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Member

**Steve Lanier**  
Member



**Mike Stark**  
County Manager

**Jim Cox**  
Deputy County Manager

100 South Oliver Drive  
Aztec, New Mexico 87410  
Phone: (505) 334-4271 Fax: (505) 334-3168  
[www.SJCounty.net](http://www.SJCounty.net)

**SAN JUAN COUNTY, NEW MEXICO**  
**Resolution No. 05-06-10**

A RESOLUTION PROVIDING POLICIES AND PROCEDURES FOR THE EVALUATION OF PROPOSED INDUSTRIAL REVENUE BOND PROJECTS BY SAN JUAN COUNTY.

Capitalized terms in the following preambles have the same definitions as set forth in Section 1, unless the context requires otherwise.

WHEREAS, the County Industrial Revenue Bond Act authorizes 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 and expand in New Mexico; and

WHEREAS, the Act also authorizes counties to issue industrial revenue bonds to finance the acquisition and/or construction of Projects; and

WHEREAS, the County supports the use of industrial revenue bonds as a tool to induce manufacturing, industrial or commercial operations to locate in the County or expand existing operations in the County in accordance with the policies and procedures set forth in this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THE GOVERNING BODY OF SAN JUAN COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Resolution:

A. “Act” means the County Industrial Revenue Bond Act, Sections 4-59-1 through 4-59-16, NMSA 1978, as amended;

B. “Applicant” means one or more persons or entities, or their successors, assigns or agents, who propose to acquire or construct a Project financed by the proceeds of Bonds;

C. “Board” means the Board of County Commissioners of San Juan County;

D. “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise in the area of municipal bonds and the exemption of interest on municipal bonds from federal income taxation and listed in the most recent edition of the Bond Buyer’s Municipal Marketplace;

E. “Bonds” means any bond, debenture, note, refunding or renewal bond or note, warrant or other security evidencing an obligation the proceeds of which, or a major portion thereof, are to be used in the trade or business carried on by someone other than the County and which are authorized to be issued by the County pursuant to the Act;

F. “County” means the County and body corporate and politic known as San Juan County, New Mexico;

G. “County Review Counsel” means an attorney or firm of attorneys retained by the County to review Bond documents on behalf of the County;

H. “Inducement Resolution” means a resolution of the Board setting forth the good faith intent of the Board to issue Bonds upon the prior satisfaction of all applicable requirements of the County;

I. “Project” means a commercial or industrial facility, a facility owned and/or operated by a non-profit organization, or portions thereof which qualify as a Project under the Act.

Section 2. Application Process.

If an Applicant wishes to request that the County issue Bonds under the Act to finance a Project on behalf of the Applicant, the Applicant shall submit a written application, in the form of Exhibit A, to the County Executive Officer at least three weeks prior to the date of the Board meeting at which the Applicant would like its application considered. The Applicant must attach to the application the proposed form of Inducement Resolution which the Applicant is requesting that the County adopt at the meeting at which the application is considered. Concurrently with the filing of the application, the Applicant shall submit to the County Treasurer's office a non-refundable application fee of two thousand five hundred dollars.

The County will consider each financing request on a case by case basis after reviewing among other things: the nature of the proposed Project; the number and nature of jobs that will be produced by the Project; infrastructure needs; the nature of any credit enhancement that will support the payment of the Bonds; and the operating history of the Applicant. The County reserves the right to decline a financing request for any reason it deems appropriate. Any agreement by the County to proceed with a financing does not constitute a recommendation by the County regarding the credit-worthiness of the financing.

Section 3. Fees of Professionals.

Concurrently with the filing of the application, the Applicant also shall submit to the County Treasurer's office, a check payable to the County for five thousand dollars as a retainer for County Review Counsel. County Review Counsel shall bill the County on an hourly basis at the rate agreed upon between the County and County Review Counsel and the County shall use the retainer to pay the fees of County Review Counsel. If any portion of the retainer remains after the closing of the Bond issue, the County shall return any unspent portion of the retainer to the

Applicant without interest. If the retainer is used prior to the closing of the Bond issue, the Applicant shall submit to the County an additional retainer of three thousand dollars within five days of notification from the County. The County does not expect the fees of County Review Counsel to exceed the initial five thousand dollar retainer unless there are unusual delays in the financing or changes in the structure of the financing.

The Applicant shall reimburse the County for fees for professional services, including but not limited to the services of financial advisors and economists, incurred by the County in connection with the Bond financing.

The fees of County Review Counsel and other professionals shall be paid regardless of whether the Bond issue closes.

The Applicant shall be responsible for retaining and paying the Fees of Bond Counsel. The loyalty of Bond Counsel shall run to the Applicant.

Section 4. Payment in Lieu of Taxes.

Based upon the information submitted by the Applicant, County staff shall determine the value of property, if any, constituting the Project which will be exempt from taxation as a result of the financing and the estimated amount of taxes to the County, the school district and the college district, if the Project is located within the boundaries of the college district, that would be otherwise collected with respect to such property in the first full year after completion of the Project if the Project were not exempt. Unless otherwise determined by the Board, the Applicant shall be required to pay, as a condition of obtaining the Bond financing, payments in lieu of taxes, commencing in the first full year after completion of the Project, equal to the taxes that would otherwise have been paid to the County for operational purposes, to the school district and to the college district, if the Project is located within the boundaries of the college district, in such year.

The payments in lieu of taxes shall automatically increase every five years by a percentage equal to the lesser of the percentage increase in the assessed value of the exempt project site and improvements during the previous five years, or five percent. In addition, if there is an expansion of the buildings and improvements which are exempt from taxation, the amount of the payment in lieu of taxes allocable to the buildings and improvements shall automatically increase by a percentage equal to the percentage increase in the square footage of the buildings and improvements. County staff will notify the Applicant at least one week prior to the date of consideration of the Inducement Resolution of the amount of the payment in lieu of taxes.

Section 5. Document Review. All resolutions, ordinances, financing agreements, closing documents and other documents relating to the County and relating to the Bonds and the issuance thereof, including any documents submitted to the State Board of Finance as an application for volume cap related to the Bonds, shall be submitted to the County Attorney and County Review Counsel at least three weeks prior to any required action on such documents or execution of the documents by County officials, as applicable. The Bond documents must reflect the payment in lieu of taxes as determined by the County.

Section 6. Status of Bonds. The principal and interest of the Bonds approved by the Board shall be payable solely out of the revenue derived from the financing, sale, or leasing of the Project with respect to which the Bonds are issued or from a guarantee agreement or agreements or a credit enhancement device or devices upon which the guarantor or obligator is other than the County. The Bonds shall never constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the New Mexico Constitution or statutes of the State of New Mexico and the Bonds shall not constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

Section 7. Severability Clause. If any section, subsection, sentence, clause, word or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Board hereby declares that it would have passed this resolution and such section, subsection, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, words or phrases being declared unconstitutional or otherwise invalid.

The foregoing policies and procedures relating to industrial revenue bonds are hereby adopted this 5th day of October, 2005.