

HOUSE BILL 143

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

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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 THE PROVISION OF PAYMENT-IN-LIEU-OF-TAXES PAYMENTS TO SCHOOL DISTRICTS IF A MUNICIPALITY OR COUNTY ACQUIRES ENERGY STORAGE FACILITY PROJECTS; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR SALES OF ENERGY STORAGE EQUIPMENT TO A GOVERNMENT FOR THE PURPOSE OF INSTALLING AN 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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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 for release at a later time to
16 integrate energy supply associated with renewable generation
17 across the electric grid; and

18 ~~[(6)]~~ (7) a 501(c)(3) corporation;

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

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

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1 E. "mortgage" means a mortgage or a mortgage and
2 deed of trust or the pledge and hypothecation of any assets as
3 collateral security;

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

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

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

25 **SECTION 2.** Section 3-32-6 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-31-3, as amended) is amended to read:

2 "3-32-6. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES.--

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

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

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

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

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

25 (b) in an aggregate amount equal to the

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1 amount received by the municipality multiplied by the
2 percentage determined by dividing the average of mills imposed
3 by the school districts within the municipality plus state debt
4 service mills as of the date of issuance of the bonds by the
5 average of the mills imposed by all entities levying taxes on
6 property in the municipality as of such date;

7 (c) divided among the school districts
8 located within the municipality, if there is more than one
9 school district in such municipality, and the in-lieu payment
10 shall be allocated as follows: 1) fifty percent allocated
11 equally among all school districts in which the project is
12 located; 2) forty percent allocated to the school districts
13 within the municipality in proportion to the area of each
14 school district within the municipality; and 3) ten percent
15 allocated to the school districts in proportion to the average
16 of each school district's student membership pursuant to the
17 Public School Code reported on the second and third reporting
18 dates for the most recent school year for which data is
19 available as of the date of issuance of the bonds; and

20 (d) for each individual school district
21 located within the municipality, no less than the amount due to
22 the school district in the tax year immediately preceding the
23 issuance of the bonds from the property included in a project,
24 had such project not been created;

25 B. to sell or lease or otherwise dispose of any or

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1 all of its projects upon such terms and conditions as the
2 governing body may deem advisable and as shall not conflict
3 with the provisions of the Industrial Revenue Bond Act;

4 C. to issue revenue bonds for the purpose of
5 defraying the cost of acquiring by construction and purchase,
6 or either, any project and to secure the payment of such bonds,
7 all as provided in the Industrial Revenue Bond Act. No
8 municipality shall have the power to operate any project as a
9 business or in any manner except as lessor;

10 D. to refinance one or more hospital or 501(c)(3)
11 corporation projects and to acquire any such hospital or
12 501(c)(3) corporation project whether by construction,
13 purchase, gift or lease, which hospital or 501(c)(3)
14 corporation project shall be located within this state and may
15 be located within or without the municipality or partially
16 within or partially without the municipality, but which shall
17 not be located more than fifteen miles outside of the corporate
18 limits of the municipality, and to issue revenue bonds to
19 refinance and acquire a hospital or 501(c)(3) corporation
20 project and to secure the payment of such bonds, all as
21 provided in the Industrial Revenue Bond Act. A municipality
22 shall not have the power to operate a hospital or 501(c)(3)
23 corporation project as a business or in any manner except as
24 lessor; and

25 E. to refinance one or more projects of any private

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

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

15 "4-59-2. DEFINITIONS.--As used in the County Industrial
16 Revenue Bond Act, unless the context clearly indicates
17 otherwise:

18 A. "commission" means the governing body of a
19 county;

20 B. "county" means a county organized or
21 incorporated in New Mexico;

22 C. "501(c)(3) corporation" means a corporation that
23 demonstrates to the taxation and revenue department that it has
24 been granted exemption from the federal income tax as an
25 organization described in Section 501(c)(3) of the Internal

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1 Revenue Code of 1986, as amended or renumbered;

2 D. "health care service" means the diagnosis or
3 treatment of sick or injured persons or medical research and
4 includes the ownership, operation, maintenance, leasing and
5 disposition of health care facilities, such as hospitals,
6 clinics, laboratories, x-ray centers and pharmacies;

7 E. "mortgage" means a mortgage or a mortgage and
8 deed of trust or the pledge and hypothecation of any assets as
9 collateral security;

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

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

23 (2) a commercial enterprise that has received
24 a permit from the energy, minerals and natural resources
25 department for a mine that has not been in operation prior to

