or

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1 property tax increments to pay the costs of construction of
2 public improvements made by the district; and

3 (9) a reference to the Tax Increment for
4 Development Act.

5 D. A resolution may direct that, prior to holding a
6 hearing on formation of a district, petitioners for the
7 formation of a district prepare a study of the feasibility, the
8 financing and the estimated costs of improvements, services and
9 benefits to result from the formation of the proposed district.
10 The governing body may require those petitioners to deposit
11 with the clerk or treasurer of the governing body an amount
12 equal to the estimated costs of conducting the study and other
13 estimated formation costs. The deposit shall be reimbursed if
14 the district is formed and if gross receipts tax increment
15 bonds or property tax increment bonds are issued by that
16 district pursuant to the Tax Increment for Development Act.

17 E. A resolution adopted pursuant to this section
18 shall direct that a public hearing on formation of the district
19 be scheduled and that notice of the hearing be mailed and
20 published."

21 Section 3. Section 5-15-7 NMSA 1978 (being Laws 2006,
22 Chapter 75, Section 7) is amended to read:

23 "5-15-7. PUBLIC HEARING.--

24 A. At a public hearing conducted pursuant to the
25 Tax Increment for Development Act, the governing body shall

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1 hear all relevant evidence and testimony and make findings. A
2 record of the hearing shall be kept and may consist of a
3 transcription by a court reporter, an electronic recording or
4 minutes taken by a designated person. The record shall be
5 preserved in the official records of the governing body and
6 shall be open to public inspection pursuant to the Inspection
7 of Public Records Act.

8 B. Testimony at a hearing is not required to be
9 given under oath.

10 C. At the conclusion of a hearing, the governing
11 body shall determine whether the tax increment development
12 district should be formed based upon the interests, convenience
13 or necessity of the owners, the residents of the proposed tax
14 increment development district and the residents of the
15 municipality or county in which the proposed tax increment
16 development district is to be located. The governing body
17 shall make the following findings before adopting a resolution
18 to approve the formation of a district:

19 (1) the tax increment development plan
20 reasonably protects the interests of the governing body in
21 meeting its goals to support:

- 22 (a) job creation;
23 (b) workforce housing;
24 (c) public school facility creation and
25 improvement, including the creation and improvement of

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1 facilities for charter schools; and

2 (d) underdeveloped area or historical
3 area redevelopment;

4 (2) the tax increment development plan
5 demonstrates elements of innovative planning techniques,
6 including mixed-use transit-oriented development, traditional
7 neighborhood design or sustainable development techniques, that
8 are deemed by the governing body to benefit community
9 development;

10 (3) the tax increment development plan
11 incorporates sustainable development considerations; and

12 (4) the tax increment development plan
13 conforms to general or long-term planning of the governing
14 body.

15 D. Subject to the limitation in Section 5-15-29
16 NMSA 1978, if the governing body determines that the district
17 should be formed, it shall adopt a resolution ordering that the
18 tax increment development district be formed and shall set the
19 matter for an election or declare that an election is waived,
20 as provided in the Tax Increment for Development Act."

21 Section 4. Section 5-15-15 NMSA 1978 (being Laws 2006,
22 Chapter 75, Section 15) is amended to read:

23 "5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX
24 INCREMENT.--

25 A. Notwithstanding any law to the contrary, but in
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1 accordance with the provisions of the Tax Increment for
2 Development Act, a tax increment development plan, as
3 originally approved or as later modified, may contain a
4 provision that a portion of certain gross receipts tax
5 increments collected within the tax increment development area
6 after the effective date of approval of the tax increment
7 development plan may be dedicated for the purpose of securing
8 gross receipts tax increment bonds pursuant to the Tax
9 Increment for Development Act.

10 B. As to a district formed by a municipality, a
11 portion of any of the following gross receipts tax increments
12 may be paid by the state directly into a special fund of the
13 district to pay the principal of, the interest on and any
14 premium due in connection with the bonds of, loans or advances
15 to, or any indebtedness incurred by, whether funded, refunded,
16 assumed or otherwise, the authority for financing or
17 refinancing, in whole or in part, a tax increment development
18 project within the tax increment development area:

19 (1) municipal gross receipts tax authorized
20 pursuant to the Municipal Local Option Gross Receipts Taxes
21 Act;

22 (2) municipal environmental services gross
23 receipts tax authorized pursuant to the Municipal Local Option
24 Gross Receipts Taxes Act;

25 (3) municipal infrastructure gross receipts

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1 tax authorized pursuant to the Municipal Local Option Gross
2 Receipts Taxes Act;

3 (4) municipal capital outlay gross receipts
4 tax authorized pursuant to the Municipal Local Option Gross
5 Receipts Taxes Act;

6 (5) municipal regional transit gross receipts
7 tax authorized pursuant to the Municipal Local Option Gross
8 Receipts Taxes Act;

9 (6) an amount distributed to municipalities
10 pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

11 (7) the state gross receipts tax.

