

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 67

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO ENERGY STORAGE FACILITIES; AMENDING THE INDUSTRIAL REVENUE BOND ACT AND THE COUNTY INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC ENERGY STORAGE FACILITIES AS ELIGIBLE PROJECTS; REQUIRING MUNICIPALITIES AND COUNTIES THAT ACQUIRE ENERGY STORAGE FACILITY PROJECTS TO PROVIDE PAYMENT-IN-LIEU-OF-TAXES PAYMENTS TO SCHOOL DISTRICTS; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR SALES OF ENERGY STORAGE EQUIPMENT TO A GOVERNMENT FOR THE PURPOSE OF INSTALLING A RENEWABLE ENERGY STORAGE FACILITY; ADDING SUNSET DATES.

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) is amended to read:

"3-32-1. INDUSTRIAL REVENUE BOND ACT--DEFINITIONS.--

Wherever used in the Industrial Revenue Bond Act unless a

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underscored material = new
[bracketed material] = delete

1 different meaning clearly appears in the context, the following
2 terms whether used in the singular or plural shall be given the
3 following respective interpretations:

4 A. "municipality" means a city, town or village in
5 New Mexico;

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

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

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

23 (3) a business in which all or part of the
24 activities of the business involve the supplying of services to
25 the general public or to governmental agencies or to a specific

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1 industry or customer but does not include an establishment
2 primarily engaged in the sale of goods or commodities at
3 retail;

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

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

13 (6) an energy storage facility, which is a
14 facility that uses mechanical, chemical, thermal, kinetic or
15 other processes to store energy from a zero carbon emission
16 resource for release at a later time; and

17 [~~(6)~~] (7) a 501(c)(3) corporation;

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

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

25 E. "mortgage" means a mortgage or a mortgage and

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1 deed of trust or the pledge and hypothecation of any assets as
2 collateral security;

3 F. "health care service" means the diagnosis or
4 treatment of sick or injured persons or medical research and
5 includes the ownership, operation, maintenance, leasing and
6 disposition of health care facilities such as hospitals,
7 clinics, laboratories, x-ray centers and pharmacies and, for
8 any small municipality only, office facilities for 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 a nonprofit corporation engaged in
14 health care services, including nursing homes, or of 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 or energy storage
18 facility project unless the school districts within the
19 municipality in which the project is located receive annual in-
20 lieu tax payments; provided that the annual in-lieu tax
21 payments required by this paragraph shall be:

22 (a) payable to the school districts for
23 the period the municipality owns and leases the project;

24 (b) in an aggregate amount equal to the
25 amount received by the municipality multiplied by the

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1 percentage determined by dividing the average of the operating,
2 capital improvement and bond mills imposed by the school
3 districts in the municipality and state debt service mills as
4 of the date of issuance of the bonds by the average of the
5 mills imposed by all entities levying taxes on property in the
6 municipality as of such date;

7 (c) shared among the school districts
8 located within the municipality equally, if there is more than
9 one school district in such municipality; and

10 (d) not be less than the amount due to
11 the school districts in the tax year immediately preceding the
12 issuance of the bonds from the property included in a project,
13 had such project not been created;

14 B. to sell or lease or otherwise dispose of any or
15 all of its projects upon such terms and conditions as the
16 governing body may deem advisable and as shall not conflict
17 with the provisions of the Industrial Revenue Bond Act;

18 C. to issue revenue bonds for the purpose of
19 defraying the cost of acquiring by construction and purchase,
20 or either, any project and to secure the payment of such bonds,
21 all as provided in the Industrial Revenue Bond Act. No
22 municipality shall have the power to operate any project as a
23 business or in any manner except as lessor;

