CHAPTER 4
Counties

ARTICLE 1
Bernalillo County

4-1-1. [Original county boundaries.]

The boundaries of the county of Bernalillo are as follows: drawing a direct line toward the east toward the Bosque de los Pinos, touching the Canon Infierno, and terminating with the boundaries of the territory, drawing a direct line from the Bosque de los Pinos, crossing the Rio del Norte in the direction of the Quelites del Rio Puerco, and continuing in the direction of the canon of Juan Tafoya, until it terminates with the boundaries of the territory; on the north by the boundaries of Santa Ana and San Miguel; on the east and west by the boundaries of this territory.

History: Laws 1851-1852, p. 292; C.L. 1865, ch. 42, § 9; C.L. 1884, § 250; C.L. 1897, § 516; Code 1915, § 1062; C.S. 1929, § 33-101; 1941 Comp., § 15-101; 1953 Comp., § 15-1-1.

ANNOTATIONS

Compiler's notes. — The county of Santa Ana, which is referred to in this section, was created by Act of Jan. 9, 1852, p. 292 (C.L. 1865, ch. 42, § 8), which read: "The boundaries of the county of Santa Ana are as follows: on the east and north by the boundaries of the county of Santa Fe; on the south from a point above the last houses of Bernalillo, where the lands previously known as those belonging to the Indians of Santa Ana are divided, drawing a direct line toward the east over the mountain until it reaches the parallel dividing the counties of San Miguel and Santa Fe, from said dividing point of the lands of the Indians of Santa Ana, drawing a line westward crossing the Rio del Norte, and terminating with the boundaries of the territory, are the boundaries of this county."

The county of Santa Ana was abolished by Laws 1876, ch. 8, § 1, which read: "The county of Santa Ana in this territory is hereby abolished; and all that portion of the territory of New Mexico heretofore embraced and included within the limits of the said county of Santa Ana, is hereby incorporated into and made a part of the county of Bernalillo."

Bernalillo county, which originally touched both the east and west borders of the territory, has been greatly reduced in size since its creation.

The present boundaries of Bernalillo county may be as follows: commencing at the southwest corner of section 34, township 8 north, range 5 east; thence east [description

from 4-30-1 NMSA 1978] on the township line between townships 7 and 8 north to the southeast corner of township 8 north, range 7 east; thence north on the range line between ranges 7 and 8 east to the northeast corner of township 8 north, range 7 east, on the second standard parallel north; thence west on said standard parallel to the southeast corner of township 9 north, range 6 east; thence north on the range line between ranges 6 and 7 east [description from 4-30-1 NMSA 1978 and 4-26-1 NMSA 1978] to the northeast corner of township 11 north of range 6 east; thence west [description from 4-23-1 NMSA 1978] on the township line between townships 11 and 12 north to the boundary line of Valencia county [described in 4-1-1 NMSA 1978 as being on the straight line running from the Quelites del Rio Puerco (an old community on the Rio Puerco just below its junction with the Rio San Jose) in the direction of the Canon of Juan Tafoya]; thence in a south-southeasterly direction along said boundary line to its intersection with a line directly west from the Bosque de los Pinos (township line between townships 7 and 8 north); thence east along said township line toward the Bosque de los Pinos to the center of the Rio Grande; thence following the thread of the river upstream in a northeasterly direction to a point immediately west of a point [description from 4-1-2 NMSA 1978] on the east bank of the Rio Grande where the southern foot of the Loma de Isleta strikes the Rio Grande; thence easterly to the Canon del Infierno; thence following up the Canon del Infierno to the point where it crosses the section line between sections 27 and 28 in township 8 north of range 5 east; thence, south along section line to the point of beginning. [The Bernalillo-Valencia line from the Canon del Infierno (Hell canyon) to the old boundary between the two counties is not defined by law. The accepted boundary seems to be that described in the last two clauses above.]

A change in the boundary between Santa Fe and Bernalillo counties was also made by Laws 1891, ch. 55 (Code 1915, § 1063; C.S. 1929, § 33-102; 1941 Comp., § 15-101, n.) which read: "After February 25, 1891, the dividing line between the counties of Santa Fe and Bernalillo shall be as follows: commencing at the southeast corner of township 9 north, of range 11 east, on the second correction line north, according to the United States public land surveys in New Mexico; thence running west along said correction line between townships 8 and 9 north, to the southwest corner of township 9 north, range 7 east, and from thence north along the dividing line between ranges 6 and 7 east to a point due west of the northwest corner of the tract of land known as the Mesita de Juana Lopez grant, as established by the surveys made by the government of the United States; thence due east to said northwest corner; thence due north 1 mile to a point; thence due west to the said dividing line between ranges 6 and 7 east; thence north along said dividing line to the northwest corner of the county of Santa Fe as at present established; it being understood that all of the country adjacent to the above-described lines, from the point of commencement on the south side and the west side thereof as far north as the present northern boundary of the county of Bernalillo, shall hereafter be a part of the county of Bernalillo."

The sections in this article were compiled respectively in art. 1 and art. 25 of ch. 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For creation or change of counties, *see* 4-33-1 NMSA 1978 et seq.

For change of county seats, *see* 4-34-1 NMSA 1978 et seq.

For prohibition against local or special laws locating or changing county seats or changing county lines, except in creating new counties, *see* N.M. Const., art. IV, § 24.

For removal of county seats, *see* N.M. Const., art. X, § 3.

4-1-2. [Change in south boundary.]

All that portion of the county of Bernalillo situated south of a line commencing at a point on the east bank of the Rio Grande where the southern foot of the Loma de Isleta strikes the Rio Grande, and running thence to the Canon del Infierno, and then following the old line of both counties to the east, shall be cut off from the county of Bernalillo, and included within the county of Valencia. All the above-described land shall be annexed to and form part of precinct number fifteen of the county of Valencia.

History: Laws 1869-1870, ch. 16, § 1; C.L. 1884, § 279; C.L. 1897, § 535; Code 1915, § 1118; C.S. 1929, § 33-3002; 1941 Comp., § 15-102; 1953 Comp., § 15-1-2.

ANNOTATIONS

Cross references. — For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

ARTICLE 1A
New County South of Bernalillo County (South Valley) (Deleted.)

4-1A-1 to 4-1A-16. Deleted.

ANNOTATIONS

Compiler's notes. — These sections, as enacted by Laws 1995, ch. 85, §§ 1 to 17, were deleted by the compiler in 1996. Section 20 of Laws 1995, ch. 85 provided that the act would become effective upon certification by the state canvassing board that a majority of votes cast in the referendum conducted pursuant to former 4-1A-15 NMSA 1978 was for the creation and operation of the new county; that referendum was defeated at the general election held November 5, 1996, by a vote of 2,224 for and 9,055 against. For provisions of former sections, *see* the 1995 NMSA 1978 on *NMOneSource.com.*

ARTICLE 2
Catron County

4-2-1. [County boundaries.]

That the county of Catron is hereby created out of that portion of the state of New Mexico lying and being situate within the following metes and bounds:

beginning at the corner marking the southeast corner of township 9 south, range 9 west and the southwest corner of township 9 south, range 8 west, New Mexico principal meridian and base lines, as shown by the United States survey, and located on the north boundary of Sierra county; thence north on the range line between range 8 west and range 9 west through townships 9, 8, 7 and 6 south, New Mexico principal meridian and base lines to the United States first standard parallel south line; thence west on said first standard parallel south to the southeast corner of township 5 south, range 9 west, and the southwest corner of township 5 south, range 8 west, New Mexico principal meridian and base lines; thence north on the range line between range 8 west and range 9 west, New Mexico principal meridian and base lines, through townships 5, 4, 3, 2 and 1 south to the New Mexico base line, United States survey; thence west on said New Mexico base line to the southeast corner of township 1 north, range 9 west and the southwest corner of township 1 north, range 8 west, New Mexico principal meridian and base lines; thence north on the range line between range 8 west and range 9 west, New Mexico principal meridian and base lines through townships 1, 2, 3 and 4 north, to the south boundary line of Valencia county; thence westerly along the south boundary line of Valencia county to the boundary line between the states of New Mexico and Arizona; thence southerly along said boundary line between the states of New Mexico and Arizona to a point where the north boundary line of Grant county intersects said state boundary lines; thence easterly along said north boundary line of Grant county to the western boundary line of Sierra county; thence northerly along the western boundary line of Sierra county to the northwest corner of Sierra county, and thence easterly along the north [boundary] line of Sierra county to the place of beginning.

History: Laws 1921, ch. 28, § 1; C.S. 1929, § 33-201; 1941 Comp., § 15-201; 1953 Comp., § 15-2-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Catron county was created out of the western portion of Socorro county.

The boundary line between Catron and Valencia counties is in reality the section line 2 miles south of the first standard parallel north.

Cross references. — For boundary between Grant and Catron counties, *see* 4-9-2 NMSA 1978.

For original boundaries of Sierra county, *see* 4-27-1 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

Attempt to abolish county and distribute territory void. — Laws 1927, ch. 185, attempting to abolish Catron county and to distribute its territory between two other counties, was void as violating N.M. Const., art. IV, § 24, prohibiting the passage of local or special laws changing county lines, except in creating new counties. *State ex rel. Dow v. Graham*, 1928-NMSC-022, 33 N.M. 504, 270 P. 897.

4-2-2. [County seat; courthouse, jail and public buildings.]

The county seat of said county of Catron shall be established at Reserve, in said county, and the board of county commissioners of said county shall select and designate suitable and convenient places at said county seat for the sites for the erection of a courthouse, jail and other public buildings of said county.

History: Laws 1921, ch. 28, § 2; C.S. 1929, § 33-202; 1941 Comp., § 15-202; 1953 Comp., § 15-2-2.

ANNOTATIONS

Compiler's notes. — Laws 1921, ch. 28, §§ 3 to 13 contained temporary provisions concerning the officers and finances of the new county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

4-2-3. [Courthouse and jail bonds; repayment.]

The county of Catron may issue bonds for courthouse and jail purposes to an amount not exceeding fifteen thousand ($15,000) dollars, which bonds shall be issued in the manner as provided by the constitution of New Mexico, payable absolutely thirty years from their date and at the option of said county twenty years from their date.

History: Laws 1921, ch. 28, § 18; C.S. 1929, § 33-218; 1941 Comp., § 15-204; 1953 Comp., § 15-2-4.

ANNOTATIONS

Compiler's notes. — This section may be inoperative. *See* State ex rel. Perea v. Board of Comm'rs, 25 N.M. 338, 182 P. 865 (1919), which held that a similar section applying to De Baca county was inoperative because it provided that the bonds might be issued in accordance with the constitution, but did not state that they could be issued in accordance with the laws of the state.

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For state, county and municipal indebtedness, *see* N.M. Const., art. IX, § 1 et seq.

4-2-4. [Road and bridge bonds.]

The county of Catron may issue bonds for the purpose of constructing and repairing public roads and bridges in an amount not exceeding twenty-five thousand ($25,000) dollars, which bonds shall be issued in the manner as provided by the constitution of New Mexico, payable absolutely thirty years from their date, and at the option of said county twenty years from their date.

History: Laws 1921, ch. 28, § 19; C.S. 1929, § 33-219; 1941 Comp., § 15-205; 1953 Comp., § 15-2-5.

ANNOTATIONS

Compiler's notes. — This section may be inoperative. *See* compiler's note under 4-2-3 NMSA 1978.

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For state, county and municipal indebtedness, *see* N.M. Const., art. IX, § 1 et seq.

For bonds for highways and bridges, *see* 67-6-1 NMSA 1978 et seq.

ARTICLE 3
Chaves County

4-3-1. [Original county boundaries.]

That the counties of Chaves and Eddy are hereby created out of all that portion of Lincoln county, lying eastward of a line drawn through said county as follows, to wit: commencing at the northern boundary line of the county of Lincoln on the line between ranges nineteen and twenty east; thence south on said line to the base line; thence south along the range line between ranges nineteen and twenty east to the first standard parallel south; thence east to the point where the range line between ranges

twenty and twenty-one east, south of said first standard parallel intersects said parallel; thence south on the line between said ranges twenty and twenty-one to the second standard parallel south; thence south to the southeast corner of township eleven, south of range twenty east; thence west to the line between ranges twenty and twenty-one south of the second standard parallel, south; thence south to the third standard parallel south along the range line between ranges twenty and twenty-one to intersect the third standard parallel, south; thence east along said parallel to where the line from the south side of same between ranges twenty-one and twenty-two intersect said parallel; thence along said range line between ranges twenty-one and twenty-two to the fourth standard parallel south; thence west along said parallel to the point where the line between ranges twenty-one and twenty-two south of said parallel intersects said parallel, and thence south on said line to the north boundary of the state of Texas.

History: Laws 1889, ch. 87, § 1; C.L. 1897, § 579; Code 1915, § 1064; C.S. 1929, § 33-301; 1941 Comp., § 15-301; 1953 Comp., § 15-3-1.

ANNOTATIONS

Compiler's notes. — This section is also compiled as 4-8-1 NMSA 1978 as it relates to Eddy county.

The boundary lines of Chaves and Eddy counties have been changed since the counties were created. De Baca and Roosevelt counties were created out of northern and eastern portions of Chaves county, and Lea county was created out of the eastern portions of both Chaves and Eddy counties. The western boundaries of these counties were changed by 4-3-3 and 4-8-3 NMSA 1978. The boundary line between Chaves and Eddy counties remains the third standard parallel south as provided in 4-3-2 NMSA 1978.

The present boundary of Chaves county would seem to be as follows: commencing with the northwest corner of township 3 south of range 20 east; thence east [description from 4-6-1 NMSA 1978] on the township line to the northeast corner of township 3 south of range 20 east; thence south on the range line to the southeast corner of township 3 south of range 20 east; thence east on the township line to the southwest corner of township 3 south of range 27 east; thence north on the range line between ranges 26 and 27 east to the northwest corner of township 3 south of range 27 east; thence east on the township line to the northeast corner of township 3 south of range 29 east [description from 4-22-1 NMSA 1978]; thence south on the range line between ranges 29 and 30 east to the southeast corner of township 5 south of range 29 east [description from 4-22-2 NMSA 1978]; thence east on the said township line which is also the first standard parallel south, to the northeast corner of township 6 south of range 31 east; thence south on the range line to the southeast corner of township 7 south of range 31 east; thence east on the township line to the northeast corner of township 8 south of range 33 east; thence south on the range line between ranges 33 and 34 east to the southeast corner of township 8 south of range 33 east; thence west [description from 4-13-1 NMSA 1978] on the township line between townships 8 and 9 south to the

northeast corner of township 9 south of range 31 east; thence south between ranges 31 and 32 east to the second standard parallel south; thence west on said standard parallel to the northeast corner of township 11 south of range 31 east; thence south between ranges 31 and 32 east to the third standard parallel south; thence west on the third standard parallel south [description from 4-3-2 NMSA 1978] to the range line between ranges 20 and 21 east, south of the third standard parallel south; thence south [description from 4-8-3 NMSA 1978] on said range line to the fourth standard parallel south; thence west [description from 4-3-3 NMSA 1978] on said standard parallel to the range line between ranges 15 and 16 east; thence north on said range line to the third standard parallel south; thence east on said standard parallel to the range line between ranges 16 and 17 east, north of the third standard parallel south; thence north on said range line to the township line between townships 13 and 14 south; thence east on said township line to the range line between ranges 20 and 21 east; thence north [description from 4-3-1 NMSA 1978] on said range line to the northwest corner of township 12 south of range 21 east; thence east on the township line between townships 11 and 12 south to the southwest corner of township 11 south of range 21 east; thence north on the range line between ranges 20 and 21 east to the second standard parallel south; thence north on the range line between ranges 20 and 21 east to the first standard parallel south; thence west on said standard parallel to the range line between ranges 19 and 20 east, north of the first standard parallel south; thence north on said range line to the point of beginning.

The sections in this article comprised art. 2 of ch. 24 of the 1915 Code. They were not reenacted by the inclusion therein, but were compiled for convenience. See the 1915 Code, p. 1665.

Section 2 of Laws 1889, ch. 87, read: "All that part of Lincoln county on the west side of the line described in the preceding section [compiled as 4-3-1 and 4-8-1 NMSA 1978] shall be and remain in the county of Lincoln."

Cross references. — For addition to Chaves county of eastern portions of Lincoln county, *see* 4-3-3 NMSA 1978.

For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

4-3-2. [Dividing line between Chaves and Eddy.]

All that part of the territory of Lincoln county east of said line and north of the third standard parallel south shall be and constitute the county of Chaves, and the remaining territory east of said line and south of said third standard parallel south, shall be and constitute the county of Eddy.

History: Laws 1889, ch. 87, § 3; C.L. 1897, § 581; Code 1915, § 1065; C.S. 1929, § 33-302; 1941 Comp., § 15-302; 1953 Comp., § 15-3-2.

ANNOTATIONS

Compiler's notes. — This section was also compiled as 4-8-2 NMSA 1978 as it relates to Eddy county.

4-3-3. [Addition to Chaves county.]

The western boundary of the county of Chaves is hereby changed so as to include within said county of Chaves all that portion of Lincoln county, lying south of the line between townships thirteen and fourteen south, of the second standard parallel south on the north, and the fourth standard parallel south on the south, and the range line between ranges fifteen and sixteen east, south of the third standard parallel south and sixteen and seventeen east south of the second standard parallel south on the west and the western boundary line of the county of Eddy on the east.

History: Laws 1899, ch. 3, § 8; Code 1915, § 1066; C.S. 1929, § 33-303; 1941 Comp., § 15-303; 1953 Comp., § 15-3-3.

ANNOTATIONS

Compiler's notes. — Laws 1899, ch. 3, § 8, as enacted, contained additional provisions relating to the settlement of indebtedness between Chaves and Lincoln counties.

Laws 1899, ch. 3, §§ 1 and 2, related to the creation of Otero county and were compiled as 4-19-1 and 4-19-2 NMSA 1978.

Cross references. — For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

4-3-4. [County seats.]

The county seat of the county of Chaves shall be in the town of Roswell in said county and the county seat of Eddy shall be in the town of Carlsbad in said county.

History: Laws 1889, ch. 87, § 4; C.L. 1897, § 582; Code 1915, § 1068; C.S. 1929, § 33-305; 1941 Comp., § 15-305; 1953 Comp., § 15-3-4.

ANNOTATIONS

Compiler's notes. — This section was also compiled as 4-8-4 NMSA 1978 as it relates to Eddy county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 3A
Cibola County

4-3A-1. Cibola county created.

The county of Cibola is hereby created out of that part of Valencia county lying westerly of the following described line:

begin on the southerly boundary line of Valencia county at its intersection with the line common to ranges 3 and 4 west, N.M.P.M.; then northerly along the line between ranges 3 and 4 west to the intersection with the line common to townships 8 and 9 north; then easterly along the line between townships 8 and 9 north and along the easterly prolongation of this line to its intersection with the westerly boundary line of Bernalillo county, the point of termination.

History: Laws 1981, ch. 24, § 1.

ANNOTATIONS

Cross references. — For original county boundaries of Valencia County, *see* 4-32-1 NMSA 1978.

For general provisions on creation or change of counties, *see* 4-33-1 NMSA 1978 et seq.

County entitled to federal "payments in lieu of taxes". — Cibola county, created in 1981 from the western portion of Valencia county, was entitled to a portion of the "payment in lieu of taxes" paid by the federal government to Valencia county to compensate the local governmental unit for loss of tax revenues from certain tax-exempt federal lands ("entitlement lands") located within local governmental boundaries. *Board of Cnty. Comm'rs v. Board of Cnty. Comm'rs*, 1986-NMSC-081, 105 N.M. 44, 728 P.2d 454.

4-3A-2. County seat.

The county seat of Cibola county shall be established at the municipality of Grants. The board of county commissioners of Cibola county after their appointment as provided in this act [4-3A-1 to 4-3A-14 NMSA 1978], shall select, designate and acquire a tract of land within that city as a place upon which shall be built the courthouse and public buildings of the county of Cibola.

History: Laws 1981, ch. 24, § 2.

4-3A-3. Temporary officers.

The governor shall within ten days after the effective date of this act appoint for the county of Cibola the county officers now provided by law for counties of this state. The officers so appointed shall serve until the election and qualification of their successors who shall be elected at the next succeeding general election.

History: Laws 1981, ch. 24, § 3.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

Cross references. — For general provisions on county officers, *see* 4-44-1 NMSA 1978 et seq.

4-3A-4. Precincts.

The precincts now existing in the territory included within the county of Cibola shall remain the same as they are now until changed according to law.

History: Laws 1981, ch. 24, § 4.

4-3A-5. Tax records.

The county assessor of Valencia county, as soon as practicable after the effective date of this act and officers for the new county have been appointed, shall turn over to the proper officials of Cibola county all tax records, schedules and assessments upon all classes of property that shall have been assessed in and that pertain to the area constituting Cibola county.

History: Laws 1981, ch. 24, § 5.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

Cross references. — For general provisions on county assessor, *see* Chapter 4, Article 39 NMSA 1978.

4-3A-6. Unpaid taxes.

The county of Cibola is entitled to all unpaid taxes, which remain unpaid at the effective date of this act upon property within the area embraced by the county of Cibola and any funds in the hands of the treasurer of Valencia county at the time this act [4-3A-1 to 4-3A-14 NMSA 1978] becomes effective, or which thereafter come into the

treasurer's hands which are properly transferable by the treasurer of Valencia county to the treasurer of Cibola county, shall be transferred in the regular course in the administration of the office upon the demand from such authority to receive same.

History: Laws 1981, ch. 24, § 6.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

Cross references. — For collection duties of county treasurer, *see* 4-43-3 NMSA 1978.

4-3A-7. Unpaid indebtedness.

The county of Cibola shall not be required to pay the county of Valencia any portion of any indebtedness incurred by the county of Valencia for public improvements which are made or contracted for after the effective date of this act.

History: Laws 1981, ch. 24, § 7.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

4-3A-8. Transitional functions.

The officers of the county of Valencia from which the county of Cibola has been created, shall exercise the functions of their several offices over Cibola county until the officers of the county of Cibola shall take office.

History: Laws 1981, ch. 24, § 8.

4-3A-9. Judicial matters.

The county of Cibola shall for judicial purposes be attached to the thirteenth judicial district. Until otherwise provided by law, magistrates for the existing county of Valencia shall be the magistrates for the county of Cibola.

History: Laws 1981, ch. 24, § 9.

4-3A-10. Classification.

The county of Cibola, for the purpose of classification and fixing the amounts of salaries of county officers taking office at the organization of the county, shall be classed as a county of the first class having a valuation over $27,000,000 but less than $45,000,000; thereafter the county shall be classed as other counties are classed.

History: Laws 1981, ch. 24, § 10.

ANNOTATIONS

Cross references. — For general provisions on classification of counties, *see* 4-44-1 and 4-44-2 NMSA 1978.

For constitutional provision on classification of counties, *see* N.M. Const., art. X, § 1.

4-3A-11. Unexpended funds and securities.

Upon the effective date of this act, the treasurer of Valencia county shall ascertain the amount of unexpended funds and securities in the treasury of Valencia county and shall also ascertain the amount of unpaid obligations and expenses of Valencia county government which will be required to be paid between the effective date of this act and the end of the sixty-ninth fiscal year. The excess of such unexpended funds and securities over such obligations and Valencia county government expenses shall be divided and paid by the treasurer of Valencia county to Cibola and Valencia counties in the proportion that the assessed valuation of all property in each county, as of January 1, 1981 bears to the total assessed valuation of all property in both counties as of January 1, 1981.

History: Laws 1981, ch. 24, § 11.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

4-3A-12. Voting machines.

Valencia county, acting by and through its proper officer or officers upon the effective date of this act shall transfer to Cibola county the number of voting machines used in the area segregated into Cibola county in the 1980 general election.

History: Laws 1981, ch. 24, § 12.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

Cross references. — For care and custody of voting machines by counties, *see* 1-9-12 NMSA 1978.

4-3A-13. Transfer of property.

Upon the effective date of this act the county of Cibola becomes the owner of all road-working and road-maintaining equipment of every kind and nature, including trucks, pickups and trailers, heretofore assigned to the county commissioner districts lying within the area segregated into Cibola county. In addition, the county of Cibola at such time shall become the owner of all real estate and improvements thereon or appurtenant thereto located within the boundaries of Cibola county, title to which is vested in the county of Valencia. The board of county commissioners of Valencia county shall execute and deliver to the proper officer or officers of Cibola county whatever instruments of transfer are necessary to vest title to all such property in the county of Cibola.

History: Laws 1981, ch. 24, § 13.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", referred to in this section, means June 19, 1981, the effective date of Laws 1981, ch. 24.

Cross references. — For property deemed county property, *see* 4-36-4 NMSA 1978.

4-3A-14. Certificates of indebtedness.

For the purpose of meeting expenses payable out of the general county fund of the county of Cibola, contracted and payable for the seventieth fiscal year, and not otherwise, the county of Cibola may issue certificates of indebtedness of the county of Cibola not to exceed one million dollars ($1,000,000), and tax levies shall be duly made therefor. The certificates of indebtedness shall be issued in a form to be approved by the state board of finance and shall be payable not more than ten years after date of issue. The certificates of indebtedness shall bear interest at a rate not to exceed that permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The proceeds of the tax levy shall be pledged to the payment of the principal and interest of the certificates when they fall due.

History: Laws 1981, ch. 24, § 14.

ANNOTATIONS

Cross references. — For boundaries of Cibola county, *see* 4-3A-1 NMSA 1978.

ARTICLE 4
Colfax County

4-4-1. [Original county boundaries.]

All that part of the territory comprised within the following limits, to wit: to the north and east by the boundaries of the territory of New Mexico; to the south the boundaries of the grant made to Carlos Beaubien and Guadalupe Miranda, and known as the Rayado grant, and on the west the boundaries of the county of Taos, shall form and constitute a new county to be known as, and called, Colfax county.

History: Laws 1868-1869, ch. 24, § 1; C.L. 1884, § 312; C.L. 1897, § 555; Code 1915, § 1069; C.S. 1929, § 33-401; 1941 Comp., § 15-401; 1953 Comp., § 15-4-1.

ANNOTATIONS

Compiler's notes. — Colfax county was formed from the northern part of Mora county.

The boundary with Taos county is described in 4-18-2 NMSA 1978 and the compiler's notes under 4-29-1 NMSA 1978.

The north boundary is the state line.

The southern and eastern boundaries may be described as follows: commencing on the eastern boundary of Taos county at the point of its intersection with the township line between townships 23 and 24 north of the base line; thence east [description from 4-4-3 NMSA 1978] on said township line to the northwest corner of township 23 north of range 20 east; thence south on the range line between ranges 19 and 20 east to the center of township 23 north; thence east [description from 4-4-2 NMSA 1978] through the center of township 23 north to the range line between ranges 27 and 28 east; thence north [description from 4-31-1 NMSA 1978] on said range line to the state line.

The sections in this article comprised art. 3 of ch. 24 of the 1915 Code. They were not reenacted by the inclusion therein, but were compiled for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For original boundaries of Taos county, *see* 4-29-1 NMSA 1978.

4-4-2. [Southern boundary.]

That the boundary line between Mora and Colfax counties be and is hereby established, to wit: starting at a point on the eastern boundary of New Mexico and about fifty-three miles south of the northeast corner of New Mexico, and running west through the center of township twenty-three north from the base line as established by government survey to the western boundary of the counties of Mora and Colfax.

History: Laws 1876, ch. 61, § 1; C.L. 1884, § 282; C.L. 1897, § 537; Code 1915, § 1070; C.S. 1929, § 33-402; 1941 Comp., § 15-402; 1953 Comp., § 15-4-2.

ANNOTATIONS

Compiler's notes. — This boundary west of the range line between ranges 19 and 20 east has been changed by 4-4-3 NMSA 1978.

Cross references. — For original boundaries of Mora county, *see* 4-18-1 NMSA 1978.

4-4-3. [Change in part of southern boundary.]

The north line of township twenty-three north, along ranges fifteen, sixteen, seventeen, eighteen and nineteen east, as shown by approved United States surveys, shall be the dividing line between Colfax county on the south, Mora county on the north and the range line between ranges nineteen and twenty east, to a point where said range line at present intersects the boundary line between said counties, from which point said boundary line, as now established by said act, January 13, 1876 [4-4-2 NMSA 1978], shall continue east to the west line of the state of Texas.

History: Laws 1882, ch. 72, § 1; C.L. 1884, § 289; C.L. 1897, § 544; Code 1915, § 1071; C.S. 1929, § 33-403; 1941 Comp., § 15-403; 1953 Comp., § 15-4-3.

ANNOTATIONS

Cross references. — For original boundaries of Mora county, *see* 4-18-1 NMSA 1978.

ARTICLE 5
Curry County

4-5-1. [County boundaries.]

That there be and is hereby created a county, to be known [as] and called Curry county, out of that portion of the territory of New Mexico, included in the following boundaries as indicated by the United States survey, to wit: commencing on the Texas-New Mexico boundary line at the point of its intersection with the east and west center line of township one north, projected thence west along said east and west center line of township one north, to the point of its intersection with the range line between ranges thirty and thirty-one east, thence north along the range line between thirty and thirty-one east to the northwest corner of township five north of range thirty-one east, thence east along the north line of township five north to the point of its intersection with the range line between thirty-two and thirty-three east, thence north along the range line beeween [between] thirty-two and thirty-three east, to the northwest corner of township six north of range thirty-three east, thence east along the north line of township six north to the point of its intersection with the range line between thirty-three and thirty-four east,

thence north along the range line between thirty-three and thirty-four to the northwest corner of township seven north of range thirty-four east, thence [east] along the north line of township seven north to the point of its intersection with the range line of thirty-four and thirty-five east, thence north along the range line between thirty-four and thirty-five east to the northwest corner of township eight north of range thirty-five east, thence east along the north line of township eight north projected to its point of intersection with the Texas-New Mexico boundary line, thence south along the Texas-New Mexico boundary line to the point of beginning.

History: Laws 1909, ch. 6, § 1; Code 1915, § 1072; C.S. 1929, § 33-501; 1941 Comp., § 15-501; 1953 Comp., § 15-5-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Curry county was formed from portions of Roosevelt and Quay counties. The boundary description does not take into account a correction in range line between ranges 30 and 31 east on the first standard parallel north. North of this parallel the range line, and therefore the county line, is displaced a distance of about 2 miles to the east.

This section was compiled in art. 4 of ch. 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled for convenience. *See* the 1915 Code, p. 1665.

Laws 1909, ch. 6, § 2, provided for a temporary county seat and the selection of a permanent one.

ARTICLE 6
De Baca County

4-6-1. County boundaries.

That the county of De Baca is hereby created out of that portion of the state of New Mexico, lying and being situate within the following metes and bounds, as indicated by the United States survey, viz.: commencing at the northeast corner of township 4 north, range 28 east; thence south on range line between ranges 28 and 29 east to the southeast corner of township 1 north, range 28 east; thence east on base line to the northeast corner of township 1 south, range 28 east; thence south on range line between ranges 28 and 29 east to the southeast corner of township 2 south, range 28 east; thence west on township line to the southwest corner of township 2 south, range 27 east; thence south on range line between ranges 26 and 27 east to the southeast corner of township 3 south, range 26 east; thence west on township line to the southwest corner of township 3 south of range 21 east; thence north on range line to the

southwest corner of township 2 south of range 21 east; thence west on township line to the southwest corner of township 2 south of range 20 east to the Lincoln county line; thence north on range line between ranges 19 and 20 east to the northwest corner of township 1 south of range 20 east; thence west [east] on township line to the southwest corner of township 1 north of range 20 east; thence north on range line between ranges 19 and 20 east to the northwest corner of township 4 north of range 20 east; thence east on township line to the southeast corner of township 5 north of range 23 east; thence north on range line to the northwest corner of township 5 north of range 24 east; thence east on township line to the northeast corner of township 5 north, range 24 east; thence north on range line to the northwest corner of township 6 north of range 25 east; thence east on township line to the northeast corner of township 6 north of range 26 east; thence south on range line between ranges 26 and 27 east to the southeast corner of township 5 north of range 26 east; thence east on township line to the place of beginning.

History: Laws 1917, ch. 11, § 1; C.S. 1929, § 33-601; 1941 Comp., § 15-601; 1953 Comp., § 15-6-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — De Baca county was created from parts of Chaves, Guadalupe and Roosevelt counties.

Liability for indebtedness of counties from which created. — Under Laws 1917, ch. 11, §§ 9 to 11, De Baca county was liable for its prorata share of the total indebtedness of the counties from which it was carved. The apportionment of debts belongs exclusively to the legislature. *State ex rel. Perea v. Board of Comm'rs*, 1919-NMSC-030, 25 N.M. 338, 182 P. 865.

ARTICLE 7
Dona Ana County

4-7-1. [Original county boundaries.]

The boundaries of the county of Dona Ana are as follows: the southern boundary, on the left bank of the Rio del Norte, is the boundary of the state of Texas, and on the right, the dividing line between the Republic of Mexico; on the north, the boundary of the county of Socorro, and on the east and west the boundaries of the territory.

History: Laws 1851-1852, p. 292, § 10; C.L. 1865, ch. 42, § 12; C.L. 1884, § 253; C.L. 1897, § 519; Code 1915, § 1074; C.S. 1929, § 33-701; 1941 Comp., § 15-701; 1953 Comp., § 15-7-1.

ANNOTATIONS

Compiler's notes. — Dona Ana county, as created by the above section, constituted the southern portion of the state from east to west. The county has been greatly reduced in size by the creation of new counties.

The present boundaries of Dona Ana county may be as follows: commencing on the south boundary line of the state of New Mexico at the point of its intersection with the range line between ranges 4 and 5 west; thence north [description from 4-16-1 NMSA 1978] on said range line to the fifth standard parallel south; thence west on said standard parallel to the southwest corner of township 25 south of range 4 west; thence north on the range line between ranges 4 and 5 west to the fourth standard parallel south; thence west on said standard parallel to the southwest corner of township 20 south of range 4 west; thence north on the range line between ranges 4 and 5 west to the northwest corner of township 18 south of range 4 west [description from 4-7-3 NMSA 1978 and 4-27-1 NMSA 1978]; thence east on the township line between townships 17 and 18 south to the principal meridian of New Mexico; thence north on the principal meridian to its intersection with a line described [4-7-2 NMSA 1978] as running from a point on the Rio Grande 1 mile south of the dwellinghouse of Tomas Gonzales in a straight line to the corner of the county of Lincoln a few miles north and west of the town of Tularosa (this corner described [4-15-1 NMSA 1978] as being the intersection of a line drawn from north to south from Malpais and a line passing east and west through the head of El Ojo de Tularosa); thence northeasterly on said line to its intersection with the range line between ranges 6 and 7 east; thence south [description from 4-19-1 NMSA 1978] on said range line to the third standard parallel south; thence west on said standard parallel to the northeast corner of township 16 south of range 5 east; thence south on the range line between ranges 5 and 6 east to the New Mexico-Texas state line. The southern boundary of the county is the southern boundary of the state, being, from east to west, the state of Texas, the center line of the Rio Grande as of September 9, 1850, and the Republic of Mexico.

Section 1075, 1915 Code, derived from Laws 1854-1855, p. 20 (C.L. 1865, ch. 20; C.L. 1897, § 533), read: "All that part of the territory of New Mexico that was recently acquired by the Gadsden Treaty, and has been annexed to this territory by an act of Congress, entitled, 'An act designating the southern limits of New Mexico, approved August 4th, 1854,' shall be and is hereby annexed to the county of Dona Ana, and the district court of said county shall have jurisdiction over the same, until other provisions be provided by law."

The sections in this article were incorporated in article 5, chapter 24 of the 1915 Code. Their inclusion therein did not constitute a reenactment, but they were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For addition of territory to county, *see* 4-7-3 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

4-7-2. [Dividing line between Socorro and Dona Ana counties.]

The dividing line between the counties of Dona Ana and Socorro, in this territory, is hereby established as follows, to wit: commencing at a point on the Rio Grande one mile south of the dwelling house of Tomas Gonzales, and thence a little southwest to a point one-quarter of a mile to the south of the Ojito del Cuervo, a ranch of the said Tomas Gonzales; thence in a westerly direction to a point one mile west of the Ojo de Berrendo, and running in a northwesterly direction to the ranches respectively known by the name of the Ojo del Berrendo, the Cienega de los Pasenos, Jaraloso, Eucisio, Cienega de los Apaches, Las Perchas and Ojo Caliente, to an equal line with that of the northern line of the county of Grant, so that all the ranches and ojos and ojitos above-mentioned be included in the county of Socorro, and the town and settlement of Hillsboro and Santa Barbara shall be included in the county of Dona Ana; and returning to the Rio Grande at the point of commencement, running thence in a straight line to the corner of the county of Lincoln, a few miles north and west of the town of Tularosa, in the county of Dona Ana.

History: Laws 1880, ch. 42, § 1; C.L. 1884, § 287; C.L. 1897, § 542; Code 1915, § 1078; C.S. 1929, § 33-705; 1941 Comp., § 15-702; 1953 Comp., § 15-7-2.

ANNOTATIONS

Compiler's notes. — The western portion of this boundary line has been changed by 4-27-1 NMSA 1978.

The name "Hillsboro" was so spelled in the original act and in Comp. Laws 1884; but the 1897 Compilation, 1915 Code and 1929 Compilation had it spelled "Hillsborough." *See also* 4-27-3 NMSA 1978.

Cross references. — For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

For change of boundary line between Lincoln and Socorro counties, *see* 4-14-2 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

4-7-3. [Territory added to Dona Ana county.]

That all that portion of the territory included within township eighteen south of ranges three and four west, according to the United States survey, shall hereafter be attached to, and constitute a part of the county of Dona Ana in said territory, and, until further provisions be made as to township lines, shall be a part of that precinct in said county, in which the town of Colorado is situated.

History: Laws 1887, ch. 14, § 1; C.L. 1897, § 573; Code 1915, § 1076; C.S. 1929, § 33-703; 1941 Comp., § 15-703; 1953 Comp., § 15-7-3.

ARTICLE 8
Eddy County

4-8-1. [Original county boundaries.]

That the counties of Chaves and Eddy are hereby created out of all that portion of Lincoln county, lying eastward of a line drawn through said county as follows, to wit: commencing at the northern boundary line of the county of Lincoln on the line between ranges nineteen and twenty east; thence south on said line to the base line; thence south along the range line between ranges nineteen and twenty east to the first standard parallel south; thence east to the point where the range line between ranges twenty and twenty-one east, south of said first standard parallel intersects said parallel; thence south on the line between said ranges twenty and twenty-one to the second standard parallel south; thence south to the southeast corner of township eleven south of range twenty east; thence west to the line between ranges twenty and twenty-one south of the second standard parallel south; thence south to the third standard parallel south along the range line between ranges twenty and twenty-one to intersect the third standard parallel south; thence east along said parallel to where the line from the south side of same between ranges twenty-one and twenty-two intersects said parallel; thence along said range line between ranges twenty-one and twenty-two to the fourth standard parallel south; thence west along said parallel to the point where the line between ranges twenty-one and twenty-two south of said parallel intersects said parallel, and thence south on said line to the north boundary of the state of Texas.

History: Laws 1889, ch. 87, § 1; C.L. 1897, § 579; Code 1915, § 1064; C.S. 1929, § 33-301; 1941 Comp., § 15-301; 1953 Comp., § 15-8-1.

ANNOTATIONS

Compiler's notes. — This section was also compiled as 4-3-1 NMSA 1978 as it relates to Chaves county.

The present western boundary of Eddy county is as described in 4-8-3 NMSA 1978.

The southern boundary is the state of Texas.

The northern and eastern boundaries may be described as follows: commencing at the closing corner of township 16 south, between ranges 20 and 21 east, [description from 4-8-3 NMSA 1978]; on the third standard parallel south, thence east [description from 4-8-2 NMSA 1978] to the northeast corner of township 16 south of range 31 east; thence south [description from 4-13-1 NMSA 1978] between ranges 31 and 32 east to the correction line between townships 20 and 21 south; thence east on said correction line

to the northeast corner of township 21 south of range 31 east; thence south between ranges 31 and 32 east to the south boundary of the state of New Mexico.

The sections in this article comprised article 5, chapter 24 of the 1915 Code. They were not reenacted by the inclusion therein, but were compiled for convenience. See the 1915 Code, p. 1665.

Laws 1889, ch. 87, § 2 read: "All that part of Lincoln county on the west side of the line described in the preceding section [compiled as 4-3-1 and 4-8-1 NMSA 1978] shall be and remain in the county of Lincoln."

Cross references. — For western boundaries of county, *see* 4-8-3 NMSA 1978.

For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

For changes in western boundary of Lincoln county, *see* 4-14-2 NMSA 1978.

4-8-2. [Dividing line between Chaves and Eddy.]

All that part of the territory of Lincoln county east of said line and north of the third standard parallel south shall be and constitute the county of Chaves, and the remaining territory east of said line and south of said third standard parallel south, shall be and constitute the county of Eddy.

History: Laws 1889, ch. 87, § 3; C.L. 1897, § 581; Code 1915, § 1065; C.S. 1929, § 33-302; 1941 Comp., § 15-302; 1953 Comp., § 15-8-2.

ANNOTATIONS

Compiler's notes. — This section was also compiled as 4-3-2 NMSA 1978 as it relates to Chaves county.

For present boundaries of Eddy county, *see* compiler's notes under 4-8-1 NMSA 1978.

Cross references. — For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

For changes in western boundary of Lincoln county, *see* 4-14-2 NMSA 1978.

4-8-3. [Western boundary of Eddy county.]

That the western boundary line of the county of Eddy, in the territory of New Mexico, shall be and the same is hereby established as follows, to wit: commencing at the closing corner to township sixteen south, between ranges twenty and twenty-one east, on the third standard parallel south of the New Mexico principal meridian; thence south between said ranges twenty and twenty-one east, to the fourth standard parallel south;

thence west along said parallel to the point where the line between ranges twenty and twenty-one east, south of said parallel, intersects said parallel, and thence south, on the range line between ranges twenty and twenty-one east, to the south boundary line of the territory of New Mexico.

History: Laws 1895, ch. 11, § 1; C.L. 1897, § 629; Code 1915, § 1067; C.S. 1929, § 33-304; 1941 Comp., § 15-304; 1953 Comp., § 15-8-3.

ANNOTATIONS

Compiler's notes. — For present boundaries of Eddy county, *see* compiler's notes under 4-8-1 NMSA 1978.

4-8-4. [County seats.]

The county seat of the county of Chaves shall be in the town of Roswell in said county and the county seat of Eddy shall be in the town of Carlsbad in said county.

History: Laws 1889, ch. 87, § 4; C.L. 1897, § 582; Code 1915, § 1068; C.S. 1929, § 33-305; 1941 Comp., § 15-305; 1953 Comp., § 15-8-4.

ANNOTATIONS

Compiler's notes. — Laws 1889, ch. 87, § 4, as enacted, provided, in relation to Eddy county, that the county seat of Eddy county "shall be in the town of Eddy in said county" and provided for an election in 1890 at which some other place could be named as the county seat. The change to "the town of Carlsbad" first appeared in the 1915 Code.

This section was also compiled as 4-3-4 NMSA 1978 as it relates to Chaves county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 9
Grant County

4-9-1. [Original county boundaries.]

All that portion of the territory of New Mexico embraced within the following boundaries, to wit: commencing at the corners of townships twenty and twenty-one south, range seven and eight west, which said corners are about four miles northeasterly from Fort Cummings, in Dona Ana county; thence running northerly in a direct line across the summit of the Sierra Mimbres to a point due west of Ojo del Muerto; thence west to the western boundary of the territory; thence south along said boundary to the southwest corner of the territory; thence following the southern

boundary of the territory eastwardly to a point on said southern boundary due south of the place of beginning; thence north to the place of beginning, shall form and constitute a new county to be called Grant county.

History: Laws 1867-1868, ch. 20, § 1; C.L. 1884, § 291; C.L. 1897, § 546; Code 1915, § 1079; C.S. 1929, § 33-801; 1941 Comp., § 15-801; 1953 Comp., § 15-9-1.

