



Bernalillo County, N.M.

Economic Development Procedures

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**ECONOMIC DEVELOPMENT DEPARTMENT CONDUIT FINANCING
APPLICATION REVIEW PROCESS**

Applicants for conduit financing are required to compile and provide certain information about the project to the County Manager and the Economic Development Director—as well as the Board of County Commissioners and other County officials as requested—in accordance with this Policy, applicable state law, the Bernalillo County Code and other applicable local rules and regulations. See Exhibits __.

I. APPLICATION ANALYSIS: Each proposed conduit transaction will be evaluated on its merits. The County Economic Development Department, in cooperation with its independent contractors and/or financial analysts, will be responsible for ensuring the application meets all federal and state laws and the requirements. In evaluation conduit transactions, County Economic Development Department must, among other duties:

A. Exemption Eligibility. Preliminarily determine whether conduit bonds may be eligible for exemption from federal income taxation and state income taxation and evaluate whether an allocation of the state’s private activity bond volume cap is required to be obtained by the applicant or the applicant’s agent.

B. Fiscal Impact Analysis. Prepare a Fiscal Impact Analysis assessing the validity of the project and containing the following information:

1. The type/nature of project operations,
2. The total number of new jobs to be created as a result of the proposed project, a total gross payroll and an estimated annual pay increase over term of project financing,
3. The number of new employees by title or job classification and respective salary,
4. A description of optional employee benefits, including job training and paid leave for vacation, illness or family care, either by amount or percentage of gross pay. If employees contribute to such benefits, indicate their contributions in amount or percentage,
5. An estimate of the total annual expenditure on goods and services procured locally, and a list of goods and services valued over \$10,000 per year. Include an estimated annual increase in total expenditure subject to GRT,
6. An estimate of the total annual expenditure on goods procured out-of-state and subject to the New Mexico compensating tax, and an estimated annual increase in total expenditure,
7. The costs of land, site improvements, and buildings,

8. The total costs of equipment, fixtures, and furnishings to be purchased with the proceeds of the bond, and the amount of such purchases in New Mexico and out-of-state, respectively,

9. If the proposal involves the manufacturing of goods, an estimate of the amount of capital expenditures to be qualified for the New Mexico investment tax credit, and

10. A description of anticipated sources and uses of funds including all forms of public and private investment in the project, and all federal, state and local incentives.

C. Waivers of Confidentiality. Execute all waivers of confidentiality required for public consideration of the conduit bond issuance application by the BCC.

D. Written Confirmation. Provide the applicant with written confirmation of the structure and readiness to proceed requirements following BCC approval.

E. Requirements. Review all bond documents and agreements, facilitate bond closings, and obtain the signature of the authorized officers of the County once all conditions have been met.

F. Authorize disbursements. Authorize disbursements, track bond payments, and monitor compliance with covenants and review quarterly financial reports.

G. Economic Impact Analysis. For projects seeking GRT and property tax exemptions, prepare an economic impact analysis to determine the direct and indirect impact of the proposed project so that quantifiable benefits resulting in a positive net return to the County can be calculated. The economic impact analysis shall include:

1. An analysis of the economic impact on the County that would result from the completion of the proposed project compared with the projected economic impact on the County if the proposed project is not approved, with an emphasis on evaluating the number of new jobs that will or will not accrue to the County.

2. A chart or other description of the effect of the proposed property tax exemption on the overlapping taxing entities, including the property taxes on the proposed project property remitted to each such overlapping entity in the immediately preceding tax year and a brief description of the projected fiscal impact of the proposed exemption to each of the overlapping entities over the term of the project.

3. Where a PILOT will be imposed, the method used to calculate the PILOT and the underlying financial and policy considerations that were taken into account in determining that method.

4. A description of anticipated sources and uses of funds including all forms of public and private investment in the project, including all federal, state and local incentives.
5. A description of the proportion of the total proposed property tax exemption that would be attributed to either (i) real or (ii) personal property, including the projected total value of the exemption with respect to each category of property over the term of the project.

II. THIRD PARTY REVIEW: At or before the adoption of the Ordinance, the Economic Development Director with the approval of the County Manager; the Economic Development Review Committee (defined below) with Commission approval; or by majority vote of the County Commission; may require an independent third party review of the project evaluation and bond structure. All requests for third party review must include a written scope of work and written justification for the use of the third party. The applicant will pay the cost of the third party review.

III. ADDITIONAL ANALYSIS: The County Economic Development Department also may undertake the following analyses:

A. Debt Management. An examination of the applicant's debt management history and the credit-worthiness of any pledged revenue, including all debt obligations secured by the pledged revenue. The following factors may be evaluated:

1. The total dollar amount of the debt owed by the applicant, including the project revenue bonds being requested,
2. Interest rate based on risk assumptions relative to perceived risk,
3. Amortization period based on useful life of assets being financed,
4. Cash flow coverage,
5. Loan collateral requirements, including collateral value, loan to value and lien position, and
6. Proposed bond documents and agreements, including IRB leases.

B. Credit Analysis. A review of the security offered by the applicant and an analysis of the credit quality of the applicant taking into consideration:

1. Educational and work history of the officers, managers, members or partners of the applicant,
2. The applicant's experience and position in the industry and in managing similar projects,
3. Assets and liabilities of the applicant,

4. Existence of liens or encumbrances on the applicant's assets, and
5. Debt to equity or other applicable ratios.
6. Delinquent taxes owed to any taxing unit.
7. Applicant, or any of its affiliates have been cited, currently under investigation, or have litigation pending for any violations of federal, state, county or municipal laws, codes or ordinances.

C. Financial Position. An evaluation of the financial performance and liquidity of the applicant including:

1. All internal reserve funds to determine whether the applicant has sufficient resources to cover unexpected costs,
2. Applicable revenue projections and the timing of all receivables to determine the ability of the applicant to service debt,
3. Predictability of cash flow, and
4. Revenues that will be used to repay the bonds will be analyzed to determine affordability of the project and the level of flexibility that exists.

IV. ECONOMIC DEVELOPMENT REVIEW COMMITTEE MEETING: The Economic Development Review Committee shall be comprised of the County Manager, the Economic Development Director, the Director of Planning and Development Services, the Deputy County Manager of Finance and the Deputy Assessor/Chief Information Officer, or their respective designees, and a third party with expertise in finance. The Economic Development Director must present all projects to the Economic Development Review Committee for review and consideration. The Economic Development Review Committee will review the specific project and advise the Economic Development Department of potential issues, concerns, or problems with the project and/or application. Additionally, the Economic Development Review Committee may suggest potential plan revisions, additional County permits, or meetings with neighborhood groups, possible competitors, and other County agencies. The Economic Development Review Committee will provide its determination for presentation to the County Commission to recommend, conditionally recommend, or pass on the proposed project without recommendation, and will provide justification as to any determination to pass on a proposed project. Notwithstanding the foregoing, the member of the Board of County Commissioners sponsoring a proposed project where it has been determined by the Economic Development Review Committee to pass without recommendation may still present the proposed project to the full County Commission for a vote.

A. Certification of Zoning. If zoning actions are required, the zoning representative on the Economic Development Review Committee will answer any questions and address the zoning of the proposed site during the review meeting. Other members of the Economic Development Review Committee also may be called upon to answer questions posed by the BCC.

B. Submittal Schedule.

1. Once the applicant has submitted a formal economic development financing application, the Economic Development Department Director must meet with the Economic Development Review Committee.
2. Upon receipt of the required submittals, the County Manager/Economic Development Director will review all proposed projects to determine if the project plan submittals are complete.
3. The County Manager/Economic Development Director may reject an incomplete proposal. The County Manager/Economic Development Director may request additional materials to include in the project packet to be presented to the BCC.
4. Within 15 days of receiving the project plan, the County Manager/Economic Development Director will contract with an independent consultant to prepare an economic and fiscal analysis of the proposed project and an accompanying report. The economic and fiscal analysis evaluates the benefits of the proposed project according to the project criteria and are a major factor in assessing the validity of the project.
5. Simultaneous with the preparation of the economic and fiscal analysis, the Bernalillo County Attorney/County Bond Counsel will provide a legal review.
6. Upon receipt of the economic analysis and legal review, the County Manager/Economic Development Director will submit the project plan to the Bernalillo County Commission for discussion at the next regularly scheduled BCC meeting.

V. BOARD OF COMMISSIONERS HEARINGS/PUBLIC COMMENT PERIOD: The economic development financing process requires two BCC hearings. At the first hearing, the BCC will consider an Inducement Resolution or Notice of Intent (for LEDA and GRIP applications). The Inducement Resolution is the County's statement of intent to consider the issuance of conduit bonds. All Inducement Resolutions must contain a 6 month sunset provision. The identity of the applicant can remain confidential for the first hearing, if desired.

