

1 SENATE BILL 232

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ENERGY STORAGE FACILITIES; AMENDING THE INDUSTRIAL  
12 REVENUE BOND ACT AND THE COUNTY INDUSTRIAL REVENUE BOND ACT TO  
13 INCLUDE CERTAIN ELECTRIC ENERGY STORAGE FACILITIES AS ELIGIBLE  
14 PROJECTS; REQUIRING THE PROVISION OF PAYMENT-IN-LIEU-OF-TAXES  
15 PAYMENTS TO SCHOOL DISTRICTS IF A MUNICIPALITY OR COUNTY  
16 ACQUIRES ENERGY STORAGE FACILITY PROJECTS; PROVIDING A GROSS  
17 RECEIPTS TAX DEDUCTION FOR SALES OF ENERGY STORAGE EQUIPMENT TO  
18 A GOVERNMENT FOR THE PURPOSE OF INSTALLING AN ENERGY STORAGE  
19 FACILITY; ADDING SUNSET DATES.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 3-32-1 NMSA 1978 (being Laws 1965,  
23 Chapter 300, Section 14-31-1, as amended) is amended to read:

24 "3-32-1. INDUSTRIAL REVENUE BOND ACT--DEFINITIONS.--

25 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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