12 C. As to a district formed by a county, all or a
13 portion of any of the following gross receipts tax increments
14 may be paid by the state directly into a special fund of the
15 district to pay the principal of, the interest on and any
16 premium due in connection with the bonds of, loans or advances
17 to or any indebtedness incurred by, whether funded, refunded,
18 assumed or otherwise, the district for financing or
19 refinancing, in whole or in part, a tax increment development
20 project within the tax increment development area:

21 (1) county gross receipts tax authorized
22 pursuant to the County Local Option Gross Receipts Taxes Act;

23 (2) county environmental services gross
24 receipts tax authorized pursuant to the County Local Option
25 Gross Receipts Taxes Act;

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1 (3) county infrastructure gross receipts tax
2 authorized pursuant to the County Local Option Gross Receipts
3 Taxes Act;

4 (4) county capital outlay gross receipts tax
5 authorized pursuant to the County Local Option Gross Receipts
6 Taxes Act;

7 (5) county regional transit gross receipts tax
8 authorized pursuant to the County Local Option Gross Receipts
9 Taxes Act; and

10 (6) the state gross receipts tax.

11 D. The gross receipts tax increment generated by
12 the imposition of municipal or county local option gross
13 receipts taxes specified by statute for particular purposes may
14 nonetheless be dedicated for the purposes of the Tax Increment
15 for Development Act if intent to do so is set forth in the tax
16 increment development plan approved by the governing body, if
17 the purpose for which the increment is intended to be used is
18 consistent with the purposes set forth in the statute
19 authorizing the municipal or county local option gross receipts
20 tax.

21 E. An imposition of a gross receipts tax increment
22 attributable to the imposition of a gross receipts tax by a
23 taxing entity may be dedicated for the purpose of securing
24 gross receipts tax increment bonds with the agreement of the
25 taxing entity, evidenced by a resolution adopted by a majority

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1 vote of that taxing entity. A taxing entity shall not agree to
2 dedicate for the purposes of securing gross receipts tax
3 increment bonds more than seventy-five percent of its gross
4 receipts tax increment attributable to the imposition of gross
5 receipts taxes by the taxing entity. A resolution of the
6 taxing entity to dedicate a gross receipts tax increment or to
7 increase the dedication of a gross receipts tax increment shall
8 become effective only on January 1 or July 1 of the calendar
9 year.

10 F. Subject to the limitation in Section 5-15-29
11 NMSA 1978, an imposition of a gross receipts tax increment
12 attributable to the imposition of the state gross receipts tax
13 within a district may be dedicated for the purpose of securing
14 gross receipts tax increment bonds with the agreement of the
15 state board of finance, evidenced by a resolution adopted by a
16 majority vote of the state board of finance. The state board
17 of finance shall not agree to dedicate more than seventy-five
18 percent of the gross receipts tax increment attributable to the
19 imposition of the state gross receipts tax within the district.
20 The resolution of the state board of finance shall become
21 effective only on January 1 or July 1 of the calendar year and
22 shall find that:

23 (1) the state board of finance has reviewed
24 the request for the use of the state gross receipts tax;

25 (2) based upon review by the state board of

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1 finance of the applicable tax increment development plan, the
2 dedication by the state board of finance of a portion of the
3 gross receipts tax increment attributable to the imposition of
4 the state gross receipts tax within the district for use in
5 meeting the required goals of the tax increment plan is
6 reasonable and in the best interest of the state; and

7 (3) the use of the state gross receipts tax is
8 likely to stimulate the creation of jobs, economic
9 opportunities and general revenue for the state through the
10 addition of new businesses to the state and the expansion of
11 existing businesses within the state.

12 G. The governing body of the jurisdiction in which
13 a tax increment development district has been established shall
14 timely notify the assessor of the county in which the district
15 has been established, the taxation and revenue department and
16 the local government division of the department of finance and
17 administration when:

18 (1) a tax increment development plan has been
19 approved that contains a provision for the allocation of a
20 gross receipts tax increment;

21 (2) any outstanding bonds of the district have
22 been paid off; and

23 (3) the purposes of the district have
24 otherwise been achieved."

25 Section 5. A new section of the Tax Increment for

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1 Development Act, Section 5-15-29 NMSA 1978, is enacted to read:

2 "5-15-29. [NEW MATERIAL] MORATORIUM--GREENFIELD TAX
3 INCREMENT DEVELOPMENT DISTRICTS.--

4 A. From the effective date of this 2008 act until
5 March 31, 2010, there shall be a moratorium on approval of tax
6 increment development plans for greenfield tax increment
7 development districts, on formation of greenfield tax increment
8 development districts and on approval by the state board of
9 finance of dedication of gross receipts tax increments for
10 greenfield tax increment development districts. During this
11 time period:

12 (1) a governing body shall not approve
13 pursuant to the provisions of Section 5-15-4 NMSA 1978 a tax
14 increment development plan for a greenfield tax increment
15 development district;

16 (2) a governing body shall not adopt a
17 resolution pursuant to the provisions of Section 5-15-4 NMSA
18 1978 declaring its intent to form a tax increment development
19 district that is a greenfield tax increment development
20 district;

21 (3) a governing body shall not adopt a
22 resolution pursuant to Subsection D of Section 5-15-7 NMSA 1978
23 ordering that a tax increment development district that is a
24 greenfield tax increment development district be formed; and

25 (4) the state board of finance shall not adopt

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1 a resolution pursuant to Subsection F of Section 5-15-15 NMSA
2 1978 approving dedication of a gross receipts tax increment for
3 bonds for a greenfield tax increment development district.