ANNOTATIONS

Compiler's notes. — Grant county, as created by the above section, was formed out of the western part of Dona Ana county. The counties of Luna and Hidalgo were later created out of parts of Grant county.

The present boundaries of Grant county may be described as follows: commencing at the southwest corner of township 19 south of range 7 west [described in 4-27-2 NMSA 1978]; thence west [description from 4-16-1 NMSA 1978] on the township line between townships 19 and 20 south to the northeast corner of township 20 south of range 11 west; thence south on the range line between ranges 10 and 11 west to the fourth standard parallel south; thence west on said standard parallel to the northeast corner of township 21 south of range 14 west; thence south on the range line between ranges 13 and 14 west to the fifth standard parallel south; thence east on said standard parallel to the northeast corner of township 26 south of range 14 west; thence south on the range line between ranges 13 and 14 west to the southeast corner of section 13 in township 28 south of range 14 west; thence following the description given in 4-12-1 NMSA 1978 to the New Mexico-Arizona boundary line. The western boundary is the state line. The north boundary is that described in 4-9-2 NMSA 1978. The northeast boundary is that described in 4-27-2 NMSA 1978.

This section was incorporated in article 6, chapter 24 of the 1915 Code. Its inclusion therein did not constitute a reenactment, for it was only compiled for convenience. See the 1915 Code, p. 1665.

Laws 1927, ch. 185, which attempted to abolish Catron county, and to divide its territory between Grant county and a new county to be called Rio Grande county, the latter including all of Socorro county, was held to violate N.M. Const., art. IV, § 24, since its purpose was to change county lines in a special or local act, and not to create new counties, by State ex rel. Dow v. Graham, 33 N.M. 504, 270 P. 897 (1928).

Section 1080, 1915 Code, derived from Laws 1880, ch. 43 (C.L. 1897, § 549), contained an amendment to the above section which read: "The above section 1079 [4-9-1 NMSA 1978] is hereby amended so as to read: commencing at the corners of townships 20 and 21 south, range 7 and 8 west, which said corners are about 4 miles northeasterly from Fort Cummings; thence running due north to a point on the south line of Socorro county, and due south to Mexico: provided, that the town of Hillsborough and the country within a radius of 5 miles of said town shall be in and form a part of Dona Ana county."

Cross references. — For boundaries of Dona Ana county, *see* 4-7-1 to 4-7-3 NMSA 1978.

4-9-2. [Boundary between Grant and Catron counties.]

That the boundary line between the counties of Socorro [Catron] and Grant be, and the same is, hereby located, fixed and established as follows: beginning at a point upon the western boundary line of the state of New Mexico where said line is intersected by the line between townships 12 and 13 south of the New Mexico principal base line and running thence eastwardly along the line between said townships 12 and 13 south, to the point where the said line intersects the one hundred and eighth (108th) meridian west of Greenwich.

History: Laws 1917, ch. 57, § 1; C.S. 1929, § 33-803; 1941 Comp., § 15-802; 1953 Comp., § 15-9-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Catron county was formed out of that portion of Socorro county which bounded on Grant county.

Compiler's notes. — Laws 1917, ch. 57, contained a preamble which declared the most feasible method of establishing the boundary line to be establishment thereof in accordance with the public land survey of the United States.

Cross references. — For boundary between Sierra and Grant counties, *see* 4-27-2 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

ARTICLE 10
Guadalupe County

4-10-1. [County boundaries.]

That out of that portion of the territory of New Mexico, which was formerly embraced within the exterior limits of Guadalupe county, except those portions of said Guadalupe county, out of which the counties of Quay and Roosevelt were established and created, and out of a portion of the county of Valencia which lies immediately west of said Guadalupe county, there is hereby created and established the county of Guadalupe, which said county of Guadalupe is described as follows, as indicated by the United States survey, to wit: commencing at the southeast corner of township two north of range twenty-six east; thence north along the range line between ranges twenty-six and twenty-seven east, to the northeast corner of township eleven north of range twenty-six

east; thence west along the north line of township eleven north of range twenty-six east, projected, to the northwest corner of township eleven north of range sixteen east; thence south along the range line between ranges fifteen and sixteen east to the southwest corner of township two north of range sixteen east; thence east along the south line of township two north of range sixteen east, projected, to the southeast corner of township two, north of range twenty-six east, to the point or place of beginning.

History: Laws 1903, ch. 69, § 2; 1905, ch. 20, § 1; Code 1915, § 1081; C.S. 1929, § 33-901; 1941 Comp., § 15-901; 1953 Comp., § 15-10-1.

ANNOTATIONS

Compiler's notes. — The southeast boundary of Guadalupe county was changed in the creation of De Baca county. The present southeast boundary begins where the south line of township 2 north is intersected by the range line between ranges 19 and 20 east; thence north [description from 4-16-1 NMSA 1978] on said range line to the northeast corner of township 4 north of range 19 east; thence east on the township line between townships 4 and 5 east to the southeast corner of township 5 north of range 23 east; thence north on the range line between ranges 23 and 24 east to the northeast corner of township 5 north of range 23 east; thence east on the township line between townships 5 and 6 north to the southeast corner of township 6 north of range 24 east; thence north on the range line between ranges 24 and 25 east to the northeast corner of township 6 north of range 24 east; thence east on the township line between townships 6 and 7 east to the southeast corner of township 7 north of range 26 east; and thence north on the range line between ranges 26 and 27 east as provided in this section.

Guadalupe county was originally created out of a portion of San Miguel county by Laws 1891, ch. 88, § 1 which read: "All that portion of land of the county of San Miguel, and territory of New Mexico, included within the boundaries hereinafter described shall form and constitute a new county, which county shall be known as the county of Guadalupe, in the territory of New Mexico, to wit: commencing at the southeast corner of township number 2 north, of range number 37 east, on the line between the territory of New Mexico and the state of Texas, and running north on the line between New Mexico and Texas, to the northeast corner of township number 11 north, of range 37 east, thence westerly between townships 11 and 12 north, to the northwest corner of township number 11 north of range 16 east; thence south between ranges 15 and 16 east, to the southeast corner of township 9 north, of range 15 east; thence east between townships 8 and 9 north, to the northeast corner of township number 8 north, of range 18 east; thence south on line between ranges 18 and 19 east, to the southeast corner of township number 5 north, of range 18 east; thence west to the northeast corner of township number 4 north, of range 18 east; thence south between ranges 18 and 19 east, to the northeast corner of township number 1 north, of range 18 east; thence easterly between ranges 1 and 2 north to the southeast corner of township number 2 north, of range 37 east and place of beginning.

"For more particular description to the boundaries of said county of Guadalupe, reference is made to the map herewith annexed, which shall constitute part of this act."

The sections in this article were incorporated in article 7, chapter 24 of the 1915 Code. Their inclusion therein did not constitute a reenactment, for they were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Quay county, *see* 4-20-1 NMSA 1978.

For boundaries of Roosevelt county, *see* 4-22-1 and 4-22-2 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

4-10-2. [County seat.]

That the county seat of the county of Guadalupe shall be and hereby is established at the town of Santa Rosa in said county.

History: Laws 1903, ch. 69, § 3; 1905, ch. 20, § 1; Code 1915, § 1082; C.S. 1929, § 33-902; 1941 Comp., § 15-902; 1953 Comp., § 15-10-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 11
Harding County

4-11-1. [County boundaries.]

That the county of Harding is hereby created out of that portion of the state of New Mexico lying and being situate within the following metes and bounds, to wit:

beginning at a point on the present west boundary of the county of Union, the same being the township corner of townships 22 and 23 north, ranges 27 and 28 east, thence north 2 [3] miles along the range line between ranges 27 and 28 east to the section corner, and point where the present north boundary of Mora county intersects the present west boundary of Union county; thence west along the present north boundary of Mora county to a point where said north boundary intersects the center of the main channel of Red river; thence southerly meandering the center of the main channel of said Red river to a point where the said center of the main channel of Red river intersects the present south boundary of the county of Mora; thence east along the present south boundary of the county of Mora to a point where said line intersects the present west boundary of the county of Union; thence southerly and southeasterly along

the present west boundary of Union county and along the northeast boundary of the Pablo Montoya grant to a point where said eastern boundary intersects the north line of the Baca location no. 2; thence east along the north line of the Baca location no. 2 to the northeast corner of said Baca location no. 2; thence south along the east line of the Baca location no. 2 to a point where said line intersects the township line between townships 13 and 14 north being the third standard parallel north [sic]; thence east along said third standard parallel north [township line] to a point where the same intersects the northwesterly boundary line of the right-of-way of the Rock Island railroad; thence northeasterly along the said north line of said right-of-way to a point where said line intersects the range line between ranges 33 and 34 east; thence north along the range line between ranges 33 and 34 east to a point where said range line intersects the township line between townships 21 and 22 north; thence west along the township line between [townships] 21 and 22 north to its intersection with range line between ranges 29 and 30 east; thence north along the range line between 29 and 30 east to the intersection of said range line with the township line between townships 22 and 23 north; thence west to the intersection of the same with the range line between ranges 27 and 28 east and the point of beginning.

History: Laws 1921, ch. 48, § 1; C.S. 1929, § 33-1001; 1941 Comp., § 15-1001; 1953 Comp., § 15-11-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Since 1941 changes have been made between Harding and Quay counties and Harding and San Miguel counties. Legal descriptions of the changes are available in district court files of the respective counties.

Harding county was created out of Mora and Union counties. The northeast boundary of Mora county [southeast boundary of Colfax county] follows the center of township 23 north [4-4-2 NMSA 1978]. The line from the corner common to townships 22 and 23 north and ranges 27 and 28 east must, therefore, extend north 3 rather than 2 miles to intersect this line. This correction was indicated by the compiler of the 1941 Code by inserting in brackets the correct number. There are 2 east-west adjustments in the range line between ranges 33 and 34 east along the east side of the county which are not described in this section. These occur on the fourth and fifth standard parallels north, the amounts of displacement in each case being small. The township line between townships 13 and 14 north is not the third standard parallel north. This correction was also indicated by the compiler of the 1941 Code by placing the incorrect portion in parentheses and by inserting in brackets the words "township line" necessary for a correct reading of the section.

Cross references. — For boundaries of Mora county, *see* 4-18-1 to 4-18-3 NMSA 1978.

For boundaries of Quay county, *see* 4-20-1 NMSA 1978.

For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For boundaries of Union county, *see* 4-31-1 NMSA 1978.

Legislative intention. — It was the intention of the legislature that Harding county was to function from June 20, 1921, that it was authorized to make special tax levies, and to anticipate their collection by issuing certificates of indebtedness not to exceed $30,000, payable in five years and that the proceeds of the levies were to be used exclusively to pay such indebtedness. *State v. Southern Pac. Co*., 1929-NMSC-027, 34 N.M. 306, 281 P. 29.

4-11-2. [County seat; buildings.]

The county seat of the county of Harding is hereby established at the town of Mosquero and the board of county commissioners of said county after their appointment as provided in this act shall select and designate a plat of the ground within said town as the place upon which shall be built the courthouse and public buildings of said county of Harding.

History: Laws 1921, ch. 48, § 2; C.S. 1929, § 33-1002; 1941 Comp., § 15-1002; 1953 Comp., § 15-11-2.

ANNOTATIONS

Compiler's notes. — Laws 1921, ch. 48, §§ 3 to 13 contained temporary provisions relating to the officers, indebtedness and finances of the new county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

4-11-3. [Bonds for courthouse and jail.]

The county of Harding may issue bonds for courthouse and jail purposes to an amount not exceeding twenty-five thousand ($25,000) dollars, which bonds shall be issued in the manner as provided by the constitution and the laws of the state of New Mexico, payable absolutely thirty years from their date, and, at the option of the county, twenty years from their date.

History: Laws 1921, ch. 48, § 18; C.S. 1929, § 33-1018; 1941 Comp., § 15-1004; 1953 Comp., § 15-11-4.

ANNOTATIONS

Compiler's notes. — Laws 1921, ch. 48, §§ 19 and 20 provided for the creation of a county high school. Such provision was held unconstitutional in State ex rel. Bd. of Educ. v. Saint, 28 N.M. 165, 210 P. 573 (1922).

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For state, county and municipal indebtedness, *see* N.M. Const., art. IX, § 1 et seq.

Constitutionality. — This section is not a violation of N.M. Const., art. IV, § 24, prohibiting special legislation. *Martinez v. Gallegos*, 1922-NMSC-053, 28 N.M. 170, 210 P. 575.

Issuance of bonds without election. — This section authorizes the county created to issue bonds for courthouse and jail purposes without submission to a vote of the people as required by N.M. Const., art. IX, § 10. *Martinez v. Gallegos*, 1922-NMSC-053, 28 N.M. 170, 210 P. 575.

Parties bound by judgment in suit relating to bonds. — Where suit was brought to determine rights under this section by a qualified citizen in behalf of himself and others similarly situated, all such other citizens were parties by representation and were bound by the judgment as to matters litigated or which might have been litigated, the same as actual parties to the record, regardless of whether they had actual notice of the pendency of the suit. *Floersheim v. Board of Comm'rs*, 1922-NMSC-070, 28 N.M. 330, 212 P. 451.

Action to enjoin issuance of bonds barred by former adjudication. — Where the allegations of a complaint to enjoin the issue of certain bonds did not state a new or different cause of action from those pleaded in a former adjudication of the same matter, in which all interested parties were joined by representation, the suit was barred by former adjudication. *Floersheim v. Board of Comm'rs*, 1922-NMSC-070, 28 N.M. 330, 212 P. 451.

ARTICLE 12
Hidalgo County

4-12-1. [County boundaries.]

That the county of Hidalgo is hereby created out of that portion of the state of New Mexico, lying and situate within the following boundaries:

beginning at the northeast (NE) corner of section 24 in township 28 south of range 14 west of the New Mexico principal meridian, and running thence westwardly along the northerly boundary lines of sections 24, 23, 22, 21, 20 and 19 of said township 28 south of range 14 west, and along the northerly boundary lines of sections 24, 23, 22, 21, 20

and 19 of township 28 south of range 15 west, and along the northerly boundary lines of sections 24, 23, 22, 21, 20 and 19 of township 28 south of range 16 west to the southwest (SW) corner of section 18 of township 28 south of range 16 west; thence northwardly upon the line between ranges 16 west and 17 west to the fifth standard parallel south and thence along the said fifth standard parallel south to the point where the line between ranges 16 and 17 west, north of said fifth standard parallel south intersects the same and thence northwardly along said line between ranges 16 west and 17 west to the northeast (NE) corner of township 21 south of range 17 west; thence westwardly along the line between townships 20 south and 21 south to the southwest (SW) corner of township 20 south of range 17 west, thence northwardly along the line between ranges 17 west and 18 west to the northeast (NE) corner of township 20 south of range 18 west; thence westwardly along the line between townships 19 south and 20 south to the southwest (SW) corner of township 19 south of range 19 west; thence northwardly along the line between ranges 19 west and 20 west to the northeast (NE) corner of township 18 south of range 20 west; thence westwardly along the line between townships 17 south and 18 south to the point where the same intersects the boundary line between the states of New Mexico and Arizona; thence southwardly along said boundary line between the states of New Mexico and Arizona to the point where the same intersects the boundary line between the United States of America and the Republic of Mexico; thence eastwardly along said boundary line between the United States of America and the Republic of Mexico to the point where the same turns northwardly in township 34 south of range 14 west of the New Mexico principal meridian; thence northwardly along said boundary line between the United States of America and the Republic of Mexico to the point where the same turns eastwardly in township 29 south of range 14 [13] west of the New Mexico principal meridian; thence [west] upon a straight line to the southwest (SW) corner of the county of Luna, and thence northwardly along the westerly boundary line of said county of Luna to the point of beginning.

History: Laws 1919, ch. 11, § 1; C.S. 1929, § 33-1101; 1941 Comp., § 15-1101; 1953 Comp., § 15-12-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Hidalgo county was created out of the southern portion of Grant county.

Cross references. — For original boundaries of Grant county, *see* 4-9-1 NMSA 1978.

For boundaries of Luna county, *see* 4-16-1 NMSA 1978.

4-12-2. [County seat; buildings.]

The county seat of the said county of Hidalgo shall be established at the village of Lordsburg in said county and the board of county commissioners of said county shall select and designate suitable and convenient places in said village for the sites for the erection of the courthouse, jail and other public buildings of said county.

History: Laws 1919, ch. 11, § 2; C.S. 1929, § 33-1102; 1941 Comp., § 15-1102; 1953 Comp., § 15-12-2.

ANNOTATIONS

Compiler's notes. — Laws 1919, ch. 11, §§ 3 to 14 contained temporary provisions relating to officers, indebtedness and finances of the new county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 13
Lea County

4-13-1. [County boundaries.]

That the county of Lea is hereby created out of that portion of the state of New Mexico lying and being situate within the following metes and bounds, as indicated by the United States survey, viz.: at the southeast corner of the state of New Mexico, thence north on the line between the state of New Mexico and the state of Texas, in [to] the northeast corner of township nine (9) south of range thirty-eight (38) east; thence west on the line between townships eight (8) and nine (9) south to the northwest corner of township nine (9) south of range thirty-two (32) east; thence south between ranges thirty-one (31) and thirty-two (32) east of [to] the correction line between townships ten (10) and eleven (11) south; thence west on said correction line to the northwest corner of township eleven (11) south of range thirty-two (32) east; thence south, between ranges thirty-one [31] and thirty-two (32) east, to the correction line between townships fifteen (15) and sixteen (16) south; thence west, on said correction line to the northwest corner of township sixteen (16) south of range thirty-two [32] east; thence south, between ranges thirty-one (31) and thirty-two (32) east to the correction line between townships twenty (20) and twenty-one (21) south; thence east on said correction line to the northwest corner of township twenty-one (21) south of range thirty-two (32) east; thence south between ranges thirty-one [31] and thirty-two (32) east to the south boundary of the state of New Mexico; thence east, on said south boundary to the point of beginning.

History: Laws 1917, ch. 23, § 1; C.S. 1929, § 33-1201; 1941 Comp., § 15-1201; 1953 Comp., § 15-13-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Lea county was created from the eastern portions of Chaves and Eddy counties.

Cross references. — For boundaries of Chaves county, *see* 4-3-1 to 4-3-3 NMSA 1978.

For boundaries of Eddy county, *see* 4-8-1 to 4-8-3 NMSA 1978.

Title to lands falling in newly created county. — Where an existing county out of which a new county was carved held tax sale certificates constituting complete legal title to lands falling in new county, title did not pass to the new county. *Anderson v. Clardy*, 1931-NMSC-028, 35 N.M. 440, 1 P.2d 120.

4-13-2. [County seat; buildings.]

The county seat of the said county of Lea shall be established at the town of Lovington, in said county; and the board of county commissioners of said county, to be appointed as hereinafter provided, shall select and designate the plat of ground known as the public square in said town, being described on the recorded plat of said town of Lovington as block ten (10) thereof, as the place in said town upon which shall be built the courthouse and public buildings of the said county of Lea.

History: Laws 1917, ch. 23, § 2; C.S. 1929, § 33-1202; 1941 Comp., § 15-1202; 1953 Comp., § 15-13-2.

ANNOTATIONS

Compiler's notes. — Laws 1917, ch. 23, §§ 3 to 13 contained temporary provisions relating to the officers, indebtedness and finances of the new county.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

4-13-3. [Courthouse and jail bonds.]

The county of Lea may issue bonds for courthouse and jail purposes to an amount not exceeding thirty thousand dollars [($30,000)], which bonds shall be issued in the manner as provided by the constitution of New Mexico, payable absolutely thirty years from their date and at the option of said county, twenty years from their date.

History: Laws 1917, ch. 23, § 17; C.S. 1929, § 33-1217; 1941 Comp., § 15-1204; 1953 Comp., § 15-13-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This section may be inoperative. *See* State ex rel. Perea v. Bd. of Comm'rs, 25 N.M. 338, 182 P. 865 (1919), which held that a similar provision applying to De Baca county was inoperative because it provided that the bonds might be issued in accordance with the constitution, but did not state that they could be issued in accordance with the laws of the state.

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For state, county and municipal indebtedness, *see* N.M. Const., art. IX, § 1 et seq.

ARTICLE 14
Lincoln County

4-14-1. [Original county boundaries.]

All that part of the county of Socorro situated to the eastward of a direct line drawn from north to south, from Malpais, and to be the western line of the new county, is hereby constituted and established, a new county which shall have the name of, and be called the county of Lincoln; the line of the north of said county shall be the dividing line of the county of Valencia; from thence drawing a line eastward without interfering with the boundaries of the county of San Miguel; and on the south a line passing east and west through the head of El Ojo de Tularosa; and this shall be the fixed boundary between the counties of Dona Ana and Lincoln.

History: Laws 1868-1869, ch. 8, § 1; C.L. 1884, § 303; C.L. 1897, § 550; Code 1915, § 1083; C.S. 1929, § 33-1301; 1941 Comp., § 15-1301; 1953 Comp., § 15-14-1.

ANNOTATIONS

Compiler's notes. — Lincoln county was originally created out of the eastern portion of Socorro county. An addition was made to it by taking the eastern part of Dona Ana county by Laws 1878, ch. 34 (C.L. 1897, § 538; Code 1915, § 1077), which read: "The dividing line between the counties of Dona Ana and Lincoln shall be as follows, to wit: following the line which separates said counties from east to west, as now established by law, up to the intersection of parallel 28 degrees 30 minutes west of Washington; thence following said parallel of 28 degrees 30 minutes southwardly to the intersection of the line which separates said county of Dona Ana and the state of Texas, and all that part of the territory to the east of said parallel 28 degrees 30 minutes heretofore

pertaining to said county of Dona Ana, be and the same hereby is annexed to and shall form a part of the county of Lincoln."

The area of Lincoln county has since been greatly reduced by the creation of new counties.

The present boundaries may be described as follows: commencing at the northeast corner of township 1 north of range 19 east; thence south [description from 4-3-1 NMSA 1978] on the range line between ranges 19 and 20 east to the base line; thence south on the range line between ranges 19 and 20 east to the first standard parallel south; thence east on said standard parallel to the northeast corner of township 6 south of range 20 east; thence south on the range line between ranges 20 and 21 east to the second standard parallel south; thence south on said range line to the southeast corner of township 11 south of range 20 east; thence west on the township line between townships 11 and 12 south to the northeast corner of township 12 south of range 20 east; thence south on the range line between ranges 20 and 21 east to the southeast corner of township 13 south of range 20 east; thence west [description from 4-3-3 NMSA 1978] on the township line between townships 13 and 14 south to the southwest corner of township 13 south of range 17 east; thence north [description from 4-19-1 NMSA 1978] on the range line between ranges 16 and 17 east to the township line between townships 11 and 12 south; thence west on said township line to the southwest corner of township 11 south of range 13 east; thence north on the range line between ranges 12 and 13 east to the second standard parallel south; thence west on said standard parallel to the southwest corner of township 10 south of range 6 east; thence north [description from 4-14-2 NMSA 1978] on the range line between ranges 5 and 6 east to the northwest corner of township 8 south of range 6 east; thence east on the township line between townships 7 and 8 south to the northeast corner of township 8 south of range 8 east; thence north [description from 4-14-1 NMSA 1978, redefined indirectly in 4-14-2 NMSA 1978] on the range line between ranges 8 and 9 east to the first standard parallel south; thence east [description from 4-14-2 NMSA 1978] on said standard parallel to the southwest corner of section 32 in township 5 south of range 10 east; thence north on the section line to the northwest corner of section 5 in township 1 south of range 10 east, on the New Mexico base line; thence east [description from 4-30-1 NMSA 1978] on the base line to the range line between ranges 15 and 16 east; thence north on said range line to the northwest corner of township 1 north of range 16 east; thence east [description from 4-10-1 NMSA 1978] on the township line between townships 1 and 2 north to the point of beginning.

The sections of this article were incorporated in article 8, chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Dona Ana county, *see* 4-7-1 to 4-7-3 NMSA 1978.

For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

4-14-2. [Changes in western boundary.]

That townships eight (8), nine (9) and ten (10) south of the base line in ranges six (6), seven (7) and eight (8) east of the New Mexico principal meridian be and the same are hereby attached to and shall hereafter constitute a part of Lincoln county: provided, that the line between Socorro and Lincoln counties shall be changed so as to run as follows:

beginning at a point where the present westerly county line between Socorro and Lincoln counties intersects the first standard parallel south, thence running east along said first standard parallel to the southeast corner of section thirty-one (31) in township five (5) south of range ten (10) east; thence north along the section line to the base line, and the same shall constitute the line between said Socorro and Lincoln counties north of said first standard parallel.

History: Laws 1909, ch. 112, § 1; Code 1915, § 1084; C.S. 1929, § 33-1302; 1941 Comp., § 15-1302; 1953 Comp., § 15-14-2.

ANNOTATIONS

Cross references. — For original boundaries of Lincoln county, *see* 4-14-1 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

Disposition of money received by county from bonds of another county. — Money received by a county from bonds of another county must go into the county general fund, under the control of the board of county commissioners. The former act (Laws 1909, ch. 78), requiring that such funds should be used to pay outstanding bonds of the county, has been annulled by congress. 1912 Op. Att'y Gen. No. 12-885.

ARTICLE 15
Los Alamos County

4-15-1. [Los Alamos county; boundaries.]

That the county of Los Alamos is hereby created out of those portions of Sandoval and Santa Fe counties lying and situate within the following boundaries, to wit:

beginning at NE corner of the SE 1/4 of section 13, township 20 north, range 6 east of the New Mexico principal meridian, which point is on the county line between

Sandoval county and Santa Fe county, state of New Mexico; thence in a westerly direction along the northern boundary of the S 1/2 of said section 13 to the northwest corner of the SW 1/4 of said section 13; thence in a northerly direction along the eastern boundary of section 14 to the northeast corner thereof; thence in a westerly direction along the northern boundaries of sections 14 and 15 to the northeast corner of section 16; thence in a southerly direction along the eastern boundary of said section 16 to the southeast corner thereof; thence in a westerly direction along the southern boundary of said section 16 to the southwest corner thereof; thence in a southerly direction along the eastern boundary line of section 20 to the NE corner of the SE 1/4 of said section 20; thence in a westerly direction along the north boundary of the S 1/2 of said section 20 to the northwest corner of the SW 1/4 of said section 20; thence in a westerly direction along the north boundary of the S 1/2 of section 19 to the northwest corner of the SW 1/4 of said section 19, all in township 20 north, range 6 east; thence in a westerly direction along the north boundary of the S 1/2 of section 24, to the northwest corner of the SW 1/4 of said section; thence in a westerly direction along the north boundary of the S 1/2 of section 23 to the northwest corner of the SW 1/4 of said section 23; thence in a northerly direction along the eastern boundary of section 22 to the northeast corner thereof; thence in a westerly direction along the northern boundary of said section 22 to a point on the eastern boundary of the Baca location numbered 1, which point is the southwest corner of the Santa Clara Indian reservation; all in township 20 north, range 5 east; thence in a southerly direction along the eastern boundary of the Baca location numbered 1, a distance of approximately 9.1 miles, to the southeast corner of the Baca location numbered 1; thence in a westerly direction approximately 1.3 miles along the southern boundary of the Baca location numbered 1, to the intersection of said boundary with the initial station of the Sawyer Mesa special survey, a survey of a portion of unsubdivided township 18 north, range 5 east, which point is the northwest corner of the Sawyer Mesa tract; thence in a southeasterly direction, along the southwest boundary of the Sawyer Mesa tract, a distance of 5.34 miles, to the intersection of the south boundary of the Sawyer Mesa tract with the west boundary of the Bandelier national monument, which point is the southeast corner of the Sawyer Mesa tract; thence in a general northerly direction approximately 0.8 miles along this boundary to the south boundary of the Ramon Vigil grant, which point is the northwest corner of the Bandelier national monument; thence in a general southeasterly direction for approximately 8.0 miles, along the boundary between the Ramon Vigil grant and the Bandelier national monument, to the intersection of said south boundary of the Ramon Vigil grant with the south end of the east boundary of said grant, which point is the southeast corner of the Ramon Vigil grant and is on the west bank of the Rio Grande river; thence in a general northeasterly direction approximately 7.8 miles along the east boundary of the Ramon Vigil grant, which boundary is parallel to the west bank of the Rio Grande river, to the southeast corner of the tract within the Ramon Vigil grant identified as Tract A in the general land office survey for group no. 406, dated August 15, 1938, and titled plat Ramon Vigil grant, New Mexico, said tract commonly being known as "Sacred Area" or "Indian Sacred Grounds"; thence in a general northwesterly direction approximately 7.7 miles along the southern boundary of said Tract A, to a point on the northern boundary of the Ramon Vigil grant, which point is at the northwest corner of the so-called "Sacred Area"; thence in an easterly direction approximately 1.9

miles along the northern boundary of the Ramon Vigil grant to a point on the Sandoval and Santa Fe county line, which point is the southeast corner of fractional section 25, township 19 north, range 6 east, and the southwest corner of a detached portion of the Bandelier national monument; thence northerly along the east side of said township to the northeast corner of section 1 of said township; thence northerly along the east side of township 20 north, range 6 east to the northeast corner of the SE 1/4 of section 13 of said township, the point of beginning.

History: 1941 Comp., § 15-1351, enacted by Laws 1949, ch. 134, § 1; 1953 Comp., § 15-15-1.

ANNOTATIONS

Cross references. — For boundaries of Sandoval county, *see* 4-23-1 NMSA 1978.

For boundaries of Santa Fe county, *see* 4-26-1 and 4-26-2 NMSA 1978.

4-15-2. [Designation of county seat.]

That the county seat of said Los Alamos county shall be established at the community of Los Alamos therein.

History: 1941 Comp., § 15-1352, enacted by Laws 1949, ch. 134, § 2; 1953 Comp., § 15-15-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 16
Luna County

4-16-1. [County boundaries.]

That a county, which shall be known as Luna county, is hereby created out of that portion of the territory of New Mexico included within the following boundaries, as indicated by United States survey, to wit: commencing at the northwest corner of township twenty-one south, range thirteen west of the New Mexico principal base and meridian; thence east along the north boundary line of township twenty-one south, to the southwest corner of township twenty south, range ten west; thence north along the west boundary line of range ten west to the northwest corner of township twenty south, range ten west; thence east along the north boundary line of township twenty south, to the northeast corner of township twenty south, range five west; thence south along the east boundary line of range five west to the international boundary line of the United

States and the Republic of Mexico; thence west along said international boundary line, to the range line between ranges thirteen and fourteen west; thence north on said range line between ranges thirteen and fourteen west, to the northwest corner of township twenty-one south, range thirteen west, the place of beginning.

History: Laws 1901, ch. 38, § 1; Code 1915, § 1085; C.S. 1929, § 33-1401; 1941 Comp., § 15-1401; 1953 Comp., § 15-16-1.

ANNOTATIONS

Compiler's notes. — Luna county was formed from parts of Grant and Dona Ana counties. There are two appreciable east-west adjustments on the west boundary of Luna county which are not detailed in this description. These occur on the 5th and 6th standard correction lines south.

The sections of this article were incorporated in article 9, chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Dona Ana county, *see* 4-7-1 to 4-7-3 NMSA 1978.

For boundaries of Grant county, *see* 4-9-1 and 4-9-2 NMSA 1978.

4-16-2. [County seat.]

That the county seat of said county of Luna shall be established at the town of Deming in said county.

History: Laws 1901, ch. 38, § 2; Code 1915, § 1086; C.S. 1929, § 33-1402; 1941 Comp., § 15-1402; 1953 Comp., § 15-16-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 17
McKinley County

4-17-1. [County boundaries.]

The present boundaries of McKinley county, as established by Chapter 19 of the Session Laws of 1899, are hereby enlarged and extended by adding thereto the following territory from the counties of Bernalillo and Valencia, viz.: beginning at the

point where the second standard parallel north intersects the boundary line between the territories of Arizona and New Mexico; thence north on said line to the point where the fifth standard parallel north, if projected westward across the Navajo Indian reservation, would intersect the boundary line between New Mexico and Arizona; thence east along the line of said fifth standard parallel north, to the northeast corner of township number twenty north, range number five west of the New Mexico principal meridian; thence south along the line between ranges numbers four and five west of the New Mexico principal meridian, to the point where it intersects the third standard parallel north; thence west along said third standard parallel north, to the southeast corner of township number thirteen north, range number eight west of the New Mexico principal meridian; thence north along the line between ranges numbers seven and eight west of the New Mexico principal meridian, to the corner of sections thirteen, eighteen, nineteen and twenty-four, township number thirteen north, ranges numbers seven and eight west of the New Mexico principal meridian; thence west along the line between sections thirteen and twenty-four, fourteen and twenty-three, fifteen and twenty-two, sixteen and twenty-one, seventeen and twenty and eighteen and nineteen, township number thirteen north, range number eight west, to the point where it intersects the first guide meridian west; thence south along the line of said first guide meridian west, to the point where it intersects the third standard parallel north; thence west on said third standard parallel north, to the northeast corner of township twelve north, range sixteen west of the New Mexico principal meridian; thence south along the line between ranges fifteen and sixteen west, to the point where it intersects the second standard parallel north; thence west along said second standard parallel north, to the point of beginning.

History: Laws 1901, ch. 39, § 1; Code 1915, § 1089; C.S. 1929, § 33-1503; 1941 Comp., § 15-1501; 1953 Comp., § 15-17-1.

ANNOTATIONS

Compiler's notes. — McKinley county was originally created out of the western portion of Bernalillo county. The original boundaries, as created by Laws 1899, ch. 19, § 1, were as follows: "There is created out of a part of the county of Bernalillo in the territory of New Mexico, a new county to be known and called McKinley county which shall embrace all that portion of the county of Bernalillo lying within the following boundaries, viz: on the north the south boundary line of the county of San Juan; on the east commencing at a point where the said south boundary line of the county of San Juan intersects the range line between ranges 8 and 9 west of the New Mexico principal meridian.

"Thence south between ranges 8 and 9 west of the southeast corner of township 14 north of range 9 west.

"Thence west along the line between townships 13 and 14 north of ranges 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, W. to the intersection of said line with the west boundary line of the territory of New Mexico.

"Thence north along the said boundary line between the territories of New Mexico and Arizona to the point of beginning.

"All the territory contained south of the south township line of township 14 north, ranges 9 W., etc., to the west boundary line of the territory of New Mexico is hereby declared to be within and be a portion of the county of Valencia."

The sections of this article were incorporated in article 10, chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Bernalillo county, *see* 4-1-1 and 4-1-2 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

Liability for payment of salary of offices where county formed from portion of another. — An account for unpaid salary of a district attorney, which was void under the Bateman Act, was revived by Laws 1901, ch. 39, § 2, which made the county liable for the payment of such accounts, and in case of one county being formed out of a portion of another, the court or county commissioners of the original county should ascertain such indebtedness that should be paid by each county proportionally as ascertained by a special commission consisting of the treasurer, auditor and solicitor general. *Johnston v. Board of County Comm'rs*, 1904-NMSC-018, 12 N.M. 237, 78 P. 43.

4-17-2. [County seat.]

The county seat of the county of McKinley shall be and the same is hereby located in the town of Gallup in said county.

History: Laws 1899, ch. 19, § 2; Code 1915, § 1088; C.S. 1929, § 33-1502; 1941 Comp., § 15-1502; 1953 Comp., § 15-17-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 18
Mora County

4-18-1. [Original county boundaries.]

All that portion of the territory embraced within the following boundaries, to wit: on the north and east by the limits of the territory of New Mexico; on the south by the

northern limits of the county of San Miguel; and on the west by the tops of the ridge of mountains which divide the valley of Taos from Mora and Rayado, shall form and constitute a new county, to be known [as] and called the county of Mora.

History: Laws 1859-1860, p. 76, § 9; C.L. 1865, ch. 42, § 18; C.L. 1884, § 258; C.L. 1897, § 524; Code 1915, § 1090; C.S. 1929, § 33-1601; 1941 Comp., § 15-1601; 1953 Comp., § 15-18-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Mora county was originally created out of the eastern portion of Taos county and comprised the northeastern part of the state. Colfax, Harding and Union counties were later created from this territory.

The present boundaries of Mora county may be described as follows: commencing at a point on the range line between ranges 11 and 12 east where it intersects the top of the mountain of Nambe; thence easterly and northerly [description from 4-21-1 NMSA 1978] along the summit of the mountains to the southern boundary of Taos county; thence continuing along the summit [description from 4-18-1 and 4-18-2 NMSA 1978], which divides the valley of Taos from the valley of Mora, to its intersection with the township line between townships 23 and 24 north; thence east [description from 4-4-3 NMSA 1978] on said township line to the northeast corner of township 23 north of range 19 east; thence south on range line between ranges 19 and 20 east to the center of township 23 north; thence east [description from 4-4-2 NMSA 1978] through the center of township 23 north to the point where it intersects the center of the main channel of Red [Canadian] river; thence southerly [description from 4-11-1 NMSA 1978] meandering the center of the main channel of Red river to a point where it intersects the north boundary of San Miguel county; thence due west [description from 4-18-3 NMSA 1978] to the Pinos Altos (on the center line of township 18 north); thence on a direct line west or westerly to the old government bridge or crossing over the El Sapellocito [Sapello]; thence following up the Sapello river to its junction with the Arroyo de la Jara; thence following up the current of the Arroyo de la Jara to its fall and source; thence northwesterly to a point 500 yards north of the house of Leandro Sanchez at Pena Blanca [Penasco Blanco]; thence due west to the range line between ranges 11 and 12 east on the east boundary of Santa Fe county; thence north [description from 4-26-1 NMSA 1978] on said range to the point of beginning. [The description of the westerly boundary of the county does not follow exactly the description in 4-18-2 NMSA 1978 but is apparently the accepted boundary with Taos county.]

Cross references. — For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For original boundaries of Taos county, *see* 4-29-1 NMSA 1978.

4-18-2. [Northwest boundary with Taos county.]

The boundaries dividing the counties of Taos and Mora shall hereafter be as follows, that is to say: west of the valley of Mora, a line running north, commencing at the first hill west of the said valley of Mora, and east of the Jicarita, crossing the Vega del Estillero opposite Canada del Raton, passing through the said canada till it reaches the foot of the Osha hill on the western base thereof; thence continuing north along the eastern base of said range, along the eastern side of the head of the Rio Colorado which runs into the Rio Grande in the county of Taos, and thence in a northeast direction to the limits of the territory of New Mexico and the territory of Colorado.

History: Laws 1867-1868, ch. 24, § 1; C.L. 1884, § 268; C.L. 1897, § 529; Code 1915, § 1091; C.S. 1929, § 33-1602; 1941 Comp., § 15-1602; 1953 Comp., § 15-18-2.

ANNOTATIONS

Compiler's notes. — This line is also the dividing line between Taos and Colfax counties.

Cross references. — For original boundaries of Taos county, *see* 4-29-1 NMSA 1978.

4-18-3. [Southern boundary.]

The dividing line to be known as the dividing line of the counties of Mora and San Miguel, shall be as follows: taking as a fixed point five hundred yards north of the house of Leandro Sanchez, at Pena Blanca, in the county of San Miguel; thence running a line directly to the west to the eastern boundary line of the county of Santa Fe; thence running from said point five hundred yards north of the house of Leandro Sanchez on a line directly east to the fall and source of the Arroyo de la Jara; thence following the current of the Arroyo de la Jara to its junction with the Sapello river; thence following down the Sapello river to the old government bridge or crossing over the El Sapellocito; thence running on a direct line east, or as nearly as may be, to the Pinos Altos, leaving all settlements on both sides of the Mora river, and within the valley of said river, in the county of Mora; thence from Pinos Altos in a direct line to the east to the limits of the territory of New Mexico.

History: Laws 1882, ch. 86, § 1; C.L. 1884, § 290; Laws 1889, ch. 37, § 1; C.L. 1897, § 576; Code 1915, § 1092; C.S. 1929, § 33-1603; 1941 Comp., § 15-1603; 1953 Comp., § 15-18-3.

ANNOTATIONS

Compiler's notes. — The eastern part of this line was changed by the creation of Harding county.

Cross references. — For boundaries of Harding county, *see* 4-11-1 NMSA 1978.

For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For boundaries of Santa Fe county, *see* 4-26-1 and 4-26-2 NMSA 1978.

4-18-4. [County seat; courts.]

The county seat of said county shall be at the plaza of Santa Gertrudes de Mora, and the district and probate courts shall be held at the said county seat at such times and places as may be fixed by law.

History: Laws 1859-1860, p. 76; C.L. 1865, ch. 42, § 19; C.L. 1884, § 259; C.L. 1897, § 525; Code 1915, § 1093; C.S. 1929, § 33-1604; 1941 Comp., § 15-1604; 1953 Comp., § 15-18-4.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 19
Otero County

4-19-1. [County boundaries.]

That there be and hereby is created out of a part of the counties of Dona Ana, Socorro and Lincoln a new county to be known [as] and called Otero county, which shall embrace all that portion of said counties of Dona Ana, Socorro and Lincoln lying within the following boundaries, viz.: beginning at a point on the boundary line between the territory of New Mexico and the state of Texas where the range line between ranges five and six east of New Mexico principal meridian, projected south, would intersect said boundary line; thence running north on said range line to the third standard parallel south; thence east along the third standard parallel south to the range line between ranges six and seven east; thence north along said range line between ranges six and seven east to the second standard parallel south; thence east along said second standard parallel south to where the same intersects the range line between ranges twelve and thirteen east; thence south along said range line between ranges twelve and thirteen east to the township lying [line] between townships eleven and twelve south; thence east along said township line between said townships eleven and twelve to the intersection of the range line between ranges sixteen and seventeen east; thence south along said range line between ranges sixteen and seventeen east, to the intersection of the same with the third standard parallel south; thence west along said third standard parallel south to the intersection of the range line between ranges fifteen and sixteen east, south of the third standard parallel south; thence south along said range line between ranges fifteen and sixteen east to the fourth standard parallel south; thence east along the fourth standard parallel south to the western boundary of Eddy county;

thence south along said western boundary of Eddy county to the boundary line between the territory of New Mexico and the state of Texas; thence west along said boundary line between said territory and state to the place of beginning.

History: Laws 1899, ch. 3, § 1; Code 1915, § 1094; C.S. 1929, § 33-1701; 1941 Comp., § 15-1701; 1953 Comp., § 15-19-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For boundaries of Dona Ana county, *see* 4-7-1 to 4-7-3 NMSA 1978.

For boundaries of Eddy county, *see* 4-8-1 to 4-8-3 NMSA 1978.

For boundaries of Lincoln county, *see* 4-14-1 and 4-14-2 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

4-19-2. [County seat.]

That the county seat of said county so created is hereby fixed and established at the town of Alamogordo therein.

History: Laws 1899, ch. 3, § 2; Code 1915, § 1095; C.S. 1929, § 33-1702; 1941 Comp., § 15-1702; 1953 Comp., § 15-19-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 20
Quay County

4-20-1. [County boundaries.]