A. At the BCC hearing regarding the Inducement Resolution, the Economic Development Director will:

1. Briefly summarize the project,
2. Provide analysis to the BCC for consideration, and
3. Recommend that the BCC approve, conditionally approve, or reject the proposed project.

B. Any person wishing to comment on the project plan and/or the recommendation may do so by submitting written comments to the Bernalillo County Commission with a copy to the County Manager/Economic Development Director. Written comments may be either in support

or opposition to the project. Comments must be submitted at least 8 days before the meeting in which the BCC is scheduled to consider the adoption of the ordinance.

C. At the second hearing, the BCC will consider a conduit Bond or Project Ordinance, and the company identity and project scope must be disclosed.

D. The applicant and/or a representative of the developer are required to attend the hearings to respond to questions from the BCC.

E. Project Plan Amendments. Minor revisions to a project plan may be incorporated into the project plan by reference. (If the bond or assistance amount is increased, any additional fees must accompany the letter.) Major revisions may require submission of an amended plan. All amendments must be received not less than 10 days before the BCC considers the Bond Ordinance taking final action on the plan. The Economic Development Department/County Manager may recommend deferral or resubmittal if the amended project plan is substantially different from the project plan described in the publication noticing the hearing or other required notices.

VI. GASB 77 REPORTING:

In reviewing applications and preparing analysis of any proposed project resulting in GRT or property tax exemption, the Economic Development Department, in conjunction with the County Assessor's office, shall ensure that information required under GASB Statement No. 77 is compiled and presented in conjunction with the Economic Impact Analysis.

EXHIBIT A

Bernalillo County Conduit Debt Review Form

Project _____ has been reviewed by both the Economic Development Department and Finance Special Projects. The project complies with the following criteria from Bernalillo County’s Conduit Financing Policy.

Compliance Criteria		Compliance	
		Yes	No
1	Does project meet economic development project qualifications?		
2	Does project meet qualified entity test?		
3	Did project pay application fee and legal deposit?		
4	Does project result in new job creation?		
5	Is the project eligible to begin construction as of the closing of the transaction?		
6	Does project identify bond purchasers?		
7	Does project conflict with County Debt Policy or Conduit Financing Policy?		
8	Does the project require a waiver by the County Manager/Economic Development Department of any of the requirements of the County Economic Development Policies to be approved by the Board of County Commissioners?		
9	Does this project create additional compliance reporting, project management, or unordinary activity for any County department?		
10	Does project utilize qualified form of collateral?		
11	Does the project have any State or Federal tax liens?		
12	Does the project meet the property tax abatement limitation of 1% of total annual County levy abatements?		
13	Does the project have a job chart for Exhibit K?		
14	Does the Economic Development Department / Finance Special Projects recommend approval of the project for an Industrial Revenue Bond?		
15	Does the project ensure significant amount of employees hired will be from Bernalillo County and will be economic-based jobs?		
16	Is local purchasing provisions appropriate to the proposed project?		
17	Has applicant provided notice and summary to the district representative?		
18	Has item been placed on the agenda with at least one Commission sponsor?		
19	Application		
20	Financial Analysis		
21	Executive Summary		

22	Impact Data		
Department Comments		Comment	
	Comment from Economic Development		
	Comment from Budget and Business Improvement		
	Comment from Finance		
	Approved: Economic Development Director		
	Approved: Finance Special Projects		
	Approved: Bond Counsel		
	Approved: Review Committee		

EXHIBIT B

Industrial Revenue Bond Act

N. M. S. A. 1978, § 4-59-1

§ 4-59-1. Short title

Chapter 4, Article 59 NMSA 1978 may be cited as the “County Industrial Revenue Bond Act.”

N. M. S. A. 1978, § 4-59-2

§ 4-59-2. Definitions

Effective: July 1, 2015

As used in the County Industrial Revenue Bond Act, unless the context clearly indicates otherwise:

- A. “commission” means the governing body of a county;
- B. “county” means a county organized or incorporated in New Mexico;
- C. “501(c)(3) corporation” means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered;
- D. “health care service” means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities, such as hospitals, clinics, laboratories, x-ray centers and pharmacies;
- E. “mortgage” means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;
- F. “project” means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county but, except as provided in Paragraph (1) of Subsection A of Section 4-59-4 NMSA 1978, not within the boundaries of any incorporated municipality in the state, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:
 - (1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
 - (2) a commercial enterprise that has received a permit from the energy, minerals and natural resources department for a mine that has not been in operation prior to the issuance of bonds for the project for which the enterprise will be involved;

- (3) a commercial enterprise that has received any necessary state permit for a refinery, treatment plant or processing plant of energy products that was not in operation prior to the issuance of bonds for the project for which the enterprise will be involved;
- (4) a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include a facility designed for the sale or distribution to the public of electricity, gas, telephone or other services commonly classified as public utilities, except for:
 - (a) water utilities; and
 - (b) any electric generation facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act;
- (5) a business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;
- (6) a nonprofit corporation engaged in health care services;
- (7) a mass transit or other transportation activity involving the movement of passengers, an industrial park, an office headquarters and a research facility;
- (8) a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and
- (9) a 501(c)(3) corporation; and

G. “property” means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project.

N. M. S. A. 1978, § 4-59-3

§ 4-59-3. Legislative intent

It is the intent of the legislature by the passage of the County Industrial Revenue Bond Act to authorize counties to acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state, promoting the use of the agricultural products and natural resources of this state and promoting a sound and proper balance in this state between agriculture, commerce and industry. Further, it is the intent of the legislature that counties may be able to promote the local health and general welfare by inducing nonprofit corporations engaged in health care services and 501(c)(3) corporations to locate, relocate, modernize or expand in this state and by inducing mass transit or

other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state. It is intended that each project be self-liquidating. It is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise or any nonprofit corporation engaged in health care services or any 501(c)(3) corporation or industrial parks, office headquarters or research and development facilities.

Credits

L. 1975, Ch. 286, § 3; L. 2002, Ch. 25, § 5; L. 2002, Ch. 37, § 5.

Formerly 1953 Comp., § 15-60-3.

NMSA 1978, § 4-59-3, NM ST § 4-59-3

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-4

§ 4-59-4. Additional powers conferred on counties

In addition to any other powers that it may now have, each county shall have the following powers:

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

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

(2) a county shall not acquire any electricity generation facility project unless the acquisition is approved by the local school board of the school district in which a project is located and the board of county commissioners, the local school board and the person proposing the project negotiate and determine the amount of an annual in- lieu tax payment to be made to the school district by the person proposing the project, for the period that the county owns and leases the project, and provided such approval shall not be unreasonably withheld;

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

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

Credits

L. 1975, Ch. 286, § 4; L. 1979, Ch. 389, § 2; L. 1997, Ch. 216, § 5; L. 1997, Ch. 226, § 5; L. 2001, Ch. 284, § 2; L. 2003, Ch. 221, § 3.

Formerly 1953 Comp., § 15-60-4.

NMSA 1978, § 4-59-4, NM ST § 4-59-4

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-4.1

§ 4-59-4.1. Notice

Effective: June 17, 2011

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a county shall give notice to the county assessor and any entity located within the county authorized to levy taxes on property in the county of its intent to consider the matter. The county assessor and entities authorized to levy taxes shall be notified by certified mail, return receipt requested, at least thirty calendar days prior to the meeting at which final action is to be taken so that comments can be transmitted to the county. The notice shall include the amount, the purpose and the time period of the proposed industrial revenue bonds.

B. The county assessor and entities authorized to levy taxes shall be able to forward their comments and any concerns to the board of county commissioners, but there is no approval required from the county assessor or entities authorized to levy taxes and they do not have veto over the proposed county industrial revenue bond issuance.

C. The county and entities authorized to levy taxes shall jointly develop criteria for issuance of industrial revenue bonds; provided, however, that county industrial revenue bonds may be authorized and issued before development of the criteria is completed.

D. The county shall notify the board of county commissioners, the county assessor and any entity levying taxes on property in the county when an industrial revenue bond has matured, expired or been replaced by a refunding bond.

Credits

L. 1997, Ch. 216, § 4; L. 1997, Ch. 226, § 4; L. 2003, Ch. 221, § 4; L. 2011, Ch. 80, § 1, eff. June 17, 2011; L. 2011, Ch. 82, § 1, eff. June 17, 2011.

NMSA 1978, § 4-59-4.1, NM ST § 4-59-4.1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-5

§ 4-59-5. Bonds issued to finance projects

A. Bonds issued by a county under authority of the County Industrial Revenue Bond Act shall not be the general obligation of the county within the meaning of Article 9, Sections 10 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Bonds and interest coupons, if any, issued under authority of the County Industrial Revenue Bond Act shall never constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

B. The bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest at such rate payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with this section, all as shall be provided in the ordinance and proceedings of the commission under which the bonds shall be authorized to be issued.