24 D. to refinance one or more hospital or 501(c)(3)
25 corporation projects and to acquire any such hospital or

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1 501(c)(3) corporation project whether by construction,
2 purchase, gift or lease, which hospital or 501(c)(3)
3 corporation project shall be located within this state and may
4 be located within or without the municipality or partially
5 within or partially without the municipality, but which shall
6 not be located more than fifteen miles outside of the corporate
7 limits of the municipality, and to issue revenue bonds to
8 refinance and acquire a hospital or 501(c)(3) corporation
9 project and to secure the payment of such bonds, all as
10 provided in the Industrial Revenue Bond Act. A municipality
11 shall not have the power to operate a hospital or 501(c)(3)
12 corporation project as a business or in any manner except as
13 lessor; and

14 E. to refinance one or more projects of any private
15 institution of higher education and to acquire any such
16 project, whether by construction, purchase, gift or lease;
17 provided that the project shall be located within this state
18 and may be located within or without the municipality or
19 partially within or partially without the municipality, but the
20 project shall not be located more than fifteen miles outside of
21 the corporate limits of the municipality, and to issue revenue
22 bonds to refinance and acquire any project of any private
23 institution of higher education and to secure the payment of
24 such bonds. A municipality shall not have the power to operate
25 a project of a private institution of higher education as a

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1 business or in any manner except as lessor."

2 SECTION 3. Section 4-59-2 NMSA 1978 (being Laws 1975,
3 Chapter 286, Section 2, as amended) is amended to read:

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

7 A. "commission" means the governing body of a
8 county;

9 B. "county" means a county organized or
10 incorporated in New Mexico;

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

16 D. "health care service" means the diagnosis or
17 treatment of sick or injured persons or medical research and
18 includes the ownership, operation, maintenance, leasing and
19 disposition of health care facilities, such as hospitals,
20 clinics, laboratories, x-ray centers and pharmacies;

21 E. "mortgage" means a mortgage or a mortgage and
22 deed of trust or the pledge and hypothecation of any assets as
23 collateral security;

24 F. "project" means any land and building or other
25 improvements thereon, the acquisition by or for a New Mexico

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1 corporation of the assets or stock of an existing business or
2 corporation located outside the state to be relocated within a
3 county but, except as provided in Paragraph (1) of Subsection A
4 of Section 4-59-4 NMSA 1978, not within the boundaries of any
5 incorporated municipality in the state, and all real and
6 personal properties deemed necessary in connection therewith,
7 whether or not now in existence, that shall be suitable for use
8 by the following or by any combination of two or more thereof:

9 (1) an industry for the manufacturing,
10 processing or assembling of agricultural or manufactured
11 products;

12 (2) a commercial enterprise that has received
13 a permit from the energy, minerals and natural resources
14 department for a mine that has not been in operation prior to
15 the issuance of bonds for the project for which the enterprise
16 will be involved;

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

22 (4) a commercial enterprise in storing,
23 warehousing, distributing or selling products of agriculture,
24 mining or industry, but does not include a facility designed
25 for the sale or distribution to the public of electricity, gas,

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1 telephone or other services commonly classified as public
2 utilities, except for:

- 3 (a) water utilities; ~~and~~
4 (b) ~~any~~ an electric generation or
5 transmission facility, other than one for which both location
6 approval and a certificate of convenience and necessity are
7 required prior to commencing construction or operation of the
8 facility, pursuant to the Public Utility Act; and

9 (c) an energy storage facility, which is
10 a facility that uses mechanical, chemical, thermal, kinetic or
11 other processes to store energy from a zero carbon emission
12 resource for release at a later time;

13 (5) a business in which all or part of the
14 activities of the business involve the supplying of services to
15 the general public or to governmental agencies or to a specific
16 industry or customer;

17 (6) a nonprofit corporation engaged in health
18 care services;

19 (7) a mass transit or other transportation
20 activity involving the movement of passengers, an industrial
21 park, an office headquarters and a research facility;

22 (8) a water distribution or irrigation system,
23 including without limitation, pumps, distribution lines,
24 transmission lines, towers, dams and similar facilities and
25 equipment; and

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

2 G. "property" means any land, improvements thereon,
3 buildings and any improvements thereto, machinery and equipment
4 of any and all kinds necessary to the project, operating
5 capital and any other personal properties deemed necessary in
6 connection with the project."