That the present county of Quay is hereby abolished and there is hereby created the county of Washington, which said county of Washington shall be described and its boundaries shall be as follows, to wit:

beginning at a point on the boundary line between the states of New Mexico and Texas, the same being the northeast corner of township seventeen (17) north, range

thirty-seven (37) east, fractional, N.M. P. M., and running thence west on the township line between townships seventeen (17) and eighteen (18) north to the northwest corner of township seventeen (17) north, range thirty-four (34) east; thence south on the range line between ranges thirty-three (33) and thirty-four (34) east, to a point where the same intersects the northwesterly right-of-way boundary line of the Rock Island railroad; thence southwesterly along said northwesterly right-of-way boundary line of the Rock Island railroad to a point where said line intersects the township line between townships thirteen (13) and fourteen (14) north; thence west on the township line between townships thirteen (13) and fourteen (14) north, to a point where the same intersects the east boundary line of the Baca location no. 2; thence south on the east boundary of the said Baca location no. 2 to the southeast corner of said Baca location no. 2; thence west on the south boundary of the Baca location no. 2 to the southwest corner of the same; thence north on the west boundary of said Baca location no. 2 to a point where the same intersects the southeast boundary line of the Pablo Montoya grant; thence southwesterly along the southeast boundary line of the Pablo Montoya grant to a point where the same intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence south on the range line between ranges twenty-six (26) and twenty-seven (27) east to the southwest corner of township five (5) north, range twenty-seven (27) east; thence east on the township line between townships four (4) and five (5) north, to the southeast corner of township five (5) north, range thirty (30) east; thence north on the range line between ranges thirty (30) and thirty-one (31) east to the northeast corner of township five (5) north, range thirty (30) east; thence east on the township line between townships five (5) and six (6) north, to the southeast corner of township six (6) north, range thirty-two (32) east; thence north on the range line between ranges thirty-two (32) and thirty-three (33) east to the southeast corner of township seven (7) north, range thirty-two (32) east; thence east on the township line between townships six (6) and seven (7) north, to the southeast corner of township seven (7) north, range thirty-three (33) east; thence north on the range line between ranges thirty-three (33) and thirty-four (34) east, to the southeast corner of township eight (8) north, range thirty-three (33) east; thence east on the township line between townships seven (7) and eight (8) north, to the southeast corner of township eight (8) north, range thirty-four (34) east; thence north on the range line between ranges thirty-four (34) and thirty-five (35) east to the southeast [northeast] corner of township nine (9) [eight (8)] north, range thirty-four (34) east; thence east on the township line between townships eight (8) and nine (9) north to the boundary line between the states of New Mexico and Texas; thence north on the boundary line between the states of New Mexico and Texas to the intersection of the same with the township line between townships seventeen (17) and eighteen (18) north, N.M. P. M., and the place of beginning.

History: Laws 1923, ch. 141, § 1; C.S. 1929, § 33-1801; 1941 Comp., § 15-1801; 1953 Comp., § 15-20-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The county of Quay was originally created in 1903 by Laws 1903, ch. 8 from the counties of Guadalupe and Union. Laws 1923, ch. 141 abolished Quay county and established Washington county. Laws 1923, ch. 150, § 1 (4-20-7 NMSA 1978) changed the name of Washington county back to Quay county. This section seems to have made no change in the boundary lines as they existed at that time. As to the validity of changes in boundaries, see State ex rel. Dow v. Graham, 33 N.M. 504, 270 P. 897 (1928).

Laws 1903, ch. 8, § 1, creating Quay county, read: "There is created a county, to be known and called Quay county, out of that portion of the territory of New Mexico included in the following boundaries as indicated by the United States survey, to wit: commencing at the southwest corner of township 5 north, range 27 east of the New Mexico principal meridian; thence north along the range line between townships 26 and 27 east to a point of intersection with the southwest corner of the Pablo Montoya grant; thence along the south boundary of said grant to the intersection with the township line between townships 11 and 12 north; thence along said township line between townships 11 and 12 north to its intersection with the southeast corner of San Miguel county; thence north along said east boundary of San Miguel county to its intersection with the third standard parallel north; thence east along said third standard parallel north to its intersection with the Texas-New Mexico boundary line; thence south along the Texas-New Mexico boundary line to the point of its intersection with the first standard parallel north (projecting eastward); thence west along the first standard parallel north to southwest corner of township 5 north, range 27 east, to the point of beginning."

Laws 1907, ch. 62, § 1 added the following territory to Quay county: "All that portion of the territory of New Mexico now included in the county of Union beginning at a point on the westerly boundary line of the state of Texas between townships 17 and 18; thence west on the line between townships 17 and 18 to the intersection between ranges 33 and 34; thence south on the line between ranges 33 and 34 to the northwesterly boundary line of the right-of-way of the Chicago, Rock Island and El Paso railroad; thence southwesterly along the northwesterly boundary line of said right-of-way of said railroad to the dividing line between townships 13 and 14; thence west on the dividing line between townships 13 and 14 to the eastern boundary line of the Baca location No. 2, the same being the eastern boundary line of the county of San Miguel according to the United States official survey; also all that portion of the territory of New Mexico now included in the county of San Miguel, lying immediately north and adjoining the county of Quay and south of the Baca location No. 2 and the Pablo Montoya grant, is attached to and shall hereafter constitute a part of the county of Quay in this territory."

Since 1941 changes have been made in the boundary between Harding and Quay counties. Legal descriptions of the changes are available in district court files of the respective counties.

Due to an east-west correction on the second standard parallel north, the southeastern line of the county intersects said standard parallel at the northwest corner of township 8 north of range 34 east rather than at the southeast corner of township 9 north of range 34 east. This correction has been indicated by means of the bracketed words inserted by the compiler.

Curry county was created from the southeast portion of Quay county.

Cross references. — For boundaries of Curry county, *see* 4-5-1 NMSA 1978.

For boundaries of Guadalupe county, *see* 4-10-1 NMSA 1978.

For boundaries of Harding county, *see* 4-11-1 NMSA 1978.

For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

For original boundaries of Union county, *see* 4-31-1 NMSA 1978.

4-20-2. [Present organization to remain; county seat.]

That the present organization of the county of Quay as to precincts, school districts, officials and otherwise shall be and become the organization of the new county of Washington; the county seat of the county of Washington shall be and remain at Tucumcari until changed according to law. All officials of Quay county who were duly elected at the last general election and who qualified as required by law and all appointive officials duly qualified shall be and remain the officials of Washington county, holding their respective offices for the time for which they were severally elected or appointed, and qualified, and they shall perform all of the duties relating to their respective offices in the county of Washington hereby created.

History: Laws 1923, ch. 141, § 2; C.S. 1929, § 33-1802; 1941 Comp., § 15-1802; 1953 Comp., § 15-20-2.

ANNOTATIONS

Compiler's notes. — The name of Washington county was changed to Quay county by Laws 1923, ch. 150.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

4-20-3. [Funds, credits and taxes.]

All funds, monies, rights, credits, licenses and taxes which belong to or were to be paid to the county of Quay shall be and become the property of the county of Washington hereby created, and all such monies and taxes shall be paid to the proper

official of Washington county; and any valid and existing indebtedness, liability or obligation of the county of Quay shall be and become an indebtedness, liability or obligation of the said county of Washington.

History: Laws 1923, ch. 141, § 3; C.S. 1929, § 33-1803; 1941 Comp., § 15-1803; 1953 Comp., § 15-20-3.

ANNOTATIONS

Compiler's notes. — The name of Washington county was changed to Quay county by Laws 1923, ch. 150.

4-20-4. [Precincts and school districts remain.]

The precincts and school districts heretofore existing in Quay county and the officials thereof shall be and remain the same as they were until changed according to law.

History: Laws 1923, ch. 141, § 4; C.S. 1929, § 33-1804; 1941 Comp., § 15-1804; 1953 Comp., § 15-20-4.

ANNOTATIONS

Compiler's notes. — The name of Washington county was changed to Quay county by Laws 1923, ch. 150.

4-20-5. [Records and tax rolls.]

All records, tax rolls, assessments and tax schedules heretofore belonging or pertaining to the county of Quay shall belong to and become the property of the county of Washington. All things and acts or duties which could have been legally required to be done or performed by any person, firm, corporation, board or official in the county of Quay may also be required from such person, firm, corporation, board or official in the county of Washington.

History: Laws 1923, ch. 141, § 5; C.S. 1929, § 33-1805; 1941 Comp., § 15-1805; 1953 Comp., § 15-20-5.

ANNOTATIONS

Compiler's notes. — The name of Washington county was changed to Quay county by Laws 1923, ch. 150.

4-20-6. [Salaries of officers.]

The officials of Washington county shall receive the same salaries respectively as they would have received as officials in Quay county until otherwise provided by law.

History: Laws 1923, ch. 141, § 8; C.S. 1929, § 33-1808; 1941 Comp., § 15-1807; 1953 Comp., § 15-20-7.

ANNOTATIONS

Compiler's notes. — The name of Washington county was changed to Quay county by Laws 1923, ch. 150.

4-20-7. [Change of name.]

The name of Washington county, heretofore created, is hereby changed to Quay county.

History: Laws 1923, ch. 150, § 1; C.S. 1929, § 33-1809; 1941 Comp., § 15-1808; 1953 Comp., § 15-20-8.

ARTICLE 21
Rio Arriba County

4-21-1. [Original county boundaries.]

The boundaries of the county of Rio Arriba are as follows: on the south from the Puertecito of Pojuaque, drawing a direct line toward the west in the direction of the mesilla of San Yldefonso; from the mesilla crossing the Rio del Norte toward the west and continuing until it reaches the boundaries of the territory; drawing a direct line from said Puertecito de Pojuaque toward the east until it reaches the last house of the town of Cundiyo, toward the south, continuing the same line until it reaches the highest point of the mountain of Nambe; from thence, following the summit of the mountain toward the north, until it reaches the southern boundary of the county of Taos; this shall constitute the eastern boundary, and on the north the boundary of the county of Taos, and on the west the boundary line of the territory.

History: Laws 1851-1852, p. 291; C.L. 1865, ch. 42, § 5; C.L. 1884, § 246; C.L. 1897, § 512; Code 1915, § 1099; C.S. 1929, § 33-1901; 1941 Comp., § 15-1901; 1953 Comp., § 15-21-1.

ANNOTATIONS

Compiler's notes. — After the creation of Rio Arriba county by the above section, the western part of Taos county was added thereto by Laws 1880, ch. 46, § 2 which read: "Hereafter all that portion of the county of Taos, on the west side of the public road leading from the Hot Springs in the county of Rio Arriba, to Conejos, in the state of Colorado, is hereby annexed to the county of Rio Arriba," thereby making the county of Rio Arriba constitute the northwest portion of the state. Other provisions concerning the boundary with Taos are found in 4-21-2 NMSA 1978.

San Juan county was created out of the western portion of Rio Arriba county in 1887, and other changes have been made in the boundaries.

The present boundaries of Rio Arriba county may be described as follows: commencing on the San Juan river at the point where it crosses the Colorado-New Mexico state line; thence [description from 4-24-1 NMSA 1978] following the San Juan river to its intersection with the range line between ranges 7 and 8 west; thence south on said range line to the seventh standard parallel north; thence west on said standard parallel to the northwest corner of township 28 north of range 7 west; thence south on the range line between ranges 7 and 8 west to the sixth standard parallel north; thence west on said standard parallel to the northwest corner of township 24 north of range 7 west; thence south on the range line between ranges 7 and 8 west to the southwest corner of section 18 township 24 north of range 7 west; thence east [description from 4-23-1 NMSA 1978] on the center of township 23 north to the New Mexico principal meridian; thence south on the principal meridian to the fifth standard parallel north; thence east on said standard parallel to the range line between ranges 6 and 7 east; thence south on the range line between ranges 6 and 7 east to the southwest corner of section 18 in township 20 north of range 7 east; thence east [description of Espanola precinct transferred to Rio Arriba county by 4-26-2 NMSA 1978] along the center of township 20 north to the range line between ranges 8 and 9 east; thence north-northwesterly across Arroyo Seco to the center line of U.S. highway 285; thence westerly along the center line of the highway approximately 1,300 feet to a point which bears south 14 degrees 19 minutes west 32.44 feet from the southeast corner of small holding claim No. 532; thence northeasterly to a point on the center line of the Santa Cruz river; thence west 3,060 feet to the center of highway 285 at the north end of the bridge over Santa Cruz river; thence northerly along the center line of U.S. highway 285 to a point opposite the southwest boundary of small holding claim No. 412; thence northwesterly on the southwestern boundary of said small holding claim to the east bank of the Rio Grande; thence northerly along the east bank of the Rio Grande to the fifth standard parallel north; thence east [description from 4-26-1 NMSA 1978] on the fifth standard parallel north to the range line between ranges 11 and 12 east; thence south on said range line to the point where it crosses the mountain of Nambe; thence easterly and northerly [description from 4-21-1 NMSA 1978] along the summit of the mountains to the point where the line described as being a straight line from the last house of Las Trampas on the south side southeasterly to the junction of the Mora and Sapello rivers [4-29-1 NMSA 1978] intersects the top of the divide.

Cross references. — For change of boundary between Rio Arriba county and Taos county, *see* 4-21-2 NMSA 1978.

For original borders of San Juan county, *see* 4-24-1 NMSA 1978.

For attachment to Rio Arriba county of Espanola precinct of Santa Fe county, *see* 4-26-2 NMSA 1978.

For original boundaries of Taos county, *see* 4-29-1 NMSA 1978.

4-21-2. [Eastern boundary.]

That the dividing line between the counties of Taos and Rio Arriba shall be changed so as to read as follows: the same shall be a straight line from the point where the present dividing line between said counties crosses the Rio Grande; thence to the north side of the house known as that of Antonio Domingo Lucero, deceased; thence west, crossing the Ojo Caliente river, to the summit of the Hot Springs mountains; and thence north to the junction of the Canada de los Comanches with the Ojo Caliente river, and thence following the wagon road to the crossing of the Tres Piedras arroyo west of the house of Juan Estevan Rodriguez, deceased, at the town of Tres Piedras; thence running west with said arroyo for a distance of one mile; thence north for a distance of one mile; thence east to the present dividing line of said counties; and thence to the southern boundary of the state of Colorado. Provided, that this will not affect any litigation now pending in said counties of Rio Arriba and Taos February 20th, 1905.

History: Laws 1880, ch. 46, § 3; C.L. 1884, § 286; C.S. 1897, § 541; Laws 1905, ch. 11, § 1; Code 1915, § 1101; C.S. 1929, § 33-1903; 1941 Comp., § 15-902; 1953 Comp., § 15-21-2.

ANNOTATIONS

Compiler's notes. — The wagon road to Conejos, Colorado, was made the boundary by Laws 1880, ch. 46, § 2. *See* compiler's notes to 4-21-1 NMSA 1978.

Cross references. — For original boundaries of Taos county, *see* 4-29-1 NMSA 1978.

ARTICLE 22
Roosevelt County

4-22-1. [Original county boundaries.]

That there be and hereby is created a county, to be known as and called Roosevelt county, out of that portion of the territory of New Mexico included in the following boundaries, as indicated by the United States survey, to wit: commencing at the southwest corner of township two south, range twenty-seven east of the New Mexico principal base and meridian; thence north along the range line between [ranges] twenty-six and twenty-seven east to the northwest corner of township four north of range twenty-seven east; thence east along the north line of township four north (projected) to its point of intersection with the Texas-New Mexico boundary line; thence south along the Texas-New Mexico boundary line to the point of its intersection with the first standard parallel south (projected eastward); thence west along the first standard parallel south to the southwest corner of township five south, range thirty-one east; thence north along the range line between ranges thirty and thirty-one east to the southwest corner of township four south, range thirty-one east; thence west along the south line of township four south, range thirty east, to the southwest corner of township

four south, range thirty east; thence north along the range line between ranges twenty-nine and thirty east, to the southwest corner of township two south, range thirty east; thence west along the south boundary line of township two south to the point of beginning.

History: Laws 1903, ch. 7, § 1; Code 1915, § 1102; C.S. 1929, § 33-2001; 1941 Comp., § 15-2001; 1953 Comp., § 15-22-1.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler and is not part of the law.

Compiler's notes. — Roosevelt county was created by the above section from Chaves and Guadalupe counties. Since its creation, the county of Curry was formed from the northeastern part, De Baca county took a strip off the western side, and additional land was added on the south.

The present boundary may be described as follows: commencing at the northwest corner of township 4 north of range 29 east; thence south [description from 4-6-1 NMSA 1978] on the range line between ranges 28 and 29 east to the southwest corner of township 1 north of range 29 east, on the New Mexico base line; thence east on the base line to the northwest corner of township 1 south of range 29 east; thence south on range line between ranges 28 and 29 east to the southwest corner of township 2 south of range 29 east; thence east along the south boundary line of township 2 south to the northwest corner of township 3 south of range 30 east; thence south [description from 4-22-1 and 4-22-2 NMSA 1978] along the range line between ranges 29 and 30 east to the southwest corner of township 5 south of range 30 east which is on the first standard parallel south; thence east on said standard parallel to the northwest corner of township 6 south of range 32 east; thence south on the range line between ranges 31 and 32 east to the southwest corner of township 7 south of range 32 east; thence east on the township line between townships 7 and 8 south to the northwest corner of township 8 south of range 34 east; thence south on the range line between ranges 33 and 34 east to the southwest corner of township 8 south of range 34 east; thence east on the township line between townships 8 and 9 south to the western boundary line of the state of Texas; thence in a northerly direction along the boundary line between Texas and New Mexico to its intersection with the east and west center line of township 1 north; thence west [description from 4-5-1 NMSA 1978] along the center line of township 1 north to the point of its intersection with the range line between ranges 30 and 31 east; thence north along the range line between ranges 30 and 31 east to the first standard parallel north; thence west on said standard parallel to the point of beginning.

This section was incorporated in article 15, chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Chaves county, *see* 4-3-1 to 4-3-3 NMSA 1978.

For boundaries of Curry county, *see* 4-5-1 NMSA 1978.

For boundaries of De Baca county, *see* 4-6-1 NMSA 1978.

For boundaries of Guadalupe county, *see* 4-10-1 NMSA 1978.

For addition to Roosevelt county, *see* 4-22-2 NMSA 1978.

4-22-2. [Addition to Roosevelt county.]

That all that portion of the territory described as follows: commencing at the southwest corner of township four south of range thirty east, thence south on range line to the southwest corner of township five south of range thirty east; thence east on said township line which is also the first standard parallel south, to the northwest corner of township six south of range thirty-two east; thence south on range line to the southwest corner of township seven south of range thirty-two east; thence east on township line to the northwest corner of township eight south of range thirty-four east; thence south on range line between ranges thirty-three and thirty-four east to the southwest corner of township eight south of range thirty-four east; thence east along the township line between townships eight and nine south to its intersection with the western boundary line of the state of Texas; thence in a northerly direction along the boundary line between Texas and New Mexico to the southeast corner of Roosevelt county; thence west along township line to the southwest [southeast] corner of township five south of range thirty east; thence north on range line to the northeast corner of township five south, range thirty east; thence west along township line to the place of beginning, be and it hereby is annexed to the county of Roosevelt as a part and portion thereof for every purpose.

History: Laws 1917, ch. 11, § 18; C.S. 1929, § 33-618; 1941 Comp., § 15-2002; 1953 Comp., § 15-22-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This section was part of the act creating De Baca county. That act transferred a portion of the western part of Roosevelt county to De Baca county and added the above-described territory to Roosevelt county on the south.

Cross references. — For boundaries of De Baca county, *see* 4-6-1 NMSA 1978.

4-22-3. [County seat.]

That the county seat of the said county of Roosevelt shall be established at the town of Portales in said county.

History: Laws 1903, ch. 7, § 1; Code 1915, § 1103; C.S. 1929, § 33-2002; 1941 Comp., § 15-2003; 1953 Comp., § 15-22-3.

ANNOTATIONS

Compiler's notes. — This section was incorporated in article 15, chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 23
Sandoval County

4-23-1. [County boundaries.]

That there be and is hereby created a county, to be known as and called the county of Sandoval, out of that portion of the territory of New Mexico included within the following boundaries, to wit:

beginning at a point three miles north of the southwest corner of township twenty-three north, of range seven west of the New Mexico principal meridian, according to the public land surveys of the United States, and running thence east along the line three miles north of the line between townships twenty-two and twenty-three north to the said principal meridian, which line shall form a part of the southern boundary of Rio Arriba county; thence south along said principal meridian to the fifth standard parallel north; thence east along said fifth standard parallel north to the range line between ranges six and seven east at the northwest corner of township twenty north in range seven east; thence south along said range line between ranges six and seven east; the same being the western boundary of Santa Fe county, to the southeast corner of township twelve north in range six east of said principal meridian; thence west along the township line between townships eleven and twelve north, said line being the northern boundary of Bernalillo county, to the boundary line of Valencia county at the northwestern corner of Bernalillo county; thence in a northwesterly direction along the boundary line of Valencia county to the third standard parallel north; thence west along said third standard parallel north, to the southeastern corner of McKinley county; thence north and along the eastern boundary line of McKinley county to the fifth standard parallel north at the southwest [northwest] corner of township twenty-one [twenty] north in range four west; thence west along said fifth standard parallel north to the southeast corner of San Juan county at the southwest corner of township twenty-one north in range seven west, and

thence north along the range line between ranges seven and eight west, said line being the easterly boundary of San Juan county, to the place of beginning.

History: Laws 1905, ch. 10, § 2; Code 1915, § 1104; C.S. 1929, § 33-2101; 1941 Comp., § 15-2101; 1953 Comp., § 15-23-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — A change was made in the boundaries of Sandoval county by the creation of Los Alamos county by Laws 1949, ch. 134, compiled as 4-15-1 and 4-15-2 NMSA 1978.

Due to an east-west correction on the fifth standard parallel north, the west line of the county intersects said standard parallel at the northwest corner of township 20 north of range 4 west rather than at the southwest corner of township 21 north of range 4 west. This correction has been indicated by the compiler by means of the bracketed words.

Sandoval county was originally created out of a portion of Bernalillo county. The boundaries of the original Sandoval county, as they appeared in Laws 1903, ch. 27, § 1, were as follows: "A county is created and established in the territory of New Mexico, to be known as the county of Sandoval, which shall include all that portion of the present county of Bernalillo lying north of a line beginning at the southeast corner of township 12 north, range 6 east of the New Mexico principal meridian, and running thence due west on the township line between townships 11 and 12 north, to the boundary line between the present county of Bernalillo and the county of Valencia." The original Sandoval county was abolished by Laws 1905, ch. 10, § 1.

The sections of this article were incorporated in Article 16, Chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Bernalillo county, *see* 4-1-1 and 4-1-2 NMSA 1978.

For boundaries of Los Alamos county, *see* 4-15-1 NMSA 1978.

For boundaries of McKinley county, *see* 4-17-1 NMSA 1978.

For boundaries of Rio Arriba county, *see* 4-21-1 and 4-21-2 NMSA 1978.

For boundaries of San Juan county, *see* 4-24-1 NMSA 1978.

For boundaries of Santa Fe county, *see* 4-26-1 and 4-26-2 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

4-23-2. [County seat.]

The county seat of the said county of Sandoval is hereby established at the town of Bernalillo in said county.

History: Laws 1905, ch. 10, § 3; Code 1915, § 1105; C.S. 1929, § 33-2102; 1941 Comp., § 15-2102; 1953 Comp., § 15-23-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 24
San Juan County

4-24-1. [Original county boundaries.]

That all of that portion of Rio Arriba county, New Mexico, comprised within the following boundaries, as hereinafter described, shall form and constitute a new county, to be hereafter known as the county of San Juan, to wit: commencing at the state line of Colorado, running along the San Juan river to where the San Juan crosses range line between ranges seven and eight [west; thence south on said range line], to the north line of Bernalillo [McKinley] county; thence west to the line of Arizona; thence running north on the Arizona line to the state of Colorado; thence east to the place of beginning; also to include all the settlements on the San Juan river below the mouth of the Los Pinos river.

History: Laws 1887, ch. 13, § 1; C.L. 1897, § 569; Code 1915, § 1106; C.S. 1929, § 33-2201; 1941 Comp., § 15-2201; 1953 Comp., § 15-24-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — There is an ambiguity in the description of the east boundary of the county which may have been due to an omission of part of the wording of the original bill during the process of enrolling and engrossing. The compiler has inserted the bracketed words to complete the sense of the description.

The original south boundary of San Juan county was amended by Laws 1901, ch. 39 [4-17-1 NMSA 1978] and was fixed as being the fifth standard parallel north.

This section was incorporated as article 17, chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Bernalillo county, *see* 4-1-1 and 4-1-2 NMSA 1978.

For boundaries of McKinley county, *see* 4-17-1 NMSA 1978.

For boundaries of Rio Arriba county, *see* 4-21-1 and 4-21-2 NMSA 1978.

ARTICLE 25
San Miguel County

4-25-1. [County boundaries.]

That the present county of San Miguel is hereby abolished and there is hereby created the county of Jefferson out of the area formerly in San Miguel county and also out of a triangular area within the Pablo Montoya grant, lying between the counties of Guadalupe, Quay and San Miguel as it heretofore existed, which said county of Jefferson shall be described and its boundaries shall be as follows, to wit:

beginning at the southeast corner of the Baca location no. 2; thence west on the south boundary of the Baca location no. 2, to the southwest corner of the same; thence north on the west boundary of said Baca location no. 2, to a point where it intersects the southeast boundary line of the Pablo Montoya grant; thence southwesterly along the southeast boundary line of the Pablo Montoya grant to a point where the same intersects the east boundary line of Guadalupe county; thence north along the eastern boundary line of Guadalupe county to the northeast corner of said county; thence west along the north boundary line of Guadalupe county to the northwest corner of Guadalupe county; thence south along the west boundary line of Guadalupe county to the northeast corner of Torrance county; thence west along the north boundary line of Torrance county to the southeast corner of Santa Fe county; thence north along the east boundary line of Santa Fe county to a point where the same is intersected by the south boundary line of Mora county; thence in an easterly direction following the south boundary lines of Mora and Harding counties to a point where the same intersects [intersect] the northwest boundary line of the Pablo Montoya grant; thence northeasterly along the northwest line of the Pablo Montoya grant to the northeast corner of said grant; thence southeasterly along the easterly boundary line of the Pablo Montoya grant to its points of intersection with the north line of the Baca location no. 2; thence east along the north boundary line of the Baca location no. 2 to the northeast corner of said Baca location no. 2; thence south along the east boundary line of the Baca location no. 2 to the southeast corner of said Baca location no. 2, and place of beginning.

History: Laws 1923, ch. 142, § 1; C.S. 1929, § 33-2301; 1941 Comp., § 15-2301; 1953 Comp., § 15-25-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The county of San Miguel was originally established by act of January 9, 1852 (§ 1107 of the 1915 Code) which read: "The boundaries of the county of San Miguel are as follows: on the east, the boundary line of the territory; on the west, the boundaries of Santa Fe; on the north, the boundaries of the counties of Taos and Rio Arriba, and on the south, drawing a line from Cibolo spring toward the north in the direction of the Berrendo spring, from thence drawing a perpendicular line toward the east, crossing the Pecos river, and continuing until it reaches the boundaries of the territory."

The eastern part of the original county of San Miguel became a part of Union county when that county was created, and later became parts of Harding and Quay counties.

Laws 1923, ch. 142 abolished San Miguel county and established Jefferson county.

Laws 1923, ch. 151, § 1 (4-25-8 NMSA 1978) changed the name back to San Miguel county.

For the validity of changes in boundaries, *see* State ex rel. Dow v. Graham, 33 N.M. 504, 270 P. 897 (1928).

Since 1941 changes have been made in the boundary between Harding and San Miguel counties. Legal descriptions of the changes are available in district court files of the respective counties.

Cross references. — For boundaries of Guadalupe county, *see* 4-10-1 NMSA 1978.

For boundaries of Harding county, *see* 4-11-1 NMSA 1978.

For boundaries of Mora county, *see* 4-18-1 to 4-18-3 NMSA 1978.

For boundaries of Quay county, *see* 4-20-1 NMSA 1978.

For boundaries of Santa Fe county, *see* 4-26-1 and 4-26-2 NMSA 1978.

For boundaries of Torrance county, *see* 4-30-1 NMSA 1978.

4-25-2. [Present organization retained; county seat.]

That the present organization of the county of San Miguel as to precincts, school districts, officials and otherwise shall be and become the organization of the new county of Jefferson; that the county seat of the county of Jefferson shall be and remain at Las Vegas until changed according to law. All officials of San Miguel county who were duly elected at the last general election and who qualified as required by law and all appointive officials duly qualified shall be and remain the officials of Jefferson county, holding their respective offices for the time for which they were severally elected or appointed, and qualified, and they shall perform all of the duties relating to their respective offices in the county of Jefferson hereby created.

History: Laws 1923, ch. 142, § 2; C.S. 1929, § 33-2302; 1941 Comp., § 15-2302; 1953 Comp., § 15-25-2.

ANNOTATIONS

Compiler's notes. — The name of Jefferson county was changed to San Miguel county by Laws 1923, ch. 151.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

4-25-3. [Funds, credits and taxes.]

All funds, monies, rights, credits, licenses and taxes which belong to or were to be paid to the county of San Miguel shall be and become the property of the county of Jefferson hereby created, and all such monies and taxes shall be paid to the proper official of Jefferson county; and any valid and existing indebtedness, liability or obligation of the county of San Miguel shall be and become an indebtedness, liability or obligation of the said county of Jefferson.

History: Laws 1923, ch. 142, § 3; C.S. 1929, § 33-2303; 1941 Comp., § 15-2303; 1953 Comp., § 15-25-3.

ANNOTATIONS

Compiler's notes. — The name of Jefferson county was changed to San Miguel county by Laws 1923, ch. 151.

4-25-4. [Precincts and school districts remain the same.]

The precincts and school districts heretofore existing in San Miguel county and the officials thereof shall be and remain the same as they were until changed according to law. The area included in the county of Jefferson which is not within any precinct or school district of said county may be organized into precincts or school districts in the manner provided by law.

History: Laws 1923, ch. 142, § 4; C.S. 1929, § 33-2304; 1941 Comp., § 15-2304; 1953 Comp., § 15-25-4.

ANNOTATIONS

Compiler's notes. — The name of Jefferson county was changed to San Miguel county by Laws 1923, ch. 151.

4-25-5. [Records and tax rolls.]

All records, tax rolls, assessments and tax schedules heretofore belonging or pertaining to the county of San Miguel shall belong to and become the property of the county of Jefferson. All things and acts or duties which could have been legally required to be done or performed by any person, firm, corporation, board or official in the county of San Miguel may also be required from such person, firm, corporation, board or official in the county of Jefferson. Assessments of lands not assessed for the year 1923 shall be made for said year in the county of Jefferson by the state tax commission.

History: Laws 1923, ch. 142, § 5; C.S. 1929, § 33-2305; 1941 Comp., § 15-2305; 1953 Comp., § 15-25-5.

ANNOTATIONS

Compiler's notes. — The name of Jefferson county was changed to San Miguel county by Laws 1923, ch. 151.

4-25-6. [Salaries remain the same.]

The officials of Jefferson county shall receive the same salaries respectively as they would have received as officials in San Miguel county until otherwise provided by law.

History: Laws 1923, ch. 142, § 8; C.S. 1929, § 33-2308; 1941 Comp., § 15-2307; 1953 Comp., § 15-25-7.

ANNOTATIONS

Compiler's notes. — The name of Jefferson county was changed to San Miguel county by Laws 1923, ch. 151.

4-25-7. [Change of name.]

That the name of the county of Jefferson, heretofore created, is hereby changed to San Miguel county.

History: Laws 1923, ch. 151, § 1; C.S. 1929, § 33-2309; 1941 Comp., § 15-2308; 1953 Comp., § 15-25-8.

ARTICLE 26
Santa Fe County

4-26-1. [County boundaries.]

The boundaries of Santa Fe county shall be defined as follows: commencing at the southeast corner of township eight north, range eleven east; thence north between ranges eleven and twelve east, to the northeast corner of township twenty north, range eleven east; thence west between townships twenty and twenty-one north, to the northwest corner of township twenty north, range seven east; thence south between ranges six and seven east to the southwest corner of township eight north, range seven east; thence east between townships seven and eight north to the place of beginning.

History: Laws 1889, ch. 127, § 1; C.L. 1897, § 596; Code 1915, § 1108; C.S. 1929, § 33-2401; 1941 Comp., § 15-2401; 1953 Comp., § 15-26-1.

ANNOTATIONS

Compiler's notes. — Since the enactment of this section, the following changes have been made in the boundaries of Santa Fe county: on the north, Espanola precinct number 16 was detached and made a part of Rio Arriba county [see 4-26-2 NMSA 1978 and also description of present boundaries of Rio Arriba county in compiler's notes under 4-21-1 NMSA 1978]; on the south, the southern boundary was made the township line between townships 9 and 10 north by the creation of Torrance county [see 4-30-1 NMSA 1978]; on the west, the present boundary is as described in this section, [see also 4-23-1 NMSA 1978] although a change in the boundary was made by Laws 1891, ch. 55 [see compiler's notes under 4-1-1 NMSA 1978]. The eastern boundary remains as described in this section. A change also was made by the creation of Los Alamos county by Laws 1949, ch. 134, compiled as 4-15-1 and 4-15-2 NMSA 1978.

Santa Fe county was originally created by Laws 1852, p. 292, which read: "The boundaries of the county of Santa Fe are, on the east, from the point of Torreones, drawing a direct line across the summit of the mountain until it reaches the angle formed by the eastern and southern boundaries of the county of Rio Arriba; from the above-mentioned point of Torreones, drawing a direct line toward the south, touching the point called Salinas in the mountain of Galisteo, and continuing said line until it reaches the Cibolo spring; from this point to the westward and turning the point of San Ysidro toward the north in the direction of Juana Lopez, touching the mouth of Las Bocas canyon, and from thence drawing a direct line toward the north, until it reaches the boundaries of the county of Rio Arriba."

The sections of this article were incorporated in Article 19 and Article 14 respectively of Chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Los Alamos county, *see* 4-15-1 NMSA 1978.

For boundaries of Rio Arriba county, *see* 4-21-1 and 4-21-2 NMSA 1978.

For boundaries of Torrance county, *see* 4-30-1 NMSA 1978.

4-26-2. [Espanola precinct attached to Rio Arriba county.]

That all of precinct number sixteen of Santa Fe county, known as Espanola precinct, be and the same is hereby detached from Santa Fe county and made a part of Rio Arriba county and attached to precinct number seven of said Rio Arriba county.

History: Laws 1903, ch. 24, § 1; Code 1915, § 1100; C.S. 1929, § 33-1902; 1941 Comp., § 15-2402; 1953 Comp., § 15-26-2.

ANNOTATIONS

Cross references. — For boundaries of Rio Arriba county, *see* 4-21-1 and 4-21-2 NMSA 1978.

ARTICLE 27
Sierra County

4-27-1. [Original county boundaries.]

All that part of the territory of New Mexico comprised within the following boundaries and limits, to wit: commencing at the Mule springs, in Mule pass, in Cook's canyon range, in the county of Grant, and running thence in a northwesterly direction along the summit of the Mimbres mountains to the north boundary line of Grant county; thence west on said north boundary line to the one hundred and eighth degree of longitude west of Greenwich; thence north on said degree of longitude to the point where the same intersects the north line of township line ten south, of New Mexico, being along the north line of [sic] township ten south, range eleven west of the [principal] meridian of New Mexico; thence east on said township line to the principal meridian of New Mexico; thence south on said principal meridian to the south line of township seventeen south, of the United States survey; thence west along said south line of said township number seventeen south, to the southwest corner of range four west, New Mexico principal meridian; thence south on the west line of said range line number four west of said principal meridian of New Mexico, to the southwest corner of township number nineteen south, of range four west, New Mexico; thence west along the south line of township number nineteen south, to the southwest corner of township nineteen south, range seven west, New Mexico principal meridian; thence west-northwest to the place of beginning on said south line to the boundary line of Grant county, shall form and constitute a new county, to be known as and called Sierra county: provided, that the

property thus separated from the county of Socorro shall not be exempt from its share of taxation to pay the outstanding bonded indebtedness of Socorro county.

History: Laws 1884, ch. 109, § 1; C.L. 1884, § 321; C.L. 1897, § 559; Code 1915, § 1109; C.S. 1929, § 33-2501; 1941 Comp., § 15-2501; 1953 Comp., § 15-27-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "township line ten south, of New Mexico, being along the north line of" preceding "[sic]" in this section are unnecessary for a correct reading of the description.

Sierra county was formed from parts of Grant, Dona Ana, and Socorro counties.

By special election held on March 7, 1950, certificate of which was filed with the county clerk of Sierra county on September 13, 1951, that portion of Socorro county lying south of the ninth township line south of the New Mexico base line and east of the New Mexico principal meridian was annexed to Sierra county.

The current boundaries of Sierra county may be described as follows: commencing at Mule springs in Mule pass in Cook's canyon range, and running thence in a northwesterly direction along the summit of the Sierra Mimbres, or black range, to the line between townships 12 and 13 south of the New Mexico base line; thence west along said township line to the 108th meridian west of Greenwich; thence north on said meridian to the north line of township 10 south, range 11 west of the principal meridian of New Mexico; thence east on said township line to the range line between ranges 5 and 6 east of the New Mexico principal meridian; thence south on said range line to the second standard parallel south; thence east on said standard parallel to the range line between ranges 6 and 7 east; thence south on said range line to the northeast corner of Dona Ana county [see compiler's notes under 4-7-1 NMSA 1978]; thence southwesterly along the former boundary between Socorro and Dona Ana counties [see 4-7-2 NMSA 1978] to the intersection of the New Mexico principal meridian with the third latitudinal section line south in township 17 south; thence south along the New Mexico principal meridian to the south line of township 17 south; thence west along said township line to the west line of range 4 west; thence south along said range line to the south line of township 19 south; thence west along the south line of township 19 south to the west line of range 7 west; thence northwest to the place of beginning.

Cross references. — For boundaries of Dona Ana county, *see* 4-7-1 to 4-7-3 NMSA 1978.

For boundaries of Grant county, *see* 4-9-1 and 4-9-2 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

4-27-2. [Boundary between Sierra and Grant counties.]

That the boundary line between the counties of Sierra and Grant be, and the same is hereby located, fixed and established as follows:

beginning at a point where the line between townships 12 and 13 south of the New Mexico principal base line intersects the one hundred and eighth (108th) meridian west of Greenwich, and running thence eastwardly along the said line between said townships 12 and 13 south, to the summit of the Sierra Mimbres, or Black range, and thence southwardly along the summit of said Sierra Mimbres, or Black range, to Mule springs in Mule pass in Cook's canyon range, and thence east-southeast to the southwest corner of township 19 south of range 7 west of the New Mexico principal base and meridian.

History: Laws 1917, ch. 57, § 2; C.S. 1929, § 33-2502; 1941 Comp., § 15-2502; 1953 Comp., § 15-27-2.

ANNOTATIONS

Cross references. — For boundaries of Grant county, *see* 4-9-1 and 4-9-2 NMSA 1978.

4-27-3. [County seat.]

The county seat of said county of Sierra is hereby permanently located and established at the town of Hillsborough in said county of Sierra.

History: Laws 1884, ch. 109, § 3; C.L. 1884, § 323; C.L. 1897, § 561; Code 1915, § 1110; C.S. 1929, § 33-2503; 1941 Comp., § 15-2503; 1953 Comp., § 15-27-3.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3, and 4-34-1 NMSA 1978 et seq.

Election authorizing removal of county seat valid. — Election held Nov. 3, 1936 authorizing the removal of the county seat from Hillsboro to Hot Springs was valid. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

ARTICLE 28
Socorro County

4-28-1. [Original county boundaries.]

The boundaries of the county of Socorro are as follows: on the south, drawing a direct line to the eastward from the Muerto spring in the Jornada in the direction of La Laguna, and continuing until it terminates with the boundary of the territory; drawing a direct line toward the west from said Muerto spring, crossing the Rio del Norte, and continuing in the same direction until it terminates with the boundary of the territory, shall be the southern boundary, and the northern boundary is the southern extremity of the county of Valencia.

History: Laws 1851-1852, p. 292; C.L. 1865, ch. 42, § 11; C.L. 1884, § 252; C.L. 1897, § 518; Code 1915, § 1111; C.S. 1929, § 33-2601; 1941 Comp., § 15-2601; 1953 Comp., § 15-28-1.

ANNOTATIONS

Compiler's notes. — Socorro county, as originally created, touched both the eastern and western boundaries of the territory. Lincoln county was created from the eastern part of Socorro county and Catron county from the western part.

Laws 1927, ch. 185, which attempted to abolish Catron county and divide its territory between Grant county and a new county to be called Rio Grande county, the latter to include also all of Socorro county, was held to violate N.M. Const., art. IV, § 24, since its purpose was to change county boundaries by special or local law, and not to create a new county, in State ex rel. Dow v. Graham, 33 N.M. 504, 270 P. 897 (1928).

Laws 1927, ch. 186 would have changed the name of Rio Grande county, created by Laws 1927, ch. 185, back to Socorro county, but since the latter was invalid, the former was of no effect.

By a special election held on March 7, 1950, certificate of which was filed with the county clerk of Sierra county on September 13, 1951, there was annexed to Sierra county that portion of Socorro county lying south of the ninth township line south of the New Mexico base line.

The current boundaries of Socorro county may be described as follows: commencing at the southeast corner of township 9 south of range 9 west then east on the south line of township 9 south to the range line between ranges 5 and 6 east; thence north along said range line to the line between townships 7 and 8 south; thence east along said township line to the range line between ranges 8 and 9 east; thence north along said range line to the first parallel standard south; thence east along said standard parallel to the southeast corner of section 31 in township 5 south of range 10 east; thence north along the section lines to the New Mexico base line; thence west along said base line to the southeast corner of section 33 in township 1 north of range 5 east; thence north through the center of range 5 east to the southeast corner of Valencia county; thence south 82 degrees 39 minutes west 2 miles 544.6 feet to a point which bears north 38 degrees 27 minutes east 7768 feet from the southwest corner of section 6, township 2 north, range 5 east; thence north 63 degrees 17.5 minutes west 3 miles 1129.2 feet to a

point on the centerline of the A.T. & S.F. railway bridge over Abo arroyo; thence north 71 degrees 20 minutes west 15 miles 5075.8 feet to a point described as being between the town of Jose Pino and the house of Jose Antonio Chavez on the east bank of the Rio Grande; thence northwesterly to the confluence of Alamito canyon with the Rio Puerco; thence due west on the section line 2 miles south of the first standard parallel north to the range line between ranges 8 and 9 west; thence south on said range line to the New Mexico base line; thence east on said base line to the northwest corner of township 1 south, range 8 west; thence south on the line between ranges 8 and 9 west to the first standard parallel south; thence east on said standard parallel to the northwest corner of township 6 south, range 8 west; thence south on the line between ranges 8 and 9 west to the point of beginning.

This section was incorporated in Article 21, Chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Catron county, *see* 4-2-1 NMSA 1978.

For boundaries of Lincoln county, *see* 4-14-1 and 4-14-2 NMSA 1978.

For boundaries of Sierra county, *see* 4-27-1 and 4-27-2 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

ARTICLE 29
Taos County

4-29-1. [Original boundaries.]

The boundaries of the county of Taos are as follows: on the south, from the first house of the town of Embudo, on the upper side, where the canyon of Picuris terminates, drawing a direct line toward the south over the mountain of Bajillo at the town of Rincones, until it reaches the front of the last house of Las Trampas, on the south side; from thence, drawing a direct line toward the east, dividing the mountain, until it reaches the junction of the rivers Mora and Sapello, and from thence to the boundary line of the territory; from the above-mentioned house of Embudo, drawing a line toward the north over the mountain, and dividing the Rio del Norte in the direction of the Tetilla de la Petaca; from thence taking a westward direction until it terminates with the boundary line of the territory; and on the north by the boundary line of the territory of New Mexico.

History: Laws 1851-1852, p. 291; C.L. 1865, ch. 42, § 4; C.L. 1884, § 245; C.L. 1897, § 511; Laws 1901, ch. 52, § 1; Code 1915, § 1112; C.S. 1929, § 33-2701; 1941 Comp., § 15-2701; 1953 Comp., § 15-29-1.

ANNOTATIONS

Compiler's notes. — Taos county as originally created was the northernmost county of the territory reaching from the eastern to the western boundaries. Mora county was created from the eastern part of Taos county, and Colfax county was later created from the northern part of Mora county.

The boundary between Taos and Colfax counties may be described as follows: commencing on the township line between townships 23 and 24 north at a point where it intersects the summit of the divide between the Rio Grande and the Canadian rivers; thence northerly [description based on 4-18-2 NMSA 1978] along the summit of the divide to the southern base of Osha hill; thence northerly along the crest of Osha hill to the southwest corner of the Maxwell Land Grant; thence northerly along the western boundary of the Maxwell Land Grant (which generally follows the summit of the divide) to its junction with the eastern boundary of the Sangre de Cristo Grant; thence northerly along the eastern boundary of the Sangre de Cristo Grant to the Colorado-New Mexico state line.