C. The bonds issued under the authority of the County Industrial Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the commission to be most advantageous, and the county may pay all expenses, attorney, engineering and architects' fees, premiums and commissions that the commission may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. The bonds issued under the authority of the County Industrial Revenue Bond Act and all applicable interest coupons shall be construed to be negotiable.

E. A bond shall not be issued by a class A county to finance a project unless an employer of the project that is valued at eight million dollars (\$8,000,000) or more:

- (1) offers to its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code; and
- (2) contributes not less than fifty percent of the premium for the health insurance for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered.

Credits

L. 1975, Ch. 286, § 5; L. 1983, Ch. 265, § 22; L. 2003, Ch. 360, § 2, eff. Jan. 1, 2004.

Formerly 1953 Comp., § 15-60-5.

NMSA 1978, § 4-59-5, NM ST § 4-59-5

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-6

§ 4-59-6. Security for bonds

A. The principal of and interest on any bonds issued under the authority of the County Industrial Revenue Bond Act:

- (1) shall be secured by a pledge of the revenues out of which such bonds shall be made payable;
- (2) may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived; and
- (3) may be secured by a pledge of the lease of such project.

B. The ordinance and proceedings under which such bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project, the maintenance and insurance of such project, the creation and maintenance of special funds from the revenues from such project and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of the County Industrial Revenue Bond Act.

C. In making any such agreements or provisions, a county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon a county or any charge upon its general credit or against its taxing powers.

Credits

L. 1975, Ch. 286, § 6.

Formerly 1953 Comp., § 15-60-6.

NMSA 1978, § 4-59-6, NM ST § 4-59-6

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-7

§ 4-59-7. Requirements respecting lease

Prior to the leasing of any project, the commission must determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; and

B. the amount necessary to be paid each year into any reserve funds which the commission may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect to it, the estimated cost of maintaining the project in good repair and keeping it properly insured. The determinations and findings of the commission required to be made in this subsection shall be set forth in the proceedings under which the proposed bonds are to be issued, and, prior to the issuance of such bonds, the county shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the county of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project;

(2) to build up and maintain any reserve deemed by the commission to be advisable in connection with the project; and

(3) to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

Credits

L. 1975, Ch. 286, § 7.

Formerly 1953 Comp., § 15-60-7.

NMSA 1978, § 4-59-7, NM ST § 4-59-7

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-8

§ 4-59-8. Refunding bonds

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county by the issuance of its refunding bonds in such amount as the commission may deem necessary but not exceeding any amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest and any premiums and commissions necessary

to be paid in connection with them. Any such refunding may be effected whether the bonds to be refunded have matured or mature thereafter, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded. The holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of the County Industrial Revenue Bond Act shall be payable solely from the revenues out of which the bonds to be refunded were payable, and shall be subject to the provisions contained in Section 5 of the County Industrial Revenue Bond Act, and may be secured in accordance with the provisions of Section 6 of the County Industrial Revenue Bond Act.

Credits

L. 1975, Ch. 286, § 8.

Formerly 1953 Comp., § 15-60-8.

NMSA 1978, § 4-59-8, NM ST § 4-59-8

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-9

§ 4-59-9. Use of proceeds from sale of bonds

The proceeds from the sale of any bonds issued under authority of the County Industrial Revenue Bond Act shall be applied only for the purpose for which the bonds were issued; any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such balance of such proceeds shall be applied to the payment of the principal of or the interest on the bonds. Any portion of the proceeds from the sale of the bonds or any accrued interest and premium received in any such sale, may, in the event the money will not be needed or cannot be effectively used to the advantage of the county for the purposes herein provided, be invested in short-term, interest-bearing securities if such investment will not interfere with the use of such funds for the primary purpose as herein provided. The cost of acquiring any project shall include the following:

- A. the actual cost of the construction of any part of a project which may be constructed, including architects', attorneys' and engineers' fees;
- B. the purchase price of any part of a project that may be acquired by purchase;
- C. the actual cost of the extension of any utility to the project site, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on such bonds for a reasonable time prior to construction, during construction and not exceeding six months after completion of construction.

Credits

L. 1975, Ch. 286, § 9.

Formerly 1953 Comp., § 15-60-9.

NMSA 1978, § 4-59-9, NM ST § 4-59-9

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-9.1

§ 4-59-9.1. Procedure for issuing industrial revenue bonds or refunding bonds

Prior to the issuance of industrial revenue bonds or refunding bonds for acquisition or improvement of a water utility or a joint water utility, New Mexico public utility commission approval, as required by the Public Utility Act, shall be obtained. H class counties shall obtain New Mexico public utility commission approval as required by Section 3- 23-3 NMSA 1978.

Credits

L. 1992, Ch. 11, § 2; L. 1993, Ch. 282, § 13.

NMSA 1978, § 4-59-9.1, NM ST § 4-59-9.1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-10

§ 4-59-10. No contribution by county

No county shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project, and shall not have the power to use land, already owned by the county or in which the county has an equity, for construction of a project or any part of it, unless the county is fully reimbursed for the value of the land as may be determined by a current appraisal or unless the county leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of the County Industrial Revenue Bond Act. This section shall not be construed to prevent a county from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

Credits

L. 1975, Ch. 286, § 10.

Formerly 1953 Comp., § 15-60-10.

NMSA 1978, § 4-59-10, NM ST § 4-59-10

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-11

§ 4-59-11. Bonds made legal investments

Bonds issued under the provisions of the County Industrial Revenue Bond Act shall be legal investments for savings banks and insurance companies organized under the laws of this state.

Credits

L. 1975, Ch. 286, § 11.

Formerly 1953 Comp., § 15-60-11.

NMSA 1978, § 4-59-11, NM ST § 4-59-11

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-12

§ 4-59-12. Exemption from taxation

The bonds authorized by the County Industrial Revenue Bond Act and the income from the bonds, all mortgages or other security instruments executed as security for the bonds, all lease agreements made pursuant to the provisions of the County Industrial Revenue Bond Act, and revenue derived from any lease or sale by the county shall be exempt from all taxation by New Mexico, or any subdivision of it.

Credits

L. 1975, Ch. 286, § 12.

Formerly 1953 Comp., § 15-60-12.

NMSA 1978, § 4-59-12, NM ST § 4-59-12

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-13

§ 4-59-13. Construction of act

The County Industrial Revenue Bond Act shall not be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as cumulative; and the County Industrial Revenue Bond Act shall not be construed as requiring an election by the voters of a county prior to the issuance of bonds hereunder by a county.

Credits

L. 1975, Ch. 286, § 13.

Formerly 1953 Comp., § 15-60-13.

NMSA 1978, § 4-59-13, NM ST § 4-59-13

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-14

§ 4-59-14. No notice or publication required

No notice, consent or approval by any commission or public officer shall be required as a prerequisite to the sale or issuance of any bonds or the making of a mortgage under the authority of the County Industrial Revenue Bond Act, except as provided in that act.

Credits

L. 1975, Ch. 286, § 14.

Formerly 1953 Comp., § 15-60-14.

NMSA 1978, § 4-59-14, NM ST § 4-59-14

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-15

§ 4-59-15. State board of finance

Effective: July 1, 2015

If any representative of an existing business or enterprise located within the boundaries of the county or within five miles of the proposed project alleges in a written complaint filed with the county governing body within fifteen days of the meeting at which an ordinance or resolution authorizing the issuance of bonds pursuant to the County Industrial Revenue Bond Act is adopted that the proposed project would directly and substantially compete with such an existing business

or enterprise located within the boundaries of the county or within five miles of the proposed project, the bonds in connection with that project shall not be issued until the state board of finance has determined that the proposed project will not directly or substantially compete with an existing business or enterprise located within the boundaries of the county or within five miles of the proposed project. The state board of finance shall conduct a hearing and make the determination within ninety days of receiving a request for determination from the county. An existing business or enterprise for which bonds were previously issued by the county pursuant to the County Industrial Revenue Bond Act shall not be entitled to file a complaint pursuant to this section.

Credits

L. 1975, Ch. 286, § 15; L. 2015, Ch. 120, § 2, eff. July 1, 2015.

Formerly 1953 Comp., § 15-60-15.

NMSA 1978, § 4-59-15, NM ST § 4-59-15

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-59-16

§ 4-59-16. Liberal interpretation

The County Industrial Revenue Bond Act shall be liberally construed to carry out its purposes.

Credits

L. 1975, Ch. 286, § 16.

Formerly 1953 Comp., § 15-60-16.

NMSA 1978, § 4-59-16, NM ST § 4-59-16

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

EXHIBIT C

County Revenue Bond Act

N. M. S. A. 1978, § 4-62-1

§ 4-62-1. Revenue bonds; authority to issue; pledge of revenues; limitation on time of issuance

Effective: July 1, 2010

- A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term “pledged revenues”, as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through M of this section.
- B. Gross receipts tax revenue bonds may be issued for one or more of the following purposes:
- (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;
 - (2) acquiring or improving county or public parking lots, structures or facilities or any combination of the foregoing;
 - (3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;
 - (4) acquiring, extending, enlarging, bettering, repairing or otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants, water utilities or other water, wastewater or related facilities, including but not limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;
 - (5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include the acquisition of rights of way;
 - (6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way;
 - (7) purchasing or otherwise acquiring or clearing land or purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing;

(9) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing; or

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving public transit systems or any regional transit systems or facilities.

