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SENATE BILL 6

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Steven P. Neville and Jacob R. Candelaria

AN ACT

RELATING TO INDUSTRIAL REVENUE BONDS; AMENDING THE INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC TRANSMISSION FACILITIES AS ELIGIBLE PROJECTS; AMENDING THE COUNTY INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC TRANSMISSION FACILITIES AS ELIGIBLE PROJECTS; REQUIRING PAYMENTS TO THE STATE FOR CERTAIN PROJECTS.

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 by Laws 2002, Chapter 25, Section 1 and by Laws 2002, Chapter 37, Section 1) 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 .215840.2

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1 terms whether used in the singular or plural shall be given the
2 following respective interpretations:

3 A. "municipality" means [~~any~~] a city, town or
4 village in [~~the state of~~] New Mexico;

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

14 (1) [~~any~~] an industry for the manufacturing,
15 processing or assembling of [~~any~~] agricultural or manufactured
16 products;

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

24 (3) [~~any~~] a business in which all or part of
25 the activities of the business involve the supplying of

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1 services to the general public or to governmental agencies or
2 to a specific industry or customer but does not include
3 [~~establishments~~] an establishment primarily engaged in the sale
4 of goods or commodities at retail;

5 (4) [~~any~~] a water distribution or irrigation
6 system, including without limitation, pumps, distribution
7 lines, transmission lines, towers, dams and similar facilities
8 and equipment, designed to provide water to [~~any~~] a vineyard or
9 winery;

10 (5) [~~any~~] an electric generation or
11 transmission facility other than one for which both location
12 approval and a certificate of convenience and necessity are
13 required prior to commencing construction or operation of the
14 facility, pursuant to the Public Utility Act [~~and Electric~~
15 ~~Utility Industry Restructuring Act of 1999~~]; and

16 (6) [~~any~~] a 501(c)(3) corporation;

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

19 D. "property" means any land, improvements thereon,
20 buildings and any improvements thereto, machinery and equipment
21 of any and all kinds necessary to the project, operating
22 capital and any other personal properties deemed necessary in
23 connection with the project;

24 E. "mortgage" means a mortgage or a mortgage and
25 deed of trust or the pledge and hypothecation of any assets as

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1 collateral security;

2 F. "health care [~~services~~] service" means the
3 diagnosis or treatment of sick or injured persons or medical
4 research and includes the ownership, operation, maintenance,
5 leasing and disposition of health care facilities such as
6 hospitals, clinics, laboratories, x-ray centers and pharmacies
7 and, for any small municipality only, office facilities for
8 physicians;

9 G. "refinance a hospital or 501(c)(3) corporation
10 project" means the issuance of bonds by a municipality and the
11 use of all or substantially all of the proceeds to liquidate
12 any obligations previously incurred to finance or aid in
13 financing a project of [~~any~~] a nonprofit corporation engaged in
14 health care services, including nursing homes, or of [~~any~~] a
15 501(c)(3) corporation, which would constitute a project under
16 the Industrial Revenue Bond Act had it been originally
17 undertaken and financed by a municipality pursuant to the
18 Industrial Revenue Bond Act; and

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

24 SECTION 2. Section 3-32-6 NMSA 1978 (being Laws 1965,
25 Chapter 300, Section 14-31-3, as amended) is amended to read:

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1 "3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--

2 In addition to any other powers that it may now have, a
3 municipality shall have the following powers:

4 A. to acquire, whether by construction, purchase,
5 gift or lease, one or more projects that shall be located
6 within this state and may be located within or without the
7 municipality or partially within or partially without the
8 municipality, but which shall not be located more than fifteen
9 miles outside of the corporate limits of the municipality;
10 provided that:

11 (1) urban transit buses qualifying as a
12 project pursuant to Subsection B of Section 3-32-3 NMSA 1978
13 need not be continuously located within this state, but the
14 commercial enterprise using the urban transit buses for leasing
15 shall meet the location requirement of this subsection; and