The boundary with Mora county is described in 4-18-1 and 4-18-2 NMSA 1978 and compiler's notes thereunder.

The southern boundary with Rio Arriba county is described in this section and also the compiler's notes under 4-21-1 NMSA 1978.

The western boundary with Rio Arriba county was altered by Laws 1880, ch. 46, § 2, which read: "Hereafter all that portion of the county of Taos, on the west side of the public road leading from the Hot Springs in the county of Rio Arriba, to Conejos, in the state of Colorado, is hereby annexed to the county of Rio Arriba."

The boundary with Rio Arriba county west of the Rio Grande is described in 4-21-2 NMSA 1978 and the compiler's notes under 4-21-1 NMSA 1978.

The north boundary of Taos county is the state line.

This section was incorporated in article 22, chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Colfax county, *see* 4-4-1 to 4-4-3 NMSA 1978.

For boundaries of Mora county, *see* 4-18-1 to 4-18-3 NMSA 1978.

For boundaries of Rio Arriba county, *see* 4-21-1 and 4-21-2 NMSA 1978.

ARTICLE 30
Torrance County

4-30-1. [County boundaries.]

That a county which shall be known as Torrance county is hereby created out of that portion of the territory of New Mexico included within the following boundaries, as indicated by the United States surveys, to wit:

commencing at the standard corner to sections no. 33 and no. 34, township one north, range five east of the New Mexico principal base line, and running thence north through the center of townships one, two and three north to the line between townships three and four north; thence west on the said township line to the southwest corner of township four north, range five east; thence north on the range line between ranges four and five east, to the southwest corner of township eight north, range five east; thence east on the township line between townships seven and eight north to the southeast corner of township eight north, range seven east; thence north on the range line between ranges seven and eight east to the northwest corner of township eight north, range eight east, on the second standard parallel north; thence west on the second standard parallel north to the southwest corner of township nine north, range seven east; thence north on the range line between ranges six and seven east to the northwest corner of township nine north, range seven east; thence east on the township line between townships nine and ten north, to the northeast corner of township nine north, range fifteen east; thence south on the range line between ranges fifteen and sixteen east, to the New Mexico principal base line; and thence west on said New Mexico principal base line to the place of beginning.

History: Laws 1903, ch. 70, § 1; 1905, ch. 2, § 2; Code 1915, § 1113; C.S. 1929, § 33-2801; 1941 Comp., § 15-2801; 1953 Comp., § 15-30-1.

ANNOTATIONS

Compiler's notes. — Torrance county was formed principally from the county of Valencia but also took in portions of other counties.

The sections of this article were incorporated in Article 23, Chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Laws 1905, ch. 2, § 1, which amended the boundaries of the county and changed the county seat, was in the nature of a purpose clause.

Cross references. — For boundaries of Santa Fe county, *see* 4-26-1 and 4-26-2 NMSA 1978.

For original boundaries of Valencia county, *see* 4-32-1 NMSA 1978.

4-30-2. [County seat.]

The county seat of the said county of Torrance shall be, and the same is hereby located at the town of Estancia in said county.

History: Laws 1903, ch. 70, § 2; 1905, ch. 2, § 3; Code 1915, § 1114; C.S. 1929, § 33-2802; 1941 Comp., § 15-2802; 1953 Comp., § 15-30-2.

ANNOTATIONS

Compiler's notes. — Laws 1905, ch. 2, § 3, changed the county seat from Progreso to Estancia.

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

Collateral attacks on validity of act changing county seat. — A contention that a murder conviction made at a term of court held in Estancia was invalid on the grounds that this section, amending Laws 1903, ch. 70, § 2, changed the county seat from Progreso to Estancia and was a special act in violation of the former Springer Act (48 U.S.C., § 1471, now repealed), was not well taken, since Estancia was at least a de facto county seat, and the validity of this section had not been attacked in a direct proceeding. *Territory v. Clark*, 1909-NMSC-005, 15 N.M. 35, 99 P. 697.

Collateral attack on validity of location of county seat. — Action by taxpayer to restrain county commissioners from contracting for or erecting a courthouse or jail at Estancia, on ground that Estancia was not the lawful county seat in that act designating it as the county seat was unconstitutional, was not maintainable since it was a collateral attack on validity of location of county seat. *Torres v. Board of County Comm'rs*, 1910-NMSC-065, 15 N.M. 703, 110 P. 851.

ARTICLE 31
Union County

4-31-1. [Original county boundaries.]

That the county of Union is hereby created out of that portion of the territory of New Mexico lying and being situate within the following metes and bounds, to wit: commencing at a point on the line between the state of Colorado and the territory of New Mexico where the range line between ranges twenty-seven and twenty-eight east crosses said line between the territory of New Mexico and state of Colorado; thence from said point, running south on said range line between ranges twenty-seven and twenty-eight east, to the south line of the county of Mora, in said territory; thence east

along the south line of the said county of Mora to the east line of what is known and called the Pablo Montoya grant; thence in a southeasterly direction along the easterly line of the said Pablo Montoya grant to the north line of what is called and known as Baca location number two; thence east along the north line of said Baca location number two to the northeast corner of said Baca location number two; thence south along the east line of said Baca location number two to the southeast corner of said Baca location number two; thence continuing south to the township line between townships eleven and twelve north; thence east along said line between townships eleven and twelve north, to the east line of the territory of New Mexico; thence north on the east line of the territory of New Mexico to the northeast corner of said territory of New Mexico; thence west along the north line of said territory of New Mexico, to the range line, between ranges twenty-seven and twenty-eight east, the point of beginning.

History: Laws 1893, ch. 49, § 1; 1895, ch. 12, § 1; C.L. 1897, § 615; Code 1915, § 1115; C.S. 1929, § 33-2901; 1941 Comp., § 15-2901; 1953 Comp., § 15-31-1.

ANNOTATIONS

Compiler's notes. — Union county was formed from the eastern portion of Colfax, Mora, and San Miguel counties. Harding and Quay counties have since been formed from the southern parts of Union county.

The present boundaries of Union county may be described as follows: commencing at a point on the line between the states of Colorado and New Mexico where the range line between ranges 27 and 28 east meets said state line; thence south [description from 4-31-1 NMSA 1978] on the range line between ranges 27 and 28 east to the southwest corner of township 23 north of range 28 east [description from 4-11-1 NMSA 1978]; thence east on the township line between townships 22 and 23 north to the range line between ranges 29 and 30 east; thence south on the range line between ranges 29 and 30 east to the township line between townships 21 and 22 north; thence east on said township line to the range line between ranges 33 and 34 east; thence south on said range line to the fifth standard parallel north; thence west on said standard parallel to the northwest corner of township 20 north of range 34 east; thence south on the range line between ranges 33 and 34 east to the township line between townships 17 and 18 north; thence east on the township line to the boundary line between the states of New Mexico and Texas [description from 4-20-1 NMSA 1978]; thence north on the east boundary line of the state to the south line boundary of the state of Colorado; thence west on the New Mexico-Colorado state line to the point of beginning.

The sections of this article were incorporated in Article 24, Chapter 24 of the 1915 Code. They were not reenacted by their inclusion therein, but were compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For boundaries of Colfax county, *see* 4-4-1 to 4-4-3 NMSA 1978.

For boundaries of Harding county, *see* 4-11-1 NMSA 1978.

For boundaries of Mora county, *see* 4-18-1 to 4-18-3 NMSA 1978.

For boundaries of Quay county, *see* 4-20-1 NMSA 1978.

For boundaries of San Miguel county, *see* 4-25-1 NMSA 1978.

4-31-2. [County seat.]

The county seat of the county of Union shall be and the same is hereby located in the town of Clayton in said county.

History: Laws 1893, ch. 49, § 2; C.L. 1897, § 616; Code 1915, § 1116; C.S. 1929, § 33-2902; 1941 Comp., § 15-2902; 1953 Comp., § 15-31-2.

ANNOTATIONS

Cross references. — For removal of county seats, *see* N.M. Const., art. X, § 3 and 4-34-1 NMSA 1978 et seq.

ARTICLE 32
Valencia County

4-32-1. [Original county boundaries.]

The county of Valencia shall be bounded as follows: on the south, drawing a line from a point between the town of Jose Pino and the house of Jose Antonio Chavez toward the east in the direction of the Bocas de Abo, and continuing said line along the Gabilan mountain until it terminates with the boundaries of the territory; drawing a direct line from the starting point of the eastern line, crossing the Rio del Norte, touching the dividing line between Belen and Sabinal, continuing the line in the direction of the canada of the Alamito del Rio Puerco, and following in the direction of Puerto de la Bolita de Oro, until it terminates with the boundary of the territory; on the north to be bounded by the county of Bernalillo.

History: Laws 1852-1853, p. 292; C.L. 1865, ch. 42, § 10; C.L. 1884, § 251; C.L. 1897, § 517; Code 1915, § 1117; C.S. 1929, § 33-3001; 1941 Comp., § 15-3001; 1953 Comp., § 15-32-1.

ANNOTATIONS

Compiler's notes. — Valencia county, which originally touched the east and west boundaries of the territory, has been greatly reduced in size since it was created by the above section.

The present boundaries of the county may be described as follows: commencing at the junction of the Arizona-New Mexico state line with the second standard parallel north; thence south on the state line to the north line of Catron county; thence east and southeasterly on the north line of Catron and Socorro counties [description from this section; see also compiler's notes under 4-28-1 NMSA 1978] to the eastern boundary with Torrance county; thence north [description from 4-30-1 NMSA 1978] following the boundary line with Torrance county to the southeast corner of section 33 in township 8 north of range 5 east; thence northerly and westerly [description from 4-1-2 NMSA 1978; see also compiler's notes under 4-1-1 NMSA 1978] to the south base of Isleta hill on the east bank of the Rio Grande; thence down the Rio Grande to its intersection with the original north boundary line of the county; thence west and northwesterly (description from this section) on the present boundary with Bernalillo and Sandoval counties to the third standard parallel north; thence west on the south boundary of Sandoval and McKinley counties [see 4-17-1 and 4-23-1 NMSA 1978] to the state line and point of beginning.

Valencia county has been reduced in size by the formation of Cibola county out of that part of Valencia county lying westerly of the following described line: begin on the southerly boundary line of Valencia county at its intersection with the line common to Ranges 3 and 4 west, N.M.P.M.; then northerly along the line between Ranges 3 and 4 west to the intersection with the line common to Townships 8 and 9 north; then easterly along the line between Townships 8 and 9 north and along the easterly prolongation of this line to its intersection with the westerly boundary line of Bernalillo county, the point of termination.

This section was incorporated in Article 25, Chapter 24 of the 1915 Code. It was not reenacted by its inclusion therein, but was compiled merely for convenience. *See* the 1915 Code, p. 1665.

Cross references. — For change of northern boundary with Bernalillo county, *see* 4-1-2 NMSA 1978.

For boundaries of Catron county, *see* 4-2-1 NMSA 1978.

For boundaries of Cibola county, *see* 4-3A-1 NMSA 1978.

For boundaries of McKinley county, *see* 4-17-1 NMSA 1978.

For boundaries of Sandoval county, *see* 4-23-1 NMSA 1978.

For original boundaries of Socorro county, *see* 4-28-1 NMSA 1978.

For boundaries of Torrance county, *see* 4-30-1 NMSA 1978.

ARTICLE 33
Creation or Change of Counties

4-33-1. [Annexation of a portion of a county to another county; reasons.]

Whenever, because of the location and conditions of roads, or the existence or nonexistence of transportation facilities, it will be more convenient for the residents of any portion of a county to travel to the county seat of some other contiguous county, and because of such location and condition of roads or the existence or nonexistence of transportation facilities, it will be more convenient and economical for such other county to render governmental services to such portion of such other county, the portion of the county so affected may be annexed to such other county in the following manner.

History: 1941 Comp., § 15-3305, enacted by Laws 1947, ch. 196, § 1; 1953 Comp., § 15-33-1.

ANNOTATIONS

Cross references. — For combined city and county corporations, *see* N.M. Const., art. X, § 4, and 3-16-1 NMSA 1978 et seq.

Constitutionality of article. — This article setting forth procedure for detachment and annexation proceedings is not void for vagueness and uncertainty. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

Section not vague. — This article is not void for uncertainty and ambiguity. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

Annexation section not special legislation. — Annexation statute is not unconstitutional as special legislation. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

Constitutional violation. — This article does not violate N.M. Const., art. IV, § 24, as being special legislation. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

Failure to mention all provisions in title of act. — Provisions for suit and court trial are an incident of an annexation proceeding and failure to mention them in title of the act providing for such proceedings does not invalidate this article. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

Savings clause. — Even in event something has been improperly omitted from the title, the saving clause in the constitutional provisions that only so much of the act as is not mentioned in the title shall be void will save this article providing for annexation of portions of counties. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

Factors in determining convenience of travel to another county seat. — Neither mileage alone nor the existence of unused public transportation was a factor in determining whether it would be more convenient under this section for residents to travel to some other county seat. *Stone v. Crenshaw*, 1952-NMSC-093, 56 N.M. 707, 248 P.2d 822.

Factors in determining convenience and economy of provision of governmental services by another county. — Testimony of county officials and others with knowledge of administrative and geographic conditions should be considered in determining whether it would be more convenient and economical under this section for the other county to render governmental services. *Stone v. Crenshaw*, 1952-NMSC-093, 56 N.M. 707, 248 P.2d 822.

The board of county commissioners had no duty to publish notice of an invalid annexation petition. — Where petitioners filed a petition to annex the Santa Fe county portion of Española, which lies within the boundaries of both Santa Fe county and Rio Arriba county, to Rio Arriba county because petitioners wanted to access the county services available at the Rio Arriba county offices in Española, the district court erred in finding that the petition complied with this section and in issuing a writ of mandamus ordering the board of county commissioners of Santa Fe county to publish notice pursuant to 4-33-3 NMSA 1978. A plain language reading of this section requires that an annexation petition state facts showing that it will be more convenient for the residents of Española currently residing in Santa Fe county to travel to Tierra Amarilla, the county seat, and neither the petition nor its attachments made any reference to Tierra Amarilla and thus failed to comply with the statutory requirement that a petition set forth facts to establish the county seat condition. *Bd. of Comm'rs of Rio Arriba Cnty. v. Bd. of Comm'rs of Santa Fe Cnty.,* 2020-NMCA-017.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 39 to 77.

Right of county to challenge acts or proceedings by which its boundaries or limits are affected, 86 A.L.R. 1373.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 A.L.R.5th 195.

20 C.J.S. Counties § 30.

4-33-2. [Petition for annexation.]

A petition executed by at least fifty-one percent (51%) of the qualified electors residing within the portion of the county proposed to be annexed shall be filed with the county commissioners of the county in which such portion is located. Such petition shall set forth the facts showing the existence of the conditions described in Section 1 [4-33-1

NMSA 1978] hereof and shall accurately set out the boundaries of the portion of the county proposed to be annexed.

History: 1941 Comp., § 15-3306, enacted by Laws 1947, ch. 196, § 2; 1953 Comp., § 15-33-2.

ANNOTATIONS

When signers may withdraw names from petition. — While signers of petition may withdraw their names before the body to which it is addressed has acted on it, they may not do so afterwards. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

Number of names on petition held sufficient. — Where signers of petition could no longer withdraw their names by a subsequent petition, leaving more than 51 percent of the electors asking for an election, a sufficient number of names appeared upon the petition. *Crosthwait v. White*, 1951-NMSC-003, 55 N.M. 71, 226 P.2d 477.

4-33-3. Contest; notice of election.

Immediately upon the filing of a petition under Section 4-33-2 NMSA 1978, it shall be the duty of the board of county commissioners with which the petition is filed to cause a notice to be published in some newspaper of general circulation in each county affected. Within thirty days after the publication of the notice, but not thereafter, any resident of either of the counties affected, on behalf of the resident and all others similarly situated, may bring an action in the district court of the county in which the area proposed to be annexed is located, against any one or more of the signers of the petition, alleging that the petition has not been executed by the requisite number of signers or that the area to be annexed is not accurately described or that the conditions described in Section 4-33-1 NMSA 1978 do not exist. The judge, after hearing, shall make a determination as to whether the allegations of the petition are well taken. If the judge shall determine that the allegations of the petition are well taken, the judge shall enter an order. If the order is not stayed, it shall be the duty of the board of county commissioners to call an election to be held within ninety days within the county of the area proposed to be annexed; provided that the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978. The county clerk shall cause a notice of election to be published two times in a newspaper of general circulation in the county, the last publication thereof to be at least seven days before the date of the election. The notice shall specify whether the proposed annexation shall appear as a ballot question in a statewide election or specify the date a special election will be held as prescribed in the Election Code [Chapter 1, NMSA 1978]. At the election, all qualified electors who reside within the county shall be entitled to vote.

History: 1941 Comp., § 15-3307, enacted by Laws 1947, ch. 196, § 3; 1951, ch. 148, § 1; 1953 Comp., § 15-33-3; 2019, ch. 212, § 188.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the notice procedures regarding an election held for the purpose of determining whether a portion of a county should be annexed, and made technical amendments; after "Immediately upon the filing of a petition", added "under Section 4-33-2 NMSA 1978", after "conditions described in Section", deleted "1 hereof" and added "4-33-1 NMSA 1978", after "election to be held within", deleted "30" and added "ninety", after "proposed to be annexed", deleted "and" and added "provided that the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978. The county clerk", after "The notice shall specify", deleted "the polling places, which polling places shall be not fewer than there were in said county at the last general election" and added "whether the proposed annexation shall appear as a ballot question in a statewide election or specify the date a special election will be held as prescribed in the Election Code", and after "entitled to vote", deleted the remainder of the section, which related to a prior version of law.

Notice that the board is required to publish is a notice of the filing with it of the petition mentioned in this section, citing it and its general purpose and object. It should describe the portion of the county proposed to be detached from the named county and attached to the other, and announce that any resident of either county affected within 30 days after publication, but not thereafter, may bring the action mentioned in this section, in the district court of the county in which the affected area lies, challenging, on grounds named in this section, the right to the annexation sought. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

Hearing and determination as to correctness of petition. — If a contest is filed, the hearing provided for takes place as provided in this section. The judge of the district court of the county in which the proceedings are initiated must, at the hearing, determine whether the allegations of the petition are true. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

If no contest is filed, then the proponents of the proposed annexation, upon calling the matter, by some appropriate pleading, to the attention of the district court of the county where the annexation proceedings are pending, may initiate the hearing contemplated by this section. Upon such hearing, even though the relief sought is unopposed, the court must determine whether there are jurisdictional grounds for the annexation as its authority to proceed further. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

The board of county commissioners had no duty to publish notice of an invalid annexation petition. — Where petitioners filed a petition to annex the Santa Fe county portion of Española, which lies within the boundaries of both Santa Fe county and Rio Arriba county, to Rio Arriba county because petitioners wanted to access the county services available at the Rio Arriba county offices in Española, the district court erred in finding that the petition complied with § 4-33-1 NMSA 1978 and in issuing a writ of mandamus ordering the board of county commissioners of Santa Fe county to publish notice pursuant to this section. A plain language reading of 4-33-1 NMSA 1978 requires that an annexation petition state facts showing that it will be more convenient for the

residents of Española currently residing in Santa Fe county to travel to Tierra Amarilla, the county seat, and neither the petition nor its attachments made any reference to Tierra Amarilla and thus failed to comply with the statutory requirement that a petition set forth facts to establish the county seat condition. *Bd. of Comm'rs of Rio Arriba Cnty. v. Bd. of Comm'rs of Santa Fe Cnty*., 2020-NMCA-017.

Procedure where second petition filed. — Where trial court has held on substantial evidence that a second petition seeking annexation is not an amendment of the first but an entirely new, independent and distinct petition, any defects in the first petition may be laid aside in determining the sufficiency of the second petition. *Youree v. Ellis*, 1954-NMSC-002, 58 N.M. 30, 265 P.2d 354.

Right to contest annexation election. — Annexation is a special statutory proceeding and the right of contest and the jurisdiction to entertain it must be found in the Act itself. No such right is provided by the Act. *Hartley v. Board of Cnty. Comm'rs*, 1957-NMSC-028, 62 N.M. 281, 308 P.2d 994.

Sufficiency of findings of trial court. — Trial court findings, although phrased in disjunctive, were sufficiently clear to express intention to find the negative of each of the conditions relied on to support annexation. *Stone v. Crenshaw*, 1952-NMSC-093, 56 N.M. 707, 248 P.2d 822.

4-33-4. [Judges for election; form of ballots.]

At such election held hereunder there shall be three election judges named by the county commissioners. Ballots shall be printed and furnished by the county commissioners, which ballots shall read as follows:

"Shall the area described in the petition filed with the county commissioners of .... county be annexed to ..... county?

For annexation .....

Against annexation ..... "

History: 1941 Comp., § 15-3308, enacted by Laws 1947, ch. 196, § 4; 1953 Comp., § 15-33-4.

4-33-5. [Counting and canvassing of votes.]

The ballots cast shall be counted by the election officials and the results thereof certified to the county commissioners. Within three days after the election held as herein provided, the county commissioners shall meet and canvass the votes cast and if a majority of those voting shall have voted for the annexation, the area as described in the petition shall be annexed to the other county as provided in said petition.

History: 1941 Comp., § 15-3309, enacted by Laws 1947, ch. 196, § 5; 1953 Comp., § 15-33-5.

4-33-6. Copies of certificate of election; publication; delivery.

Immediately upon canvassing the results of the election held pursuant to Chapter 4, Article 33 NMSA 1978, the board of county commissioners shall cause a certified copy of its certificate of election to be published in a newspaper of general circulation in both counties and shall cause a copy to be delivered to the department of finance and administration, the taxation and revenue department and the county assessor of each county affected.

History: 1941 Comp., § 15-3310, enacted by Laws 1947, ch. 196, § 6; 1953 Comp., § 15-33-6; Laws 1995, ch. 12, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, added the section heading; inserted "held pursuant to Chapter 4, Article 33 NMSA 1978", substituted "department of finance and administration, the tax and revenue department" for "state tax commission", and made stylistic changes.

Right to contest annexation election. — Annexation is a special statutory proceeding and the right of contest and the jurisdiction to entertain it must be found in the Act itself. No such right is provided by the Act. *Hartley v. Board of Cnty. Comm'rs*, 1957-NMSC-028, 62 N.M. 281, 308 P.2d 994.

4-33-7. [Effective date of annexation; effect of outstanding indebtedness.]

If the proposition carries, the area described in the petition shall be and become a part of the county to which annexation was made on January 1 of the next odd-numbered year. Provided that whenever there shall be any outstanding indebtedness of the county or school district in which such area was originally located, the annexation shall not be complete for debt service purposes until such indebtedness is discharged in full.

History: 1941 Comp., § 15-3311, enacted by Laws 1947, ch. 196, § 7; 1953 Comp., § 15-33-7.

4-33-8. [Taking part of territory from existing county; indebtedness of existing county; taxation by new county.]

Whenever a part of the territory embraced within the limits of any county of this state having outstanding indebtedness, bonded or otherwise, is taken to form a new county or

to add to the area of a county already in existence, nothing in this article [4-33-8 and 4-33-9 NMSA 1978] shall be construed to release any of the citizens or property, subject at that time or which may thereafter become subject to taxation within the exterior boundaries of the territory so taken, unless such indebtedness has been otherwise provided for, and the board of county commissioners of such new county or of the county to which such territory has been added is hereby authorized and required to levy annually a tax which shall be assessed and collected by the assessor and collector at the time and in the manner that other taxes are assessed, levied and collected in said county upon all the citizens and residents and property subject or which may thereafter become subject to taxation within the limits of the territory so taken as the same legally existed and is established at the time the said territory is taken: provided, that said tax shall be uniform between the county gaining and the county losing the territory. The board of county commissioners of the county whose territory has been taken shall notify the board of county commissioners of such new county to which territory has been added of the amount of the levy and for the purposes above specified immediately upon the same being made; and no adjournment of either board of county commissioners, when convened for making the levies for the purposes of taxation, shall be had until the levy herein provided for in this article shall have been made.

History: Laws 1903, ch. 20, § 1; Code 1915, § 1119; C.S. 1929, § 33-3101; 1941 Comp., § 15-3101; 1953 Comp., § 15-33-8.

ANNOTATIONS

Compiler's notes. — The words "this article" were inserted by the compilers of the 1915 Code and referred to art. 26 of ch. 24 thereof. The provisions in art. 26 of ch. 24 of the 1915 Code are compiled as this section and 4-33-9 NMSA 1978.

Cross references. — For effect of outstanding indebtedness on annexation of a portion of one county to another, *see* 4-33-7 NMSA 1978.

Compulsion of contribution from former portion of county for payment of judgment against county. — Upon division of a county, it had the power to compel contribution from the segregated portions to pay a judgment against it in proportion to the taxable property received. *Territory ex rel. Coler v. Board of Cnty. Comm'rs*, 1907-NMSC-018, 14 N.M. 134, 89 P. 252, *aff'd*, 215 U.S. 296, 30 S. Ct. 111, 54 L. Ed. 202 (1909).

Issuance of mandamus to compel tax levy to satisfy judgment on bonds of divided county. — Mandamus could issue to compel the board of county commissioners of Santa Fe county to levy a tax to satisfy a judgment on county bonds, although portions of that county had since been annexed to two adjoining counties, since Santa Fe county could compel contribution from the other counties. In such case a demand was not necessary. *Comm'rs of Santa Fe Cnty. v. Territory of N.M. ex rel. Coler*, 215 U.S. 296, 30 S. Ct. 111, 54 L. Ed. 202 (1909).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 82.

4-33-9. [Disposition of taxes collected.]

All moneys collected by the collector of such new county or of the county to which said territory has been added pursuant to the levy and assessment provided for in Section 4-33-8 NMSA 1978 shall be paid to the treasurer and collector of the county from which territory was taken, on or before the fifteenth day of each month.

History: Laws 1903, ch. 20, § 2; Code 1915, § 1120; C.S. 1929, § 33-3102; 1941 Comp., § 15-3102; 1953 Comp., § 15-33-9.

4-33-10. [Taking entire county; indebtedness of old county; taxation.]

Should an entire county having an outstanding indebtedness, bonded or otherwise, be taken so as to form a new county or be absorbed into another county already existing, it is hereby made the duty of the board of county commissioners of such new county, or of the county into which such entire new county may have been absorbed, annually to levy a tax which shall be assessed and collected by the assessor and collector of said county at the time and in the manner that other taxes are levied, assessed and collected in said county, unless such indebtedness has been otherwise provided for, upon all citizens, residents and property now subject or which may herein be subject to taxation within the limits of the county so taken or absorbed as herein mentioned sufficient to pay the interest or principal or both of such outstanding indebtedness in the same manner and to the same extent as was or would be required of the county commissioners of the county so taken or absorbed had the same not been taken or absorbed.

History: Laws 1903, ch. 20, § 3; Code 1915, § 1121; C.S. 1929, § 33-3301; 1941 Comp., § 15-3103; 1953 Comp., § 15-33-10.

ANNOTATIONS

Compulsion of contribution from former portion of county for payment of judgment against county. — Where a county has been divided between two other counties, it may compel contribution from such counties for the payment of a judgment in proportion to the taxable property in each. *Comm'rs of Santa Fe Cnty. v. Territory of N.M. ex rel. Coler*, 215 U.S. 296, 30 S. Ct. 111, 54 L. Ed. 202 (1909).

4-33-11. [Retention of court jurisdiction on creation or change of county.]

The jurisdiction of the courts of this state to proceed to final determination or settlement of all civil and criminal actions and probate proceedings pending therein shall in no wise be affected by the creation of a new county or by any other change of the boundary lines of any county, and the court in which such action or proceeding is then pending shall retain full jurisdiction of such action or proceeding to final judgment or decree, subject only to change of venue or appeals, as provided by law.

History: Laws 1899, ch. 55, § 1; Code 1915, § 1122; C.S. 1929, § 33-3302; Laws 1939, ch. 76, § 1; 1941 Comp., § 15-3104; 1953 Comp., § 15-33-11.

4-33-12. [Transcription of certain records.]

That whenever a new county has been created out of any county or counties of the state of New Mexico it shall be the duty of the board of county commissioners of the new county to arrange within thirty days from the time said commissioners qualify, for the transcribing of all that portion of the records on file in the office of the probate clerk and recorder of the original county or counties which affect persons, real estate and personal property situate or being in the new county.

History: Laws 1899, ch. 70, § 1; Code 1915, § 1123; Laws 1917, ch. 106, § 1; C.S. 1929, § 33-3303; 1941 Comp., § 15-3105; 1953 Comp., § 15-33-12.

ANNOTATIONS

Cross references. — For payment for transcription of records, *see* 4-33-13, 4-33-16 NMSA 1978.

A photographic copy of a county record is a sufficient "transcript." 1921 Op. Att'y Gen. No. 21-2863 1/2.

4-33-13. [Cost of transcription; certificate.]

The cost of transcribing such records shall be paid by the new county so created and the board of county commissioners of such county are [is] hereby empowered and directed to provide for such transcribing of records, either by contract let to some competent and responsible person or persons or by hiring responsible and competent persons for such work but in no event shall the price paid therefor exceed the sum of ten (10) cents per hundred (100) words for transcribing deeds and such printed or written matter or the sum of five cents [($.05)] per square inch for the reproduction of maps, plats, etc. Provided, that no instrument shall be required to be transcribed for less than twenty-five (25) cents or any map or plat reproduced for less than one ($1.00) dollar. When the transcription of such records shall have been completed the person or persons making such transcription shall enter, upon the last page of such new records created or upon the face of such plat or maps reproduced, a certificate under oath, that the same are true and correct copies of the instruments as originally recorded.

History: Laws 1899, ch. 70, § 2; Code 1915, § 1124; Laws 1917, ch. 106, § 2; C.S. 1929, § 33-3304; 1941 Comp., § 15-3106; 1953 Comp., § 15-33-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For payments to county clerk for transcription of records, *see* 4-33-16 NMSA 1978.

4-33-14. [Transcription; effect; evidence.]

Upon the completion of the transcription of any such record in the manner provided in the two preceeding [preceding] sections [4-33-12, 4-33-13 NMSA 1978] and the delivery thereof to any such new county, the same shall be taken and deemed in law the equivalent of such original record and be of the same force and effect and impart notice equally with original records, and certified copies of the transcribed records or any part thereof made by the county clerk of said new county shall be receivable in evidence in the same manner certified copies of such original records would have been so received.

History: Laws 1899, ch. 70, § 3; Code 1915, § 1125; C.S. 1929, § 33-3305; 1941 Comp., § 15-3107; 1953 Comp., § 15-33-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted "county clerk" for "probate clerk and ex officio recorder."

4-33-15. [Transcriptions made prior to 1899 validated.]

Whenever any county created prior to March 16, 1899 has already caused records affecting the property therein to be made from the records of the county or counties, from which the same was created and certified to be such transcription by the county clerk making the same; such transcription shall have the same force and effect and certified copies or any part thereof shall be receivable in evidence as above provided for counties which shall have such transcription after March 16th, 1899.

History: Laws 1899, ch. 70, § 4; Code 1915, § 1126; C.S. 1929, § 33-3306; 1941 Comp., § 15-3108; 1953 Comp., § 15-33-15.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted "created prior to March 16, 1899" for "heretofore created by law," "affecting" for "effecting," "county clerk" for "probate clerk and ex officio recorder" and "shall have such transcription after March 16th, 1899" for "shall hereafter have such transcription."

4-33-16. [Payment for transcription; county clerk; deferred payments.]

The account of such county clerk shall be presented to the board of county commissioners of the new county, said account to be itemized and verified, showing his expenses and services for such work, which shall consist of money, if any, actually expended by him for books of record in which the transcripts had been entered and a charge at the rate of fifteen cents [($.15)] per one hundred words for copying, comparing, indexing and certifying the transcripts of records and he shall be allowed interest on all deferred payments at six percent per annum.

History: Laws 1907, ch. 28, § 2; Code 1915, § 1128; C.S. 1929, § 33-3308; 1941 Comp., § 15-3110; 1953 Comp., § 15-33-17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Since this section seems to apply only to the county clerk of a county out of which another has been created, it may not apply to a person engaged to transcribe such records under 4-33-13 NMSA 1978 who is not a clerk of such county.

The 1915 Code compilers substituted "county clerk" for "probate clerk and ex officio recorder."

Cross references. — For costs of transcription of records, *see* 4-33-13 NMSA 1978.

Compensation of deceased clerk. — Where probate clerk died in 1906 while in process of making transcripts of property records of old county for use of new county, the compensation to which his estate was entitled was fixed by C.L. 1897, § 1768 (superseded by 34-7-14, 34-7-15 NMSA 1978), and not by this section, which imposed additional duties which were not performed by the decedent. *Summers v. Board of Cnty. Comm'rs*, 1910-NMSC-025, 15 N.M. 376, 110 P. 509.

4-33-17. Annexation by resolution; notification of secretary of state; challenge.

If there are no qualified electors residing within the portion of a county proposed to be annexed by another county, resolutions shall be passed by the county commissions

of both affected counties approving a transfer of territory from one county to the other. The resolutions shall state the facts permitting such transfer by this method and a description of the territory to be transferred. The county clerks shall forward a copy of each resolution to the secretary of state. The county to which the territory is to be transferred shall place the territory within one or more of its voting precincts and so notify the secretary of state for compliance with election laws. Any aggrieved property owner or qualified elector within the annexed territory may file an action in the district court; if no action is filed within the ninety days, the transfer of the territory shall take place in accordance with the provisions of Section 4-33-7 NMSA 1978.

History: 1978 Comp., § 4-33-17, enacted by Laws 1985, ch. 64, § 1.

ARTICLE 34
Change of County Seats

4-34-1. [Petition; number of signers; calling of election; deposit in certain cases; deeds to property for buildings; prohibited removals; limitation on elections.]

Whenever the citizens of any county in this state shall present a petition to the board of county commissioners signed by qualified electors of said county equal in number to at least one-half the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to a vote of the qualified electors of said county at the next general election, if the same is to occur within one year of the time of presenting said petition, otherwise at a special election to be called for that purpose at any time within two months from the date of presenting said petition: provided, that whenever it is proposed to remove a county seat of any county which has public buildings consisting of a courthouse and jail, the original construction of which cost said county more than the sum of thirty thousand dollars ($30,000), such cost to be ascertained from the records of the board of county commissioners of said county, then before said board of commissioners shall make such order so submitting such proposition to remove the county seat, to the qualified voters of said county, [the board of commissioners] shall require from the petitioners or the persons interested in the removal of said county seat a deposit of forty thousand dollars ($40,000) in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construction of a courthouse and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal in counties which have no courthouses and jails, the cost to the county of which, as ascertained from the records of said county commissioners is less than said sum of thirty thousand dollars ($30,000) as aforesaid; but the same shall be required in all cases when it is proposed

to remove a county seat from a point situated on a railroad to another point also so situated: provided, further, that the city, town, village or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of said county seat shall cause to be conveyed to said county, by a good and perfect title, in the event that the proposition for the removal shall receive a majority of the votes cast at such election, sufficient suitable land to be accepted, if containing as much as three-fourths of an acre for courthouse, jail and other buildings for such county, the deed for which shall be filed with and accepted by the board of county commissioners before calling said election which deed to be redelivered to the grantor therein named in case said proposition to remove said county seat fails to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place, situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years.

History: Laws 1897, ch. 6, § 1; C.L. 1897, § 630; Laws 1909, ch. 80, § 2; Code 1915, § 1140; C.S. 1929, § 33-3501; 1941 Comp., § 15-3201; 1953 Comp., § 15-34-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — New Mexico Const., art. X, § 3 provides that where there are county buildings, three-fifths of the votes are necessary for removal of the county seat. It also limits removal elections to once in eight years.

Cross references. — For issuance of bonds for construction of buildings, *see* 4-34-3 NMSA 1978.

For acceptance of bonds and deeds to grounds in lieu of cash contribution, *see* 4-34-9 NMSA 1978.

For constitutional provisions for removal of county seats, *see* N.M. Const., art. X, § 3.

Constitutionality of article. — The intent of the legislature was to apply the law to all cities and counties similarly situated, having a present application to all cities within the provisions of the act and a future application to all cities in the territory attaining similar conditions. The necessity for the discrimination made in this act is apparent and fully justifies its enactment as general legislation which it purports to be. *Codlin v. Kohlhousen*, 1899-NMSC-008, 9 N.M. 565, 58 P. 499, appeal dismissed, 181 U.S. 151, 21 S. Ct. 584, 45 L. Ed. 793 (1901).

Validity. — This section is valid and constitutional. *Gray v. Taylor*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

This section was not special or local by reason of the 20-mile limitation. *Gray v. Taylor*, 1910-NMSC-069, 15 N.M. 742, 113 P. 588, *aff'd on rehearing*, 1911-NMSC-020, 16 N.M. 171, 113 P. 588, *aff'd*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

This section was not invalid for want of registration of voters at particular election. *Gray v. Taylor*, 1910-NMSC-069, 15 N.M. 742, 113 P. 588 (1910), *aff'd on rehearing*, 1911-NMSC-020, 16 N.M. 171, 113 P. 588, *aff'd*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

This section was held not invalid for absence of signature of governor and certificate by him as of the date when he received it; nor for the absence of signatures of presiding officers of the legislative council and house, the journals showing passage in both houses. *Gray v. Taylor*, 1910-NMSC-069, 15 N.M. 742, 113 P. 588, *aff'd on rehearing*, 1911-NMSC-020, 16 N.M. 171, 113 P. 588, *aff'd*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

Effect of constitutional provision. — The constitutional provision relative to removal of county seats "as now or hereafter provided by law" authorized election under this section. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Meaning of "general election". — Legislature in authorizing municipalities to change their names and change their county seats by favorable vote at "general election" following appropriate action of the governing body meant the biennial election for choosing county, state and federal officials and representatives. *Benson v. Williams*, 1952-NMSC-074, 56 N.M. 560, 246 P.2d 1046.

Contents of petition. — Petition to board of county commissioners to call an election to vote on proposition to remove county seat was held sufficient without requesting removal of county seat. *Gray v. Taylor*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

Determination of original cost of old building. — In determining original cost of old building, subsequent repairs should not be included. *Gray v. Taylor*, 1910-NMSC-069, 15 N.M. 742, 113 P. 588 (1910), *aff'd on rehearing*, 1911-NMSC-020, 16 N.M. 171, 113 P. 588, *aff'd*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 32, 33.

Prohibition to restrain action of administrative officers as to relocation of county seat, 115 A.L.R. 33, 159 A.L.R. 627.

20 C.J.S. Counties §§ 49 to 62.

4-34-2. [Notice of election; ballots; canvassing.]

The county commissioners shall cause a certified copy of such order to be published in some newspaper of general circulation published in said county for four consecutive weeks immediately prior to such election, and by handbills posted up at three of the most public places in each precinct at least four weeks prior to such election.

The ballots to be voted at such election shall have printed thereon the words: For county seat . . . . . ., with the name of the place for which the voter desires to cast his ballot either printed or written thereon. Such ballots shall be canvassed as in elections for county officers and the returns of such election shall be certified by the county clerk to the secretary of state together with a certified copy of the order of the county commissioners and a sworn certificate of the publication thereof, to be filed in the office of said secretary.

History: Laws 1897, ch. 6, § 2; C.L. 1897, § 631; Code 1915, § 1141; C.S. 1929, § 33-3502; 1941 Comp., § 15-3202; 1953 Comp., § 15-34-2.

ANNOTATIONS

Cross references. — For canvassing of ballots, *see* 1-13-1 NMSA 1978 et seq.

For publication of notice, *see* 14-11-1 NMSA 1978 et seq.

Form of ballot. — Form of ballots in county seat removal election was held sufficient where ballot provided for in order was "For county seat . . . ." *Gray v. Taylor*, 1910-NMSC-069, 15 N.M. 742, 113 P. 588 (1910), *aff'd on rehearing*, 1911-NMSC-020, 16 N.M. 171, 113 P. 588, *aff'd*, 227 U.S. 51, 33 S. Ct. 199, 57 L. Ed. 413 (1913).

4-34-3. Bonds for new building; bids.

Should a majority of the votes at such election be cast in favor of the place named in the petition, the county seat shall be removed to that place, and it shall be the duty of the board of county commissioners, as soon as the citizens of that place have delivered the deed and paid over the sum of money mentioned in the written guaranty provided for in Section 4-34-1 NMSA 1978, to cause to be erected upon the site so provided a courthouse and jail to cost not to exceed three times the amount paid by the citizens, including said amount.

For the purpose of such construction, the board of county commissioners is hereby authorized to issue bonds of that county in such form as the board of county commissioners shall determine, for such time and bearing such rate of interest as it may deem best, such bonds to be sold at, above or below par as permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], or taken at par in payment for such construction. The contract for the construction of such buildings shall be let to the lowest responsible bidder after advertising the time and place of opening sealed bids for the same in a newspaper published in the county once a week for four consecutive weeks,

such contractor to furnish a good and sufficient bond for the completion of such buildings according to the plans and specifications.

History: Laws 1897, ch. 6, § 3; C.L. 1897, § 632; Code 1915, § 1142; C.S. 1929, § 33-3503; 1941 Comp., § 15-3203; 1953 Comp., § 15-34-3; Laws 1983, ch. 265, § 15.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For public works contracts, *see* 13-4-1 NMSA 1978 et seq.

For publication of notice, *see* 14-11-1 NMSA 1978 et seq.

Vote required. — Mere irregularities in the conduct of an election will not render an election void in the absence of a statute so providing. The legislature may, however, expressly provide that certain omissions shall invalidate the vote, in which event no alternative is left to the court. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Prerequisites to bond issue. — Bonds for construction of buildings in removal of county seat may not be issued until county commissioners have complied with constitutional requirements. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.

4-34-4. [Removal to new county seat; neglect of officer; misdemeanor; penalty.]

So soon as convenient buildings can be had at such new county seat the courts for said county shall be held therein, and so soon as the new courthouse and jail shall have been completed, the county commissioners shall cause all the county records, county offices and property pertaining thereto, and all county prisoners, to be removed to the new county seat. Any county commissioner or other county officer who shall neglect or refuse to carry out any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than five hundred dollars [($500)] nor more than one thousand dollars [($1,000)], which fine may be collected by a suit on his official bond and shall be paid over to the county treasurer for the general county fund.

History: Laws 1897, ch. 6, § 4; C.L. 1897, § 633; Code 1915, § 1143; C.S. 1929, § 33-3504; 1941 Comp., § 15-3204; 1953 Comp., § 15-34-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For requirement that county surveyor keep office at county seat, *see* 4-42-4 NMSA 1978.

For requirement that county officers keep offices at county seat, *see* 4-44-34 NMSA 1978.

For requirement that clerk of probate court have office at county seat, *see* 34-7-4 NMSA 1978.

Section not repealed by 4-44-34 NMSA 1978. — This section was not made obsolete by the predecessor of current 4-44-34 NMSA 1978, amending the law relating to the duty of officers to keep office at the county seat. *Territory ex rel. White v. Riggle*, 1911-NMSC-074, 16 N.M. 713, 120 P. 318.

When removal to new county seat required. — In case of removal to a new county seat, officers are not required to remove offices and books before a courthouse and jail are completed. *Territory ex rel. White v. Riggle*, 1911-NMSC-074, 16 N.M. 713, 120 P. 318.

A courthouse must be built on property within the county seat. 1967 Op. Att'y Gen. No. 67-61.

What materials need to be moved. — Where convenient buildings have been obtained at the new county seat for the purpose of holding court, the district court may and shall convene its sessions therein, but none of the other county offices, records or prisoners shall be removed to the new county seat until the courthouse and jail are completed, and this includes the probate office. 1936 Op. Att'y Gen. 36-1472.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Officer's failure or refusal to reside at county seat as neglect of duty punishable as offense, 134 A.L.R. 1256.

4-34-5. [Notice of establishment of new county seat; pending actions and proceedings.]