4 B. The moratorium pursuant to this section shall
5 not apply to a tax increment development district with respect
6 to which a governing body, prior to the effective date of this
7 2008 act, adopted a resolution ordering the formation of the
8 district and for which, prior to the effective date of this
9 2008 act, the state board of finance adopted a resolution
10 dedicating a gross receipts tax increment attributable to the
11 imposition of the state gross receipts tax within the district.

12 C. For the purposes of this section, "greenfield
13 tax increment development district" means a tax increment
14 development district:

15 (1) consisting of land or property the
16 majority of which has not been developed and is not currently
17 served by municipal or county public infrastructure; and

18 (2) for which the tax increment development
19 plan primarily relies on the development of new residential or
20 commercial structures rather than the redevelopment of existing
21 residential or commercial structures."

22 Section 6. [NEW MATERIAL] TAX INCREMENT FINANCING TASK
23 FORCE CREATED--MEMBERSHIP--DUTIES.--

24 A. The "tax increment financing task force" is
25 created. The task force shall function from the date of its

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1 appointment until June 30, 2009.

2 B. The task force is composed of the following
3 members:

4 (1) the secretary of finance and
5 administration or the secretary's designee;

6 (2) the secretary of taxation and revenue or
7 the secretary's designee;

8 (3) the chief executive officer of the New
9 Mexico finance authority or the chief executive officer's
10 designee;

11 (4) the executive director of the New Mexico
12 association of counties or the director's designee;

13 (5) the executive director of the New Mexico
14 municipal league or the director's designee;

15 (6) a member to be appointed by the executive
16 director of the American federation of state, county and
17 municipal employees New Mexico council 18;

18 (7) a member to be appointed by the New Mexico
19 chapter of the American planning association;

20 (8) a member to be appointed by the chair of
21 the legislative finance committee;

22 (9) one member, to be appointed by the
23 governor, to represent a neighborhood association within or
24 adjacent to an existing or proposed tax increment development
25 district;

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1 (10) one member, to be appointed by the New
2 Mexico legislative council, to represent a neighborhood
3 association within or adjacent to an existing or proposed tax
4 increment development district;

5 (11) one at-large public member to be
6 appointed by the governor; and

7 (12) one at-large public member to be
8 appointed by the New Mexico legislative council.

9 C. Vacancies on the task force shall be filled by
10 appointment by the original appointing authority.

11 D. Members of the task force are entitled to per
12 diem and mileage as provided in the Per Diem and Mileage Act
13 and shall receive no other compensation, perquisite or
14 allowance.

15 E. Staff for the task force shall be provided by
16 the legislative council service, the legislative finance
17 committee, the department of finance and administration and the
18 taxation and revenue department.

19 F. The task force shall evaluate the implementation
20 and effect of the Tax Increment Development Act to date and the
21 consequences of the creation of additional greenfield tax
22 increment development districts, including at a minimum,
23 examination of the following issues:

24 (1) the long-term fiscal impact on the general
25 fund;

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1 (2) the long-term fiscal impact on municipal
2 and county funding for recurring programs;

3 (3) the amount of state and local gross
4 receipts taxes and property taxes committed to existing tax
5 increment development districts;

6 (4) the experience of other states with tax
7 increment financing, especially the inclusion of state-level
8 taxes in tax increment financing;

9 (5) what the consequences have been of
10 permitting tax increment development districts to enter into
11 contracts for public improvements without regard to the
12 provisions of the Procurement Code or local procurement
13 regulations;

14 (6) the availability of other economic
15 development incentives in existing tax increment development
16 districts;

17 (7) what the consequences would be if tax
18 increment revenues prove insufficient to cover debt service on
19 tax increment development district bonds;

20 (8) whether approval by the local governing
21 body that approved the district's tax increment development
22 plan should be added as an explicit requirement for changes to
23 tax increment development district boundaries and tax increment
24 development district board membership; and

25 (9) other possible alternatives for providing

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1 financing for public infrastructure for new developments.

2 G. The task force shall report its findings and
3 recommendations for legislation to the governor and the
4 legislature by June 1, 2009.

5 Section 7. APPROPRIATION.--One hundred thousand dollars
6 (\$100,000) is appropriated from the general fund to the
7 legislative council service for expenditure in fiscal years
8 2008 and 2009 to pay costs associated with the tax increment
9 financing task force. Any unexpended or unencumbered balance
10 remaining at the end of fiscal year 2009 shall revert to the
11 general fund.

12 Section 8. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect immediately.