A county may pledge irrevocably any or all of the revenue from the first one-eighth increment, the third one-eighth increment and the one-sixteenth increment of the county gross receipts tax and any increment of the county infrastructure gross receipts tax and county capital outlay gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds for any of the purposes authorized in this section or specific purposes or for any area of county government services. If the revenue from the first one-eighth increment, the third one-eighth increment or the one-sixteenth increment of the county gross receipts tax or any increment of the county infrastructure gross receipts tax or county capital outlay gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax or any increment of the county infrastructure gross receipts tax or county capital outlay gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the county may appoint a commercial bank trust department to act as trustee of the proceeds of the tax and to administer the payment of principal of and interest on the bonds.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any independent fire district project or facilities, including where applicable purchasing, otherwise acquiring or improving the ground for the project, or any combination of such purposes. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as “fire protection revenue bonds”.

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related

to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as “environmental revenue bonds”.

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as “gasoline tax revenue bonds”.

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as “utility revenue bonds” or “joint utility revenue bonds”.

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including as applicable purchasing, otherwise acquiring or improving the ground therefor and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project shall not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of the revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that facilities or equipment is reasonably related to and constitutes a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

- (1) “project revenue bonds” means the bonds authorized in this subsection; and
- (2) “project revenues” means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including where applicable purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund Law and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest

on and principal of the bonds. The revenues of a fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the county that facilities or equipment is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district revenue bonds.

I. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The county may pledge irrevocably any or all of the revenues received by the county from the law enforcement protection fund distributions pursuant to the Law Enforcement Protection Fund Act to the payment of the interest on and principal of the law enforcement protection revenue bonds.

J. Hospital emergency gross receipts tax revenue bonds may be issued for acquiring, equipping, remodeling or improving a county hospital or county health facility. A county may pledge irrevocably to the payment of the interest on and principal of the hospital emergency gross receipts tax revenue bonds any or all of the revenues received by the county from a county hospital emergency gross receipts tax imposed pursuant to Section 7-20E-12.1 NMSA 1978 and dedicated to payment of bonds or a loan for acquiring, equipping, remodeling or improving a county hospital or county health facility.

K. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act. A county may pledge irrevocably any or all of the county infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for the purpose authorized in this subsection.

L. County education gross receipts tax revenue bonds may be issued for public school or off-campus instruction program capital projects as authorized in Section 7-20E-20 NMSA 1978. A county may pledge irrevocably any or all of the county education gross receipts tax revenue to the payment of interest on and principal of the county education gross receipts tax revenue bonds for the purpose authorized in this section.

M. PILT revenue bonds may be issued by a county to repay all or part of the principal and interest of an outstanding loan owed by the county to the New Mexico finance authority. A county may pledge irrevocably all or part of PILT revenue to the payment of principal of and interest on new loans or preexisting loans provided by the New Mexico finance authority to finance a public project as “public project” is defined in Subsection E of Section 6-21-3 NMSA 1978.

N. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 4-62-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

O. No bonds may be issued by a county, other than an H class county, a class B county as defined in Section 4-36-8 NMSA 1978 or a class A county as described in Section 4-36-10 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or construct a utility unless the utility is regulated by the public regulation commission pursuant to the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a “utility” includes but is not limited to a water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain public regulation commission approvals required by Section 3-23-3 NMSA 1978.

P. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax, a county infrastructure gross receipts tax, the county education gross receipts tax, a county capital outlay gross receipts tax, the gasoline tax or the county hospital emergency gross receipts tax, or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

Q. As used in this section:

(1) “county infrastructure gross receipts tax revenue” means the revenue from the county infrastructure gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(2) “county capital outlay gross receipts tax revenue” means the revenue from the county capital outlay gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(3) “county education gross receipts tax revenue” means the revenue from the county education gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(4) “county environmental services gross receipts tax revenue” means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(5) “county fire protection excise tax revenue” means the revenue from the county fire protection excise tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(6) “county gross receipts tax revenue” means the revenue attributable to the first one-eighth increment, the third one-eighth increment and the one-sixteenth increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth increment made pursuant to Section 7-1-6.16 NMSA 1978;

(7) “gasoline tax revenue” means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978;

(8) “PILT revenue” means revenue received by the county from the federal government as payments in lieu of taxes; and

(9) “public building” includes but is not limited to fire stations, police buildings, county or regional jails, county or regional juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment.

As used in Chapter 4, Article 62 NMSA 1978, the term “bond” means any obligation of a county issued under Chapter 4, Article 62 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a county to make payments.

Credits

L. 1992, Ch. 95, § 1; L. 1993, Ch. 282, § 14; L. 1993, Ch. 308, § 2; L. 1995, Ch. 141, § 8, eff. April 5, 1995; L. 1996, Ch. 83, § 2, eff. March 6, 1996; L. 1997, Ch. 20, § 1, eff. July 1, 1997; L. 1998, Ch. 90, § 2; L. 1999, Ch. 199, § 2, eff. April 6, 1999; L. 2000, Ch. 69, § 1, eff. March 6, 2000; L. 2001, Ch. 172, § 3; L. 2001, Ch. 328, § 2, eff. April 5, 2001; L. 2003, Ch. 98, § 1, eff. July 1, 2003; L. 2010, Ch. 82, § 1, eff. July 1, 2010.

NMSA 1978, § 4-62-1, NM ST § 4-62-1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-2

§ 4-62-2. Use of proceeds of bond issue

It is unlawful to divert, use or expend any money received from the issuance of bonds for any purpose other than the purpose for which the bonds were issued.

Credits

L. 1992, Ch. 95, § 2.

NMSA 1978, § 4-62-2, NM ST § 4-62-2

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-3

§ 4-62-3. Revenue bonds; terms

County revenue bonds:

- A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;
- B. may be subject to prior redemption at the county's option at such time and upon such terms and conditions with or without the payment of a premium as may be determined by the governing body;
- C. may mature at any time not exceeding fifty years after the date of issuance, except county revenue bonds issued for reconstructing, resurfacing or repairing existing streets, which may mature at any time not exceeding twenty years after the date of issuance;
- D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the governing body;
- E. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and
- F. may be sold at public or negotiated sale.

Credits

L. 1992, Ch. 95, § 3; L. 1995, Ch. 141, § 9, eff. April 5, 1995.

NMSA 1978, § 4-62-3, NM ST § 4-62-3

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-3.1

§ 4-62-3.1. Exemption from taxation

The bonds authorized by Chapter 4, Article 62 NMSA 1978 and the income from the bonds or any mortgages or other instruments executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

Credits

L. 2001, Ch. 126, § 2.

NMSA 1978, § 4-62-3.1, NM ST § 4-62-3.1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-4

§ 4-62-4. Ordinance authorizing revenue bonds; two-thirds majority required; resolution authorizing revenue bonds to be issued and sold to the New Mexico finance authority

A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 4-62-1 NMSA 1978, the governing body may adopt an ordinance that:

- (1) declares the necessity for issuing revenue bonds;
- (2) authorizes the issuance of revenue bonds by an affirmative vote of two-thirds of all the members of the governing body; and
- (3) designates the source of the pledged revenues.

B. If a majority of a five-member governing body, but fewer than four members, votes in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of issuing the revenue bonds is submitted to a vote of the qualified electors for their approval at a special or regular county election. If an election is necessary, the election shall be conducted in the manner provided in Section 4-49-8 NMSA 1978. Notice of the election shall be given as provided in Section 4-49-8 NMSA 1978.

C. In addition and as alternative to adopting an ordinance as required by the provisions of Subsections A and B of this section, at a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 4-62-1 NMSA 1978, the governing body may authorize the issuance and sale, from time to time, of revenue bonds in amounts not to exceed one million dollars (\$1,000,000) at any one time to the New Mexico finance authority by adoption of a resolution that:

- (1) declares the necessity for issuing and selling revenue bonds to the New Mexico finance authority;
- (2) authorizes the issuance and sale of revenue bonds to the New Mexico finance authority by an affirmative vote of a majority of all the members of the governing body; and
- (3) designates the source of the pledged revenues.

At the option of the governing body, revenue bonds in an amount in excess of one million dollars (\$1,000,000) may be authorized by an ordinance adopted in accordance with Subsections A and B of this section and issued and sold to the New Mexico finance authority.