When a new county seat shall have been established in accordance with this article the county commissioners shall cause due notice thereof to be published in some newspaper of general circulation published in said county for four consecutive weeks, and all suits, actions, process, prosecutions and proceedings already commenced or that may be commenced shall proceed to final judgment and execution at such new county seat.

History: Laws 1897, ch. 6, § 5; C.L. 1897, § 634; Code 1915, § 1144; C.S. 1929, § 33-3505; 1941 Comp., § 15-3205; 1953 Comp., § 15-34-5.

ANNOTATIONS

Compiler's notes. — The words "this article" were substituted for the words "this act" by the 1915 Code compilers and referred to art. 29 of ch. 24 of the 1915 Code compiled herein as 4-34-1 to 4-34-10 NMSA 1978. The words "this act" referred to Laws 1897, ch. 6, compiled herein as 4-34-1 to 4-34-5 NMSA 1978.

Cross references. — For publication of notice, *see* 14-11-1 NMSA 1978 et seq.

4-34-6. [City cooperating in erection of buildings; bonds; taxation.]

Hereafter when the county seat of any county in this state shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a courthouse and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings, not to exceed in amount three percent upon the total value of all the taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: provided, the total indebtedness of such city, including such bonds, shall not exceed four per centum of the total value of all taxable property within the limits of such city according to such last preceding general assessment.

Such bonds may be payable in such time and manner and with such rate of interest not to exceed six per centum per annum as such council shall prescribe; and it shall be the duty of such council, or the county commissioners of said county, as the case may be, to cause to be levied and collected in the manner and at the time of the levying and collecting other taxes each year and until such bonds and interest thereon shall be fully paid, a special tax upon all taxable property in the said city sufficient in amount to meet the interest and create a sinking fund to pay said bonds at maturity in accordance with the provisions thereof.

History: Laws 1897, ch. 33, § 1; C.L. 1897, § 635; Code 1915, § 1145; C.S. 1929, § 33-3506; 1941 Comp., § 15-3206; 1953 Comp., § 15-34-6.

ANNOTATIONS

Cross references. — For joint City-County Building Law, *see* 5-5-1 NMSA 1978 et seq.

4-34-7. [City cooperating; amount of bonds required; city to have perpetual use.]

The county commissioners of such county are hereby authorized to join with the council of such city in the construction of such building: provided, the par value of the

bonds so issued and contributed by such city shall equal the cost of the grounds for such building. The [, the] amount of the cash contribution provided by law to be made by the city to which the county seat shall be removed, and a sufficient sum in addition thereto to cover the costs of the additional space to be used for city purposes; and upon completion of said building to give such city a lease for the perpetual use of such portion of said building as it may be entitled to; and also to arrange for the keeping of city prisoners in said jail.

History: Laws 1897, ch. 33, § 2; C.L. 1897, § 636; Code 1915, § 1146; C.S. 1929, § 33-3507; 1941 Comp., § 15-3207; 1953 Comp., § 15-34-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For requirement of contribution by city to which county seat to be removed, *see* 4-34-1 NMSA 1978.

4-34-8. [City cooperating; sale of bonds; construction by commissioners; maintenance.]

Such bonds shall be sold at par or taken at par in payment for grounds or building, and such bonds shall be delivered to the county commissioners or to such person as they may designate to have charge of the construction and payment for such building. The contract for such construction shall be let by the county commissioners, and said grounds and building shall belong to the county, and the county shall have the right to charge and collect from such city its proper share of the cost of maintenance, repair and insurance thereof.

History: Laws 1897, ch. 33, § 3; C.L. 1897, § 637; Code 1915, § 1147; C.S. 1929, § 33-3508; 1941 Comp., § 15-3208; 1953 Comp., § 15-34-8.

ANNOTATIONS

Cross references. — For public works contracts, *see* 13-4-1 NMSA 1978 et seq.

4-34-9. [City cooperating; bonds and deeds may be in lieu of cash contribution.]

Such county commissioners shall receive and accept bonds of such city issued according to this article, together with an agreement duly executed by the owners of suitable grounds for said public building, to execute a good and sufficient deed conveying the same to said county in exchange for a certain amount of said bonds in

lieu of the cash contribution and guaranty provided by law in case of removal of county seats.

History: Laws 1897, ch. 33, § 4; C.L. 1897, § 638; Code 1915, § 1148; C.S. 1929, § 33-3509; 1941 Comp., § 15-3209; 1953 Comp., § 15-34-9.

ANNOTATIONS

Compiler's notes. — The words "this article" were substituted for the words "this act" by the 1915 Code compilers and referred to art. 29 of ch. 24 of the 1915 Code compiled herein as 4-34-1 to 4-34-10 NMSA 1978. The words "this act" referred to Laws 1897, ch. 33, compiled herein as 4-34-6 to 4-34-10 NMSA 1978.

Cross references. — For requirement of contribution by city to which county seat to be removed, *see* 4-34-1 NMSA 1978.

4-34-10. [Tax levy for payment of bonds.]

In case of a removal of the county seat as provided by law and the issue of bonds by any county for the purpose of constructing county buildings, it shall be the duty of the county commissioners of such county to cause to be levied and collected at the time and in the manner of levying and collecting other taxes, each year until said bonds and the interest thereon are fully paid, a special tax upon all taxable property within said county sufficient to pay the interest on such bonds and to create a sinking fund to retire said bonds at maturity in accordance with the provisions thereof.

History: Laws 1897, ch. 33, § 5; C.L. 1897, § 639; Code 1915, § 1149; C.S. 1929, § 33-3510; 1941 Comp., § 15-3210; 1953 Comp., § 15-34-10.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

ARTICLE 35
Determination of Boundary Disputes

4-35-1. Boundaries; dispute; commission to settle.

Whenever the location of the boundary line between two or more counties is in dispute, the controversy shall be settled by a boundary commission consisting of the chair of the board of county commissioners and a licensed professional surveyor appointed by the board of county commissioners of each of the counties affected by the dispute and the district attorney of the district in which the counties are situate. If such

counties are in more than one judicial district, the district attorney of each district shall be a member of the commission.

History: Laws 1912, ch. 45, § 1; Code 1915, § 1174; C.S. 1929, § 33-4003; 1941 Comp., § 15-3301; 1953 Comp., § 15-35-1; 2011, ch. 56, § 2.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, required that licensed professional surveyors be appointed to the boundary commission.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 28.

Right of county as to challenging acts or proceedings by which its boundaries are affected, 86 A.L.R. 1373.

20 C.J.S. Counties § 16.

4-35-2. [Survey; plat and field notes.]

It shall be the duty of such boundary commission to cause a joint survey to be made of such boundary line according to the description thereof in the statutes and to have such line plainly marked by suitable monuments set at convenient intervals and to cause a plat and field notes of such survey to be filed in the office of the county clerk of each of said counties. Such plat and field notes shall be signed and certified by the members of the boundary commission as the official plat and field notes of said boundary line as located by the commission.

History: Laws 1912, ch. 45, § 2; Code 1915, § 1175; C.S. 1929, § 33-4004; 1941 Comp., § 15-3302; 1953 Comp., § 15-35-2.

ANNOTATIONS

Cross references. — For descriptions of county boundaries, *see* 4-1-1 NMSA 1978 et seq.

For survey for establishment of county boundaries, *see* 4-42-9 NMSA 1978.

4-35-3. [District attorney; duties; payment of expenses.]

The district attorney or district attorneys, as the case may be, shall call a meeting of the commission to arrange for making such joint survey.

The officers serving on such boundary commission shall receive no additional compensation for such services. The expense incurred by the commission for

transportation, subsistence and the necessary assistants and employes [employees] shall be borne share and share alike by the several counties interested, to be paid upon warrants drawn by the several boards of county commissioners.

History: Laws 1912, ch. 45, § 3; Code 1915, § 1176; C.S. 1929, § 33-4005; 1941 Comp., § 15-3303; 1953 Comp., § 15-35-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-35-4. Boundary commission; inability to locate line[; procedure for judicial determination].

If for any reason the joint boundary commission be unable to locate the boundary line according to the description thereof in the statutes, the commission shall certify such disagreement to the attorney general of the state of New Mexico, and it shall thereupon be the duty of the attorney general of the state of New Mexico to forthwith file petition in the district court of the judicial district wherein the two counties disagreeing as to the boundary are located, or, if said counties are in two judicial districts, said petition shall be filed in either of said judicial districts as may be determined by the said attorney general of the state of New Mexico; such petition shall accurately describe by metes and bounds or by section, township and range, the area in controversy. The judge of the district court in which such petition is filed shall thereupon enter an order fixing a time and place for hearing upon said petition, and cause such notice thereof to be given to interested parties as the court in such order may prescribe. Upon such hearing the court shall receive and hear such competent evidence as may be material to prove the true location of such county line as fixed by the statutes of New Mexico; and the court shall from such evidence determine and fix by judicial decree the boundary line between the two counties, as it may find the same to exist under the laws of the state of New Mexico and shall assess the costs to the parties as to the court may seem just and equitable. The board of county commissioners of either county interested, or any taxpayer of the district or area involved in the controversy may appear at said hearing and introduce evidence as to the true location of such boundary line. In the event such decree shall establish a boundary line different from the line theretofore recognized by either county in the matter of assessment and collection of taxes, or by individual owning real estate in the area thus in controversy in the matter of the filing or recording of instruments of writing affecting such real estate, such decree shall not affect taxes or property already assessed for taxes at the time of the rendition of such decree, and the record of instruments affecting such real estate made in good faith in either county before the rendition of said decree shall not be affected thereby, but such filing or recording of such instruments shall be legal, and have the same effect as if such instruments had been filed or recorded in the proper county as determined by the decree so establishing such boundary line.

History: Laws 1912, ch. 45, § 4; Code 1915, § 1177; C.S. 1929, § 33-4006; Laws 1939, ch. 160, § 1; 1941 Comp., § 15-3304; 1953 Comp., § 15-35-4.

ANNOTATIONS

Bracketed material. — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

Cross references. — For descriptions of county boundaries, *see* 4-1-1 NMSA 1978 et seq.

ARTICLE 36
Miscellaneous Powers of Counties

4-36-1. [County public library;] secretary of state to furnish publications.

After a public library is established, the secretary of state shall furnish to the public library a copy of any work published under his authority.

History: 1953 Comp., § 15-36-1.2, enacted by Laws 1965, ch. 87, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

4-36-2. County libraries; establishment; contract services; gifts and bequests.

A. A county may establish and maintain a free public library under proper regulation and may receive, hold and dispose of a gift, donation, devise or bequest that is made to the county for the purpose of establishing, increasing or improving the library. The governing body may apply the use, profit, proceeds, interest and rents accruing from such property in any manner that will best improve the library and its use.

B. A county establishing a public library may enter into contracts and joint powers agreements with other counties, municipalities, local school boards, post-secondary educational institutions and the library division of the office of cultural affairs for the furnishing of regional library services.

History: 1953 Comp., § 15-36-1.3, enacted by Laws 1965, ch. 87, § 3; 1977, ch. 246, § 46; 1980, ch. 151, § 2; 1999, ch. 20, § 2.

ANNOTATIONS

Cross references. — For state library commission, *see* Chapter 18, Article 2 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted the present catchline for the former catchline which read "Contract with other counties"; deleted former Subsections A(1) through A(3) and B relating to contracting with one or more counties and the library division of the office of cultural affairs for library services, contracting for the establishment of a regional library serving more than one county, appropriating money for the support of a regional library or library services, and providing that any regional library so established must first be approved by the state librarian; added the language beginning "establish and maintain" to the end of Subsection A; and added Subsection B.

4-36-3. County power to act as agent; purpose.

A county may act as an agent of the United States government for the expenditure of money authorized by any act of the United States congress.

History: 1953 Comp., § 15-36-1.4, enacted by Laws 1975, ch. 137, § 1.

ANNOTATIONS

County receipt of wastewater system construction grants. — There are no constitutional or statutory limitations which would prevent counties from being eligible to receive wastewater system construction grants from the environmental protection agency. 1978 Op. Att'y Gen. No. 78-15.

4-36-4. [County property.]

Any real or personal property heretofore or which may hereafter be transferred to any county shall be deemed the property of such county.

History: Laws 1876, ch. 1, § 2; C.L. 1884, § 333; C.L. 1897, § 652; Code 1915, § 1151; C.S. 1929, § 33-3602; 1941 Comp., § 15-3402; 1953 Comp., § 15-36-2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 491 to 499.

Absence of specific statutory authority, power of governing body of county to dispose of county real estate in, 21 A.L.R.2d 722.

Public utility plant or interest therein, power of county to sell, lease or mortgage, 61 A.L.R.2d 595.

20 C.J.S. Counties §§ 143 to 149.

4-36-5. Firefighting; county may purchase from municipalities.

A. Counties may contract with municipalities or individuals for purchase of firefighting services for the county or certain areas in a county where such services are needed when, in the opinion of the board of county commissioners, such services may be more economically provided by such contracts than maintaining firefighting services by the county.

B. The contract price shall be based upon the cost of the services, the depreciation of the equipment and the cost of insurance necessary or desirable to protect the municipality from loss or claim during the time it is engaged in extraterritorial firefighting under a contract with the county. Subject to the agreement between the municipality and the county, the contract may provide for annual, monthly or actual-use payments.

History: 1953 Comp., § 15-36-40, enacted by Laws 1967, ch. 115, § 1; 2013, ch. 78, § 1.

ANNOTATIONS

Cross references. — For municipal powers for fire prevention and protection, *see* 3-18-11 NMSA 1978.

For municipal fire-fighting facilities, *see* 3-35-1 NMSA 1978 et seq.

For the Fire Protection Fund Law, *see* 59A-53-1 NMSA 1978 et seq.

The 2013 amendment, effective June 14, 2013, authorized counties to contract with individuals for firefighting services; and in Subsection A, after "municipalities", added "or individuals".

4-36-6. Parks; county government acquisition.

No county government shall acquire property within the exterior boundaries of any other local government for park purposes unless it has received the prior approval for such acquisition for such purposes from the governing body of the local government within whose boundaries the property is situated.

History: 1953 Comp., § 15-36-42, enacted by Laws 1973, ch. 368, § 1.

ANNOTATIONS

Cross references. — For powers of municipalities as to parks generally, *see* 3-18-18 NMSA 1978.

For construction of parks and recreational facilities, *see* 3-18-19 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability to one struck by golf ball, 53 A.L.R.4th 282.

4-36-7. Foreign trade zones.

The board of county commissioners of any county, pursuant to the federal Foreign Trade Zones Act, as may be amended from time to time, and regulations adopted pursuant thereto, may:

A. with the prior written approval of the economic development department, apply for and accept a grant of authority to establish, operate and maintain a foreign trade zone;

B. provide such facilities and services as may be necessary or desirable in establishing a foreign trade zone; and

C. exercise such other powers as may be necessary or desirable to establish, operate and maintain a foreign trade zone.

History: Laws 1991, ch. 154, § 1.

ANNOTATIONS

Cross references. — For municipal foreign-trade zone regulations, *see* 3-18-29 NMSA 1978.

For the Community Development Incentive Act, *see* Chapter 3, Article 64 NMSA 1978.

For the federal Foreign Trade Zones Act, *see* 19 U.S.C.S. § 81a et seq.

4-36-8. Class B county; sewer and water utility.

A. Any class B county of the state having a population of more than ninety-eight thousand but less than one hundred thousand, according to the last federal decennial census, and having a net taxable value for rate-setting purposes for the 1991 property tax year of more than one billion four hundred million dollars ($1,400,000,000) but less than one billion five hundred million dollars ($1,500,000,000) shall be permitted to purchase, own, operate and sell sewer and water utilities. Such class B counties shall not purchase, own, operate or sell any other utilities.

B. In the operation of a sewer or water utility by a class B county, the county shall set just and reasonable rates based on cost of service.

History: 1978 Comp., § 4-36-8, enacted by Laws 1993, ch. 308, § 1.

4-36-9. Reimbursement for expenses attendant to temporary detention of a child; reimbursement for ancillary services; civil action.

A. When a child is detained in a facility for the temporary detention of children that is administered or financed by a county and the child subsequently is found to be delinquent or enters into a consent decree, the board of county commissioners may seek reimbursement from the child's parent, guardian or legal custodian for the amount of money expended by the county for the care and support of the child during his period of detention. The child support guidelines set forth in Section 40-4-11.1 NMSA 1978 may be used to calculate a reasonable payment.

B. When a child is detained in a facility for the temporary detention of children that is administered or financed by the county and the child subsequently is found to be delinquent or enters into a consent decree, the board of county commissioners may seek reimbursement from the child's parent, guardian or legal custodian for the amount of money expended by the county for the provision of ancillary services to the child. Ancillary services include psychiatric, psychological or medical services provided by the county to the child. The child support guidelines set forth in Section 40-4-11.1 NMSA 1978 may be used for the purpose of determining the amount of money owed by a parent, guardian or legal custodian for the provision of ancillary services to that parent's child.

C. When a parent, guardian or legal custodian refuses or fails to reimburse a county for the expenses incurred by a county pursuant to Subsection A or B of this section, the board of county commissioners may initiate a civil action against the parent, guardian or legal custodian to recover the amount of money owed to the county.

History: Laws 1993, ch. 243, § 1.

4-36-10. Class A county; sewer and water utility; operation authorization.

A. A class A county having a population of more than one hundred thirty-five thousand but less than four hundred eighty-one thousand according to the last federal decennial census, and having a 1993 net taxable value of property, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of at least one billion one hundred thirty-one million dollars ($1,131,000,000) but not more than five billion two hundred million dollars ($5,200,000,000) may establish, purchase, own and operate sewer and water utilities and sell water and sewer utility service.

B. In the operation of a sewer or water utility, the county shall set just and reasonable rates based on its cost of service.

History: 1978 Comp., § 4-36-10, enacted by Laws 1996, ch. 83, § 1.

4-36-11. Findings; declaration of disaster; powers of county commissions.

A. The legislature finds that:

(1) numerous citizens and government officials in the state of New Mexico have repeatedly petitioned the United States forest service both collectively and individually at public meetings, by correspondence and by telephone to request that the forest service take appropriate action to remove or eliminate the conditions that have created a state of emergency caused by a present risk to the lives and property of citizens in and adjacent to national forests within New Mexico;

(2) all the petitions have for all practical purposes been either ignored or discounted by the United States forest service resulting only in what can be reasonably characterized as inaction on the part of the forest service to appropriately reduce, if not remove, the risk to the lives and property of the citizens of New Mexico;

(3) because the United States forest service has failed to exercise its responsibilities as a sovereign to protect the lives and property of the citizens of New Mexico and because it is a fundamental principle under the laws of any just society that the persistent failure of a sovereign to fulfill such obligations constitutes grounds for the forfeiture of jurisdictional supremacy, such a forfeiture must hereby be recognized and declared; and

(4) because of recognition and declaration of this forfeiture of jurisdictional supremacy, a jurisdictional vacuum has been created that requires the state of New Mexico to acknowledge its obligations as a sovereign power to protect the lives and property of its citizens and consequently to authorize any action it presently deems necessary to fill the vacuum created by the federal government by assuming jurisdiction to reduce to acceptable levels, if not remove, the threat of catastrophic fires posed by present conditions in national forests within its borders.

B. The legislature declares a disaster within those areas of the national forests of New Mexico that suffered severe fire damage, as determined by the local board of county commissioners, where large amounts of forest undergrowth have created the potential for damaging fires in the future. The legislature also declares that the disaster is of such magnitude that the police power of the state should be exercised to the extent necessary to provide the resources and services that will end the disaster and mitigate its effects.

C. After consulting with the state forester and the regional United States forester, taking surveys, holding those public hearings as may be necessary and developing a plan to mitigate the effects of the disaster, a board of county commissioners for a county in which a disaster has been declared pursuant to Subsection A of this section may take such actions as are necessary to clear and thin undergrowth and to remove or log fire-damaged trees within the area of the disaster. A county may enter into an agreement with a contractor, licensee or other agent to carry out the purposes of this subsection.

History: Laws 2001, ch. 7, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2001, ch. 7, § 2 contained an emergency clause and was approved March 8, 2001.

Section preempted by federal law. — Where the Otero county board of county commissioners (board), pursuant to this section, enacted a plan to reduce hazardous vegetation in the Lincoln national forest by extracting standing live and dead trees and wood materials for the purpose of reducing the fire danger in the area, and where the United States sued the board and the state of New Mexico in federal court seeking a declaration that the resolution and its enabling statute were preempted by conflicting federal law, the district court did not err in granting summary judgment to the United States because although state and local governments can ordinarily exercise their police powers over federal land within their boundaries, those powers must yield under the Supremacy Clause when they conflict with federal law regarding conduct on federal land. The test of whether both federal and state regulations may operate, or the state regulation must give way under the Supremacy Clause is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives. *United States v. Bd. of Cnty. Commiss'rs of the Cnty. of Otero*, 843 F.3d 1208 (10th Cir. 2016).

ARTICLE 37
County Ordinances

4-37-1. Counties; powers; ordinances.

All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Included in this grant of powers to the counties are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. The board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties.

History: 1953 Comp., § 15-36A-1, enacted by Laws 1975, ch. 312, § 1.

ANNOTATIONS

Cross references. — For municipal ordinances, *see* 3-17-1 NMSA 1978 et seq.

For powers of municipalities, *see* 3-18-1 NMSA 1978 et seq.

For zoning regulations, *see* 3-21-1 NMSA 1978 et seq.

Powers. — A county is a political subdivision of the state and possesses only such powers as are expressly granted to it by the legislature, together with those necessarily implied to implement those express powers. *El Dorado at Santa Fe, Inc. v. Board of Cnty. Comm'rs of Santa Fe Cnty*., 1976-NMSC-029, 89 N.M. 313, 551 P.2d 1360.

Construction of grants of authority generally. — It is not necessary that grant of powers to counties or other municipal corporations contain a specification of each particular act to be done, but it is sufficient if the words used are sufficiently comprehensive to include the proposed acts; an express authority might be general as well as particular. *Agua Pura Co. v. Mayor of Las Vegas*, 1900-NMSC-002, 10 N.M. 6, 60 P. 208.

Police powers. — The legislature has conferred police powers to counties through Section 4-37-1 NMSA 1978. *Brazos Land, Inc. v. Board of Cnty. Comm'rs*, 1993-NMCA-013, 115 N.M. 168, 848 P.2d 1095.

General police power and zoning ordinances. — Counties have statutory authority to enact general police power and zoning ordinances; however, enactment procedures and regulatory powers differ between the two. *Board of Cnty. Comm'rs v. City of Las Vegas*, 1980-NMSC-137, 95 N.M. 387, 622 P.2d 695.

Preemption of local ordinances. — Under New Mexico law, there are three ways a state statute can preempt a local ordinance: 1) expressly, because the statute contains language stating that it preempts local ordinances, 2) impliedly, because the ordinance and the state statute conflict, or 3) impliedly, because the statute demonstrates an intent to occupy the entire field. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

In passing the Forest Conservation Act, 68-2-1 NMSA 1978 et seq., the legislature left room for concurrent jurisdiction over local forestry issues; thus, the act does not impliedly preempt a county ordinance, dealing, *inter alia*, with economic development, local employment, and hours of operation, by occupying the entire field of regulation relating to timber harvesting in New Mexico. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

Under New Mexico law, an ordinance is not necessarily invalid because it provides for greater restrictions than state law; rather, the test is whether the ordinance permits an act the general law prohibits or prohibits an act the general law permits. *Rancho Lobo, Ltd. v. Devargas*, 303 F.3d 1195 (10th Cir. 2002), cert. denied, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003).

Enforcement of zoning ordinances. — Although this section acknowledges that counties are granted the same powers granted to municipalities except for those powers that are inconsistent with the statutory or constitutional limitations placed on counties, the statute in no way provides an express grant of authority to enforce local zoning ordinances on state land. *County of Santa Fe v. Milagro Wireless, LLC*, 2001-NMCA-070, 130 N.M. 771, 32 P.3d 214.

Leasing road equipment. — A county has the power to lease road equipment as a power included in the right to purchase. *Allstate Leasing Corp. v. Board of County Comm'rs*, 450 F.2d 26 (10th Cir. 1971).

Road construction and repair. — Counties possess the authority to construct or repair county roads within their boundaries. *Bolton v. Board of Cnty. Comm'rs*, 1994-NMCA-167, 119 N.M. 355, 890 P.2d 808, cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

Removal of offices, property and prisoners to new county seat. — A county is a quasi-municipal corporation and among its definite powers is the power, coupled with a mandatory duty, to remove to new county seat, when properly selected, all county offices and property, and all county prisoners, if courthouse and jail are completed. *Orchard v. Board of Comm'rs*, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41.

Power to adopt traffic ordinances. — Based on express provisions in the state Motor Vehicle Code [66-1-1 NMSA 1978] governing local authorities and the corresponding powers of counties and municipalities, a county has the statutory authority to adopt local traffic ordinances that are not inconsistent with the laws of the state. *Board of Comm'rs v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672.

Ordinance conflicted with free range of livestock management. — Where the county filed a criminal complaint against defendant for allowing defendant's cattle to run at large in violation of a county ordinance that made it unlawful for a person to allow or permit an animal to run at large; and the land in question was not within the boundary of a municipality, a conservancy district, or a military base, the metropolitan court properly dismissed the criminal complaint because the ordinance conflicted with New Mexico's free range or "fence out" approach to livestock management as expressed in Subsection C of Section 66-7-363 NMSA 1978 and Section 77-16-1 NMSA 1978, and the county did not have general authority to disallow the free running of livestock in unincorporated or open areas of their jurisdiction. *Bernalillo Bd. of Co. Comm's v. Benavidez*, 2013-NMCA-015, 292 P.3d 482, cert. denied, 2012-NMCERT-012.

Merit system and collective bargaining. — A board of county commissioners has power to adopt a merit system for, and collectively bargain with, county employees. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Authority to charge franchise fee. — A county board of commissioners may enter into franchise agreements with utility companies and impose a franchise fee in exchange for the county's reasonable expenses incurred in granting the franchise and for the utilities' use of public highways, streets and alleys under the franchise agreements. 2014 Op. Att'y Gen. No. 14-01.

Powers generally. — A county is merely a governmental unit of the state and possesses only such powers as are expressly or impliedly conferred upon it by constitutional provisions or legislative enactments. 1969 Op. Att'y Gen. No. 69-103.

Consolidation of counties. — Two or more counties possess the authority to consolidate in accordance with 3-5-1 NMSA 1978. The counties, however, must be contiguous. 1987 Op. Att'y Gen. No. 87-55.

The legislature would be prohibited from passing a special law that would in effect or specifically abolish a county. When two or more counties consolidate under a general statute, however, they effectively are abolished, and a new entity would emerge. 1987 Op. Att'y Gen. No. 87-55.

The laws providing for annexation or consolidation of portions of counties provide no "priorities" among contiguous counties. The petition must accurately set out the boundaries of the county proposed to be annexed and must state to which county the residents desire to be annexed. The resolutions providing for consolidation must also include within their terms the counties to be consolidated. 1987 Op. Att'y Gen. No. 87-55.

No authority to call for referendum. — In the absence of a constitutional reservation of the right of the people to hold referendum on county ordinances, and in the absence of a specific statutory authority requiring a referendum on ordinances, there is no authority for a county to call a voluntary referendum. Should such a referendum be held, it would not, regardless of its outcome, affect the adoption or validity of the ordinance. 1979 Op. Att'y Gen. No. 79-35.

County's proposed "right to work" ordinance would likely exceed the scope of authority granted to the county by the legislature. — In general, a New Mexico county possesses only such powers as are expressly granted to it by the legislature, together with those necessarily implied to implement those express powers, and where the legislature has granted counties the authority to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants, such a grant of authority does not encompass or include the authority to adopt an ordinance which regulates contracts between employees, employers, and unions, and therefore, where Sandoval county has

proposed an ordinance that is intended to provide that no employee covered by the federal National Labor Relations Act need join or pay dues to a union, or refrain from joining a union, as a condition of employment, the proposed ordinance would exceed the scope of powers granted by the legislature. *Sandoval County Right to Work Ordinance* (1/18/18), Att'y Gen. Adv. Ltr. 2018-03.

Federal law preempts county's proposed "right to work" ordinance. — The federal National Labor Relations Act (NLRA) regulates private sector employment, governs matters of collective bargaining, and preempts, or precludes, state and other non-federal laws that attempt to regulate areas covered by the NLRA, and therefore, where Sandoval county has proposed an ordinance that is intended to provide that no employee covered by the federal NLRA need join or pay dues to a union, or refrain from joining a union, as a condition of employment, the proposed ordinance is preempted by the NLRA and is unenforceable. *Sandoval County Right to Work Ordinance* (1/18/18), Att'y Gen. Adv. Ltr. 2018-03.

Cooperation with cities and federal government. — A county and a city can enter into an agreement to cooperate in sponsoring a flood control project, and counties and cities can cooperate with the federal government and seek aid under the Watershed Protection and Flood Prevention Act (16 U.S.C. § 1001 et seq.). 1963 Op. Att'y Gen. No. 63-82.

Power to carry out proprietary functions. — Under the general rule, the grant to counties of the authority to carry out normally proprietary functions may not be implied under any statute. 1969 Op. Att'y Gen. No. 69-103.

Operation of housing project. — The county commissioners are invested with broad powers regarding authority to do acts in the interest of the county. The operation of a housing project is certainly in the interest of the county and for a county purpose and county commissioners have the power to maintain and operate a housing project. 1953 Op. Att'y Gen. No. 53-5725.

Authority over sewage facilities. — Pursuant to this section and 3-26-1A(1) NMSA 1978, counties have the authority to acquire and maintain sewage facilities and thereby meet the requirements of 40 C.F.R. 131.11(o)(2)(ii), which requires an agency to have the authority to effectively manage waste treatment works, etc. 1978 Op. Att'y Gen. No. 78-15.

County may not impose criminal sanctions by resolution rather than by ordinance. 1981 Op. Att'y Gen. No. 81-26.

Fireworks. — This section gives counties the same authority to enact ordinances under the Fireworks Licensing and Safety Act (60-2C-1 et seq. NMSA 1978) as is specifically conferred on municipalities. 1990 Op. Att'y Gen. No. 90-11.

Setting office hours. — A county commission may set the hours that offices of other elected county officials must stay open. 1990 Op. Att'y Gen. No. 90-05.

Increasing work hours without additional compensation. — A county commission may increase the hours worked by county employees without additional compensation. 1990 Op. Att'y Gen. No. 90-05.

Violation of law by county officials. — Elected county officials who fail to perform their official duty are subject to removal, civil suit or criminal prosecution if they violate the law. 1987 Op. Att'y Gen. No. 87-18.

General superintending authority of commission or council. — A county commission or a county council does not have any general superintending authority over other elected county officials. 1987 Op. Att'y Gen. No. 87-18.

Supervision of employees of elected officials. — A county commission, its personnel director or other agents may exercise supervision over the employees of other elected officials and require those employees to work hours contrary to those established by the officials, to the extent permitted by statute, provided the board's supervision over elected officials' employees does not interfere with the duties of those officials. 1990 Op. Att'y Gen. No. 90-05.

Although a county commission has the authority to control staff of elected officials to some extent through the budget, it must act reasonably in light of other demands on the budget and the needs of the officials. 1990 Op. Att'y Gen. No. 90-05.

Lease of equipment or personal property. — Municipalities or counties may lease equipment or other personal property on a long-term basis, since municipalities and counties in New Mexico have been given express authority to contract, and a lease is merely a contract. 1966 Op. Att'y Gen. No. 66-20.

Purchase and sale of land for industrial park development. — Under this section, it appears that a county may purchase land for industrial park development and in turn sell the property in order for the development to be realized if such a transaction would be for the benefit of the inhabitants of the county. It appears that so long as the land purchased for industrial park development is sold at a fair market price, the operation of such a project will not run afoul of N.M. Const., art. IX, § 14. 1965 Op. Att'y Gen. No. 65-75.

Conservation easements. — Counties may acquire and hold conservation easements assuming they do so consistent with other laws applicable to public purchases of real property and do not do so by eminent domain. 2001 Op. Att'y Gen. No. 01-02.

Providing work for charitable institutions. — It may be implied, from construction of N.M. Const., art. IX, § 14, that a county would have the power to do road work for a

charitable institution which was providing for the care of sick and indigent persons. 1969 Op. Att'y Gen. No. 69-103.

Providing services for private persons. — The county road departments may not perform services for private persons without specific statutory authority. 1969 Op. Att'y Gen. No. 69-103.

Responsibility for legal fees. — In a lawsuit between a county commission and other elected county officials concerning employment terms and conditions, each party is responsible for its own attorney's fees. The county is responsible for legal fees of its elected officials and employees only to the extent required by statute. 1990 Op. Att'y Gen. No. 90-05.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 167 to 204, 295 to 383, 400.

Loan or transfer temporarily of money from one fund to another, power to make, 70 A.L.R. 431.

Mortgage or pledge of property or income thereof, power as to, 71 A.L.R. 828.

Federal courts, applicability to, of state constitutional or statutory provisions regarding liability of county to suit, 86 A.L.R. 1019.

Insurance of public property, right or duty to carry, 100 A.L.R. 600.

Compromise claim, power of county or its officials to, 105 A.L.R. 170, 15 A.L.R.2d 1359.

"County and corporate" purposes, what are, within constitutional provision that legislature may invest power to levy taxes for, in the local authorities, 106 A.L.R. 913.

Stock of private corporation, constitutional or statutory provisions prohibiting counties from acquiring or subscribing to, 152 A.L.R. 495.

Auditorium or stadium as public purpose for which taxing power may be exercised, 173 A.L.R. 415.

Assignment of claims arising out of contract against state, constitutionality, construction and effect of statute forbidding, 175 A.L.R. 1119.

Real estate, power of governing body to dispose of in absence of specific statutory authority, 21 A.L.R.2d 722.

Tax claim, power to remit, release or compromise, 28 A.L.R.2d 1425.

Public utility plant or interest therein, power of county to sell, lease or mortgage, 61 A.L.R.2d 595.

20 C.J.S. Counties §§ 39, 73.

4-37-2. Areas in which county ordinances are effective.

County ordinances are effective within the boundaries of the county, including privately owned land or land owned by the United States. However, ordinances are not effective within the limits of any incorporated municipality; provided that an ordinance adopted by a county pursuant to the Solar Energy Improvement Special Assessment Act shall be effective within the limits of an incorporated municipality if the municipality adopts an ordinance approving the application of the county's ordinance within the incorporated municipality.

History: 1953 Comp., § 15-36A-2, enacted by Laws 1975, ch. 312, § 2; 2019, ch. 110, § 1.

ANNOTATIONS

Cross references. — For municipal ordinances, *see* 3-17-1 NMSA 1978 et seq.

For zoning regulations, *see* 3-21-1 NMSA 1978 et seq.

The 2019 amendment, effective June 14, 2019, provided that ordinances adopted by a county pursuant to the Solar Energy Improvement Special Assessment Act are effective within the limits of an incorporated municipality if the municipality adopts an ordinance approving the application of the county's ordinance within the incorporated municipality; after "not effective within the limits of any incorporated municipality", added the remainder of the section.

County traffic ordinance. — Provision of a county traffic ordinance that "It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state" was clearly antagonistic with the jurisdictional limit placed on county ordinances in this section. *Board of Comm'rs v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672.

Municipality not exempt from regulations of air quality control board. — This section does not exempt a municipality from regulations adopted by the Albuquerque-Bernalillo county air quality control board, which has the authority to adopt regulations to prevent or abate air pollution in Bernalillo county. 1982 Op. Att'y Gen. No. 82-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — "Radius," meaning of term employed in contract, statute or ordinance as descriptive of area, location or distance, 10 A.L.R.2d 605.

4-37-3. Enforcing county ordinances; jurisdiction.

A. County ordinances may be enforced by prosecution for violations of those ordinances in any court of competent jurisdiction of the county. Penalties for violations of any county ordinances shall not exceed a fine of three hundred dollars ($300) or imprisonment for ninety days or both the fine and imprisonment; except that a county may enact and enforce ordinances that impose the following penalties in addition to any other penalty provided by law:

(1) no more than one thousand dollars ($1,000) for discarding or disposing of refuse, litter or garbage on public or private property in any manner other than by disposing it in an authorized landfill;

(2) no more than five thousand dollars ($5,000) for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]; and

(3) no more than imprisonment for three hundred sixty-four days or a fine of one thousand dollars ($1,000), or both, for violation of an ordinance regarding driving while under the influence of intoxicating liquor or drugs.

B. Prosecution of violations under this section may be commenced by the issuance of a citation charging the violation. Citations may be issued by the code enforcement officer of the county or an employee or employees of the county authorized by the board of county commissioners to issue such citations.

History: 1953 Comp., § 15-36A-3, enacted by Laws 1975, ch. 312, § 3; 1989, ch. 370, § 1; 1993, ch. 66, § 2.

ANNOTATIONS

The 1993 amendment, effective January 1, 1994, inserted the subsection designations "A" and "B" and, in Subsection A, inserted the paragraph designations "(1)" and "(2)" and added Paragraph (3).

Enforcement of ordinance. — This section does not provide sole remedy for violations of county ordinances. *Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of Cnty. Comm'rs*, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

County traffic ordinance. — Provision of a county traffic ordinance that purported to punish certain offenses deemed to be felonies with punishment up to imprisonment for eighteen months and/or a five thousand dollar fine was in direct conflict with this section

and was, therefore, invalid. *Board of Comm'rs v. Greacen*, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672.

4-37-4. Enforcement officers in counties; duties.

A. It is the duty of every county sheriff, deputy sheriff, constable and other county law enforcement officer to:

(1) enforce the provisions of all county ordinances;

(2) diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and

(3) cooperate with the district attorney or other prosecutor in all reasonable ways.

B. Any county law enforcement officer that fails to perform his duty in any material respect is subject to removal from office and payment of all costs of prosecution.

History: 1953 Comp., § 15-36A-4, enacted by Laws 1975, ch. 312, § 4.

ANNOTATIONS

Cross references. — For county sheriff, *see* Chapter 4, Article 41 NMSA 1978.

For payment of expenses of sheriffs, deputy sheriffs and guards in performing certain official business, *see* 4-44-18 NMSA 1978.

Liability under 41-4-12 NMSA 1978. — The statutory obligations that officers cooperate with prosecutors and bring defendants before the courts are primarily designed to protect the public by ensuring that dangerous criminals are removed from society and brought to justice; accordingly, as with the duty to investigate crimes under 29-1-1 NMSA 1978, the duties of cooperating with prosecutors, diligently filing complaints, and bringing defendants before the courts inure to the benefit of private individuals, and the violation of these statutory duties may give rise to a cognizable claim under the Tort Claims Act, Chapter 41, Article 4 NMSA 1978. *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep't*, 1996-NMSC-021, 121 N.M. 646, 916 P.2d 1313.

4-37-5. County ordinances; style and form.

The style and form of county ordinances shall be determined by the board of county commissioners.

History: 1953 Comp., § 15-36A-5, enacted by Laws 1975, ch. 312, § 5.

4-37-6. Voting on proposed county ordinances; majority vote required for passage or repeal.

A. A proposed county ordinance shall be passed only by a majority vote of all the members of the board of county commissioners, and an existing county ordinance shall be amended or repealed in the same manner. Upon a vote of passage, amendment or repeal of any county ordinance, the yeas and nays shall be called and recorded.

B. Within thirty days of the adoption, amendment or repeal of an ordinance or resolution in an H class county, a petition may be presented to the board of county commissioners asking that the measure be submitted to a special election for its adoption or rejection. The petition must be signed by more than fifteen percent of the number of qualified electors who voted at the previous general election. Only qualified electors may sign the petition. Upon the filing of the petition with the board of county commissioners, the ordinance or resolution becomes ineffective and the board shall provide for an election on the measure within sixty days of the filing of the petition. The ballot shall contain the text of the ordinance or resolution in question. Below the text shall be the phrases: "for the measure" and "against the measure" followed by spaces for marking with a cross the phrase desired. The election may be held using voting machines in which case copies of the ordinance or resolution shall be made available at the polls. If a majority of the votes cast favor the measure, it shall take effect immediately. If a majority of the votes cast are against the measure, it shall not take effect.

History: 1953 Comp., § 15-36A-6, enacted by Laws 1975, ch. 312, § 6.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Injunctive relief against submission of constitutional amendment, statute, municipal charter or municipal ordinance, on ground that proposed action would be unconstitutional, 19 A.L.R.2d 519.

4-37-7. Proposal of ordinances; publication.

A. Ordinances may be proposed by any member of the board of county commissioners. Ordinances shall not be submitted to the board for final passage until a majority of the members have directed that the title and a general summary of the subject matter of the proposed ordinances be published one time in a newspaper of general circulation within the county at least two weeks prior to the meeting of the board at which the ordinance is proposed for final passage. The date and time of the meeting at which the ordinance is to be considered shall also be published.

B. Copies of proposed ordinances shall be made available to interested persons during normal and regular business hours of the county clerk upon request and payment of reasonable charge, beginning with the date of publication and continuing to the date of consideration by the county's elected commission.

C. This section shall not apply to ordinances dealing with an emergency declared by the board of county commissioners to be an immediate danger to the public health, safety and welfare of the county or to ordinances the subject matter of which amends a city zoning map if the amendment has been considered by, and recommended to, the board of county commissioners by a planning commission with jurisdiction in the matter.

D. It is a sufficient defense to any suit or prosecution to show that notice by publication was not made.

History: 1953 Comp., § 15-36A-7, enacted by Laws 1975, ch. 312, § 7; 1981, ch. 218, § 2.

ANNOTATIONS

Cross references. — For adoption of municipal ordinances, *see* 3-17-4 NMSA 1978.

An omission of a publication of an ordinance would render the enactment of the ordinance void and it could not be enforced. 1964 Op. Att'y Gen. No. 64-117 (rendered under former law).

4-37-8. Printed county ordinances; seal; use as evidence.

County ordinances may be received in evidence without further proof when they are printed and when the ordinance purports to be printed by the county. Ordinances may also be proved by the seal of the board of county commissioners.

History: 1953 Comp., § 15-36A-8, enacted by Laws 1975, ch. 312, § 8.

4-37-9. County ordinances; recording and publication; effective date.

A. All county ordinances, immediately after their passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the county clerk.

B. No ordinance shall take effect until thirty days after the ordinance has been recorded in the book kept by the county for that purpose.

C. Notwithstanding the provisions of Subsection B of this section, when a board of county commissioners declares that it is necessary for the public peace, health and safety that an ordinance take effect immediately after passage, the ordinance shall take effect when it is recorded in the book kept by the county for that purpose and authenticated by the signature of the county clerk.

History: 1953 Comp., § 15-36A-9, enacted by Laws 1975, ch. 312, § 9; 1997, ch. 37, § 1.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Conclusiveness of declaration of emergency in ordinance, 35 A.L.R.2d 586.

4-37-9.1. Water conservation and drought management plans.

A county shall consider ordinances and codes to encourage water conservation and drought management planning pursuant to the provisions of Section 3 [72-14-3.2 NMSA 1978] of this act.

History: Laws 2003, ch. 138, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 138 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

4-37-10. Short title.

This act [4-37-10 to 4-37-13 NMSA 1978] may be cited as the "Home Rule County Validation Act".

History: Laws 1987, ch. 8, § 1.

4-37-11. Validation.

All amendments adopted under color of law to a county charter adopted under the provisions of Article 10, Section 5 of the constitution of New Mexico allowing or purporting to allow the county to exercise all legislative powers and perform all functions not expressly denied by general law or charter as provided in Article 10, Section 6 of the constitution of New Mexico and all acts and proceedings heretofore taken under such charter amendments are hereby validated, ratified, approved and confirmed, as of the date of adoption or attempted adoption of such amendments, notwithstanding any lack of power, authority or otherwise, and notwithstanding any defects and irregularities in such acts and proceedings.

History: Laws 1987, ch. 8, § 2.

4-37-12. Effect and limitations.