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1 the issuance of bonds for the project for which the enterprise
2 will be involved;

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

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

14 (a) water utilities; ~~and~~

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

20 (c) an energy storage facility, which is
21 a facility that uses mechanical, chemical, thermal, kinetic or
22 other processes to store energy for release at a later time to
23 integrate energy supply associated with renewable generation
24 across the electric grid;

25 (5) a business in which all or part of the

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1 activities of the business involve the supplying of services to
2 the general public or to governmental agencies or to a specific
3 industry or customer;

4 (6) a nonprofit corporation engaged in health
5 care services;

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

9 (8) a water distribution or irrigation system,
10 including without limitation, pumps, distribution lines,
11 transmission lines, towers, dams and similar facilities and
12 equipment; and

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

14 G. "property" means any land, improvements thereon,
15 buildings and any improvements thereto, machinery and equipment
16 of any and all kinds necessary to the project, operating
17 capital and any other personal properties deemed necessary in
18 connection with the project."

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

21 "4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In
22 addition to any other powers that it may now have, each county
23 shall have the following powers:

24 A. to acquire, whether by construction, purchase,
25 gift or lease, one or more projects, which shall be located

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1 within this state and shall be located within the county
2 outside the boundaries of any incorporated municipality;
3 provided, however, that:

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

7 (2) a county shall not acquire any electricity
8 generation ~~[or]~~ facility, transmission facility or energy
9 storage project unless the school districts within the county
10 in which the project is located receive annual in-lieu tax
11 payments; provided that the annual in-lieu tax payments
12 required by this paragraph shall be:

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

15 (b) in an aggregate amount equal to the
16 amount received by the county multiplied by the percentage
17 determined by dividing the average of all of the mills imposed
18 by the school districts in the county, including the operating,
19 capital improvement, building improvement, education technology
20 and bond mills imposed by the school districts in the county
21 plus state debt service mills as of the date of issuance of the
22 bonds by the average of the mills imposed by all entities
23 levying taxes on property in the county as of such date;

24 (c) divided among the school districts
25 located within the county, and if there is more than one school

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1 district in such county, the in-lieu payment shall be allocated
2 as follows: 1) fifty percent allocated equally among all
3 school districts in which the project is located; 2) forty
4 percent allocated to the school districts within the county in
5 proportion to the area of each school district within the
6 county; and 3) ten percent allocated to the school districts in
7 proportion to the average of each school district's student
8 membership pursuant to the Public School Code reported on the
9 second and third reporting dates for the most recent school
10 year for which data is available as of the date of issuance of
11 the bonds; and

12 (d) for each individual school district
13 located within the county, no less than the amount due to the
14 school district 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, 2044, 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. [~~The deduction allowed pursuant to this section~~
15 ~~shall not be claimed for receipts from an expenditure for which~~
16 ~~a taxpayer claims a credit pursuant to Section 7-2-18.25,~~
17 ~~7-2A-25 or 7-9G-2 NMSA 1978] Prior to July 1, 2044, receipts
18 from selling energy storage equipment or related equipment to a
19 government for the purpose of installing an energy storage
20 facility may be deducted from gross receipts.~~

21 C. As used in this section:

22 (1) "energy storage equipment" means equipment
23 that is installed for the purpose of storing electric energy in
24 an energy storage facility that uses mechanical, chemical,
25 thermal, kinetic or other processes to store energy for release

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1 at a later time to integrate energy supply associated with
2 renewable generation across the electric grid;

3 [~~(1)~~] (2) "government" means the United States
4 or the state or a governmental unit or a subdivision, agency,
5 department or instrumentality of the federal government or the
6 state;

7 [~~(2)~~] (3) "related equipment" means
8 transformers, power conversion equipment, circuit breakers and
9 switching and metering equipment used to connect:

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

12 (b) an energy storage facility to the
13 electric grid or to a wind or solar electric generation plant;

14 [~~(3)~~] (4) "solar generation equipment" means
15 solar thermal energy collection, concentration and heat
16 transfer and conversion equipment; solar tracking hardware and
17 software; photovoltaic panels and inverters; support
18 structures; turbines and associated electrical generating
19 equipment used to generate electricity from solar thermal
20 energy; and related equipment; and

21 [~~(4)~~] (5) "wind generation equipment" means
22 wind generation turbines, blades, nacelles, rotors and
23 supporting structures used to generate electricity from wind
24 and related equipment."

25 SECTION 6. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2024.

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