D. No ordinance or resolution may be adopted under the provisions of this section that uses as pledged revenues the county gross receipts tax for a purpose that would be inconsistent with the purpose for which that county gross receipts tax revenue was dedicated. Any revenue in excess of the amount necessary to meet all annual principal and interest payments and other requirements incident to repayment of the bonds may be transferred to any other fund of the county.

Credits

L. 1992, Ch. 95, § 4; L. 1995, Ch. 141, § 10, eff. April 5, 1995.

NMSA 1978, § 4-62-4, NM ST § 4-62-4

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-5

§ 4-62-5. Revenue bonds not general county obligations; authentication

A. Revenue bonds or refunding revenue bonds issued as authorized in Chapter 4, Article 62 NMSA 1978 are:

- (1) not general obligations of the county; and
- (2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the proper pledged revenues and that the bondholders may not look to any other county fund for the payment of the interest and principal of the bonds.

B. The bonds shall be executed by the chairman of the governing body and treasurer or the clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act, and the coupons, if any, shall bear the facsimile signature of the treasurer of the county.

Credits

L. 1992, Ch. 95, § 5.

NMSA 1978, § 4-62-5, NM ST § 4-62-5

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-6

§ 4-62-6. Revenue bonds; mandatory rates for non-utility revenue-producing projects; mandamus; impairment of payment

A. The governing body of any county issuing non-utility revenue bonds as authorized in Chapter 4, Article 62 NMSA 1978 shall establish rates for services rendered by or use of the applicable non-utility revenue-producing project to provide revenue sufficient to pay the following or, where applicable to a revenue-producing project, to enter into leases or other agreements sufficient to provide revenues that are sufficient to pay the following:

- (1) all reasonable expenses of operation; and

(2) all principal of and interest on the revenue bonds as those amounts come due.

B. In the event the governing body fails or refuses to establish rates for the applicable non-utility revenue-producing project, or to enter into a lease or other agreement where applicable to a non-utility revenue-producing project, any bondholder may apply to the district court for a mandatory order requiring the governing body to establish rates or to enter into such applicable leases or agreements that will provide revenues adequate to meet the requirements of this section.

C. Any law that authorized the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978 or that affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise modified in such a manner as to impair any outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

Credits

L. 1992, Ch. 95, § 6.

NMSA 1978, § 4-62-6, NM ST § 4-62-6

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-7

§ 4-62-7. Revenue bonds; refunding authorization

A. Any county having issued revenue bonds as authorized in Sections 4-62-1 through 4-62-6 NMSA 1978 or pursuant to any other laws enabling the governing body of any county having issued revenue bonds payable only out of the pledged revenue may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of the outstanding bonds of any outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. The county may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues that may be pledged to an original issue of bonds as

provided in Section 4-62-1 NMSA 1978. This section permits the pledge of revenues from one source to the payment of bonds that refund bonds payable from a different source of revenue.

C. Bonds for refunding and bonds for any purpose permitted by Section 4-62-1 NMSA 1978 may be issued separately or issued in combination in one or more series.

Credits

L. 1992, Ch. 95, § 7; L. 1998, Ch. 10, § 1, eff. Feb. 19, 1998.

NMSA 1978, § 4-62-7, NM ST § 4-62-7

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-8

§ 4-62-8. Refunding bonds; escrow; detail

A. Refunding bonds issued pursuant to Chapter 4, Article 62 NMSA 1978 shall be authorized by ordinance or by resolution if the refunding bonds are to be issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 4-62-4 NMSA 1978. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provisions shall be made for paying the bonds refunded at the time provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any escrow shall not

be limited to proceeds of refunding bonds but may include the other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of, or the payment of which is unconditionally guaranteed by, the United States, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Chapter 4, Article 62 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the county or of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the county subject to the limitations in this section and Section 4-62-9 NMSA 1978 and, to the extent applicable, Sections 4-62-1 through 4-62-6 NMSA 1978 relating to original bond issues, and the refunding bonds are not subject to the provisions of any other statute except as may be incorporated by reference in Chapter 4, Article 62 NMSA 1978.

E. The county shall receive from the department of finance and administration written approval of any non-utility gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds, fire protection refunding revenue bonds, environmental refunding revenue bonds or non-utility project refunding revenue bonds issued pursuant to the provisions of Sections 4-62-7 through 4-62-10 NMSA 1978.

Credits

L. 1992, Ch. 95, § 8; L. 1995, Ch. 141, § 11, eff. April 5, 1995.

NMSA 1978, § 4-62-8, NM ST § 4-62-8

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-9

§ 4-62-9. Refunding revenue bonds; terms

County refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the county's option at such time and upon such terms and conditions with or without the payment of a premium as may be determined by the governing body;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the governing body; and

D. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act.

Credits

L. 1992, Ch. 95, § 9; L. 1995, Ch. 141, § 12, eff. April 5, 1995.

NMSA 1978, § 4-62-9, NM ST § 4-62-9

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 4-62-10

§ 4-62-10. Refunding revenue bonds; ordinance; resolution

A. At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the governing body by a majority vote of all the members of the governing body may adopt an ordinance authorizing the issuance of the refunding revenue bonds.

B. At any regular or special meeting called for the purpose of issuing and selling refunding revenue bonds to the New Mexico finance authority, the governing body by an affirmative vote of a majority of all the members of the governing body may adopt a resolution authorizing issuance and sale of the refunding revenue bonds to the New Mexico finance authority pursuant to Subsection C of Section 4-62-4 NMSA 1978.

Credits

L. 1992, Ch. 95, § 10; L. 1995, Ch. 141, § 13, eff. April 5, 1995.

NMSA 1978, § 4-62-10, NM ST § 4-62-10

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

EXHIBIT D

Municipal Housing Law

N. M. S. A. 1978, § 3-45-1

§ 3-45-1. Municipal Housing Law; short title

Effective: April 7, 2009

Chapter 3, Article 45 NMSA 1978 may be cited as the “Municipal Housing Law”.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 1, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-1.

NMSA 1978, § 3-45-1, NM ST § 3-45-1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-2

§ 3-45-2. Finding and declaration of necessity

Effective: April 7, 2009

It is hereby declared that:

- A. unsanitary or unsafe dwelling accommodations exist in the state;
- B. persons of low and moderate income are forced to reside in such unsanitary or unsafe accommodations;
- C. within the state, there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low and moderate income can afford and that such persons are forced to occupy overcrowded, congested dwelling accommodations and that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety and welfare of the residents of the state and impair economic values;
- D. these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;
- E. these areas in the state cannot be cleared nor can the shortage of safe and sanitary dwellings for persons of low and moderate income be relieved through the operation of private enterprise

and that the construction of housing projects for persons of low and moderate income, as defined in the Municipal Housing Law, would therefore not be competitive with private enterprise;

F. the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low and moderate income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state and municipal concern; and

G. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve a shortage of affordable housing, which now constitutes an emergency; and the necessity in the public interest for the provisions enacted by the Municipal Housing Law is hereby declared as a matter of legislative determination.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 2, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-2.

NMSA 1978, § 3-45-2, NM ST § 3-45-2

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-3

§ 3-45-3. Definitions

Effective: July 1, 2014

The following terms, wherever used or referred to in the Municipal Housing Law, shall have the following respective meanings:

A. “city” means any municipality and, unless the context otherwise clearly indicates, any county. “The city” means the particular city or county for which a particular housing authority is created. “County” means any county;

B. “governing body” means, in the case of a city, the council or board of commissioners and, in the case of other state public bodies, the council, commissioners, board or other body having charge of the fiscal affairs of the state public body;

C. “mayor” means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city. In the case of a county, the term “mayor” means the board of county commissioners;

D. “clerk” means the city recorder, the county clerk or the officer charged with the duties customarily imposed on the clerk;

E. “area of operation” includes all of the city or, in the case of a county, includes all of the county, except the area shall not include any area that lies within the boundaries of any city that has an established housing authority or housing agency without the consent of the city. Upon approval by the governing bodies of the cities involved, the area of operation of one city pursuant to the Municipal Housing Law may be enlarged to include the area within the boundaries of any other city. Any subsequent withdrawal of consent of a city for operation within its boundaries by another city shall not prohibit the development and operation of any housing projects initiated in the city by another city prior to the date of withdrawal;

F. “authority” or “housing authority” means any agency or other instrumentality of a city or a separate public body politic and corporate created pursuant to the Municipal Housing Law;

G. “state public body” means any county, municipal corporation, commission, district, authority, including a housing authority that is a separate body politic, other subdivision or public body of the state;

H. “federal government” includes the United States of America, the federal department of housing and urban development or any other agency or instrumentality, corporate or otherwise, of the United States of America;

I. “slum” means any area where dwellings predominate that by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to the safety, health or well-being of the occupants or to surrounding properties;

J. “housing project” means any work or undertaking of the city:

(1) to demolish, clear or remove buildings from any slum area. The work or undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes;

(2) to provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for persons of low and moderate income. The work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or

(3) to accomplish a combination of the foregoing.