The Home Rule County Validation Act [4-37-10 to 4-37-13 NMSA 1978] shall operate to supply such legislative authority as may be necessary to validate any amendments to a county charter adopted under Article 10, Section 5 of the constitution of New Mexico allowing the county to exercise the powers provided for in Article 10, Section 6 of the constitution of New Mexico and any acts and proceedings heretofore taken under such charter amendments which the legislature could have supplied or provided for or can now supply or provide for in the law under which such amendments were adopted and such acts and proceedings were taken. The Home Rule County Validation Act, however, shall be limited to the validation of charter amendments, acts and proceedings to the extent to which such validation can be effectuated under the state and federal constitutions. The Home Rule County Validation Act shall not operate to validate, ratify, approve, confirm or legalize any charter amendment, act, proceeding or other matter which has heretofore been determined in any legal proceeding to be illegal, void or ineffective.

History: Laws 1987, ch. 8, § 3.

4-37-13. Construction.

The Home Rule County Validation Act [4-37-10 to 4-37-13 NMSA 1978], being necessary to secure the public health, safety, convenience and welfare, shall be liberally construed to carry out its purposes.

History: Laws 1987, ch. 8, § 4.

ARTICLE 38
Board of County Commissioners

4-38-1. [Exercise of county powers.]

The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners.

History: Laws 1876, ch. 1, § 3; C.L. 1884, § 334; C.L. 1897, § 653; Code 1915, § 1188; C.S. 1929, § 33-4201; 1941 Comp., § 15-3501; 1953 Comp., § 15-37-1.

ANNOTATIONS

Cross references. — For powers of counties generally, *see* 4-37-1 NMSA 1978.

For management powers of board generally, *see* 4-38-18 NMSA 1978.

For filling of vacancies in legislative offices, *see* N.M. Const., art. IV, § 4.

For control of property of disincorporated municipalities, *see* 3-4-7 NMSA 1978.

For subdivision planning, *see* 3-20-5 NMSA 1978 et seq.

For investigation of bonds of county and precinct officers, *see* 10-2-12 NMSA 1978.

For filling of vacancies in county and precinct offices, *see* 10-3-3 NMSA 1978.

For liability of governmental entities and public employees, *see* 41-4-1 NMSA 1978 et seq.

For subdivision regulation, *see* 47-6-9 NMSA 1978 et seq.

Government of county vested in boards of county commissioners. — By the 1876 act of which this section was a part, it was evidently intended that the government of the county should pass from the probate judge to the boards of county commissioners. *Coler v. Board of Cnty. Comm'rs*, 1891-NMSC-024, 6 N.M. 88, 27 P. 619.

Allocation of public funds. — Where a county or political subdivision is confronted with a shortage of available revenues, the county is invested with discretion concerning the allocation of public funds. *Gallegos v. Trujillo*, 1992-NMCA-090, 114 N.M. 435, 839 P.2d 645, cert. denied, 114 N.M. 314, 838 P.2d 468.

Investment decision-making. — The county treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the county board of finance. The board of finance has no power to modify the county treasurer's decision without the treasurer's concurrence. On the other hand, the county treasurer cannot impose a unilateral decision upon the board of finance. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

There is no statutory prohibition against delegation to the county treasurer by the board of county commissioners, sitting as the county board of finance, of specific investment decision-making. For example, the board could adopt a policy and permit the treasurer to make investment decisions that conform to the policy. Such delegation may be essential to enable the treasurer to respond to sudden changes in the financial markets. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Adoption of merit system or approval of collective-bargaining agreement. — There is no statutory impediment in general to the adoption by the board of county commissioners of a merit system or approval of a collective-bargaining agreement that includes at least some employees of the county treasurer. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

A board of county commissioners does not unlawfully infringe upon a county treasurer's prerogatives unless it undermines the treasurer's ability to perform the duties of the office by means that are not granted to the board by statute. Ordinances providing for

merit systems or collective-bargaining agreements can pass that test. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Employment offer from two commissioners held invalid. — The action of two county commissioners orally extending an offer of a two-year employment was without statutory authority because it was not made at a duly constituted meeting of the board and, thus, it was not a valid act capable of binding the county. *Trujillo v. Gonzales*, 1987-NMSC-119, 106 N.M. 620, 747 P.2d 915.

County officials are trustees for the people within the county. — As such, they are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs. 1967 Op. Att'y Gen. No. 67-149.

General superintending authority. — A county commission or a county council does not have any general superintending authority over other elected county officials. 1987 Op. Att'y Gen. No. 87-18.

Violation of law. — Elected county officials who fail to perform their official duties are subject to removal, civil suit or criminal prosecution if they violate the law. 1987 Op. Att'y Gen. No. 87-18.

Ownership, operation and maintenance of an airport is within the powers of the board of county commissioners. 1947 Op. Att'y Gen. No. 47-5007.

Closing county offices on Saturdays. — In view of the language of the statutes and the holdings in the supreme court, the county commissioners in the various counties have the absolute power and discretion to determine if they should close the county offices on Saturdays. 1955 Op. Att'y Gen. No. 55-6221.

Approval of purchases must be made in public meeting. — A county commission may not, consistently with the Open Meetings Act, Chapter 10, Article 15 NMSA 1978, approve purchases by telephone. When it approves purchases, a county commission is conducting public business and taking official action. Therefore, to be valid, this action must be taken by the commissioners acting as a body at a meeting open to the public and according to the requirements of the Open Meetings Act. 1991 Op. Att'y Gen. No. 91-12.

Board of county commissioners may legally award a franchise to a water company for the operation of a water system outside corporate limits of a municipality. 1946 Op. Att'y Gen. No. 46-4915.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 124 to 166.

Power of board to make appointment to office extending beyond its own term, 70 A.L.R. 794, 149 A.L.R. 336.

Compromise claim, power of county or its officials to, 15 A.L.R.2d 1359.

Real estate: power of governing body of county to dispose of county real estate in absence of specific statutory authority, 21 A.L.R.2d 722.

20 C.J.S. Counties § 70.

4-38-2. Members; quorum.

A. The board of county commissioners shall consist of either three or five qualified electors who shall be elected according to law. For a three-member board, two members constitute a quorum for the purpose of transacting business. For a five-member board, three members constitute a quorum for the purpose of transacting business.

B. The board of county commissioners of any county having a population of more than one hundred thousand, as shown by the most recent federal decennial census, and having a final, full assessed valuation in excess of seventy-five million dollars ($75,000,000) shall consist of five qualified electors who shall be elected according to law.

History: Laws 1876, ch. 1, § 8; C.L. 1884, § 339; C.L. 1897, § 658; Code 1915, § 1189; C.S. 1929, § 33-4202; 1941 Comp., § 15-3502; 1953 Comp., § 15-37-2; Laws 1974, ch. 21, § 1; 2002, ch. 61, § 1.

ANNOTATIONS

Cross references. — For classification of counties for salary purposes, *see* 4-44-1 NMSA 1978.

For five member boards of county commissioners, *see* N.M. Const., art. X, § 7.

For oath and bond of county officers, *see* 10-1-13 NMSA 1978.

The 2002 amendment, effective May 15, 2002, in Subsection A, substituted "either three or five qualified electors" for "three qualified electors any two of whom shall be competent to transact business" in the first sentence, and added the second and third sentences; and in Subsection B, inserted "federal", and deleted the former last sentence, which read: "For the purpose of transacting business, three members shall constitute a quorum."

Relationship of constitutional provisions concerning office of county commissioner. — When N.M. Const., art. X, § 7, was added by constitutional

amendment, the old § 2 of article X ceased to apply to counties having a population greater than 100,000 and an assessed valuation greater than $75,000,000. Under N.M. Const., art. X, § 7, the original offices of county commissioner for two-year terms in affected counties were in effect abolished and new offices of county commissioner for two four-year terms were created, notwithstanding that the new constitutional provision does not expressly say that the old offices were abolished and new ones created. *Morris v. Gonzales*, 1978-NMSC-026, 91 N.M. 495, 576 P.2d 755.

Permissible terms of office. — A county commissioner who has previously served a two-year term as county commissioner under N.M. Const., art. X, § 2, and one four-year term under N.M. Const., art. X, § 7, may serve an additional four-year term under N.M. Const., art. X, § 7. *Morris v. Gonzales*, 1978-NMSC-026, 91 N.M. 495, 576 P.2d 755.

Constitutionality of scheme for election of county commissioners. — Statutory provisions for election of county commissioners from five separate voting districts in certain heavily populated counties does not deny equal protection under federal constitution to residents of less heavily populated counties where three county commissioners are elected at large, since classification between heavily populated counties, with a greater variety of social and economic needs of the populace, and more rural counties, where needs of the general populace were likely to be similar, has a substantial and reasonable relation to the subject matter involved. *Pierce v. King*, 373 F. Supp. 1130 (D.N.M. 1974).

Eligibility of county employee for office of county commissioner. — A school bus driver, employed by the county, is eligible to be a candidate and may run for election for the office of county commissioner if he is a qualified elector and is not otherwise disqualified generally by reason of the disqualification spelled out in the New Mexico constitution. 1959 Op. Att'y Gen. No. 59-210.

There is no statute prohibiting a county commissioner from accepting another office. The office is not incompatible with an office under the cattle sanitary board (now New Mexico livestock board) or the state highway department. 1939 Op. Att'y Gen. No. 39-3137.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 129.

Power of courts or judges in respect of removal of county commissioner, 118 A.L.R. 175.

20 C.J.S. Counties § 79.

4-38-3. Residence in districts; period for districting; election at large.

A. A county having a population greater than thirteen thousand, according to the most recent federal decennial census, shall be divided by the board of county commissioners into as many compact single-member districts as there are board members to be elected. The districts shall be as equal in population as possible and numbered respectively to correspond to the number of board members. One commissioner shall be elected from each district by the voters of the district and shall be a resident of the district from which he is elected. If a commissioner permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned. The division of the county into single-member districts shall be made once immediately following each federal decennial census.

B. An H class county or a county having a population of thirteen thousand or fewer according to the most recent federal decennial census, may be divided by the board of county commissioners into single-member districts. If the county is districted, the districts shall be as equal in population as possible and numbered respectively to correspond to the number of board members. A commissioner shall be a resident of the district from which he is elected. If a commissioner permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned. The division of the county into single-member districts shall be made once immediately following each federal decennial census. The board of county commissioners in a county with only three board members may require either that:

(1) commissioners shall be elected from each district by the voters of the whole county; or

(2) each commissioner shall be elected by the voters of the district from which that commissioner is running for office.

History: Laws 1876, ch. 1, § 10; 1880, ch. 19, § 1; C.L. 1884, § 341; C.L. 1897, § 660; Code 1915, § 1190; C.S. 1929, § 33-4203; 1941 Comp., § 15-3503; 1953 Comp., § 15-37-3; Laws 1959, ch. 106, § 1; 1961, ch. 27, § 1; 1974, ch. 21, § 2; 1985, ch. 204, § 1; 1987, ch. 290, § 1; 1991 (1st S.S.), ch. 5, § 1; 2002, ch. 61, § 2.

ANNOTATIONS

Cross references. — For election of county commissioners, *see* 4-38-6 NMSA 1978.

For class H county, *see* 4-44-3 NMSA 1978.

For authority of legislature to enact laws permitting division of counties into county commission districts and to provide that elective county commissioners reside in respective county commission districts, *see* N.M. Const., art. V, § 13.

For qualifications for holding office generally, *see* N.M. Const., art. VII, § 2.

For five member boards of county commissioners, *see* N.M. Const., art. X, § 7.

The 2002 amendment, effective May 15, 2002, in Subsection A, inserted "according to the most recent federal decennial census," in the first sentence, and inserted "immediately following" in the last sentence; and in Subsection B, inserted "according to the most recent federal decennial census," in the present first sentence and added the remainder of the subsection.

The 1991 (1st S.S.) amendment, effective December 18, 1991, deleted the Subsection A designation and deleted former Subsection B, relating to division, based on census results, of counties having a population of over 100,000 and having a final, full assessed valuation in excess of $75,000,000.

Constitutionality of scheme for election of county commissioners. — Statutory provisions for election of county commissioners from five separate voting districts in certain heavily populated counties does not deny equal protection under federal constitution to residents of less heavily populated counties where three county commissioners are elected at large, since classification between heavily populated counties, with a greater variety of social and economic needs of the populace, and more rural counties, where needs of the general populace were likely to be similar, has a substantial and reasonable relation to the subject matter involved. *Pierce v. King*, 373 F. Supp. 1130 (D.N.M. 1974).

Power to draw boundaries for election of five member boards of county commissioners. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83 (decided prior to 1992 amendment to N.M. Const. art. X, § 7).

Residency requirement. — A candidate for county commissioner must reside in the district in which he runs. *Velasquez v. Chavez*, 1984-NMSC-109, 102 N.M. 54, 691 P.2d 55.

Candidates must be resident of district at time name certified. — A reason for restricting candidates to residents of the district from which they seek election is to insure that each elected commissioner has knowledge of the problems and the needs of the district from which he is elected. It is properly within the spirit of such restriction, and will promote efficient filing administration, to require that a candidate be a resident of the district from which he seeks election at the time his name is certified. *State ex rel. Rudolph v. Lujan*, 1973-NMSC-077, 85 N.M. 378, 512 P.2d 951.

Redistricting. — If redistricting has not occurred within two years and in the board's discretion redistricting is needed and justifiable, the board of county commissioners may do so, filing a map and record of the change in the county clerk's office. 1941 Op. Att'y Gen. No. 41-3863 (rendered under prior law).

Candidate for county commissioner must file in district of residency. — In order for a candidate for county commissioner to qualify for that office, he must file in the district where he resides. 1966 Op. Att'y Gen. No. 66-30.

Declaration of candidacy to be used in determining residency of candidate. — Since a candidate may move without changing his affidavit of registration, the address (or precinct) shown on the declaration of candidacy should be used in determining the candidate's precinct. 1966 Op. Att'y Gen. No. 66-30.

Investigation by county clerk of residency of candidate. — If the county clerk's office has any reason to believe that a person's residence is other than that shown on the declaration of candidacy, the county clerk should investigate to ascertain if the address (or precinct) shown on the declaration of candidacy is in fact the candidate's residency. The county clerk may use his staff to do so, or may call upon the services of the sheriff's office. 1966 Op. Att'y Gen. No. 66-30.

Residency of persons appointed to fill vacancies. — Person appointed to fill vacancy in office of county commissioner must, at the time of appointment, be a resident of the commissioner district from which his predecessor was elected. 1916 Op. Att'y Gen. No. 16-1764.

Effect of change of residence by county commissioner subsequent to election. — A county commissioner, once elected and qualified, does not lose his right to the office by change of residence, unless he removes entirely from the county. 1915 Op. Att'y Gen. No. 15-1516.

Where a county is divided and a new county is made, commissioners who reside in the new county forfeit their office as commissioners of the old county. 1918 Op. Att'y Gen. No. 18-2079.

Holding of another office or position by county commissioner. — There is nothing in our statutes prohibiting a county commissioner from holding a position with the state administration, but under 10-3-1 NMSA 1978, his office would be vacated if he undertook to discharge the duties of an incompatible office. Whether it would be incompatible depends on the position itself. 1939 Op. Att'y Gen. No. 39-3196.

Incompatible positions. — A person may serve as a member of the board of trustees of a town and county commissioner or county assessor at the same time unless the two offices held at the same time are considered legally incompatible. 1960 Op. Att'y Gen. No. 60-30.

Am. Jur. 2d, A.L.R. and C.J.S. references. — "At-large" elections as violation of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), 92 A.L.R. Fed. 824.

20 C.J.S. Counties § 65.

4-38-4, 4-38-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1991 (1st S.S.), ch. 5, § 3 repealed 4-38-4 and 4-38-5 NMSA 1978, as amended by Laws 1983, ch. 126, § 1 and as enacted by Laws 1983, ch. 126, § 2, relating to precincts and designation of districts in Bernalillo county, respectively, effective December 18, 1991. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

4-38-6. Election; term.

A. In each county all county commissioners shall be elected to serve four-year terms, subject to the provisions of Subsection B of this section.

B. In those counties that consist of a three-member board of county commissioners, the secretary of state shall designate by lottery the terms for each county commission district, which shall elect two county commissioners for terms of four years and one county commissioner for a term of two years. The terms for two commissioners shall expire in the same year.

C. In those counties that, prior to 1992, have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the 1994 general election; thereafter, all elected officials shall be elected for terms of four years. The terms of the assessor, sheriff and probate judge shall expire in the same year, and the terms of the treasurer and clerk shall expire in the same year.

History: Laws 1899, ch. 30, § 1; Code 1915, § 1191; C.S. 1929, § 33-4204; 1941 Comp., § 15-3504; 1953 Comp., § 15-37-4; Laws 1974, ch. 21, § 5; 1983, ch. 126, § 3; 1993, ch. 119, § 1.

ANNOTATIONS

Cross references. — For residence of county commissioners in areas from which elected, *see* 4-38-3 NMSA 1978.

For terms of county officers generally, *see* N.M. Const., art. X, § 2.

For five member boards of county commissioners, *see* N.M. Const., art. X, § 7.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 64.

4-38-7. [Holding office until successor is qualified.]

Every person appointed county commissioner shall hold his office until the general election, and until his successor shall be qualified and enters upon the duties of such office.

History: Laws 1876, ch. 1, § 39; C.L. 1884, § 370; C.L. 1897, § 689; Code 1915, § 1192; C.S. 1929, § 33-4205; 1941 Comp., § 15-3505; 1953 Comp., § 15-37-5.

ANNOTATIONS

Cross references. — For terms of office of county commissioners, *see* N.M. Const., art. X, §§ 2 and 7 and 4-38-6 NMSA 1978.

For tenure of officers generally, *see* N.M. Const., art. XX, § 2.

For filling of vacancies of county commissioners, *see* N.M. Const., art. XX, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 66.

4-38-8. Meetings.

The board of county commissioners shall meet, after notice as required by law for meetings of public bodies, at the county seat of each county at quarterly meetings in January, April, July and October in each year and at such other times within the prescribed county as in the opinion of the board the public interests may require. Meetings other than quarterly meetings may be held in the municipality with the largest population concentration in the county, and meetings concerning matters of local interest only may be held in the community affected. All meetings shall be held in a public building owned be [by] the state, county or public schools.

History: Laws 1876, ch. 1, § 11; C.L. 1884, § 343; C.L. 1897, § 662; Code 1915, § 1194; C.S. 1929, § 33-4208; 1941 Comp., § 15-3507; 1953 Comp., § 15-37-7; Laws 1975, ch. 30, § 1; 1981, ch. 81, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For duties of county clerk as clerk of board of county commissioners, *see* 4-40-3 to 4-40-6 NMSA 1978.

For examination by board of canceled orders, *see* 4-45-7 NMSA 1978.

For meetings of policy-making bodies, *see* 10-15-1 to 10-15-4 NMSA 1978.

Election of chairman. — This section and 4-38-10 NMSA 1978 in essence provide that at its first meeting in the January following its election, a board of county commissioners shall elect a chairman to serve as such during his term of office. 1969 Op. Att'y Gen. No. 69-110.

Authority to call special meetings. — The two commissioners other than the chairman most certainly possess the authority to call special meetings. So far as the chairman is concerned, his power is no greater and no less than the authority possessed by his fellow county commissioners. 1959 Op. Att'y Gen. No. 59-204.

County seat as "designated post of duty". — The "designated post of duty" (as referred to in 10-8-4 NMSA 1978) of a county commissioner for purposes of per diem and mileage rates is established by reference to this section at the county seat. 1988 Op. Att'y Gen. No. 88-65.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 136 to 158.

20 C.J.S. Counties §§ 79 to 81.

4-38-9. Repealed.

History: Laws 1897, ch. 60, § 16 [15]; C.L. 1897, § 867(15); Code 1915, § 1195; C.S. 1929, § 33-4209; 1941 Comp., § 15-3508; 1953 Comp., § 15-37-8; repealed by Laws 2013, ch. 214, § 14.

ANNOTATIONS

Repeals. — Laws 2013, ch. 214, § 14 repealed 4-38-9 NMSA 1978, as enacted by Laws 1897, ch. 60, § 15, relating to publishing of board of county commissioners' proceedings, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

4-38-10. Chairman.

A. The county commission shall select a chairman in a manner and for a term provided by county ordinance.

B. In the absence of a county ordinance providing for the chairman's selection and term, the county commissioners shall, at the first meeting of each year choose one of their number chairman, who shall preside at that meeting and all other meetings if present; but in case of his absence from any meeting, the members present shall choose one of their number as temporary chairman.

History: Laws 1876, ch. 1, § 17; C.L. 1884, § 348; C.L. 1897, § 667; Code 1915, § 1196; C.S. 1929, § 33-4210; 1941 Comp., § 15-3509; 1953 Comp., § 15-37-9; 1990, ch. 13, § 1.

ANNOTATIONS

Election of chairman generally. — Section 4-38-8 NMSA 1978 and this section in essence provide that at its first meeting in the January following its election, a board of county commissioners shall elect a chairman to serve as such during his term of office. 1969 Op. Att'y Gen. No. 69-110.

Term of chairman. — The language "who shall preside at such meeting and all other meetings during the year if present" might be considered as limiting the term of the chairman to one year. However, it is felt that this language merely relates back and refers to 4-38-8 NMSA 1978 setting forth the regular meetings to be held during any year and does not limit the term of the chairman to one year when his term of office as county commissioner is for two years. 1954 Op. Att'y Gen. No. 54-5983 (decided prior to adoption of N.M. Const., art. X, § 7 and amendment of 4-38-6 NMSA 1978).

When new chairman may be elected. — Only if the chairman either resigns as chairman or ceases to be a member of the board may a new chairman be legally elected. 1969 Op. Att'y Gen. No. 69-110.

4-38-11. [Chairman; powers and duties.]

The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties and he shall sign all orders on the county treasury.

History: Laws 1876, ch. 1, § 18; C.L. 1884, § 349; C.L. 1897, § 668; Code 1915, § 1197; C.S. 1929, § 33-4211; 1941 Comp., § 15-3510; 1953 Comp., § 15-37-10.

ANNOTATIONS

Cross references. — For signature by chairman of county orders, *see* 4-45-4 NMSA 1978.

4-38-12. [Seal; sessions to be public; rules and regulations.]

Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. Their sessions shall be public with open doors, and all persons conducting themselves in an orderly manner may attend their meetings, and they may establish rules and regulations to govern the transaction of their business.

History: Laws 1876, ch. 1, § 16; C.L. 1884, § 347; C.L. 1897, § 666; Code 1915, § 1198; C.S. 1929, § 33-4212; 1941 Comp., § 15-3511; 1953 Comp., § 15-37-11.

ANNOTATIONS

Cross references. — For duty of sheriff to attend meetings of board of county commissioners, *see* 4-41-16 NMSA 1978.

For meetings of policy-making bodies, *see* 10-15-1 to 10-15-4 NMSA 1978.

Approval and signature of minutes of special meeting. — If a special meeting is held and the minutes of the proceedings are read later at the regular meeting, the commissioners who concurred in the special meeting may approve and sign them if the proper procedures are followed, as motion to approve, second, etc. 1959 Op. Att'y Gen. No. 59-204.

4-38-13. [Powers; property belonging to county.]

The board of county commissioners shall have power at any session to make such orders concerning the property belonging to the county as they may deem expedient.

History: Laws 1876, ch. 1, § 14(1); C.L. 1884, § 345(1); C.L. 1897, § 664(1); Code 1915, § 1199; C.S. 1929, § 33-4213; 1941 Comp., § 15-3512; 1953 Comp., § 15-37-12.

ANNOTATIONS

Cross references. — For county property, *see* 4-36-4 NMSA 1978.

For powers of counties generally, *see* 4-37-1 NMSA 1978.

For control of property of disincorporated municipality, *see* 3-4-7 NMSA 1978.

For insuring of public buildings, *see* 13-5-1, 13-5-3 NMSA 1978.

For maintenance and upkeep of district attorney facilities, *see* 36-1-8.1 NMSA 1978.

Rental of space in county buildings to private persons. — Board of county commissioners may rent space in county courthouse to private individual when it does not interfere with public use and rental is for a short term only. 1945 Op. Att'y Gen. No. 45-4723.

Lease of county buildings free of rent. — The board of county commissioners may permit the department of public welfare (now human services department) to use county buildings for its purposes free of rent. 1938 Op. Att'y Gen. 38-1899.

Determination of use of space assigned to county sheriff. — While this section and 4-38-18 NMSA 1978 grant the board of county commissioners the authority to control and manage county property, this does not mean the board may arbitrarily decide how space assigned to the county sheriff may be used. 1969 Op. Att'y Gen. No. 69-50.

Setting office hours. — A county commission may set the hours that offices of other elected county officials must stay open. 1990 Op. Att'y Gen. No. 90-05.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 491 to 498.

Real estate: power of governing body of county to dispose of county real estate in absence of specific statutory authority, 21 A.L.R.2d 722.

Public utility plant or interest therein, power of county to sell, lease or mortgage, 61 A.L.R.2d 595.

20 C.J.S. Counties §§ 143 to 149.

4-38-13.1. County equipment and property; permitted uses.

A. Notwithstanding any other provision of law, the board of county commissioners of any county except a class A county may contract for the use of county equipment or property for the benefit of community ditch associations, mutual domestic water associations or other public entities providing services to significant groups of county residents, which services could legally be provided by a governmental entity. In granting this permission, the board shall specifically describe the equipment or property to be used and the entity on whose behalf it will be used.

B. A board of county commissioners may contract for the use of county buildings for the benefit of nonprofit organizations demonstrating a consistent history of service to sick and indigent persons in the county, which service could legally be expected to be provided by a governmental entity, at rates these organizations can be reasonably expected to pay while maintaining their full service commitment to their respective constituencies. These contracts shall set forth the respective value of services being provided to county residents and the relative value of the use of property provided by the county. A contract entered into pursuant to this subsection is exempt from the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] pursuant to Section 13-1-98.2 NMSA 1978.

History: 1978 Comp., § 4-38-13.1, enacted by Laws 1984, ch. 43, § 1; 2005, ch. 96, § 2; 2009, ch. 155, § 1.

ANNOTATIONS

Cross references. — For exercise of county powers through ordinances, *see* 4-37-1 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection B, added the last sentence.

The 2005 amendment, effective June 17, 2005, added Subsection B to authorize counties to contract for the use of county buildings for the benefit of nonprofit organizations that provide services to sick and indigent persons at rates those organizations can reasonably pay while maintaining their full service commitment and to require the contract to set forth the respective value of services being provided and the value of the use of county property.

4-38-13.2. Legislative findings; community value.

The legislature finds that without the daily contributions and efforts of the thousands of worthwhile nonprofit organizations dedicated to serving sick and indigent persons in communities throughout New Mexico, the state would be inundated with constant requests for health, human and social services that it does not have revenue or resources to provide. The legislature finds that it is in the best interests of that population, as well as for all residents and taxpayers, that consideration be extended as real value recognition of the indispensable part these services contribute to the fabric of life in New Mexico.

History: Laws 2005, ch. 96, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 96 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

4-38-14. [County appropriation for state fair authorized.]

That the county commissioners in each respective county of the state may, for the purpose of aiding their county in displaying its products or potential products at the New Mexico state fair in Albuquerque, appropriate and expend out of the general fund of such county a sum not exceeding $1,000 annually.

History: 1941 Comp., § 15-3512a, enacted by Laws 1951, ch. 88, § 1; 1953 Comp., § 15-37-13.

ANNOTATIONS

Cross references. — For state fairs generally, *see* 16-6-1 NMSA 1978 et seq.

Appropriation of funds to install displays at state fair. — Counties may make appropriations with which to install displays at the state fair which, presumably, will be of benefit to the counties. 1915 Op. Att'y Gen. No. 15-1578; 1915 Op. Att'y Gen. No. 15-1676.

4-38-15. [Agent of county having charge of county exhibit at state fair; appointment.]

That said county commissioners may appoint a qualified and suitable person to have charge of said county exhibits and to represent their county at the New Mexico state fair, and may if necessary compensate said agent for such services out of said appropriation.

History: 1941 Comp., § 15-3512b, enacted by Laws 1951, ch. 88, § 2; 1953 Comp., § 15-37-14.

ANNOTATIONS

Cross references. — For state fairs generally, *see* 16-6-1 NMSA 1978 et seq.

4-38-16. [Accounts; county buildings; taxation.]

To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle, and allow all accounts chargeable against the county, and when so settled they may issue county orders therefor as provided by law.

To build and keep in repair all county buildings, and in case there are no county buildings, to provide suitable rooms for county purposes.

To apportion and order the collection of taxes by law.

History: Laws 1876, ch. 1, § 14(2-4); C.L. 1884, § 345(2-4); C.L. 1897, § 664(2-4); Code 1915, § 1200; C.S. 1929, § 33-4214; 1941 Comp., § 15-3513; 1953 Comp., § 15-37-15.

ANNOTATIONS

Cross references. — For publication of report of receipts and expenditures, *see* 4-38-27 NMSA 1978.

For settlement of accounts upon turning over of office by county collector, *see* 4-43-4 NMSA 1978.

For accounts and claims against counties, *see* 4-45-3 NMSA 1978 et seq.

For contracts for construction of courthouses, jails or bridges, *see* 4-49-15 NMSA 1978.

For construction of county auditoriums, *see* 5-3-11 NMSA 1978 et seq.

For joint city-county building, *see* 5-5-1 NMSA 1978 et seq.

For publication of list of monthly expenditures of board, *see* 10-17-3 NMSA 1978.

For filing with clerk by county officers of monthly statement of public moneys received and disbursed, *see* 10-17-4 NMSA 1978.

For public works generally, *see* 13-4-1 NMSA 1978 et seq.

For insuring of public buildings, *see* 13-5-1, 13-5-3 NMSA 1978.

The board has jurisdiction to allow and authorize the payment of only legal accounts against the county. *State ex rel. Baca v. Montoya*, 1915-NMSC-013, 20 N.M. 104, 146 P. 956.

Accounts legally chargeable. — The county commissioners are not authorized to allow an account not legally chargeable against the county, such as allowing a deputy assessor, whose compensation is not fixed by statute, a claim for services as a public officer. *Fancher v. Board of Comm'rs*, 1921-NMSC-039, 28 N.M. 179, 210 P. 237.

Court can inquire into judgment rendered against a county to ascertain if the claim is legally payable out of taxes sought to be so applied. *State ex rel. Baca v. Montoya*, 1915-NMSC-013, 20 N.M. 104, 146 P. 956; *Atchison, T. & S.F.R.R. v. Territory*, 1903-NMSC-007, 11 N.M. 669, 72 P. 14, *appeal dismissed*, 201 U.S. 41, 26 S. Ct. 386, 50 L. Ed. 651 (1906).

Provision of water supply for community within county. — Providing an adequate supply of water for municipal and domestic purposes in one of the communities of the county possessed of no other municipal government than that afforded by the county was a legitimate county purpose. *Agua Pura Co. v. Mayor of Las Vegas*, 1900-NMSC-002, 10 N.M. 6, 60 P. 208.

Meaning of "county purposes". — County purposes are those purposes which promote the welfare of the county as a whole and its citizens. The term "county purposes" means such enterprises as would not advance the wants and demands of the community independent of public aid. The building of courthouses, jails, poorhouses and common roads and bridges by which they are made accessible to the people are county purposes, while hotels and mercantile, trading, banking and manufacturing establishments would not be. Functions pertaining to legal aid, a health center, welfare services, employment, job training and counseling services and relocation and rehabilitation services would be of such a nature as to provide a primary benefit to the county in which they are situated. Therefore, they are county purposes and may be housed by the county. 1967 Op. Att'y Gen. No. 67-145.

Provision of sleeping accommodations in jail. — The county commissioners have no authority to divert money from one fund to another; but providing sleeping accommodations in the jail could properly be paid from the courthouse repair fund. 1914 Op. Att'y Gen. No. 14-1151.

Arrangement for sale of county bonds. — It is within the power of the county commissioners to make such arrangement as is possible to secure the sale of county bonds at par and accrued interest, which are worth less than par in the market. 1914 Op. Att'y Gen. No. 14-1282.

Provision for assessors' expenses. — The matter of providing for assessors' expenses is governed by the general powers of the county commissioners. 1924 Op. Att'y Gen. No. 24-3749.

Rental of office space outside county seat. — The county commissioners have the power under this section to rent office space outside the county seat for an assistant district attorney. 1952 Op. Att'y Gen. No. 52-5501.

Setting office hours. — A county commission may set the hours that offices of other elected county officials must stay open. 1990 Op. Att'y Gen. No. 90-05.

Purchase and maintenance of automobile for official use by sheriff. — County funds may be used for the purchase of an automobile to be used by the sheriff in his official business, and also to maintain the same, if no claim is made for mileage. 1921 Op. Att'y Gen. No. 21-3031.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 499, 533, 766; 71 Am. Jur. 2d State and Local Taxation § 67; 72 Am. Jur. 2d State and Local Taxation §§ 629, 630, 753, 854, 881.

20 C.J.S. Counties §§ 70, 145, 203, 233, 234, 244.

4-38-17. Tax levy for county general purposes; allocation.

Boards of county commissioners are authorized to levy a tax on all taxable property in the county for general county purposes, including salaries and expenses of county officers, deputies and employees, subject to maximum rates provided by law. Proceeds of the tax shall be allocated to appropriate funds, budgeted and expended as provided by law.

History: 1953 Comp., § 15-37-15.1, enacted by Laws 1973, ch. 4, § 10.

4-38-17.1. Tax levies authorization; procedures; health purposes.

A. A board of county commissioners may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the county under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the purpose of providing health care to sick and indigent persons in the county.

B. The resolution shall specify the rate of the proposed tax, which shall not exceed one dollar fifty cents ($1.50) on each one thousand dollars ($1,000) of net taxable value of property allocated to the county under the Property Tax Code and shall:

(1) specify the date of the election at which the question of imposition of the tax to the qualified electors of the county shall be held, which may be a general election or a special election called for that purpose, except that the election may not be held on the same ballot as an election held pursuant to Section 4-48B-15 NMSA 1978; and

(2) limit the imposition of the proposed tax to no more than eight years.

C. The question shall be voted upon as a separate question and shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. Upon certification, copies of the election shall be mailed immediately to the department of finance and administration and the taxation and revenue department.

D. For purposes of this section, "county" means a class B county with a population of no less than forty-one thousand and no more than forty-five thousand according to the last federal decennial census.

E. The mill levy authorized in this section is not subject to the rate limitation provisions of Section 7-37-7.1 NMSA 1978 and shall not be used to meet a county's obligations pursuant to Section 27-10-4 NMSA 1978.

History: Laws 2004, ch. 113, § 1; 2005, ch. 89, § 1.

ANNOTATIONS

Cross references. — For the Indigent Hospital and County Health Care Act, *see* 27-5-1 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection B(1), provided that an election may not be held on the same ballot as an election held pursuant to Section 4-48-15 NMSA 1978.

4-38-18. [Management in general.]

To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law.

History: Laws 1876, ch. 1, § 14(5); C.L. 1884, § 345(5); C.L. 1897, § 664(5); Code 1915, § 1201; C.S. 1929, § 33-4215; 1941 Comp., § 15-3514; 1953 Comp., § 15-37-16.

ANNOTATIONS

Cross references. — For county powers generally, *see* 4-37-1 NMSA 1978.

For exercise of powers of county by board of county commissioners generally, *see* 4-38-1 NMSA 1978.

For county advisory boards, *see* 4-38-38 NMSA 1978 et seq.

Supplying of unincorporated town in county with water. — The powers of a county are not only corporate but administrative, and it is authorized to do the acts in the interest of the county and to make necessary contracts when not otherwise provided by law. This will include the right to supply an unincorporated town with water for domestic and municipal use. *Agua Pura Co. v. Mayor of Las Vegas*, 1900-NMSC-002, 10 N.M. 6, 60 P. 208.

Representing county. — This section would authorize the commissioners to represent the county against unwarranted injuries or prejudice to its rights and property. *Board of Comm'rs v. Hubbell*, 1923-NMSC-060, 28 N.M. 634, 216 P. 496, distinguished in *Dietz v. Hughes*, 1935-NMSC-055, 39 N.M. 349, 47 P.2d 417.

Discretion of commissioners. — This section gives the county commissioners very wide discretionary power in management of interest of county in cases not otherwise provided for by law. 1915 Op. Att'y Gen. No. 15-1482.

Scope of commissioners' powers. — The powers given to the county commissioners to act in the interest of the county are extremely broad. 1967 Op. Att'y Gen. No. 67-145.

Expenditure of county's general funds. — The commissioners may, in their discretion, expend the county's general funds for any purpose which will be of benefit to the county unless such expenditure is expressly prohibited by law. 1958 Op. Att'y Gen. No. 58-21.

Use of excess funds in county treasury. — County commissioners have discretionary power to use excess funds remaining in treasury for county purposes. 1914 Op. Att'y Gen. No. 14-1232, 1914 Op. Att'y Gen. No. 14-1250.

Use of funds arising from interest on deposits. — Under this section, county commissioners have discretion to use money arising from interest on deposits. 1914 Op. Att'y Gen. No. 14-1227.

Employment of agents and servants. — The general rule is that county commissioners are without power to employ a person to perform acts which are part of the official duties imposed by statute on another county or state officer, or where the matter of employment of persons is expressly and fully covered by the statute, but with these limitations they have implied power to employ such agents and servants as may be required for county purposes and which are not otherwise provided for by statute or by the state constitution, and the wisdom and expediency of making a particular appointment is within their exclusive discretion. 1939 Op. Att'y Gen. No. 39-3256.

This section is an exceedingly broad grant of power, and county commissioners may, in their discretion, appoint purchasing agents or other servants necessary to efficiently carry out the business of the county. 1939 Op. Att'y Gen. No. 39-3256.

Employment of agricultural agent. — County commissioners may cooperate with the agricultural college (now New Mexico state university) to employ an agricultural agent for the benefit of the county. 1914 Op. Att'y Gen. No. 14-1301.

Employment of farm demonstrator. — Expenditure of county money in cooperation with the state in putting a farm demonstrator at work in the county was within this section. 1915 Op. Att'y Gen. No. 15-1481.

Merit system for county employees. — The county commissioners may establish by ordinance a merit system to regulate the employment of county employees. 1981 Op. Att'y Gen. No. 81-29.

Security for county courthouse. — Commissioners are responsible for providing security for county courthouse on 24-hour basis. 1979 Op. Att'y Gen. No. 79-04.

Increasing work hours without additional compensation. — A county commission may increase the hours worked by county employees without additional compensation. 1990 Op. Att'y Gen. No. 90-05.

Supervision of employees of elected officials. — A county commission, its personnel director or other agents may exercise supervision over the employees of other elected officials and require those employees to work hours contrary to those established by the officials, to the extent permitted by statute, provided the board's supervision over elected officials' employees does not interfere with the duties of those officials. 1990 Op. Att'y Gen. No. 90-05.

Interaction with other elected county officials. — Although a county commission has the authority to control staff of elected officials to some extent through the budget, it

must act reasonably in light of other demands on the budget and the needs of the officials. 1990 Op. Att'y Gen. No. 90-05.

Cooperation with cities and federal government. — A county and a city can enter into an agreement to cooperate in sponsoring a flood control project, and counties and cities can cooperate with the federal government and seek aid under the Watershed Protection and Flood Prevention Act (16 U.S.C. § 1001 et seq.). 1963 Op. Att'y Gen. No. 63-82 (opinion rendered under former law).

Setting office hours. — A county commission may set the hours that offices of other elected county officials must stay open. 1990 Op. Att'y Gen. No. 90-05.

Closing county offices on Saturdays. — In view of the language of the statutes and the holdings in the supreme court, the county commissioners in the various counties have the absolute power and discretion to determine if they should close the county offices on Saturdays. 1955 Op. Att'y Gen. No. 55-6221.

Rental of space in county buildings to private persons. — Board of county commissioners may rent space in county courthouse to private individual when it does not interfere with public use and rental is for a short term only. 1945 Op. Att'y Gen. No. 45-4723.

Determination of use of space assigned to county sheriff. — While 4-38-13 NMSA 1978 and this section grant the board of county commissioners the authority to control and manage county property, this does not mean the board may arbitrarily decide how space assigned to the county sheriff may be used. 1969 Op. Att'y Gen. No. 69-50.

Provision for lodging of prisoners from other counties in county jail. — The board of county commissioners can lodge federal prisoners from surrounding counties if adequate facilities for their care and custody are not available in that particular county; however, the sheriff of the county wherein the jail is situated has, even in the case of a contract between two counties within the state of New Mexico, the right to maintain the standards of cleanliness, health and discipline, and such a contract cannot work to the exclusion of the prisoners of the county wherein the jail is situated. 1957 Op. Att'y Gen. No. 57-234.

Rewards for capture of criminals. — The board has no power to offer rewards for the capture and conviction of criminals. 1922 Op. Att'y Gen. No. 22-3295.

Payment for services in detecting and prosecuting for unlawful death. — To detect and prosecute for unlawful death is certainly such a governmental purpose as is envisaged, and the county commissioners, under this section, can certainly pay for such services. 1958 Op. Att'y Gen. No. 58-83.

Appropriation of funds to install displays at state fair. — Counties may make appropriations with which to install displays at the state fair which, presumably, will be of

benefit to the counties. 1915 Op. Att'y Gen. No. 15-1578, 1915 Op. Att'y Gen. No. 15-1676.

Allowance of funds to city for service rendered in fighting fire outside of the city limits was within general powers of the board. 1915 Op. Att'y Gen. No. 15-1482.

Responsibility for legal fees. — In a lawsuit between a county commission and other elected county officials concerning employment terms and conditions, each party is responsible for its own attorney's fees. The county is responsible for legal fees of its elected officials and employees only to the extent required by statute. 1990 Op. Att'y Gen. No. 90-05.

4-38-19. County commissioners; employing deputies and employees; employing a county manager.

A. A board of county commissioners may set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county, except that elected county officials have the authority to hire and recommend the salaries of persons employed by them to carry out the duties and responsibilities of the offices to which they are elected.

B. A board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities.

C. All officials, officers, deputies and employees of the county or of an elected official of the county, shall receive their salaries or wages for services rendered on regular paydays, not more than sixteen days apart.

History: 1953 Comp., § 15-37-16.1, enacted by Laws 1969, ch. 219, § 1; Laws 1971, ch. 191, § 1; 1973, ch. 90, § 1.

ANNOTATIONS

Cross references. — For salaries of elected county officers, *see* 4-44-4 NMSA 1978 et seq.

The county treasurer has exclusive statutory authority to hire and supervise deputies and other employees of their office. — State law expressly provides elected county officers, including the county treasurer, with exclusive authority to hire and recommend the salaries of a deputy and employees to carry out the duties of their offices, while the county commission is authorized to set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county, and may apply a merit or other personnel policy governing working conditions for county

employees to the extent the merit system does not improperly infringe upon the elected official's authority to hire and supervise employees or interfere with the elected official's ability to perform the duties of the office. 2024 Op. Att'y Gen. No. 24-08.

The "except" clause of Subsection A does not transfer the salary-setting authority for deputies and the like from the board of county commissioners to elected officials. 1975 Op. Att'y Gen. No. 75-64.

Merit system for county employees. — The county commissioners may establish by ordinance a merit system to regulate the employment of county employees. 1981 Op. Att'y Gen. No. 81-29.

Employment contract between board of county commissioners and county manager, while not in violation of the Bateman Act (6-6-11 NMSA 1978 et seq.), which was enacted to require municipalities to live within their annual incomes, was nonetheless void because it created an unconstitutional debt of the county and was an illegal attempt to bind future boards. 1988 Op. Att'y Gen. No. 88-67.

Increasing work hours without additional compensation. — A county commission may increase the hours worked by county employees without additional compensation. 1990 Op. Att'y Gen. No. 90-05.

Supervision of employees of elected officials. — A county commission, its personnel director or other agents may exercise supervision over the employees of other elected officials and require those employees to work hours contrary to those established by the officials, to the extent permitted by statute, provided the board's supervision over elected officials' employees does not interfere with the duties of those officials. 1990 Op. Att'y Gen. No. 90-05.

