

ARTICLE 59
County Industrial Revenue Bonds

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4-59-1. Short title.

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

4-59-2. Definitions.

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 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 [62-13-1 NMSA 1978] and the Electric Utility Industry Restructuring Act of 1999 [62-3A-1 NMSA 1978];
 - (3) 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;
 - (4) a nonprofit corporation engaged in health care services;
 - (5) a mass transit or other transportation activity involving the movement of passengers, an industrial park, an office headquarters and a research facility;
 - (6) a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and
 - (7) 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.

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.

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 [4-59-1 NMSA 1978]; 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.

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 [59A-1-1 NMSA 1978]; 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.

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 [Chapter 4, Article 59 NMSA 1978]:

- (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.

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.

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 [Chapter 4, Article 59 NMSA 1978] 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 [4-59-5 NMSA 1978] of the County Industrial Revenue Bond Act, and may be secured in accordance with the provisions of Section 6 [4-59-6 NMSA 1978] of the County Industrial Revenue Bond Act.

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 [this article] 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.

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 [62-13-1 NMSA 1978], shall be obtained. H class counties shall obtain New Mexico public utility commission approval as required by Section 3-23-3 NMSA 1978.

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 [Chapter 4, Article 59 NMSA 1978]. 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.

4-59-11. Bonds made legal investments.

Bonds issued under the provisions of the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] shall be legal investments for savings banks and insurance companies organized under the laws of this state.

4-59-12. Exemption from taxation.

The bonds authorized by the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] 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.

4-59-13. Construction of act.

The County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] 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.

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 [Chapter 4, Article 59 NMSA 1978], except as provided in that act.

4-59-15. Board of finance.

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 at a meeting at which an ordinance or resolution authorizing the issuance of bonds hereunder [sic], 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 such 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.

4-59-16. Liberal interpretation.

The County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] shall be liberally construed to carry out its purposes.