The term “housing project” also may be applied to the planning of the buildings and improvements, the acquisition of property or existing structures, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith;

K. “low-income person” means any individual, couple or family whose gross income does not exceed eighty percent of that person’s particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing rent or mortgage payments or a “low-income person” as defined by the federal government;

L. “bonds” means any bonds, notes, interim certificates, debentures or other obligations issued pursuant to the Municipal Housing Law;

M. “real property” includes all lands, including improvements and fixtures on the lands and property of any nature appurtenant to the lands or used in connection with the lands, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

N. “obligee” includes any holder of bonds issued pursuant to the Municipal Housing Law, trustees for any such bondholders, or lessor demising to a city property used in connection with a housing project, or any assignee or assignees of the lessor’s interest or any part of the lessor’s interest and the federal government when it is a party to any contract with a city in regard to a housing project;

O. “affordable housing” means any housing accommodations that serve the needs of low- and moderate-income persons;

P. “affordable housing program” means an ongoing delivery system of affordable housing services that assists persons of low and moderate income;

Q. “moderate-income person” means any individual, couple or family whose gross annual income is not less than eighty percent of that person’s particular area median income and does not exceed one hundred twenty percent of that area median income;

R. “multi-jurisdictional housing authority” means two or more housing authorities joined or cooperating for the purposes of consolidating administrative duties and obligations and providing more effective and efficient housing projects and programs within their jurisdictions; and

S. “immediate family member” means:

- (1) a spouse, including a former spouse, a de facto spouse or a former de facto spouse;
- (2) a child or an adult child, including an adopted child, a step-child or an ex-nuptial child;
- (3) a parent or a step-parent;
- (4) a grandparent;
- (5) a grandchild;
- (6) a sibling or a step-sibling;
- (7) a first cousin;
- (8) an aunt or an uncle;
- (9) a father-in-law or a mother-in-law;

- (10) a sister-in-law or a brother-in-law; and
- (11) any other relative who is financially supported.

Credits

L. 1965, Ch. 300; L. 1989, Ch. 50, § 1; L. 2009, Ch. 226, § 3, eff. April 7, 2009; L. 2014, Ch. 60, § 1, eff. July 1, 2014.

Formerly 1953 Comp., § 14-46-3.

NMSA 1978, § 3-45-3, NM ST § 3-45-3

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-4

§ 3-45-4. Powers

Effective: April 7, 2009

A. Every city, in addition to other powers conferred by the Municipal Housing Law, may:

- (1) within its area of operation, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project or any part of a housing project and operate and maintain the housing project, and for any of those purposes, the governing body of the city may appropriate money and authorize the use of any property of the city;
- (2) purchase its bonds issued pursuant to the Municipal Housing Law at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled;
- (3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in the Municipal Housing Law, establish and revise the rents or charges therefor; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; acquire by the exercise of the power of eminent domain any real property; sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; and procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts of any bonds issued pursuant to the Municipal Housing Law, including the power to pay premiums on any such insurance;
- (4) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction or both of any housing project;

- (5) insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable;
- (6) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants of a housing project; and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the federal government may have attached to its financial aid of the project;
- (7) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving the conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low and moderate income; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for persons of low and moderate income and cooperate with the state or any political subdivision of the state in action taken in connection with the problems; and engage in research, studies and experimentation on the subject of housing and affordable housing programs; and
- (8) exercise all or any part or combination of powers herein granted.

B. Any two or more cities or authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes or other obligations and giving security therefor, or contracting with respect to housing projects or affordable housing programs located within the area of operation of any one or more of the cities or authorities. For that purpose, a city or authority may, by resolution, prescribe and authorize any other city or authority so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the city or authority so joining or cooperating or in its own name.

Credits

L. 1965, Ch. 300; L. 1969, Ch. 183, § 1; L. 2009, Ch. 226, § 4, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-4.

NMSA 1978, § 3-45-4, NM ST § 3-45-4

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-5

§ 3-45-5. Creation of authority

Effective: July 1, 2014

A. Every city, in addition to other powers conferred by the Municipal Housing Law, shall have power and is authorized, by proper resolution of its governing body, to create an authority to be known as the “housing authority” of the city as a public body politic and corporate separate from the city. The city may delegate to the authority the power to construct, maintain, operate and manage any housing project or affordable housing programs of the city and may delegate to the authority any or all of the powers conferred on the city by the Municipal Housing Law.

B. When the governing body of a city adopts a resolution pursuant to Subsection A of this section:

(1) the mayor shall appoint three, five or seven persons as commissioners of the authority as follows:

(a) at least three commissioners if the municipality is a village, town or county that does not contain a metropolitan statistical area as defined by the United States census; or

(b) at least five but no more than seven commissioners if the municipality is a city or a county that contains a metropolitan statistical area as defined by the United States census; and

(2) the commissioners who are first appointed shall be designated to serve staggered terms of one to five years from the date of their appointment, depending on the size of the authority. Thereafter, commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. A commissioner of an authority shall not hold any other office or employment of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to law. A commissioner may serve two or more successive terms of office. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner shall receive no compensation for services for the authority in any capacity, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

C. Two or more cities joined together pursuant to Subsection B of Section 3-45-4 NMSA 1978 shall establish their commissioners in accordance with Subsection B of this section, except that each city shall have equitable representation on the commission. The commissioners representing each city shall be appointed by the mayor of the city.

D. Any powers delegated by a city to an authority shall be vested in the commissioners of the authority in office from time to time. A majority of commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other

purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The commission shall organize itself at its annual meeting each even-numbered year. Any city creating a housing authority may authorize the authority to employ a secretary, who shall be executive director and who shall be removable only for cause. With the delegated authority from the commission, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the authority, technical experts and such other officers, attorneys, agents and employees, permanent and temporary, as the authority may require; determine their qualifications, duties and compensation; and delegate to one or more of them such powers or duties as the authority may deem proper.

Credits

L. 1965, Ch. 300; L. 1989, Ch. 50, § 2; L. 2009, Ch. 226, § 5, eff. April 7, 2009; L. 2014, Ch. 60, § 2, eff. July 1, 2014.

Formerly 1953 Comp., § 14-46-5.

NMSA 1978, § 3-45-5, NM ST § 3-45-5

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-6

§ 3-45-6. Prohibited actions

Effective: April 7, 2009

Neither a housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the commission of the housing authority or any member of the member's immediate family. The prohibition established by this subsection does not apply to any member who has not served on the governing body of a resident management corporation and who otherwise has not occupied a policymaking position with the resident management corporation or the housing authority;

B. any employee of the housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the housing authority.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 6, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-6.

NMSA 1978, § 3-45-6, NM ST § 3-45-6

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-7

§ 3-45-7. Removal of commissioners

Effective: April 7, 2009

A commissioner of an authority may be removed by the mayor, but only for inefficiency, neglect of duty or misconduct in office and only after the commissioner has been given a copy of the charges at least ten days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner by the mayor, a record of the proceedings, together with the charges and findings, shall be filed in the office of the clerk. Commissioners may be removed for cause based on noncompliance with housing program regulations.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 7, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-7.

NMSA 1978, § 3-45-7, NM ST § 3-45-7

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-8

§ 3-45-8. Eminent domain

In addition to the other purposes for which a city may appropriate property, a city shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under the Municipal Housing Law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A city may exercise the power of eminent domain hereunder in the manner provided by the laws of the state of New Mexico, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain hereunder in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Title to property so acquired shall be taken in the name of the city.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-8.

NMSA 1978, § 3-45-8, NM ST § 3-45-8

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-9

§ 3-45-9. Operation not for profit

Effective: April 7, 2009

It is declared to be the policy of this state that each city shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations and that no city shall construct or operate any housing project for profit. To this end, a city shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the federal government or other sources for housing projects, will be sufficient:

- A. to pay, as they become due, the principal and interest on the bonds or other obligations of the city issued under the Municipal Housing Law;
- B. to meet the cost of and to provide for maintaining and operating the housing projects and affordable housing programs, including the cost of any insurance, the administrative expenses of the city incurred in connection with the housing projects and affordable housing programs and the funding of any operational reserves as the authority deems appropriate;
- C. to fund such reserves to secure the payment of its bonds as the authority deems appropriate or convenient; and
- D. to allow private, profit-making entities to enter into agreements with the authority, and such agreements shall not be deemed to affect the nonprofit status of the authority or conflict with the intent of the creation of the authority.

Credits

L. 1965, Ch. 300; L. 1989, Ch. 50, § 3; L. 2009, Ch. 226, § 8, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-9.

NMSA 1978, § 3-45-9, NM ST § 3-45-9

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-10

§ 3-45-10. Sales, rentals and tenant selection

Effective: April 7, 2009

A. In the operation or management of housing projects and affordable housing programs or the sale of any property pursuant to the Municipal Housing Law, a city shall at all times observe the following duties with respect to rentals, property and tenant selection:

- (1) it may rent, lease or sell the dwelling accommodations in the housing project and affordable housing programs only to persons falling within federally established standards;
- (2) it may rent, lease or sell to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and
- (3) it shall not accept any person as a tenant in any housing program if the person has an annual net income in excess of federally established standards.