Although a county commission has the authority to control staff of elected officials to some extent through the budget, it must act reasonably in light of other demands on the budget and the needs of the officials. 1990 Op. Att'y Gen. No. 90-05.

Employment of agents and servants. — The general rule is that county commissioners are without power to employ a person to perform acts which are part of the official duties imposed by statute on another county or state officer, or where the matter of employment of persons is expressly and fully covered by the statute, but with these limitations they have implied power to employ such agents and servants as may be required for county purposes and which are not otherwise provided for by statute or by the state constitution, and the wisdom and expediency of making a particular appointment is within their exclusive discretion. 1939 Op. Att'y Gen. No. 39-3256.

4-38-20. Repealed.

History: 1953 Comp., § 15-37-17, enacted by Laws 1969, ch. 90, § 1; Laws 1975, ch. 255, § 127; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-38-20 NMSA 1978, as enacted by Laws 1969, ch. 90, § 1, relating to precinct boundaries, filing with the secretary of state, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-38-21. Repealed.

History: Laws 1876, ch. 1, § 15; C.L. 1884, § 346; C.L. 1897, § 665; Code 1915, § 1207; Laws 1921, ch. 15, § 1; 1927, ch. 95, § 1; C.S. 1929, § 33-4221; 1941 Comp., § 15-3516; 1953 Comp., § 15-37-18; Laws 1969, ch. 90, § 2; 1984 (1st S.S.), ch. 3, § 7; 1991 (1st S.S.), ch. 6, § 9; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-38-21 NMSA 1978, as enacted by Laws 1876, ch. 1, § 15, relating to creation of new precincts, petition necessary, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-38-22. Repealed.

History: Laws 1876, ch. 1, § 28; C.L. 1884, § 359; C.L. 1897, § 677; Code 1915, § 1208; C.S. 1929, § 33-4222; 1941 Comp., § 15-3517; 1953 Comp., § 15-37-19; Laws 1969, ch. 90, § 3; 1975, ch. 255, § 128; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-38-22 NMSA 1978, as enacted by Laws 1876, ch. 1, § 28, relating to change in precincts, map, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-38-23. Repealed.

History: Laws 1876, ch. 1, § 32; C.L. 1884, § 363; C.L. 1897, § 682; Code 1915, § 1239; C.S. 1929, § 33-4305; 1941 Comp., § 15-3518; 1953 Comp., § 15-37-20; Laws 1969, ch. 90, § 4; 1975, ch. 255, § 129; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-38-23 NMSA 1978, as enacted by Laws 1876, ch. 1, § 32, relating to change in precincts, certificates and map to secretary of state, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-38-24. Powers over highways.

The board of county commissioners of each county shall have the power to lay out, alter or discontinue any road running through one or more precincts or townships in such county and to perform such other duties respecting roads as may be required by law.

History: Laws 1876, ch. 1, § 14(7); C.L. 1884, § 345(7); C.L. 1897, § 664(7); Code 1915, § 1203; C.S. 1929, § 33-4217; 1941 Comp., § 15-3520; 1953 Comp., § 15-37-22; 2011, ch. 137, § 108.

ANNOTATIONS

Cross references. — For application of moneys from United States forest reserves to road fund, *see* 6-11-3 NMSA 1978.

For funds for maintenance of secondary roads, *see* 6-11-6 NMSA 1978.

For cattleguards on school bus routes, *see* 22-16-8 NMSA 1978.

For snow removal on school bus routes, *see* 22-16-10 NMSA 1978.

For requirement of permission for utilities to use county roads, *see* 62-1-3 NMSA 1978.

For county highways, *see* 67-4-2 NMSA 1978 et seq.

For the Scenic Highway Zoning Act, *see* 67-13-1 NMSA 1978 et seq.

For rights-of-way for oil and gas pipelines, *see* 70-3-7 to 70-3-9 NMSA 1978.

For the Noxious Weed Control Act, *see* 76-7-1 NMSA 1978 et seq.

Compiler's notes. — Laws 1927, ch. 41, § 722, purports to repeal "So much of Section 1203 [this section] . . . as relates to elections . . .." The second paragraph of this section was therefore omitted from the 1929, 1941 and 1953 Comps. However, the paragraph is set out above since N.M. Const., art. IV, § 18 requires the section to be amended to be set out in full which was not done as to this section in Laws 1927, ch. 41.

The 2011 amendment, effective July 1, 2011, eliminated the duty of boards of county commissioners to appoint a board of registration for the registration of voters and judges of elections, the authority to act as boards of canvassers, the duty of judges of elections to make returns, and requirements for canvassing elections.

Road construction and repair. — Counties possess the authority to construct or repair county roads within their boundaries. *Bolton v. Board of County Comm'rs*, 1994-NMCA-167, 119 N.M. 355, 890 P.2d 808, cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

When dedication of land by owner binding upon county. — Though dedication of land by the owner to public use may bind the dedicator, the county is not bound until there has been an acceptance by the board of county commissioners. *State ex rel. Shelton v. Board of Comm'rs*, 1945-NMSC-027, 49 N.M. 218, 161 P.2d 212.

4-38-25. [Bridges.]

They may order and direct the construction of bridges and provide and appropriate funds therefor.

History: Laws 1876, ch. 1, § 14(11); C.L. 1884, § 345(11); C.L. 1897, § 664(11); Code 1915, § 1205; C.S. 1929, § 33-4219; 1941 Comp., § 15-3521; 1953 Comp., § 15-37-23.

ANNOTATIONS

Cross references. — For powers of commissioners with respect to county highways in general, *see* 67-4-2 NMSA 1978 et seq.

For vacation, alteration and establishment of county roads and bridges, *see* 67-5-1 NMSA 1978 et seq.

For county highway and bridge bonds, *see* 67-6-1 NMSA 1978 et seq.

For obstructions and injuries to highways and bridges, *see* Chapter 67, Article 7 NMSA 1978.

4-38-26. [Streets in unincorporated county seats.]

The boards of county commissioners in the unincorporated county seats of this state shall have the same powers that were possessed by the boards of trustees and city council in the incorporated towns and cities of New Mexico, on March 7, 1897, with reference to the care, opening, altering, changing and grading of roads and streets in their respective county seats, and with reference to the laying of sidewalks and taking care of the same in such county seat: provided, that the county shall not pay any of the expenses in making such improvements or changes.

History: Laws 1897, ch. 30, § 1; C.L. 1897, § 664(13); Code 1915, § 1206; C.S. 1929, § 33-4220; 1941 Comp., § 15-3522; 1953 Comp., § 15-37-24.

ANNOTATIONS

Compiler's notes. — The compilers of C.L. 1897 added this section to § 664 thereof, as though it were a subsection of Laws 1876, ch. 1, § 14. Except in content, it had no connection with that act, but was independent legislation.

Traffic in unincorporated village. — County commissioners have not the power to regulate traffic in an unincorporated village. 1929 Op. Att'y Gen. No. 29-13.

When dedication of land by owner binding upon county. — Though dedication of land by the owner to public use may bind the dedicator, the county is not bound until there has been an acceptance by the board of county commissioners. *State ex rel. Shelton v. Board of Comm'rs*, 49 N.M. 218, 161 P.2d 212 (1945).

4-38-27. [Receipts and expenditures; publication of report.]

The boards of county commissioners of their respective counties at their regular meeting in January in each year shall cause to be prepared a statement of the receipts and expenditures of such county during the year immediately preceding, setting forth the amount of money received from taxes, from licenses and all other sources; setting forth also the amount expended and the particular objects for which in each case every sum of money has been expended; and such statement signed by the chairman and county clerk shall be published.

History: Laws 1876, ch. 1, § 26; C.L. 1884, § 357; C.L. 1897, § 675; Code 1915, § 1211; C.S. 1929, § 33-4225; 1941 Comp., § 15-3524; 1953 Comp., § 15-37-26.

ANNOTATIONS

Compiler's notes. — This section may be affected by 10-17-1 to 10-17-3 NMSA 1978 which provide for monthly summaries of minutes of the proceedings of the board of county commissioners to be prepared and filed with the clerk and mailed to county legal newspapers and made public, and for monthly statements of expenditures to be published.

Cross references. — For publication of proceedings of board of county commissioners generally, *see* 4-38-9 NMSA 1978.

For preparation and disposition of monthly minutes of proceedings of board of county commissioners, *see* 10-17-1, 10-17-2 NMSA 1978.

For publication of list of monthly expenditures of board of county commissioners, *see* 10-17-3 NMSA 1978.

For filing of monthly statements of public moneys received and disbursed by county officers, *see* 10-17-4 NMSA 1978.

For language requirements for publication of proceedings of board of county commissioners, *see* 14-11-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 196.

4-38-28. [Payments without authority; liability of commissioners.]

All moneys, county warrants or other indebtedness paid out or ordered to be paid out by any of the said county commissioners before mentioned, without authority of law, each and every county commissioner so doing shall be liable for and to the county for the amount so by them paid out without authority of law and all the costs and expenses incurred in the recovery of such money, which amount shall be collected and recovered in a suit before the district court, and upon the said bond, in the same manner as other actions.

History: Laws 1887, ch. 8, § 2; C.L. 1897, § 697; Code 1915, § 1215; C.S. 1929, § 33-4229; 1941 Comp., § 15-3525; 1953 Comp., § 15-37-27.

ANNOTATIONS

Cross references. — For use of certified copy in action on bond of public officer, *see* 10-2-10 NMSA 1978.

Sheriff's telephone bills. — Because the board of county commissioners may be liable for any payments they order made if the payments are not authorized by law, the board may require the county sheriff to itemize and verify telephone bills for his office in order for the board to protect itself. 1963 Op. Att'y Gen. No. 63-142.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 539.

20 C.J.S. Counties §§ 199 to 201, 137 to 141.

4-38-29. [Approving unauthorized account; penalty; recovery of money.]

Any county commissioner who shall vote to approve any account, or order any money paid to any officer or individual, except as provided by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars [($500)], and the money so illegally ordered to be paid shall be recovered in a suit brought in the name of the county on his official bond.

History: Laws 1897, ch. 60, § 15 [14]; C.L. 1897, § 867(14); Code 1915, § 1216; C.S. 1929, § 33-4230; 1941 Comp., § 15-3526; 1953 Comp., § 15-37-28.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers deleted "The county commissioners shall receive no mileage or additional compensation for attending special or called meetings and" from the beginning of the section.

Cross references. — For use of certified copy in action on bond of public officer, *see* 10-2-10 NMSA 1978.

County clerks not responsible for funds. — Legal responsibility for the disbursement of public funds, vested in the board of county commissioners, does not extend to county clerks. 1979 Op. Att'y Gen. No. 79-33.

4-38-30. [Neglect of duty; penalty.]

If any one of the commissioners shall refuse or neglect to perform any of the duties which are or shall be required by law of him as a member of the board of county commissioners without any just cause therefor, he shall for each offense be fined in a sum not less than twenty-five dollars [($25.00)] nor more than one hundred dollars [($100)] on conviction in the district court.

History: Laws 1876, ch. 1, § 27; C.L. 1884, § 358; C.L. 1897, § 676; Code 1915, § 1212; C.S. 1929, § 33-4226; 1941 Comp., § 15-3527; 1953 Comp., § 15-37-29.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For failure, neglect or refusal to perform duties as cause for removal of local public officers, *see* 10-4-2 NMSA 1978.

4-38-31. [Establishment of airports.]

The boards of county commissioners of the various counties of this state are hereby authorized and empowered to acquire by purchase, condemnation, gift or lease lands for use as an airport and to establish, construct, own, lease, control, equip, improve, maintain and operate an airport, and to lease or grant the use and privilege thereof to others. Such airports and the airstrips and landing fields thereof are hereby declared to be in the nature of public roads in their facilitation of public travel and transportation; and, the buildings and structures necessary to be used in connection therewith are hereby declared to be necessary public buildings, and the exclusive use of any such airport or airports shall not be granted to any person, persons, firm, corporation or association.

History: 1941 Comp., § 15-3528, enacted by Laws 1949, ch. 67, § 1; 1953 Comp., § 15-37-30.

ANNOTATIONS

Cross references. — For leasing of state lands by municipalities, *see* 19-7-54 NMSA 1978.

For joint airport zoning boards, *see* 64-2-1, 64-2-2 NMSA 1978.

Airports and landing fields. — Counties and municipalities are specifically authorized by statute to operate an airport or landing field. *Yarger v. Timberon Water & Sanitation Dist*., 2002-NMCA-055, 132 N.M. 270, 46 P.3d 1270.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 8 Am. Jur. 2d Aviation § 71.

4-38-32. Eminent domain power for acquiring airports.

Any property desired for use as an airport by counties under Section 4-38-31 NMSA 1978, may be acquired as for a public purpose and as a matter of public necessity under the power of eminent domain according to the procedure for condemnation provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1941 Comp., § 15-3529, enacted by Laws 1949, ch. 67, § 2; 1953 Comp., § 15-37-31; 1981, ch. 125, § 43.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 A.L.R.3d 752.

4-38-33. [Eminent domain power over land contiguous and adjacent to airport.]

The power of eminent domain and right of condemnation granted to counties under the provisions of this act [4-38-31 to 4-38-37 NMSA 1978] shall extend to such land contiguous and adjacent to any such airport or any other lands within one-half mile in any direction from the outer boundaries of said airport as may be necessary to render ingress to and egress from said airport efficient and free from hazard.

History: 1941 Comp., § 15-3530, enacted by Laws 1949, ch. 67, § 3; 1953 Comp., § 15-37-32.

ANNOTATIONS

Cross references. — For condemnation proceedings generally, *see* 42A-1-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 A.L.R.3d 752.

4-38-34. [Joint county-municipal operation of airports.]

The boards of county commissioners are hereby authorized and empowered to cooperate and join with any municipality located in such county, in the joint operation, financing, maintenance and control of publicly owned or operated airports, under such plan and provisions, as the board of county commissioners and the governing body of such municipality may mutually agree.

History: 1941 Comp., § 15-3531, enacted by Laws 1949, ch. 67, § 4; 1953 Comp., § 15-37-33.

ANNOTATIONS

Cross references. — For joint airport zoning boards, *see* 64-2-1, 64-2-2 NMSA 1978.

4-38-35. [Federal aid for airports; gifts.]

The respective boards of county commissioners are authorized and empowered to seek and obtain, if possible, from the United States government, or any department or agency thereof, financial aid and assistance to carry into effect the purposes hereof. Such boards are also authorized and empowered in their discretion to accept gifts and donations of any kind or character from any source whatsoever, including, but not limited to a site for such airports.

History: 1941 Comp., § 15-3532, enacted by Laws 1949, ch. 67, § 5; 1953 Comp., § 15-37-34.

4-38-36. [Power to issue bonds for airports.]

The boards of county commissioners of the various counties of this state are hereby authorized and empowered to issue and dispose of the negotiable bonds of such county, subject to the limitations and in accordance with Article 9 of the constitution, for the purpose of securing funds for the acquisition and construction of an airport, airplane landing strips and necessary public buildings to be used in connection therewith.

History: 1941 Comp., § 15-3533, enacted by Laws 1949, ch. 67, § 6; 1953 Comp., § 15-37-35.

ANNOTATIONS

Cross references. — For state, county and municipal indebtedness, *see* N.M. Const., art. IX, § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 220.

4-38-37. [Procedure for issuing bonds for airports.]

The proceedings for calling, holding and canvassing the results of an election to determine whether such bonds are to be issued, the manner of issuance and the terms and provisions of such bonds, the sale thereof, the levy of taxes for the payment thereof and the manner and time of payment thereof shall all be the same as is now or may hereafter be provided by law with respect to bonds issued for the purpose of building courthouses and, in general, all of the provisions of law with respect to county courthouse bonds shall, so far as applicable, apply to the bonds herein authorized.

History: 1941 Comp., § 15-3534, enacted by Laws 1949, ch. 67, § 7; 1953 Comp., § 15-37-36.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

4-38-38. Creation of county advisory boards.

There is created a county advisory board in each county of the fourth and fifth class. The board shall consist of the county commissioners, the county treasurer, county assessor, sheriff and county clerk.

History: 1953 Comp., § 15-37-37, enacted by Laws 1959, ch. 239, § 1.

ANNOTATIONS

Cross references. — For classification of counties for salary purposes, *see* 4-44-1 NMSA 1978.

4-38-39. Duties of board.

The board shall meet with the county commissioners and advise them on all matters concerning the offices of county officials and on all matters concerning administration of public matters of the county. Each member of the board shall familiarize himself with all matters of a public nature in his respective county, and each member of the advisory board shall make suggestions and recommendations for more efficient administration of county finances, county government or any other function of the county. The advisory board shall encourage cooperation between various county officials and bring about mediation when several county officials fail or neglect to cooperate in exercising their

duties whenever the lack of cooperation becomes detrimental to the efficiency of county government.

History: 1953 Comp., § 15-37-38, enacted by Laws 1959, ch. 239, § 2.

4-38-40. Executive committee.

The county treasurer, county assessor and county clerk are ex officio the executive committee of the county advisory board.

History: 1953 Comp., § 15-37-39, enacted by Laws 1959, ch. 239, § 3.

4-38-41. Terms of members.

Terms of members of the county advisory boards in fourth and fifth class counties begin June 15, 1959, and expire with each member's term of elective county office. Terms of successors shall begin and expire with each member's term of elective county office.

History: 1953 Comp., § 15-37-40, enacted by Laws 1959, ch. 239, § 4.

4-38-42. Salary[; members of advisory board].

In addition to salaries received as elective county officers, each member of a county advisory board, except the county commissioners, shall receive six hundred dollars ($600) a year, plus three hundred dollars ($300) additional for deputies. Each county commissioner shall receive three hundred dollars ($300) a year; provided, that only so much of the salaries of each member of the board shall be allowed as the county's valuation will raise for the salary funds within the twenty mill limitation.

History: 1953 Comp., § 15-37-41, enacted by Laws 1959, ch. 239, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

ARTICLE 39
County Assessor

4-39-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 119, § 2 repealed 4-39-1 NMSA 1978, as enacted by Laws 1884, ch. 63, § 1, providing for the election of a county assessor, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 4-38-6 NMSA 1978.

4-39-2. Courses in property valuation and property tax administration authorized; issuance of certificates.

The taxation and revenue department, in cooperation with the international association of assessing officers and the real estate appraisers board, may establish four grades of courses in the field of property valuation and property tax administration. The courses shall be graded in order of increasing difficulty and shall be administered by the department. Persons completing a course and passing an examination on a particular grade of property valuation and property tax administration shall be issued an appraiser's certificate of an appropriate grade. A person shall not be issued an appraiser's certificate of a particular grade unless the person has been issued an appraiser's certificate for each one of the lesser grades. The appraiser's certificates shall be denominated "Appraiser 1", "Appraiser 2", "Appraiser 3" and "Appraiser 4" and shall be granted in order of difficulty of the course and examination completed. The "Appraiser 4" certificate shall be granted for completion of the most difficult course. County assessors or appraisers who have been granted an "Appraiser 4" certificate shall be designated "New Mexico certified appraiser" and shall be provided by the taxation and revenue department with a certificate granting this designation.

History: 1953 Comp., § 15-38-1.1, enacted by Laws 1978, ch. 47, § 1; 1995, ch. 12, § 2; 2005, ch. 118, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 47, § 1, repealed 15-38-1.1, 1953 Comp. (4-39-2 NMSA 1978), relating to the authorization of courses in property valuation and property tax administration and issuance of certificates, and enacted a new section.

Cross references. — For qualifications for appraisers' certificates, *see* 4-39-3 NMSA 1978.

For property tax training programs, *see* 7-35-5 NMSA 1978.

The 2005 amendment, effective June 17, 2005, authorized the real estate appraisers board to participate in establishing property valuation and property tax administration courses.

The 1995 amendment, effective June 16, 1995, deleted "property tax division of the" preceding "taxation" and substituted "international association of assessing officers" for "state institutions of higher learning" in the first sentence; substituted "department" for

"institutions of higher learning" at the end of the second sentence; substituted "taxation and revenue department" for "property tax division" in the final sentence; and made a stylistic change.

4-39-3. Qualifications for appraiser's certificates.

The taxation and revenue department, in cooperation and in keeping with the standards of the international association of assessing officers and the real estate appraisers board, shall establish the qualifications that are prerequisite to the issuance of each grade of appraiser's certificate.

History: 1953 Comp., § 15-38-1.2, enacted by Laws 1969, ch. 269, § 2; 1973, ch. 258, § 139; 1974, ch. 92, § 1; 1977, ch. 249, § 25; 1995, ch. 12, § 3; 2005, ch. 118, § 2.

ANNOTATIONS

Cross references. — For conduct of courses in property valuation and property tax administration and issuance of appraisers' certificates, *see* 4-39-2 NMSA 1978.

For property tax training programs, *see* 7-35-5 NMSA 1978.

The 2005 amendment, effective June 17, 2005, required the taxation and revenue department to establish qualifications for appraisers' certificates in cooperation and in keeping with the standards of the real estate appraisers board.

The 1995 amendment, effective June 16, 1995, deleted "property tax division of the" preceding "taxation" and "with the representatives of the participating institutions" following "cooperation" near the beginning, and made stylistic changes throughout the section.

4-39-4. Additional compensation to assessors.

In addition to the salaries provided for county assessors in Sections 4-44-4 through 4-44-5 NMSA 1978, county assessors may receive additional cumulative increments up to:

A. an additional seven hundred fifty dollars ($750) a year for holding an "Appraiser 1" certificate;

B. an additional one thousand seven hundred fifty dollars ($1,750) a year for holding an "Appraiser 2" certificate;

C. an additional three thousand dollars ($3,000) a year for holding an "Appraiser 3" certificate; and

D. an additional three thousand five hundred dollars ($3,500) a year for holding an "Appraiser 4" certificate.

History: 1953 Comp., § 15-38-1.3, enacted by Laws 1969, ch. 269, § 3; 1977, ch. 138, § 1; 2023, ch. 119, § 1.

ANNOTATIONS

Compiler's notes. — Salaries for county assessors are now set out in Sections 4-44-4 to 4-44-8 NMSA 1978 and in 4-44-14 NMSA 1978.

Cross references. — For certificates generally, *see* 4-39-2, 4-39-3 NMSA 1978.

For powers of board of county commissioners as to hiring and setting of salaries of county employees and deputies generally, *see* 4-38-19 NMSA 1978.

The 2023 amendment, effective July 1, 2023, effective July 1, 2023, increased the amount of additional compensation a county may provide to assessors, and revised statutory citations; in the introductory clause, after "may receive", added "additional cumulative increments up to"; in Subsection A, after "an additional", deleted "five hundred dollars ($500)" and added "seven hundred fifty dollars ($750)"; in Subsection B, after "an additional", deleted "one thousand dollars ($1,000)" and added "one thousand seven hundred fifty dollars ($1,750)"; in Subsection C, after "an additional", deleted "one thousand dollars ($1,000)" and added "three thousand dollars ($3,000)"; and in Subsection D, after "an additional", deleted "one thousand dollars ($1,000)" and added "three thousand five hundred dollars ($3,500)".

Additional compensation for county assessors is limited to the amount set out in this section. — The plain language of 4-39-4 NMSA 1978, states that the additional compensation listed in the section supplements the salaries of county assessors, and the plain language of 4-39-5 NMSA 1978, states that the additional compensation set out in that section is provided to any qualifying appraiser employed in the office of the assessor. Accordingly, the appropriate rate of additional compensation for a county assessor who obtains an appraiser certificate appears to be limited to the rate set out in § 4-39-4 NMSA 1978, and elected county assessors, therefore, are not entitled to the additional compensation contemplated in § 4-39-5 NMSA 1978. *Appropriate Amount of Compensation for an Elected County Assessor* (8/11/20), Att'y Gen. Adv. Ltr. 2020-08.

A board of county commissioners is obligated to seek repayment of any amount improperly paid to county assessors. — The legislature has closely regulated the amounts which a county assessor can be compensated, which is consistent with the constitutional mandate set out in N.M. Const., art. X, § 1, that no county officer shall receive any salary, compensation, or emoluments in any form other than authorized by law, and therefore any action by a board of county commissioners to provide compensation which exceeds the statutory limits would be a violation of the express legislative cap, and a board of county commissioners that failed to comply with the

statutory requirements when it approved a county assessor's compensation would be obligated to seek repayment of the amounts improperly paid. *Appropriate Amount of Compensation for an Elected County Assessor* (8/11/20), Att'y Gen. Adv. Ltr. 2020-08.

4-39-5. Additional compensation to certain certified employees in appraiser offices.

A board of county commissioners may provide additional cumulative increments to the salary of employees in the office of the assessor as an incentive for obtaining greater qualification levels up to the following amounts:

A. an additional seven hundred fifty dollars ($750) a year for holding an "Appraiser 1" certificate;

B. an additional one thousand seven hundred fifty dollars ($1,750) a year for holding an "Appraiser 2" certificate;

C. an additional three thousand dollars ($3,000) a year for holding an "Appraiser 3" certificate; and

D. an additional three thousand five hundred dollars ($3,500) a year for holding an "Appraiser 4" certificate.

History: 1953 Comp., § 15-38-1.4, enacted by Laws 1977, ch. 138, § 2; 2015, ch. 78, § 1; 2023, ch. 119, § 2.

ANNOTATIONS

Cross references. — For powers of board of county commissioners as to hiring and setting of salaries of county employees and deputies generally, *see* 4-38-19 NMSA 1978.

The 2023 amendment, effective July 1, 2023, increased the amount of additional compensation a county may provide to certified employees in the office of the assessor; in the section heading, deleted "appraisers" and added "certain certified employees in appraiser offices"; in the introductory clause, after "salary of", deleted "any qualifying appraiser employed" and added "employees"; in Subsection A, after "an additional", deleted "five hundred dollars ($500)" and added "seven hundred fifty dollars ($750)"; in Subsection B, after "an additional", deleted "one thousand five hundred dollars ($1,500)" and added "one thousand seven hundred fifty dollars ($1,750)"; in Subsection C, after "an additional", deleted "two thousand five hundred dollars ($2,500)" and added "three thousand dollars ($3,000)"; and in Subsection D, after "an additional", deleted "three thousand dollars ($3,000)" and added "three thousand five hundred dollars ($3,500)".

The 2015 amendment, effective July 1, 2015, adjusted the qualification incentive pay for qualifying appraisers employed in the office of the assessor; in the introductory sentence of the section, after "may provide", deleted "as qualification incentive pay the following", and after "office of the assessor", added "as an incentive for obtaining greater qualification levels up to the following amounts"; in Subsection B, after "additional", deleted "one thousand dollars ($1,000)" and added "one thousand five hundred dollars ($1,500)"; in Subsection C, after "additional", deleted "one thousand dollars ($1,000)" and added "two thousand five hundred dollars ($2,500)"; and in Subsection D, after "additional", deleted "one thousand dollars ($1,000)" and added "three thousand dollars ($3,000)".

County assessors are not entitled to the additional compensation set out in this section. — The plain language of 4-39-4 NMSA 1978, states that the additional compensation listed in the section supplements the salaries of county assessors, and the plain language of 4-39-5 NMSA 1978, states that the additional compensation set out in the section is provided to any qualifying appraiser employed in the office of the assessor. Accordingly, the appropriate rate of additional compensation for a county assessor who obtains an appraiser certificate appears to be limited to the rate set out in 4-39-4 NMSA 1978, and elected county assessors, therefore, are not entitled to the additional compensation contemplated in 4-39-5 NMSA 1978. *Appropriate Amount of Compensation for an Elected County Assessor* (8/11/20), Att'y Gen. Adv. Ltr. 2020-08.

4-39-6. Assessors; removal proceedings against; secretary of taxation and revenue may cause to be instituted; district attorney; attorney general.

A. The secretary of taxation and revenue may, if grounds appear therefor, cause removal proceedings to be instituted against any assessor by the district attorney for the county for which the assessor was elected, or by the attorney general, in the manner provided by law for the institution and prosecution of removal proceedings against public officers by district attorneys.

B. The secretary of taxation and revenue shall cause removal proceedings to be instituted under Subsection A of this section against any assessor whose functions have been suspended under Section 7-35-6 NMSA 1978 when any suspension under that section continues without interruption for a period of more than sixty days.

C. Nothing in this section shall be construed to repeal or limit any provisions of law relating to the liability of assessors as such or as public officers to fine, imprisonment or removal from office for failure, refusal or neglect to discharge any duty imposed upon them by law, but shall be in addition to them.

History: 1953 Comp., § 15-38-7, enacted by Laws 1955, ch. 176, § 5; 1973, ch. 258, § 140; 1977, ch. 249, § 26; 1995, ch. 12, § 4.

ANNOTATIONS

Cross references. — For action against assessors for noncompliance with the Property Tax Code, *see* 7-35-6 NMSA 1978.

For removal of public officers, *see* 10-3-1 NMSA 1978 et seq.

The 1995 amendment, effective June 16, 1995, substituted "secretary of taxation and revenue" for "property tax division of the taxation and revenue department" in the section heading and for "director of the property tax division of the taxation and revenue department" in Subsections A and B, made a stylistic change in Subsection B, and added Subsection C.

4-39-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 12, § 15 repealed 4-39-7 NMSA 1978, as enacted by Laws 1955, ch. 176, § 6, relating to construction of the law on removal proceedings against assessors, effective June 16, 1995. For provision of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 4-39-6 NMSA 1978.

ARTICLE 40
County Clerk

4-40-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 119, § 2 repealed 4-40-1 NMSA 1978, as enacted by Laws 1868-1869, ch. 36, § 1, providing for the election of a county clerk and treasurer, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 4-38-6 NMSA 1978.

4-40-2. County clerk; bond.

The county clerk of each county shall, before entering upon the duties of his office and within ten days after the first day of January following his election, execute a bond to the state of New Mexico, in the penal sum of ten thousand dollars [($10,000)], with sufficient sureties, to be approved by the judge of the district court of said county, conditioned that he will well and faithfully perform all of his duties as such county clerk during his term of office.

History: Laws 1901, ch. 35, §§ 1, 2; Code 1915, § 1441; Laws 1919, ch. 10, § 1; C.S. 1929, § 34-425; 1941 Comp., § 15-3702; 1953 Comp., § 15-39-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For oath and bonds of county officers, *see* 10-1-13 NMSA 1978.

For bonds of public officers generally, *see* 10-2-1 NMSA 1978 et seq.

4-40-3. [Duties; ex-officio clerk of board of county commissioners.]

The county clerk shall be ex-officio clerk of the board of county commissioners, shall attend the sessions of the board in person or by deputy, keep the seals, records and papers of said board of county commissioners and keep a record of the proceedings of said board in a book as required by law, under the direction of the county commissioners.

History: Laws 1876, ch. 1, § 19; C.L. 1884, § 350; C.L. 1897, § 678; Code 1915, § 1235; C.S. 1929, § 33-4301; 1941 Comp., § 15-3704; 1953 Comp., § 15-39-4.

ANNOTATIONS

Compiler's notes. — Under N.M. Const., art. VI, § 22, the county clerk is designated as clerk of the district court and clerk of the probate court until otherwise provided by law. After July 1, 1969, judges of the district courts are authorized and empowered to appoint clerks. *See* 34-6-19 NMSA 1978.

Cross references. — For filing of surveys with county clerk, see 4-42-7 NMSA 1978.

For duties pertaining to accounts and claims against county, *see* 4-45-3 NMSA 1978 et seq.

For maintenance of record of vouchers filed by county flood commissioner, *see* 4-50-6 NMSA 1978.

For duties pertaining to recording of documents, *see* 14-8-1, 14-8-2, 14-8-6, 14-8-9 NMSA 1978.

For duties of probate clerks, *see* 34-7-14 NMSA 1978 et seq.

For deputy probate clerks, *see* 34-7-22 NMSA 1978 et seq.

For duties pertaining to filing and vacation of subdivision plats, *see* 47-6-6, 47-6-7 NMSA 1978.

For filing or recording with clerk of public utilities instruments, *see* 62-13-9, 62-13-11, 62-13-12 NMSA 1978.

For deposit of money received from sale of trespassing animal in irrigation district, *see* 77-14-22 NMSA 1978.

Purpose of this section is not to confer validity on meetings of the county commissioners but to provide the board with a clerk to keep its records. 1973 Op. Att'y Gen. No. 73-56.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants, 71 A.L.R.2d 1140.

20 C.J.S. Counties § 130.

4-40-4. [Duties as clerk of county commissioners.]

It shall be the general duty of the clerk of the board of commissioners:

A. to record in a book to be provided for that purpose all proceedings of the board;

B. to make regular entries of all their resolutions and decisions in all questions concerning the raising of money;

C. to record the vote of each commissioner on any question submitted to the board if required by any member;

D. to sign all orders issued by the board for the payment of money, and to record in a book to be provided for that purpose, the receipts of the county treasurer of the receipts and expenditures of the county;

E. to preserve and file all accounts acted upon by the board with their action thereon, and he shall perform such special duties as are required by law.

History: Laws 1876, ch. 1, § 29; C.L. 1884, § 360; C.L. 1897, § 679; Code 1915, § 1236; C.S. 1929, § 33-4302; 1941 Comp., § 15-3705; 1953 Comp., § 15-39-5.

ANNOTATIONS

Cross references. — For service of clerk on county advisory board, *see* 4-38-38 NMSA 1978 et seq.

For duties of clerk as to accounts and claims against county, *see* 4-45-3 NMSA 1978 et seq.

Ministerial duties. — Statutory duties of county clerks are ministerial and are intended only to insure the regularity of county fiscal procedures. 1979 Op. Att'y Gen. No. 79-33.

4-40-5. County clerk; duty regarding accounts.

It shall be the duty of the county clerk to designate upon every account, which shall be audited and approved and allowed by the board of county commissioners, the amount so allowed.

History: Laws 1876, ch. 1, § 30; C.L. 1884, § 361; C.L. 1897, § 680; Code 1915, § 1237; C.S. 1929, § 33-4303; 1941 Comp., § 15-3706; 1953 Comp., § 15-39-6; 2011, ch. 134, § 1.

ANNOTATIONS

Cross references. — For approval or disapproval of accounts by board, *see* 4-45-3 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the requirement that county clerks provide certified copies of records and accounts upon request.

Death certificates. — County clerks may not issue copies of death certificates on file in their office unless the vital statistics bureau promulgates regulations authorizing it or unless the legislature amends the Vital Statistics Act (24-14-1 NMSA 1978 et seq.) to grant county clerks such authority. 1988 Op. Att'y Gen. No. 88-01.

County clerks could not issue certified copies of death certificates pursuant to 14-8-4 NMSA 1978 in order to avoid the higher fees charged for the issuance of certificates by the vital statistics bureau. 1988 Op. Att'y Gen. No. 88-01.

Charging of fee for issuance of certified copies of military discharge papers. — In absence of statute authorizing free certified copies, a fee of $.15 per page must be charged by the county clerk for issuing certified copies of soldiers' discharge papers. 1943 Op. Att'y Gen. No. 43-4337.

4-40-6. [Duties as to orders for money.]

Such clerk shall not sign or issue any county order unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount and number of the same and the name of the person to whom it is issued shall be entered in a book kept by him in his office for that purpose.

History: Laws 1876, ch. 1, § 31; C.L. 1884, § 362; C.L. 1897, § 681; Code 1915, § 1238; C.S. 1929, § 33-4304; 1941 Comp., § 15-3707; 1953 Comp., § 15-39-7.

ANNOTATIONS

Cross references. — For attestation of county orders by clerk, *see* 4-45-4 NMSA 1978.

Ministerial duties. — Statutory duties of county clerk are ministerial and are intended only to insure the regularity of county fiscal procedures. 1979 Op. Att'y Gen. No. 79-33.

4-40-7. [Newspaper subscriptions.]

The county clerks of the several counties of this state are hereby authorized and required to subscribe for such, one copy each of newspapers as are printed and published in their respective counties.

History: Laws 1889, ch. 49, § 1; C.L. 1897, § 768; Code 1915, § 1241; C.S. 1929, § 33-4307; 1941 Comp., § 15-3708; 1953 Comp., § 15-39-8.

ANNOTATIONS

Section imposes duty to subscribe to newspapers upon the county clerk only when such newspaper or newspapers are printed and published in the county. 1957 Op. Att'y Gen. No. 57-192.

Microfilming. — Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

4-40-8. To keep file of newspapers.

It shall be the duty of each county clerk to receive and preserve every copy of the paper or papers so subscribed for and from time to time cause the same to be properly arranged and bound in volumes of convenient size and in a substantial manner, and said volumes, when bound, shall be kept in his office for the use of the courts, when needed, of strangers and the inhabitants of the county all of whom shall have access to the same at all times during office hours, free of charge. Provided, that in order to more permanently preserve and to make easily accessible valuable historical source material of state and local history, county clerks may upon the approval of the county commissioners make indefinite loans of the files of newspapers not in current demand, to libraries of state educational institutions, or to public libraries situated within the county. For his services in this behalf the county clerk shall receive the sum of ten dollars [($10.00)] for each volume, and for the neglect of the duties hereby imposed shall forfeit the sum of fifty dollars [($50.00)], to be recovered with costs in a civil action before any court.

History: Laws 1889, ch. 49, § 2; C.L. 1897, § 769; Code 1915, § 1242; C.S. 1929, § 33-4308; Laws 1941, ch. 132, § 1; 1941 Comp., § 15-3709; 1953 Comp., § 15-39-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The $10.00 fee provision of this section is unconstitutional as it is clearly in conflict with N.M. Const. art X, § 1, but other provisions of the section are fully effective. 1942 Op. Att'y Gen. No. 42-4199.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

Microfilmed originals may be destroyed. — If microfilmed and certified pursuant to 14-3-15 NMSA 1978, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.

4-40-9. [Newspapers; payment of expenses.]

The subscription price of such paper or papers, and the binding of the several volumes thereof, shall be paid out of the general fund of the county in the same manner as other charges are audited and allowed from such fund by the respective boards of county commissioners.

History: Laws 1889, ch. 49, § 3; C.L. 1897, § 770; Code 1915, § 1243; C.S. 1929, § 33-4309; 1941 Comp., § 15-3710; 1953 Comp., § 15-39-10.

ANNOTATIONS

Cross references. — For duties of clerk pertaining to subscription to and preservation of newspapers, *see* 4-40-7, 4-40-8 NMSA 1978.

4-40-10. [Newspapers; abstraction, mutilation or destruction; penalty.]

Any person who shall willfully abstract, destroy, mutilate or deface any number or volume of such newspapers purchased in pursuance of Sections 4-40-7 and 4-40-8 NMSA 1978, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars [($500)], or imprisonment [imprisoned] in the county jail not more than six months, or [punished] both by such fine and imprisonment in the discretion of the court.

History: Laws 1889, ch. 49, § 4; C.L. 1897, § 771; Code 1915, § 1244; C.S. 1929, § 33-4310; 1941 Comp., § 15-3711; 1953 Comp., § 15-39-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 41
County Sheriff

4-41-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 119, § 2 repealed 4-41-1 NMSA 1978, as enacted by Laws 1851-1852, p. 198, providing for the election of a county probate judge and sheriff, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 4-38-6 NMSA 1978.

4-41-2. [Duties.]

The sheriff shall be conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.

History: Kearny Code, Sheriffs, § 4; C.L. 1865, ch. 99, § 3; C.L. 1884, § 398; C.L. 1897, § 734; Code 1915, § 1260; C.S. 1929, § 33-4416; 1941 Comp., § 15-3802; 1953 Comp., § 15-40-2.

ANNOTATIONS

Cross references. — For enforcement of county ordinances, *see* 4-37-3 NMSA 1978.

For collection and disposition of fees by sheriffs of H class counties, *see* 4-44-15 NMSA 1978.

For maintenance of records as to confinement and release of prisoners, *see* 4-44-19 NMSA 1978.

For allowances and reimbursement of expenses for feeding prisoners, *see* 4-44-19, 4-44-20 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

For enforcement of game laws, *see* 17-2-19 NMSA 1978.

For enforcement of trappers' and fur dealers' provisions, *see* 17-5-8 NMSA 1978.

For carrying of weapons, *see* 30-7-2 NMSA 1978.

For penalty for resisting or obstructing officer, *see* 30-22-1 NMSA 1978.

For penalty for refusing to aid officer, *see* 30-22-2 NMSA 1978.

For penalty for permitting prisoner to escape, *see* 30-22-11 NMSA 1978.

For duties pertaining to forest fire laws, *see* 30-32-3 NMSA 1978.

For control of jails, *see* 33-3-1 NMSA 1978.

For collection of contributions under Unemployment Compensation Law, *see* 51-1-36 NMSA 1978.

For duties pertaining to the Detoxification Reform Act, *see* 43-2-1.1 NMSA 1978.

For arrest procedure for violations of motor vehicle laws, *see* 66-8-122 NMSA 1978 et seq.

For arrest of persons obstructing or causing injury to highways, *see* 67-7-11 NMSA 1978.

For execution of orders of livestock board, *see* 77-3-2 to 77-3-10 NMSA 1978.

For power of officers to stop vehicles transporting livestock or carcasses, *see* 77-9-46 NMSA 1978.

County sheriff is conservator of peace. — A sheriff and his deputies are conservators of the peace within their county. *Anchondo v. Corrections Dep't*, 1983-NMSC-051, 100 N.M. 108, 666 P.2d 1255.

Suppressing breaches of the peace. — The power and duty of a law enforcement officer to suppress breaches of the peace includes the right to take any reasonable steps to prevent such breaches from occurring when the officer has good reason to believe that a disturbance may occur. *State v. Prince*, 1999-NMCA-010, 126 N.M. 547, 972 P.2d 859.

Preventing breaches of the peace. — The power and duty to suppress breaches of the peace includes the right to take any reasonable steps to prevent such a breach from occurring when the officers have good reason to believe that a disturbance may take place. *State v. Hilliard*, 1988-NMCA-066, 107 N.M. 506, 760 P.2d 799, cert. denied, 107 N.M. 468, 760 P.2d 160 .

Duties as to maintenance of roads and extinguishment of fires. — Sheriffs are conservators of the peace, law enforcement officers and arms of the courts and have no

duties pertaining to the maintenance of roads or the extinguishment of fires. *Sanchez v. Board of County Comm'rs*, 1970-NMCA-058, 81 N.M. 644, 471 P.2d 678, cert. denied, 81 N.M. 668, 472 P.2d 382.

Liability under 41-4-12 NMSA 1978. — The statutory obligations that officers cooperate with prosecutors and bring defendants before the courts are primarily designed to protect the public by ensuring that dangerous criminals are removed from society and brought to justice; accordingly, as with the duty to investigate crimes under 29-1-1 NMSA 1978, the duties of cooperating with prosecutors, diligently filing complaints, and bringing defendants before the courts inure to the benefit of private individuals, and the violation of these statutory duties may give rise to a cognizable claim under the Tort Claims Act, Chapter 41, Article 4 NMSA 1978. *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep't*, 1996-NMSC-021, 121 N.M. 646, 916 P.2d 1313.

County sheriff is conservator of peace within his county. 1955 Op. Att'y Gen. No. 55-6283.

County sheriff and state police have concurrent authority for enforcement of state laws independent of one another. 1943 Op. Att'y Gen. No. 43-4252.

Transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department; jail administrators and independent contractors may also transport inmates at their facilities. 2000 Op. Att'y Gen. No. 00-02.

Sheriffs do not have the sole responsibility for transporting arrested individuals to county jail. — Any person charged with a crime committed in the state, while awaiting indictment or trial on such charge is required to be incarcerated in the county jail of the county wherein such crime is alleged to have been committed, and this section explicitly designates the sheriff as being responsible for transporting detainees to court to answer such charges, but this section does not address the mechanics of transporting an individual to jail in the first place when that individual is arrested by another law enforcement agency; when a municipal officer acts to arrest someone, they are acting under their statutory authority as a municipal officer and the municipality is therefore responsible and liable for the arrestee until the arrestee is delivered to the actual custody of the county jail. A court may reasonably conclude that municipal officers have authority to transport individuals arrested to county custody. *County Sheriff Prisoner Transport Responsibility upon Arrest of Individuals by Municipal Police* (12/2/2022), Att'y Gen. Adv. Ltr. 2022-17.