16 (2) a municipality shall not acquire any
17 electricity generation or transmission facility project unless
18 the acquisition is approved by the local school board of the
19 school district in which [~~a~~] the project is located and the
20 governing body, the local school board and the person proposing
21 the project negotiate and determine the amount of an annual in-
22 lieu tax payment to be made to the school district by the
23 person proposing the project, for the period that the
24 municipality owns and leases the project, and provided such
25 approval shall not be unreasonably withheld;

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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 corporate
19 limits of the municipality, and to issue revenue bonds to
20 refinance and acquire a hospital or 501(c)(3) corporation
21 project and to secure the payment of such bonds, all as
22 provided in the Industrial Revenue Bond Act. A municipality
23 shall not have the power to operate a hospital or 501(c)(3)
24 corporation project as a business or in any manner except as
25 lessor; and

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1 E. to refinance one or more projects of any private
2 institution of higher education and to acquire any such
3 project, whether by construction, purchase, gift or lease;
4 provided that the project shall be located within this state
5 and may be located within or without the municipality or
6 partially within or partially without the municipality, but the
7 project shall not be located more than fifteen miles outside of
8 the corporate limits of the municipality, and to issue revenue
9 bonds to refinance and acquire any project of any private
10 institution of higher education and to secure the payment of
11 such bonds. A municipality shall not have the power to operate
12 a project of a private institution of higher education as a
13 business or in any manner except as lessor."

14 **SECTION 3.** A new section of the Industrial Revenue Bond
15 Act is enacted to read:

16 "[NEW MATERIAL] **ELECTRIC TRANSMISSION PROJECTS--PAYMENTS**
17 **TO THE STATE.**--The state shall receive annual payments equal to
18 five percent of the total amount of in-lieu tax payments made
19 by a person proposing an electric transmission project to
20 counties, municipalities and other local entities authorized to
21 levy taxes on property, including in-lieu tax payments made to
22 school districts pursuant to Paragraph (2) of Subsection A of
23 Section 3-32-6 NMSA 1978, and five percent of the value of any
24 other consideration paid to local entities authorized to levy
25 taxes on property by a person proposing an electric

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1 transmission project. A copy of any agreement providing for
2 such in-lieu tax payments shall be provided to the secretary of
3 finance and administration within thirty days of written
4 approval of such agreement by all of the parties. Each annual
5 payment to the state shall be made no later than the end of
6 each fiscal year in which in-lieu tax payments are made to
7 local taxing entities. Each annual payment shall be made to
8 the department of finance and administration for deposit to the
9 general fund."

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

12 "4-59-2. DEFINITIONS.--As used in the County Industrial
13 Revenue Bond Act, unless the context clearly indicates
14 otherwise:

15 A. "commission" means the governing body of a
16 county;

17 B. "county" means a county organized or
18 incorporated in New Mexico;

19 C. "501(c)(3) corporation" means a corporation that
20 demonstrates to the taxation and revenue department that it has
21 been granted exemption from the federal income tax as an
22 organization described in Section 501(c)(3) of the Internal
23 Revenue Code of 1986, as amended or renumbered;

24 D. "health care service" means the diagnosis or
25 treatment of sick or injured persons or medical research and

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1 includes the ownership, operation, maintenance, leasing and
2 disposition of health care facilities, such as hospitals,
3 clinics, laboratories, x-ray centers and pharmacies;

4 E. "mortgage" means a mortgage or a mortgage and
5 deed of trust or the pledge and hypothecation of any assets as
6 collateral security;

7 F. "project" means any land and building or other
8 improvements thereon, the acquisition by or for a New Mexico
9 corporation of the assets or stock of an existing business or
10 corporation located outside the state to be relocated within a
11 county but, except as provided in Paragraph (1) of Subsection A
12 of Section 4-59-4 NMSA 1978, not within the boundaries of any
13 incorporated municipality in the state, and all real and
14 personal properties deemed necessary in connection therewith,
15 whether or not now in existence, [~~which~~] that shall be suitable
16 for use by the following or by any combination of two or more
17 thereof:

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

21 (2) a commercial enterprise that has received
22 a permit from the energy, minerals and natural resources
23 department for a mine that has not been in operation prior to
24 the issuance of bonds for the project for which the enterprise
25 will be involved;