B. Nothing contained in this section or Section 3-45-9 NMSA 1978 shall be construed as limiting the power of a city to vest in an obligee the right, in the event of a default by the city, to take possession and operate housing projects or affordable housing programs or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or Section 3-45-9 NMSA 1978.

Credits

L. 1965, Ch. 300; L. 1989, Ch. 50, § 4; L. 2009, Ch. 226, § 9, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-10.

NMSA 1978, § 3-45-10, NM ST § 3-45-10

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-11

§ 3-45-11. Bonds

A. A city shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any project or undertaking hereunder. A city shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it hereunder. In order to carry out the purposes of the Municipal

Housing Law, a city may issue, upon proper resolution, bonds on which the principal and interest are payable:

- (1) exclusively from the income and revenues of the housing project or projects financed with the proceeds of such bonds; or
- (2) exclusively from such income and revenues together with grants and contributions from the federal government or other sources in aid of such project or projects.

B. Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Municipal Housing Law shall be payable solely from the sources provided in this section. Such bonds shall not be a general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-11.

NMSA 1978, § 3-45-11, NM ST § 3-45-11

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-12

§ 3-45-12. Form and sale of bonds; interest on certain obligations

Effective: July 1, 2014

A. Bonds of a city issued under the Municipal Housing Law shall be authorized by its resolution and may be issued in any one or more series and shall bear such date, mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place and be subject to such terms of redemption, with or without premium, as the resolution, its trust indenture or the bond so issued may provide.

B. Obligations issued by a city that are true loan obligations made to the farm service agency of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the city jurisdiction and in a financial newspaper published in the city of San Francisco, California, or in the city of New York, New York; provided that the bonds may be sold to the federal government at private

sale at not less than par, and, in the event less than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the city not to exceed the interest cost to the city of the portion of the bonds sold to the federal government.

D. In case any of the officers of the city, the authority or any of its instrumentalities whose signatures appear on any bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes the same as if the officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Municipal Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security for the bond, any such bond reciting in substance that it has been issued by the city to aid in financing a housing project to provide dwelling accommodations for persons of low and moderate income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Housing Law.

Credits

L. 1965, Ch. 300; L. 1979, Ch. 270, § 1; L. 1989, Ch. 50, § 5; L. 2009, Ch. 226, § 10, eff. April 7, 2009; L. 2014, Ch. 60, § 3, eff. July 1, 2014.

Formerly 1953 Comp., § 14-46-12.

NMSA 1978, § 3-45-12, NM ST § 3-45-12
Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-13

§ 3-45-13. Provisions of bonds and trust indentures

In connection with the issuance of bonds pursuant to the Municipal Housing Law or the incurring of obligations under leases made pursuant to the Municipal Housing Law and in order to secure the payment of such bonds or obligations, a city in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a housing project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant, subject to the limitations contained in the Municipal Housing Law, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

F. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Municipal Housing Law; and to covenant as to the maintenance of such real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

G. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

H. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Municipal Housing Law, or any specified proportion of them, the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the right, in the event of a default by said city, to take possession of any housing project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the city with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to such bonds; and

I. to exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, or like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-13.

NMSA 1978, § 3-45-13, NM ST § 3-45-13

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-14

§ 3-45-14. Construction of bond provisions

The Municipal Housing Law without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-14.

NMSA 1978, § 3-45-14, NM ST § 3-45-14

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-15

§ 3-45-15. Certification of attorney general

A city may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such bonds and proceedings conform to the provisions of the Municipal Housing Law and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of New Mexico.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-15.

NMSA 1978, § 3-45-15, NM ST § 3-45-15
Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-16

§ 3-45-16. Remedies of an obligee

An obligee of a city shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceeding at law or in equity, to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said city and the fulfillment of all duties imposed upon said city by the Municipal Housing Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee of said city.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-16.

NMSA 1978, § 3-45-16, NM ST § 3-45-16
Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-17

§ 3-45-17. Additional remedies conferrable to an obligee

A city shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part hereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the city shall continue in default;

B. to obtain the appointment of a receiver of any housing project of said city or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long as the city shall continue in

default, operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said city as the court shall direct; and

C. to require said city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-17.

NMSA 1978, § 3-45-17, NM ST § 3-45-17

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-18

§ 3-45-18. Exemption of property from execution sale

All real property owned or held by a city for the purposes of the Municipal Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against the same nor shall any judgment against a city be a charge or lien on such real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-18.

NMSA 1978, § 3-45-18, NM ST § 3-45-18

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-19

§ 3-45-19. Exemption of property from taxation

The real property of a housing project, as defined in Section 3-45-3 NMSA 1978, is declared to be public property used for essential public and governmental purposes and is property of a city of this state and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by the city.

Credits

L. 1965, Ch. 300; L. 1979, Ch. 258, § 1.

Formerly 1953 Comp., § 14-46-19.

NMSA 1978, § 3-45-19, NM ST § 3-45-19

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-20

§ 3-45-20. Aid from state or federal government

Effective: April 7, 2009

In addition to the powers conferred upon a city by other provisions of the Municipal Housing Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for, or in aid of, any housing project or affordable housing program within its area of operation and, to these ends, to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Housing Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project or affordable housing program of the city.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 11, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-20.

NMSA 1978, § 3-45-20, NM ST § 3-45-20

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-21

§ 3-45-21. Cooperation in undertaking housing projects or affordable housing programs

Effective: April 7, 2009

A. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects or affordable housing programs located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

- (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any city;

- (2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works that it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects or affordable housing programs;
- (3) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;
- (4) cause services to be furnished for housing projects or affordable housing programs of the character that the state public body is otherwise empowered to furnish;
- (5) enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;
- (6) do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;
- (7) incur the entire expense of any public improvements made by the state public body in exercising the powers granted in the Municipal Housing Law; and
- (8) enter into agreements that may extend over any period, notwithstanding any provision or rule of law to the contrary, with any city or multi-jurisdictional housing authority as agent therefor, respecting action to be taken by the state public body pursuant to any of the powers granted by the Municipal Housing Law.

B. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

C. In the event an authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the authority may, by resolution of its governing body, transfer its assets and operation to another housing authority, including a multi-jurisdictional housing authority or regional housing authority. The multi-jurisdictional housing authority or regional housing authority shall accept, by resolution of its governing board, a transfer of assets and operations of an authority that has been declared by the federal department of housing and urban development to be in default of the annual contributions contract between that department and the authority.

Credits

L. 1965, Ch. 300; L. 2009, Ch. 226, § 12, eff. April 7, 2009.

Formerly 1953 Comp., § 14-46-21.

NMSA 1978, § 3-45-21, NM ST § 3-45-21

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-22

§ 3-45-22. Procedure for exercising powers

The exercise by the city or other state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-22.

NMSA 1978, § 3-45-22, NM ST § 3-45-22

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-23

§ 3-45-23. Supplemental nature of the Municipal Housing Law

The powers conferred by the Municipal Housing Law shall be in addition and supplemental to the powers conferred by any other law.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-23.

NMSA 1978, § 3-45-23, NM ST § 3-45-23

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-24

§ 3-45-24. Housing bonds; legal investments; security; negotiable

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control

in any bonds or other obligations issued pursuant to the Municipal Housing Law or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of the Municipal Housing Law to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations and that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in the Municipal Housing Law shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-24.

NMSA 1978, § 3-45-24, NM ST § 3-45-24

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 3-45-25

§ 3-45-25. Law controlling

Insofar as the provisions of the Municipal Housing Law are inconsistent with the provisions of any other law, the provisions of the Municipal Housing Law shall be controlling.

Credits

L. 1965, Ch. 300.

Formerly 1953 Comp., § 14-46-25.

NMSA 1978, § 3-45-25, NM ST § 3-45-25

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

EXHIBIT E

Local Economic Development Act

N. M. S. A. 1978, § 5-10-1

§ 5-10-1. Short title

Effective: May 18, 2016

Chapter 5, Article 10 NMSA 1978 may be cited as the “Local Economic Development Act”.

Credits

L. 1993, Ch. 297, § 1; L. 2016, Ch. 14, § 1, eff. May 18, 2016.

NMSA 1978, § 5-10-1, NM ST § 5-10-1

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-2

§ 5-10-2. Findings and purpose of act

Effective: July 1, 2007

A. The legislature finds that:

- (1) development of the New Mexico economy is vital to the well-being of the state and its residents;
- (2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;
- (3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;
- (4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and
- (5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.

B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic

development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act.