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

9 "4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In
10 addition to any other powers that it may now have, each county
11 shall have the following powers:

12 A. to acquire, whether by construction, purchase,
13 gift or lease, one or more projects, which shall be located
14 within this state and shall be located within the county
15 outside the boundaries of any incorporated municipality;
16 provided, however, that:

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

20 (2) a county shall not acquire any electricity
21 generation, [~~or~~] transmission or energy storage facility
22 project unless the school districts within the county in which
23 the project is located receive annual in-lieu tax payments;
24 provided that the annual in-lieu tax payments required by this
25 paragraph shall be:

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1 (a) payable to the school districts for
2 the period the county owns and leases the project;

3 (b) in an aggregate amount equal to the
4 amount received by the county multiplied by the percentage
5 determined by dividing the average of the operating, capital
6 improvement and bond mills imposed by the school districts in
7 the county and state debt service mills as of the date of
8 issuance of the bonds by the average of the mills imposed by
9 all entities levying taxes on property in the county as of such
10 date;

11 (c) shared among the school districts
12 located within the county equally; and

13 (d) not be less than the amount due to
14 the school districts in the tax year immediately preceding the
15 issuance of the bonds from the property included in a project,
16 had such project not been created;

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

21 C. to issue revenue bonds for the purpose of
22 defraying the cost of acquiring, by construction and purchase
23 or either, any project and to secure the payment of such bonds,
24 all as provided in the County Industrial Revenue Bond Act. No
25 county shall have the power to operate any project as a

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1 business or in any manner except as lessor thereof."

2 SECTION 5. Section 7-9-54.3 NMSA 1978 (being Laws 2002,
3 Chapter 37, Section 8, as amended by Laws 2010, Chapter 77,
4 Section 2 and by Laws 2010, Chapter 78, Section 2) is amended
5 to read:

6 "7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND AND SOLAR
7 GENERATION EQUIPMENT--ENERGY STORAGE EQUIPMENT--SALES TO
8 GOVERNMENTS.--

9 A. Prior to July 1, 2033, receipts from selling
10 wind generation equipment or solar generation equipment to a
11 government for the purpose of installing a wind or solar
12 electric generation facility may be deducted from gross
13 receipts.

14 B. Prior to July 1, 2033, receipts from selling
15 energy storage equipment to a government for the purpose of
16 installing a renewable energy storage facility may be deducted
17 from gross receipts.

18 [~~B.~~] C. The [~~deduction~~] deductions allowed pursuant
19 to this section shall not be claimed for receipts from an
20 expenditure for which a taxpayer claims a credit pursuant to
21 Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

22 [~~E.~~] D. As used in this section:

23 (1) "energy storage equipment" means equipment
24 that is installed for the purpose of storing electric energy
25 received from a wind or solar electric generation facility that

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1 uses mechanical, chemical, thermal, kinetic or other processes
2 to store energy for release at a later time and related
3 equipment;

4 [~~1~~] (2) "government" means the United States
5 or the state or a governmental unit or a subdivision, agency,
6 department or instrumentality of the federal government or the
7 state;

8 [~~2~~] (3) "related equipment" means
9 transformers, power conversion equipment, circuit breakers and
10 switching and metering equipment used to connect:

11 (a) a wind or solar electric generation
12 plant to the electric grid; or

13 (b) a renewable energy storage facility
14 to the electric grid or to a wind or solar electric generation
15 plant;

16 [~~3~~] (4) "solar generation equipment" means
17 solar thermal energy collection, concentration and heat
18 transfer and conversion equipment; solar tracking hardware and
19 software; photovoltaic panels and inverters; support
20 structures; turbines and associated electrical generating
21 equipment used to generate electricity from solar thermal
22 energy; and related equipment; and

23 [~~4~~] (5) "wind generation equipment" means
24 wind generation turbines, blades, nacelles, rotors and
25 supporting structures used to generate electricity from wind

1 and related equipment."

2 SECTION 6. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2023.

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underscoring material = new
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