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1 (3) a commercial enterprise that has received
2 any necessary state permit for a refinery, treatment plant or
3 processing plant of energy products that was not in operation
4 prior to the issuance of bonds for the project for which the
5 enterprise will be involved;

6 (4) a commercial enterprise in storing,
7 warehousing, distributing or selling products of agriculture,
8 mining or industry, but does not include a facility designed
9 for the sale or distribution to the public of electricity, gas,
10 telephone or other services commonly classified as public
11 utilities, except for:

12 (a) water utilities; and

13 (b) any electric generation or
14 transmission facility other than one for which both location
15 approval and a certificate of convenience and necessity are
16 required prior to commencing construction or operation of the
17 facility, pursuant to the Public Utility Act;

18 (5) a business in which all or part of the
19 activities of the business involve the supplying of services to
20 the general public or to governmental agencies or to a specific
21 industry or customer;

22 (6) a nonprofit corporation engaged in health
23 care services;

24 (7) a mass transit or other transportation
25 activity involving the movement of passengers, an industrial

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1 park, an office headquarters and a research facility;

2 (8) a water distribution or irrigation system,
3 including without limitation, pumps, distribution lines,
4 transmission lines, towers, dams and similar facilities and
5 equipment; and

6 (9) a 501(c)(3) corporation; and

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

12 SECTION 5. Section 4-59-4 NMSA 1978 (being Laws 1975,
13 Chapter 286, Section 4, as amended) is amended to read:

14 "4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In
15 addition to any other powers that it may now have, each county
16 shall have the following powers:

17 A. to acquire, whether by construction, purchase,
18 gift or lease, one or more projects, which shall be located
19 within this state and shall be located within the county
20 outside the boundaries of any incorporated municipality;
21 provided, however, that:

22 (1) a class A county with a population of more
23 than three hundred thousand may acquire projects located
24 anywhere in the county; and

25 (2) a county shall not acquire any electricity

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1 generation or transmission facility project unless the
2 acquisition is approved by the local school board of the school
3 district in which a project is located and the board of county
4 commissioners, the local school board and the person proposing
5 the project negotiate and determine the amount of an annual in-
6 lieu tax payment to be made to the school district by the
7 person proposing the project, for the period that the county
8 owns and leases the project, and provided such approval shall
9 not be unreasonably withheld;

10 B. to sell or lease or otherwise dispose of any or
11 all of its projects upon such terms and conditions as the
12 commission may deem advisable and as shall not conflict with
13 the provisions of the County Industrial Revenue Bond Act; and

14 C. to issue revenue bonds for the purpose of
15 defraying the cost of acquiring, by construction and purchase
16 or either, any project and to secure the payment of such bonds,
17 all as provided in the County Industrial Revenue Bond Act. No
18 county shall have the power to operate any project as a
19 business or in any manner except as lessor thereof."

20 SECTION 6. A new section of the County Industrial Revenue
21 Bond Act is enacted to read:

22 "[NEW MATERIAL] ELECTRIC TRANSMISSION PROJECTS--PAYMENTS
23 TO THE STATE.--The state shall receive annual payments equal to
24 five percent of the total amount of in-lieu tax payments made
25 to counties, municipalities and other local entities authorized

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1 to levy taxes on property, including in-lieu tax payments made
2 to school districts pursuant to Paragraph (2) of Subsection A
3 of Section 4-59-4 NMSA 1978, and five percent of the value of
4 any other consideration paid to local entities authorized to
5 levy taxes on property by a person proposing an electric
6 transmission project. A copy of any agreement providing for
7 such in-lieu tax payments shall be provided to the secretary of
8 finance and administration within thirty days of written
9 approval of such agreement by all of the parties. Each annual
10 payment to the state shall be made no later than the end of
11 each fiscal year in which in-lieu tax payments are made to
12 local taxing entities. Each annual payment shall be made to
13 the department of finance and administration for deposit to the
14 general fund."

15 SECTION 7. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2020.

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