Credits

L. 1993, Ch. 297, § 2; L. 2007, Ch. 160, § 8, eff. July 1, 2007.

NMSA 1978, § 5-10-2, NM ST § 5-10-2

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-3

§ 5-10-3. Definitions

Effective: May 18, 2016

As used in the Local Economic Development Act:

- A. “arts and cultural district” means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act;¹
- B. “cultural facility” means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;
- C. “department” means the economic development department;
- D. “economic development project” or “project” means the provision of direct or indirect assistance to a qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;

- E. “governing body” means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;
- F. “local government” means a municipality or county;
- G. “municipality” means an incorporated city, town or village;
- H. “person” means an individual, corporation, association, partnership or other legal entity;
- I. “qualifying entity” means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:
- (1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
 - (2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
 - (3) a business, including a restaurant or lodging establishment, in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
 - (4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
 - (5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
 - (6) a facility for the direct sales by growers of agricultural products, commonly known as farmers’ markets;
 - (7) a business that is the developer of a metropolitan redevelopment project;
 - (8) a cultural facility; and
 - (9) a retail business;
- J. “regional government” means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and

K. “retail business” means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population, according to the most recent federal decennial census, of:

- (1) ten thousand or less; or
- (2) more than ten thousand but less than thirty-five thousand if:
 - (a) the economic development project is not funded or financed with state government revenues; and
 - (b) the business created through the project will not directly compete with an existing business that is: 1) in the municipality; and 2) engaged in the sale of the same or similar goods or commodities at retail.

Credits

L. 1993, Ch. 297, § 3; L. 1998, Ch. 90, § 3; L. 1999, Ch. 245, § 1; L. 2000, Ch. 103, § 5; L. 2007, Ch. 160, § 9, eff. July 1, 2007; L. 2013, Ch. 201, § 1, eff. July 1, 2013; L. 2016, Ch. 14, § 2, eff. May 18, 2016.

Footnotes

1

NMSA 1978, § 15-5A-1 et seq.

NMSA 1978, § 5-10-3, NM ST § 5-10-3

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-4

§ 5-10-4. Economic development projects; restrictions on public expenditures or pledges of credit

Effective: July 1, 2013

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

- (1) the value of any land or building contributed to any project pursuant to a project participation agreement;
- (2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
- (3) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;
- (4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
- (5) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or
- (6) funds donated by private entities to be used for defraying the cost of a project.

C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

D. In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or county that has imposed a municipal or county local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or county infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or county local option gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local

Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.

F. The question shall be submitted to the voters of the municipality or county as a separate question at a regular municipal or county election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code. A special county election shall be called, conducted and canvassed in substantially the same manner as provided by law for general I elections.

G. If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or county economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date.

Credits

L. 1993, Ch. 297, § 4; L. 1998, Ch. 90, § 4; L. 2003, Ch. 349, § 17; L. 2007, Ch. 160, § 10, eff. July 1, 2007; L. 2009, Ch. 172, § 1, eff. June 19, 2009; L. 2013, Ch. 201, § 2, eff. July 1, 2013.

NMSA 1978, § 5-10-4, NM ST § 5-10-4

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-5

§ 5-10-5. Economic development department; technical assistance

Effective: July 1, 2007

At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic development project or technical assistance to cultural facilities with respect to economic development projects.

Credits

L. 1993, Ch. 297, § 5; L. 2007, Ch. 160, § 11, eff. July 1, 2007.

N. M. S. A. 1978, § 5-10-6

§ 5-10-6. Economic development plan; contents; publication

Effective: July 1, 2007

A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component, and an economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.

B. The economic development plan or the ordinance adopting the plan may:

- (1) describe the local or regional government's economic development and community goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals;
- (2) describe the types of qualifying entities and economic activities that will qualify for economic development projects;
- (3) describe the criteria to be used to determine eligibility of an economic development project and a qualifying entity to participate in an economic development project;
- (4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;
- (5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;
- (6) if an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate its economic assistance and recoup its investment;
- (7) identify revenue sources, including those of the local or regional government, that will be used to support economic development projects;

(8) identify other resources the local or regional government is prepared to offer qualifying entities, including specific land or buildings it is willing to lease, sell or grant a qualifying entity; community infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities; and professional services contracts by local or regional governments necessary to provide these resources;

(9) detail the minimum benefit the local or regional government requires from a qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the qualifying entity of local or regional government-provided land, buildings or infrastructure; the public to private investment ratio; and direct local tax base expansion;

(10) describe the safeguards of public resources that will be ensured, including specific ways the local or regional government can recover any costs, land, buildings or other thing of value if a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the local or regional government; and

(11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments who are party to the agreement.

C. The economic development plan shall be printed and made available to the residents within the local or regional government area.

Credits

L. 1993, Ch. 297, § 6; L. 1998, Ch. 90, § 5; L. 2007, Ch. 160, § 12, eff. July 1, 2007.

NMSA 1978, § 5-10-6, NM ST § 5-10-6

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-7

§ 5-10-7. Regional plans; joint powers agreement; regional government

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act to develop a regional economic development plan which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.

B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies

of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

Credits

L. 1993, Ch. 297, § 7.

NMSA 1978, § 5-10-7, NM ST § 5-10-7

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-8

§ 5-10-8. Economic development project applications

A. After the adoption of an economic development plan by a local or regional government, a qualifying entity shall submit to the local or regional government an economic development project application.

B. The application shall be on a form and require such information as the local or regional government deems necessary.

Credits

L. 1993, Ch. 297, § 8.

NMSA 1978, § 5-10-8, NM ST § 5-10-8

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-9

§ 5-10-9. Project evaluation; department

Effective: July 1, 2007

A. The local or regional government shall review each project application, and projects shall be approved by ordinance.

B. The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

C. The local or regional government may negotiate with a qualifying entity on the type or amount of assistance to be provided or on the scope of the economic development project.

Credits

L. 1993, Ch. 297, § 9; L. 2007, Ch. 160, § 13, eff. July 1, 2007.

NMSA 1978, § 5-10-9, NM ST § 5-10-9

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-10

§ 5-10-10. Project participation agreement; duties and requirements

Effective: July 1, 2013

A. The local or regional government and the qualifying entity shall enter into a project participation agreement.

B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

C. The qualifying entity shall provide security to each local or regional government, the state or any other New Mexico governmental entity providing public support for an economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the local or regional government and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.

D. If a qualifying entity fails to perform its substantive contribution, the local or regional government shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement. The project participation agreement for an economic development project that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state.

E. The project participation agreement at a minimum shall set out:

- (1) the contributions to be made by each party to the participation agreement;
- (2) the security provided to each governmental entity that provides public support for an economic development project by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material

participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

(3) a schedule for project development and completion, including measurable goals and time limits for those goals; and

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

Credits

L. 1993, Ch. 297, § 10; L. 2013, Ch. 43, § 1, eff. July 1, 2013.

NMSA 1978, § 5-10-10, NM ST § 5-10-10

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-11

§ 5-10-11. Project revenues; special fund; annual audit

A. Local or regional government revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

B. In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

Credits

L. 1993, Ch. 297, § 11.

NMSA 1978, § 5-10-11, NM ST § 5-10-11

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-12

§ 5-10-12. Plan and project termination

A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

B. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a project may be transferred to the general fund of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

Credits

L. 1993, Ch. 297, § 12.

NMSA 1978, § 5-10-12, NM ST § 5-10-12

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

N. M. S. A. 1978, § 5-10-13

§ 5-10-13. Limitations

Nothing in the Local Economic Development Act shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

Credits

L. 1993, Ch. 297, § 13.

NMSA 1978, § 5-10-13, NM ST § 5-10-13

Current including emergency Ch. 3, of the 1st Regular Session of the 53rd Legislature (2017)

EXHIBIT F

Bernalillo County LEDA review Form			
<p>Project has been reviewed by both the Economic Development Department and Finance Special Projects. The project complies with the following criteria from Bernalillo County's Economic Development Financing Policy. Projects that do not meet the qualification below shall be presented to Debt Policy Committee for review.</p>			
Compliance Criteria		Compliance	
		Yes	No
1	Does project meet economic development project qualification		
2	Does project meet qualified entity test		
3	Did project pay application fee legal fee		
4	Does project result in new job creation		
5	Does project conflict with County State LEDA Statue, Debt Policy, And / or Economic Development Financing Policy		
6	Does this project create additional compliance reporting, project Management, or unordinary activity for any county department		
7	Does project utilize qualified form of collateral		
8	Does the project have any State or Federal Tax Liens		
Department Comments		Comment	
9	Comment from Economic Development		
10	Comment from Budget and Business Improvement		
11	Comment from Finance		
12	Application in file		
13	Financial Analysis in file		
14	Executive Summary in file		
	Approved: Economic Development Director		
	Approved: Finance Special Projects		

EXHIBIT G
GRIP AND LEDA ORDINANCES