Sheriffs do not have the sole responsibility for transporting arrested individuals to county jail. — Any person charged with a crime committed in the state, while awaiting indictment or trial on such charge is required to be incarcerated in the county jail of the county wherein such crime is alleged to have been committed, and this section explicitly designates the sheriff as being responsible for transporting detainees to court to answer such charges, but this section does not address the mechanics of

transporting an individual to jail in the first place when that individual is arrested by another law enforcement agency; when a municipal officer acts to arrest someone, they are acting under their statutory authority as a municipal officer and the municipality is therefore responsible and liable for the arrestee until the arrestee is delivered to the actual custody of the county jail. A court may reasonably conclude that municipal officers have authority to transport individuals arrested to county custody. *County Sheriff Prisoner Transport Responsibility upon Arrest of Individuals by Municipal Police* (7/1/22), Att'y Gen. Adv. Ltr. 2022-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 46, 48, 49, 61.

Civil liability of sheriff or other officer charged with keeping jail or prison for death or injury of prisoner, 14 A.L.R.2d 353, 41 A.L.R.3d 1021.

Personal liability of sheriff, or his bond, for negligently causing personal injury or death, 60 A.L.R.2d 873.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner, 41 A.L.R.3d 1021.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

80 C.J.S. Sheriffs and Constables §§ 74 to 79.

4-41-3. [Failure to execute bond and oath; performing duties; penalty.]

Any person who shall enter upon or attempt to execute any official duty as sheriff or as ex-officio collector, without having first executed and filed his official bond and oath of office as above required, shall be deemed guilty of a misdemeanor, and upon conviction in the district court, shall be fined in any sum not exceeding three hundred dollars [($300)], in the discretion of the court.

History: Laws 1876, ch. 16, § 5; C.L. 1884, § 386; C.L. 1897, § 724; Code 1915, § 1250; C.S. 1929, § 33-4406; 1941 Comp., § 15-3806; 1953 Comp., § 15-40-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "or as ex-officio collector" appear to be obsolete in view of 4-43-3 NMSA 1978.

Cross references. — For oath required of officers, *see* N.M. Const., art. XX, § 1.

For oath and bond of county officers, *see* 10-1-13 NMSA 1978.

For bonds of public officers, *see* 10-2-1 NMSA 1978 et seq.

4-41-4. [Exercising powers after removal; penalty.]

If any such sheriff, after being removed as provided by law, shall attempt to exercise any of the rights or powers of said office, or shall fail or refuse to turn over the office to the person appointed to succeed him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in the district court, shall be punished by a fine not exceeding three hundred dollars [($300)], or by imprisonment not exceeding three months, in the discretion of the court before which the cause may be tried.

History: Laws 1876, ch. 16, § 9; C.L. 1884, § 390; C.L. 1897, § 727; Code 1915, § 1252; C.S. 1929, § 33-4408; 1941 Comp., § 15-3808; 1953 Comp., § 15-40-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For removal of local public officers, *see* 10-4-1 NMSA 1978 et seq.

4-41-5. Deputy sheriffs; appointment and term; merit system.

The sheriffs in all the counties of this state shall have power to appoint deputies, who shall remain in office at the pleasure of such sheriffs; except that in counties which have established a merit system by ordinance, the provisions of the ordinance shall control the demotion and discharge of deputies and other employees of the sheriff's office, except for one under-sheriff and an executive secretary, both of whom shall hold exempt positions.

History: Laws 1855-1856, ch. 2, § 1; C.L. 1865, ch. 99, § 9; C.L. 1884, § 401; C.L. 1897, § 737; Code 1915, § 1255; C.S. 1929, § 33-4411; 1941 Comp., § 15-3809; 1953 Comp., § 15-40-9; Laws 1975, ch. 11, § 3.

ANNOTATIONS

Cross references. — For establishment of merit system and incorporation of provisions thereof in employment contracts of deputy sheriffs, *see* 4-41-6, 4-41-7 NMSA 1978.

For qualifications of deputy sheriffs, *see* 4-41-8 NMSA 1978.

For employment of part-time deputies in certain counties, *see* 4-44-17 NMSA 1978.

For payment of expenses of sheriffs, deputy sheriffs and guards for serving process and certain other official business, *see* 4-44-18 NMSA 1978.

For oaths and bonds of deputy county officers, *see* 4-44-35 NMSA 1978.

For requirement that deputies be citizens of New Mexico, *see* 29-1-9 NMSA 1978.

For requirement of certification by New Mexico law enforcement academy, *see* 29-7-10 NMSA 1978.

Deputy sheriffs' discharge upheld for disruption of office. — Where deputy sheriffs began tape recording their conversations with the sheriff following a quarrel and a subsequent request for the deputies' resignations and the activities of the deputy sheriffs caused animosities and disruption to develop within the sheriff's office, to the end that an air of suspicion and distrust prevailed which impaired the efficiency of the office, the discharge of the deputies was upheld. *Serna v. Manzano*, 616 F.2d 1165 (10th Cir. 1980).

Reimbursement of sheriff for salaries of deputies. — An account by a sheriff of a county of the fourth class for reimbursement for sums paid out on salary to deputies did not violate N.M. Const., art. X, § 1, prohibiting county officers from receiving to their own use any fees or emoluments other than the legal salary. *State ex rel. Garcia v. Board of Comm'rs*, 1916-NMSC-030, 21 N.M. 632, 157 P. 656, *aff'd*, 22 N.M. 562, 166 P. 906.

Liability for acts of deputy. — County sheriff was not liable in damage suit for false return of service by deputy sheriff, either on the theory that deputy acted by virtue of the deputy's office, since plaintiffs had the burden of proving that service of civil process was within the authority of deputy, and they had failed to find any evidence that would meet that burden, or on the theory that deputy acted under color of the deputy's office, since representations which led plaintiffs to believe that they were dealing with sheriff's office did not occur during defendant-sheriff's term of office. *Karr v. Dow*, 1973-NMCA-016, 84 N.M. 708, 507 P.2d 455, cert. denied, 84 N.M. 696, 507 P.2d 443.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 12, 16.

Liability of sheriff or his bond for the defaults and misfeasances of his assistants and deputies, 1 A.L.R. 236, 102 A.L.R. 174, 116 A.L.R. 1064, 71 A.L.R.2d 1140.

Liability of sheriff for loss or injury of property levied upon, where it is in charge of agent or deputy, 138 A.L.R. 720.

Civil liability of sheriff or other officer charged with keeping jail or prison for death or injury of prisoner, 14 A.L.R.2d 353, 41 A.L.R.3d 1021.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner, 41 A.L.R.3d 1021.

Validity, construction and application of regulation regarding outside employment of governmental employees or officers, 94 A.L.R.3d 1230.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer", justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

Validity, construction, and application of regulations regarding outside employment of governmental employees of officers, 62 A.L.R.5th 671.

80 C.J.S. Sheriffs and Constables §§ 34, 35.

4-41-6. Counties authorized to establish merit systems for deputies and personnel in the county sheriff's office.

Each county is authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff's office. The ordinance may, in the discretion of the board of county commissioners, provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per week and the methods of employment, promotion, demotion and discharge of such deputies and employees within the limits provided by law.

History: 1953 Comp., § 15-40-9.1, enacted by Laws 1975, ch. 11, § 1.

ANNOTATIONS

Cross references. — For effect of merit system upon demotion and discharge of deputies, *see* 4-41-5 NMSA 1978.

Deputies' exercise of rights not valid reason for discharge. — The fact that this section allows the sheriff to exercise a broad discretion in discharging deputies does not and cannot justify his invasion of constitutional rights by firing deputies for exercising these rights. *Francia v. White*, 594 F.2d 778 (10th Cir. 1979).

4-41-7. Provisions of merit system constitute part of employment contract.

In all cases of employment by county sheriffs of deputies, clerks and other personnel to positions covered by the merit system subsequent to the passage of an ordinance establishing a merit system, the contract of employment between the deputy or employee and the sheriff shall be considered to contain the provisions of the ordinance

and all regulations issued pursuant thereto. The provisions of an ordinance and all regulations issued pursuant thereto shall become part of the contract of employment between the sheriff and all employees of the sheriff's office in positions covered by the merit system when the employment relationship exists at the time of the passage of the ordinance, unless the employee files with the county clerk, within ten days of the passage of the ordinance, a declaration stating that the employee does not desire to have the provisions of the ordinance, together with the regulations issued pursuant thereto, included as a part of his contract of employment.

History: 1953 Comp., § 15-40-9.2, enacted by Laws 1975, ch. 11, § 2.

ANNOTATIONS

Cross references. — For effect of merit system upon demotion and discharge of deputies, *see* 4-41-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

4-41-8. [Deputy sheriff; qualifications; character; revocation of commission.]

No person who may be under indictment or may be generally known as a notorious bad character, or as a disturber of the peace shall be eligible to serve as a deputy sheriff, and sheriffs are hereby prohibited from issuing commissions to such persons as deputy sheriffs, and it is hereby made the duty of the judge of the district court upon complaint being made that the provisions of this section have been violated to investigate the same, and if found to be true, such judge of the district court is hereby given authority to revoke any such commission given by any sheriff contrary to the provisions of this section.

History: Laws 1905, ch. 120, § 1; Code 1915, § 1257; C.S. 1929, § 33-4413; 1941 Comp., § 15-3810; 1953 Comp., § 15-40-10.

ANNOTATIONS

Cross references. — For additional qualifications pertaining to deputy sheriffs, *see* 4-41-10 NMSA 1978.

For applicability of the Criminal Offender Employment Act to law enforcement agencies, *see* 28-2-5 NMSA 1978.

Special deputy. — Sheriff can commission as special deputy sheriff a full-time law enforcement officer employed by a municipality, the Navajo tribe or the federal government. The applicants, of course, would have to secure the appointment from the

sheriff of the county in which they wish to act and qualify in accordance with this section, 29-1-9 and 4-41-10 NMSA 1978, and any other statutes of the state of New Mexico pertaining to the qualification of deputy sheriffs. 1957 Op. Att'y Gen. No. 57-83.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables § 10.

80 C.J.S. Sheriffs and Constables § 37.

4-41-9. Powers of deputy sheriff.

Deputies are authorized to discharge all the duties that belong to the office of sheriff that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs. If there is a vacancy in the office of sheriff, the highest-ranking deputy sheriff or under-sheriff, who is qualified to hold the office of sheriff, shall exercise the powers of sheriff until a sheriff is appointed and qualified.

History: Laws 1855-1856, ch. 2, § 3; C.L. 1865, ch. 99, § 11; C.L. 1884, § 403; C.L. 1897, § 740; Code 1915, § 1259; C.S. 1929, § 33-4415; 1941 Comp., § 15-3811; 1953 Comp., § 15-40-11; 1978 Comp., § 4-41-9, 2017, ch. 56, § 1.

ANNOTATIONS

The 2017 amendment, effective April 6, 2017, authorized a deputy sheriff or under-sheriff to exercise the powers of sheriff while there is a vacancy in the office of sheriff; added the catchline "Powers of deputy sheriff"; in the first sentence, deleted "The said"; and, added the last sentence.

A "special deputy" does not necessarily lack the authority to serve a writ of execution or make levy pursuant to writ. *Novak v. Dow*, 1970-NMCA-104, 82 N.M. 30, 474 P.2d 712.

Use of force in making arrest. — Large rocks, hurled by misdemeanant at deputy sheriff in resisting arrest, were dangerous weapons, justifying resort to extreme measures on part of deputy. *State v. Vargas*, 1937-NMSC-049,42 N.M. 1, 74 P.2d 62, distinguished in *State v. Gabaldon*, 1939-NMSC-060, 43 N.M. 525, 96 P.2d 293.

Jury instruction as to status of deputy sheriff. — In murder prosecution in which there was a question as to whether the defendant was a deputy sheriff acting to perfect or enforce an arrest when the killing occurred, instructions leaving question whether defendant was a deputy sheriff to the jury were proper where there was no direct evidence that such was the case. *Territory v. Kimmick*, 1910-NMSC-058, 15 N.M. 178, 106 P. 381.

County sheriff was not liable in damage suit for false return of service by deputy sheriff, either on the theory that deputy acted by virtue of the deputy's office, since plaintiffs had the burden of proving that service of civil process was within the authority of deputy, and they had failed to find any evidence that would meet that burden, or on the theory that deputy acted under color of the deputy's office, since representations which led plaintiffs to believe that they were dealing with sheriff's office did not occur during defendant-sheriff's term of office. *Karr v. Dow*, 1973-NMCA-016, 84 N.M. 708, 507 P.2d 455, cert. denied, 84 N.M. 696, 507 P.2d 443.

Deputy sheriffs may not exercise any power other than those delegated by the sheriff, and, therefore, the deputy sheriff does not exercise his powers and duties independently of a superior power, nor is he subject only to the general control of a power placed over him by the legislature. The detailed supervision and control exercised over deputy sheriffs by their sheriffs eliminate the office of deputy sheriff from the category of a public office and place it in the category of public employment. 1960 Op. Att'y Gen. No. 60-222.

Duties of public weighmasters. — Deputy sheriffs, in their official capacity, are required to perform the duties of public weighmasters when so designated by the sheriffs, and are not to receive for their own use any fees or other extra compensation for their services. 1931 Op. Att'y Gen. 31-183.

Disposition of fees recovered by deputies in connection with performance of duties. — Deputy sheriffs are entitled to no other compensation for the performance of their duties, which includes the service of civil and criminal papers as authorized by statute, than their salaries, and all fees recovered by them in connection with the performance of such duties must be remitted to the county treasurers of their respective counties. 1954 Op. Att'y Gen. No. 54-6033.

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 9, 50, 63.

80 C.J.S. Sheriffs and Constables §§ 57 to 60.

4-41-10. Right to carry arms; deputies; appointment.

All sheriffs shall at all times be considered as in the discharge of their duties and be allowed to carry arms on their persons. On the appointment of any regular or permanent deputy sheriff, it shall be the duty of the sheriff to file one notice of the appointment in the office of the county clerk of the sheriff's county and one notice of the appointment in the office of the clerk of the district court of that county, and each of the sheriff's deputies shall file an oath of office in the office of the county clerk. Any sheriff is hereby authorized at any time to appoint respectable and orderly persons as special deputies to

serve any particular order, writ or process or when in the opinion of any sheriff the appointment of special deputies is necessary and required for the purpose of preserving the peace, and it shall not be necessary to give or file any notice of such special appointment; however, the provision authorizing the carrying of concealed arms shall not apply to such persons. Provided, no person shall be eligible to appointment as a deputy sheriff unless the person is a citizen of the United States of America. There shall be no additional fees or per diem paid by the counties for any additional deputies other than as provided by law.

History: Laws 1891, ch. 63, § 4; C.L. 1897, § 738; Laws 1901, ch. 5, § 1; Code 1915, § 1258; C.S. 1929, § 33-4414; 1941 Comp., § 15-3812; 1953 Comp., § 15-40-12; 1983, ch. 182, § 1; 2006, ch. 30, § 1.

ANNOTATIONS

Cross references. — For qualifications of deputy sheriffs, *see* 4-41-8 NMSA 1978.

For payment of expenses of sheriffs, deputy sheriffs and guards for serving process and certain other official business, *see* 4-44-18 NMSA 1978.

For oaths and bonds of deputy county officers, *see* 4-44-35 NMSA 1978.

For oath of public officers, *see* N.M. Const., art. XX, § 1.

For requirement that deputy sheriffs be citizens of New Mexico, *see* 29-1-9 NMSA 1978.

The 2006 amendment, effective March 2, 2006, deleted the requirement that a deputy sheriff be a legally qualified voter of the state of New Mexico and required that a deputy sheriff be a citizen of the United States of America.

Tribal officer was properly cross-commissioned. — Where defendant, who was a non-Indian, was arrested by a Pueblo police officer on property of the Pueblo and charged in a county magistrate court with aggravated DWI; the officer was cross-commissioned as a county special deputy sheriff by the county sheriff's office; the officer signed an oath of office that was also signed by the county sheriff and carried a card issued by the county sheriff's office indicating the officer's cross-commissioning status; the officer was wearing the Pueblo police department uniform at the time of the arrest; the officer was a commissioned, full-time Pueblo tribal officer; and the officer's salary was paid by the Pueblo police department and included incremental pay financed from a grant from the bureau of Indian affairs to assist the Pueblo police department in targeting the motoring public, the officer was properly cross-commissioned and could properly arrest defendant while wearing the uniform of and receiving a salary from the Pueblo police department. *State v. Sanchez*, 2014-NMCA-095.

Notice of the appointment of special deputies need not be filed with the county clerk or district court clerk. *Eaton v. Bernalillo Cnty*., 1942-NMSC-040, 46 N.M. 318, 128 P.2d 738.

A special deputy does not necessarily lack the authority to serve a writ of execution or make levy pursuant to writ. *Novak v. Dow*, 1970-NMCA-104, 82 N.M. 30, 474 P.2d 712.

Testimony of improperly appointed officer. — Trial court did not abuse its discretion in admitting the testimony of a deputy sheriff in his capacity as a deputy sheriff in a criminal prosecution, even though he was not a registered voter as required by this section. *State v. Martinez*, 1986-NMCA-069, 104 N.M. 584, 725 P.2d 263.

Dismissal of charges not appropriate remedy. — Fact that undercover officer failed to comply with the oath and appointment requirements of this section did not warrant dismissal of charges against defendant, as officer was still qualified to testify. *State v. Vallejos*, 1998-NMCA-151, 126 N.M. 161, 967 P.2d 836, cert. denied, 126 N.M. 107, 967 P.2d 447.

Common law. — At common law a sheriff could appoint an under-sheriff and as many general or special deputies as the public service may have required. 1957 Op. Att'y Gen. No. 57-83.

All sheriffs are on duty at all times and the same would be true of paid deputies even though their specific duties might be restricted. 1966 Op. Att'y Gen. No. 66-91.

Appointment of special deputy. — Sheriff can commission as special deputy sheriff a full-time law enforcement officer employed by a municipality, the Navajo tribe or the federal government. The applicants, of course, would have to secure the appointment from the sheriff of the county in which they wish to act and qualify in accordance with 29-1-9, 4-41-8 NMSA 1978 and this section, and any other statutes of the state of New Mexico pertaining to the qualification of deputy sheriffs. 1957 Op. Att'y Gen. No. 57-83.

Appointment of special deputy. — There is no legal prohibition in this section against an appointment of a city policeman as a special deputy sheriff solely for the purpose of serving papers. 1958 Op. Att'y Gen. No. 58-38.

Payment of special deputy for services performed. — A city policeman appointed as a special deputy sheriff for purpose of serving papers may not be paid for such serving both as city policeman and special deputy sheriff. 1958 Op. Att'y Gen. No. 58-38.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 80 C.J.S. Sheriffs and Constables §§ 45, 46.

4-41-10.1. [Right to carry concealed arms.]

Notwithstanding anything contained herein to the contrary, only fully certified sheriffs and full-time certified deputy sheriffs shall be allowed to carry concealed arms.

History: Laws 1983, ch. 182, § 2.

4-41-11. [Injuries to sheriff or deputy while making arrest; medical expenses; limitation.]

Whenever any sheriff or deputy sheriff has been or may be hereafter wounded or injured while in pursuit of or attempting to arrest any person accused of any crime in this state, and shall make affidavit fully setting forth the facts of his said wounding or injury, and shall also make affidavit that he is a poor person and that he is unable to pay for proper medical or surgical attention, or that his family is unable to do so for him or furnish support for himself or family, and said affidavit shall be supported by the affidavit of two disinterested freeholders of the county, not more than one of whom shall be from the same precinct, then upon the presenting of said affidavits to the board of county commissioners of the county wherein said sheriff or deputy sheriff was an officer at the time of his said injury or wounding, they may allow from the county treasury a sum of money, which to them shall seem reasonable, to be used for the benefit of said wounded or injured officer for medical or surgical attention or for the removal of said officer to some hospital or for the immediate relief of his family: provided, that no such sum or sums of money shall altogether exceed five hundred dollars [($500)].

History: Laws 1889, ch. 104, § 1; C.L. 1897, § 742; Code 1915, § 1261; C.S. 1929, § 33-4417; 1941 Comp., § 15-3813; 1953 Comp., § 15-40-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 80 C.J.S. Sheriffs and Constables § 494.

4-41-11.1. Qualifications; waiver.

A. Court security officers of county sheriff departments of class A counties shall meet all the prerequisites for permanent appointment as peace officers as stated in Section 29-7-8 NMSA 1978 [repealed].

B. All court security officers provided for pursuant to Subsection A of this section shall be commissioned as peace officers with full powers and responsibilities while within the confines of the county courthouse or as otherwise specified by the court.

C. Court security officers employed by county sheriff departments of class A counties on January 1, 1977 shall be exempted from the provisions of Subsection A of this section.

History: Laws 1981, ch. 82, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law. Laws 1993, ch. 255, § 11 repealed 29-7-8 NMSA 1978, effective July 1, 1993.

4-41-12. [Entering other counties; powers.]

The various sheriffs of the several counties of this state shall have the right to enter any county of this state, or any part of this state, for the purpose of arresting any person charged with crime, whether the county so entered be the same to which the sheriff so entering was elected or not; and the deputies of said sheriffs shall have the same power as is conferred on the sheriffs, and any sheriff entering any county as above mentioned, shall have the same power to call out the power of said county to aid him, as is conferred on sheriffs in their own counties.

History: Laws 1868-1869, ch. 33, § 1; C.L. 1884, § 395; C.L. 1897, § 731; Code 1915, § 1262; C.S. 1929, § 33-4418; 1941 Comp., § 15-3814; 1953 Comp., § 15-40-14.

ANNOTATIONS

Cross references. — For duties of enforcement officers in counties, *see* 4-37-4 NMSA 1978.

For refusal to assist officer, *see* 30-22-2 NMSA 1978.

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables § 57.

80 C.J.S. Sheriffs and Constables § 36.

4-41-13. [Execution of process of probate court; attendance.]

It is hereby made the duty of the sheriffs of the several counties of this state to serve and execute all process directed to them by said judges of probate in their respective counties, and shall be subject to fine and amercement as provided by law for the neglect or refusal to discharge the duties required of them; and it is hereby made the

duty of the sheriff of each county, or his deputy, to attend the probate court of his county, under the direction of the judge thereof.

History: Laws 1887, ch. 66, § 2; C.L. 1897, § 753; Code 1915, § 1264; C.S. 1929, § 33-4420; 1941 Comp., § 15-3815; 1953 Comp., § 15-40-15.

ANNOTATIONS

Cross references. — For reimbursement of peace officers for mileage traveled by privately owned conveyances in serving process, *see* 4-41-19 NMSA 1978.

For issuance of process by probate judges, *see* 34-7-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 61, 62.

80 C.J.S. Sheriffs and Constables §§ 80 to 88.

4-41-14. Sheriff to serve and execute process and orders of magistrate [and municipal] courts.

The sheriff or his deputy shall serve and execute, according to law:

A. all process, writs and orders directed to him by the judges of the magistrate courts; and

B. criminal process directed to him by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs and if the municipal judge from whose court the process has issued has made satisfactory arrangements with the sheriff for payment for the services to be rendered.

History: 1953 Comp., § 15-40-15.1, enacted by Laws 1975, ch. 242, § 1; 1988, ch. 88, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

Cross references. — For attendance at trials or hearings before magistrates, *see* 4-41-16 NMSA 1978.

For reimbursement of peace officers for mileage traveled by privately owned conveyances in serving process, *see* 4-41-19 NMSA 1978.

For payment of per diem expenses of sheriffs and deputy sheriffs for serving process and other official business, *see* 4-44-18 NMSA 1978.

For service of summons, complaints, pleadings and other papers in civil actions in magistrate courts, *see* Rules 2-202 and 2-203 NMRA.

For service of pleadings and summons in criminal actions in magistrate courts, *see* Rules 6-205 and 6-209 NMRA.

For execution of arrest and search warrants in magistrate courts, *see* Rules 6-206 and 6-208 NMRA.

Sheriffs may serve warrants in any county. — This section, along with 31-1-4E NMSA 1978, permits sheriffs to serve search warrants, which are included in the term "process," in any county of the state. *State v. Gutierrez*, 1985-NMCA-034, 102 N.M. 726, 699 P.2d 1078, cert. denied, 102 N.M. 734, 700 P.2d 197.

Liability for wrongful execution of writ. — The facial validity of a writ of restitution protects the executing officers from liability. *Runge v. Fox*, 1990-NMCA-086, 110 N.M. 447, 796 P.2d 1143.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 61, 62.

80 C.J.S. Sheriffs and Constables §§ 80 to 88.

4-41-15. [Fees; payment in advance.]

The party at whose application any civil writ, subpoena or process, except execution, is issued, shall pay in advance, if so demanded by the sheriff, the fees allowed by law for such services.

History: Laws 1895, ch. 35, § 3; C.L. 1897, § 1801; Code 1915, § 1268; C.S. 1929, § 33-4424; 1941 Comp., § 15-3817; 1953 Comp., § 15-40-17.

ANNOTATIONS

Cross references. — For requirement that county officers collect fees in advance, *see* 4-44-29 NMSA 1978.

Advance payment required of state. — The state and its agencies need not use the sheriff to serve process, but if they do, they may also be required to pay in advance. 1979 Op. Att'y Gen. No. 79-29.

4-41-16. Fees; attendance on courts; sessions of county commissioners; hearing before judges.

A. The sheriffs of this state shall be allowed, except from the state or any state agency, the following fees and compensations:

(1) for serving every writ, citation, order, subpoena or summons, not more than forty dollars ($40.00);

(2) for every writ of capias or attachment for each defendant, six dollars ($6.00);

(3) for taking and returning every bond required by law, five dollars ($5.00);

(4) for levying every execution and return of same, six dollars ($6.00);

(5) for making, executing and delivering every sheriff's deed, to be paid by the purchaser, six dollars ($6.00);

(6) for every return of non est inventus, fifty cents ($.50); and

(7) for making every return of any process, order, summons, citation or decree of any court, two dollars ($2.00).

No sheriff shall collect more than one of the fees listed in this subsection, regardless of how many documents may be served upon one or more individuals, when those documents are served at the same time and at the same location.

B. In the service of any subpoena or summons for witnesses, the sheriff shall be allowed compensation of one dollar ($1.00) for each of the witnesses so summoned by the sheriff, notwithstanding that the name of the witness may appear in but one copy of the subpoena or summons.

C. It is the duty of the sheriffs of the state to attend:

(1) the sessions of every district court, which attendance shall be paid in the manner now provided by law;

(2) all sessions of the probate court and sessions of the boards of county commissioners, which attendance shall be paid sheriffs out of the general county funds of the county in which the services were rendered; and

(3) at the trial or hearing before magistrates in felony cases, where the arrest is made by the sheriff, either with or without a warrant, which attendance shall be paid as provided in this section out of the general county funds; but sheriffs shall not be allowed any compensation for attending at the trial of any misdemeanor case before any magistrate unless a sheriff made the arrest in the misdemeanor case.

History: Laws 1895, ch. 35, § 1; C.L. 1897, § 1799; Laws 1907, ch. 19, § 1; 1909, ch. 16, § 1; Code 1915, § 1266; C.S. 1929, § 33-4422; 1941 Comp., § 15-3818; 1953 Comp., § 15-40-18; Laws 1959, ch. 270, § 1; 1976, ch. 51, § 1; 1977, ch. 94, § 1; 1980, ch. 42, § 1; 1985, ch. 120, § 1; 1987, ch. 300, § 1; 1996, ch. 43, § 1; 2008, ch. 65, § 1.

ANNOTATIONS

Cross references. — For attendance at probate court sessions, *see* 4-41-13 NMSA 1978.

For commissions and expenses on executions, *see* 4-41-17 NMSA 1978.

For reimbursement of peace officers for mileage traveled by privately owned conveyances in serving process, *see* 4-41-19 NMSA 1978.

For payment of per diem expenses of sheriffs, deputy sheriffs and guards for serving process and other official business, *see* 4-44-18 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

For compensation for collection of unemployment compensation contributions, *see* 51-1-36 NMSA 1978.

The 2008 amendment, effective July 1, 2008, in Subsection A(1), increased the fee from $30 to $40.

The 1996 amendment, effective May 15, 1996, substituted "thirty dollars ($30.00)" for "fifteen dollars ($15.00)" in Subsection A(1) and substituted "and" for "or" at the end of Subsection A(6).

Collection and disposition of fees generally. — The first seven items of Subsection A, providing fees for the service and return of process, are to be collected by the sheriff from the litigants in all civil cases, and are to be paid to the treasurer under 4-44-21, 4-44-28 NMSA 1978. 1937 Op. Att'y Gen. No. 37-1786.

Provision pertaining to taking and returning bond applies to both civil and criminal cases. 1945 Op. Att'y Gen. No. 45-4675.

The sheriff is chargeable with the fee paid for the execution of the death penalty, even though it does come from the state and not the county. 1917 Op. Att'y Gen. No. 17-2013 (rendered under prior law).

Fees assessable against person under arrest and in jail. — No cost may be assessed for the service of warrant of arrest on an individual who is already under arrest and held in jail. This cost is unnecessary and unreasonable and is not incidental

to the prosecution. The transportation fee for carrying the defendant between the jail and the court for trial may be properly assessed against him, if convicted. There may be instances where the defendant is transported between the jail and the court for unnecessary and unreasonable purposes, and in that event, the defendant could not be forced to pay the costs. This is a matter of fact and not subject to an unalterable rule. The carrying out of the order of the court, including a commitment order, is a fee which may properly be assessed against the convicted defendant. 1960 Op. Att'y Gen. No. 60-149.

Mileage fees may be imposed. — A sheriff and his deputies are required to collect certain fees under this section from private individuals for performing prescribed services, and in connection with the performance of such duties a mileage fee may be imposed. Mileage fees are required under 4-44-28 NMSA 1978 to be deposited into the county treasury, and pursuant to 4-44-31 NMSA 1978, they are credited to the county salary fund (now county general fund). 1963 Op. Att'y Gen. No. 63-111.

The state and its agencies are required to pay the statutory fees for service of process. 1979 Op. Att'y Gen. No. 79-29.

Sheriff not required to be courthouse security guard. — Subsection C only requires the sheriff's attendance at trials and hearings of the court and does not require his presence as a round-the-clock security guard for the entire courthouse. 1979 Op. Att'y Gen. No. 79-04.

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 68 to 75, 77 to 81, 83, 84, 86 to 89.

80 C.J.S. Sheriffs and Constables § 474.

4-41-17. [Executions; commissions and expenses.]

For commissions for receiving or paying moneys on executions, where lands, goods or chattels have been levied upon, advertised and sold, four per centum on the first five hundred dollars [($500)], and two percent on all sums above that; also the actual expenses incurred in taking care of any such goods or chattels so levied upon, between the day of levy and sale; and one-half of said commission, when the money has been paid without making levy or sale.

History: Laws 1895, ch. 35, § 2; C.L. 1897, § 1800; Code 1915, § 1267; C.S. 1929, § 33-4423; 1941 Comp., § 15-3819; 1953 Comp., § 15-40-19.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For fee for levy and return of execution, *see* 4-41-16 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

Taxation of expenses of keeping and preserving attached property as costs. — The court properly taxed as costs the necessary expenses of the sheriff in keeping and preserving attached personal property in his possession and control. *Jones-Noland Drilling Co. v. Bixby*, 1929-NMSC-091, 34 N.M. 413, 282 P. 382.

The defendant or debtor is chargeable with the sheriff's commission herein provided as one of the costs. 1943 Op. Att'y Gen. No. 43-4314.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 30 Am. Jur. 2d Executions § 205 et seq.; 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 68 to 75, 77 to 81, 83, 84, 86 to 89.

Personal liability of sheriff for negligence causing damage to property, 53 A.L.R. 41.

Liability of sheriff executing process of execution or attachment for failure to seize sufficient property, 93 A.L.R. 316.

Right of sheriff or constable to demand indemnity bond as a condition of executing process or seizure of property in absence of claim by third person, 95 A.L.R. 943.

Duty of sheriff as to care of property levied upon, 138 A.L.R. 710.

80 C.J.S. Sheriffs and Constables §§ 485 to 489.

4-41-18. [Fees; service of jury venire.]

The sheriff shall receive ten dollars [($10.00)] for the service of any jury venire, and shall be paid the regular rates of mileage hereinafter provided, for each mile actually and necessarily traveled in serving said jury venire.

History: Laws 1895, ch. 35, § 4; C.L. 1897, § 1802; Code 1915, § 1269; C.S. 1929, § 33-4425; 1941 Comp., § 15-3820; 1953 Comp., § 15-40-20.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "hereinafter provided" referred to the first sentence of Laws 1895, ch. 35, § 6, which was superseded by 15-40-21, 1953 Comp. (repealed by Laws 1961, ch. 253, § 9). This section may be superseded in its entirety by later provisions. *See* compiler's note under 4-41-21 NMSA 1978. *See also* 4-44-21, 4-44-28, 4-44-29 NMSA 1978.

Cross references. — For fee for calling jury generally, *see* 4-41-16 NMSA 1978.

For charge for mileage traveled in providing service of jury venire, *see* 4-41-19 NMSA 1978.

For charge for service of more than one subpoena or summons, *see* 4-41-21 NMSA 1978.

4-41-19. County peace officers and constables; mileage; conditions.

A. Peace officers and constables shall be allowed mileage or the distance actually and necessarily traveled by privately owned conveyance in serving any judicial process.

B. In serving any jury venire, a sheriff, deputy sheriff, constables [constable] or other county peace officer shall charge for the actual mileage traveled and necessary in providing service of jury venire.

C. If more than one peace officer or constable travels in one privately owned conveyance in the performance of official business, only the officer owning the conveyance used shall be reimbursed.

History: 1953 Comp., § 15-40-21.1, enacted by Laws 1961, ch. 253, § 2; 1963, ch. 9, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For charge for service of more than one subpoena or summons, *see* 4-41-21 NMSA 1978.

For payment of per diem expenses of sheriffs, deputy sheriffs and guards for serving process and other official business, *see* 4-44-18 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

Sheriff could not collect from the county service fees and mileage for the service of process issued on behalf of the county or state. *State ex rel. Peck v. Velarde*, 1935-NMSC-033, 39 N.M. 179, 43 P.2d 377 (decision under former law).

The state and its agencies are required to pay the statutory fees for service of process. 1979 Op. Att'y Gen. No. 79-29.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables § 89.

80 C.J.S. Sheriffs and Constables §§ 498 to 500.

4-41-20. Sheriffs, deputy sheriffs and other county peace officers; public transportation; reimbursement.

Whenever a sheriff, deputy sheriff or other county peace officer utilizes public transportation in the performance of any official business within or without the state he shall be reimbursed for the actual cost of the fare and shall not be paid mileage. The mode of public transportation used shall be the most economical possible, considering all the expenses and circumstances.

History: 1953 Comp., § 15-40-21.2, enacted by Laws 1961, ch. 253, § 3.

ANNOTATIONS

Cross references. — For payment of per diem expenses of sheriffs, deputy sheriffs and guards for serving process and other official business, *see* 4-44-18 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

4-41-21. [More than one subpoena, summons or prisoner; no extra charge.]

It is distinctly provided that when more than one subpoena or summons or service is made or performed upon more than one person in the same town or place, or when more than one prisoner is conducted from one place to another, the sheriff shall not charge more nor receive any mileage in excess of that which he would be entitled to for serving one subpoena in such place, or conducting one prisoner from one place to another: and provided, further, that in service of subpoena or summons in more than one town or place along the same route, the sheriff shall not be entitled to any greater mileage than that of the most distant point actually and necessarily traveled to in the discharge of his duties, with the additional mileage earned in actual and necessary travel from, and in returning to, the place of departure from any general route as aforesaid.

History: Laws 1895, ch. 35, § 6; C.L. 1897, § 1804; Code 1915, § 1272; C.S. 1929, § 33-4428; 1941 Comp., § 15-3822; 1953 Comp., § 15-40-22.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers deleted provisions at the beginning of this section which provided "mileage at the rate of 12 1/2 cents per mile" for serving process and transporting prisoners and "one dollar per day for feeding prisoners while en route to the penitentiary." Apparently, the omitted provisions were superseded by Laws 1897, ch. 60, § 11(10), compiled as 15-40-21, 1953 Comp. (repealed by Laws 1961, ch. 253, § 9) and Laws 1897, ch. 60, § 12(11), compiled as 15-43-11, 1953 Comp. (repealed by Laws 1961, ch. 253, § 9). *See* 4-41-19, 4-41-20, 4-44-18 NMSA 1978. *See also* 4-44-28, 4-44-29 NMSA 1978.

Cross references. — For reimbursement of county peace officers and constables for mileage traveled by private conveyances in serving judicial process, *see* 4-41-19 NMSA 1978.

For payment of per diem expenses of sheriffs, deputy sheriffs and guards for serving process and other official business, *see* 4-44-18 NMSA 1978.

For collection and disposition of fees, commission, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

4-41-22. [Other fees.]

For all other services and expenses, except those mentioned in this article, the sheriff shall receive the fees and compensation fixed by law for such services and expenses.

History: Laws 1895, ch. 35, § 8; C.L. 1897, § 1806; Code 1915, § 1273; C.S. 1929, § 33-4429; 1941 Comp., § 15-3823; 1953 Comp., § 15-40-23.

ANNOTATIONS

Compiler's notes. — The words "this article" were substituted for the words "this act" by the 1915 compilers and refer to art. 37 of ch. 24 of the 1915 Code. The words "this act" would refer to Laws 1895, ch. 35, which is compiled herein as this section, 4-41-15 to 4-41-18 and 4-41-21 NMSA 1978.

Cross references. — For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

ARTICLE 42
County Surveyor

4-42-1. County surveyor.

The elected office of county surveyor is abolished.

History: Laws 1891, ch. 33, § 1; C.L. 1897, § 785; Code 1915, § 1287; C.S. 1929, § 33-4901; 1941 Comp., § 15-3901; 1953 Comp., § 15-41-1; Laws 1967, ch. 238, § 4; 2011, ch. 56, § 3.

ANNOTATIONS

Cross references. — For salaries of county surveyors, *see* 4-44-4 to 4-44-15 NMSA 1978.

For oath and bond of county officers, *see* 10-1-13 NMSA 1978.

For adoption of coordinate system, *see* 47-1-49 NMSA 1978 et seq.

For registration of professional land surveyors, *see* 61-23-5 NMSA 1978 et seq.

The 2011 amendment, effective December 31, 2012, abolished the position of county surveyor.

Section does not violate N.M. Const., art. VII, § 2, by requiring county surveyors to be practical land surveyors. 1968 Op. Att'y Gen. No. 68-114.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Mistake in, or misrepresentation as to accuracy of, survey of real property, surveyor's liability for, 35 A.L.R.3d 504.

80 C.J.S. Counties §§ 177, 272.

4-42-2. Repealed.

History: Laws 1891, ch. 33, § 3; C.L. 1897, § 787; Code 1915, § 1289; C.S. 1929, § 33-4903; 1941 Comp., § 15-3903; 1953 Comp., § 15-41-3; repealed by Laws 2011, ch. 56, § 29.

ANNOTATIONS

Repeals. — Laws 2011, ch. 56, § 29 repealed 4-42-2 NMSA 1978, as enacted by Laws 1891, ch. 33, § 3, relating to injuries by surveyors, effective December 31, 2012. For provisions of former section, *see* the 2011 NMSA 1978 on *NMOneSource.com.*

4-42-3. Licensed professional surveyor; inquiry as to boundaries; oath to witnesses; report.

When a licensed professional surveyor appointed by the board of county commissioners is called upon to make any survey that is to be used in any court, the surveyor is hereby authorized and required, upon application of either party, to administer an oath or affirmation to any witness who may be brought to prove any corner or line of that survey or any natural or artificial object or mark that may be necessary to identify the same, which testimony shall be reduced to writing and subscribed by the witness and a return made thereof with the return of the surveyor.

History: Laws 1891, ch. 33, § 4; C.L. 1897, § 783; Code 1915, § 1290; C.S. 1929, § 33-4904; 1941 Comp., § 15-3904; 1953 Comp., § 15-41-4; 2011, ch. 56, § 4.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, required that licensed professional surveyors be used to make surveys.

4-42-4. Licensed professional surveyor; office and records.

A licensed professional surveyor appointed by the board of county commissioners shall keep two books of records that shall be furnished the surveyor by the board of county commissioners for that purpose, which books the surveyor shall transmit to the surveyor's successor in office. One book shall contain the calculations by latitudes and departures of all surveys made by the surveyor or the surveyor's deputies, and each calculation shall have a corresponding number with the plat and field notes to which it refers in the book of records. The other book shall be a book of records and so constituted as to have the left page for diagrams and plats and the right page for notes and remarks, and each diagram and plat shall be numbered progressively. The field notes of the survey so recorded shall contain a full statement of the surveys, with the variations of the magnetic needle, length of lines and location of corners, with description of such corners and description of all witness trees and other marks used as witness marks for such corners, with size, distance and course.

History: Laws 1891, ch. 33, § 5; C.L. 1897, § 789; Code 1915, § 1291; C.S. 1929, § 33-4905; 1941 Comp., § 15-3905; 1953 Comp., § 15-41-5; 2011, ch. 56, § 5.

ANNOTATIONS

Cross references. — For furnishing of stationery, postage and office supplies by board of county commissioners generally, *see* 4-44-33 NMSA 1978.

For keeping of offices of county officers at county seat, *see* 4-44-34 NMSA 1978.

For delivery by public officers of law books, records and documents to successors, *see* 10-17-5 NMSA 1978.

The 2011 amendment, effective December 31, 2012, required licensed professional surveyors appointed by a board of county commissioners to keep two books of records.

The board of county commissioners may furnish quarters to county surveyor in its discretion if same are available, but the board is under no duty to provide him with telephone or stationery, although his necessary official telephone calls and stationery should be allowed by the board. 1933 Op. Att'y Gen. No. 33-554.

4-42-5. Licensed professional surveyor; latitudes and departures; following United States instructions.

All calculations to ascertain the contents of a tract of land by a licensed professional surveyor appointed by the board of county commissioners shall be made by latitudes and departures, and on each plat shall be laid down the variations of the magnetic needle from the true meridian. In reestablishing missing corners, the county surveyor shall establish said corners in strict accordance with the manual of instructions of the United States to the United States deputy surveyors.

History: Laws 1891, ch. 33, § 6; C.L. 1897, § 790; Code 1915, § 1292; C.S. 1929, § 33-4906; 1941 Comp., § 15-3906; 1953 Comp., § 15-41-6; 2011, ch. 56, § 6.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, required that licensed professional surveyors perform the work required by this section.

4-42-6. Licensed professional surveyor; interference with.

If a licensed professional surveyor appointed by the board of county commissioners shall be molested or prevented from doing or performing any of the surveyor's official duties by means of threats or improper interference of any person, the surveyor shall call on the sheriff or other peace officer of the county, who shall accompany the surveyor and afford the surveyor all necessary protection against any person thus threatening or improperly interfering with the surveyor while performing official duties. The person so offending shall, on conviction thereof before any court of competent jurisdiction, be fined in a sum not less than five dollars ($5.00) nor exceeding one hundred dollars ($100) and be liable for all damages caused to any person by the hindrance of the surveyor and for all the expenses that may accrue in consequence of the attendance of the sheriff or officer and the delay of the surveyor.

History: Laws 1891, ch. 33, § 7; C.L. 1897, § 791; Code 1915, § 1293; C.S. 1929, § 33-4907; 1941 Comp., § 15-3907; 1953 Comp., § 15-41-7; 2011, ch. 56, § 7.

ANNOTATIONS

Cross references. — For right of surveyor to enter private lands, *see* 61-23-30 NMSA 1978.

The 2011 amendment, effective December 31, 2012, authorized licensed professional surveyors appointed by boards of county commissioners to call upon local police officers if the surveyor is molested or prevented from performing the surveyor's official duties.

4-42-7. Fees; purchase of plats of United States surveys; admissibility of certified copies of surveys as evidence; filing copy of surveys.

The expense of the chain carriers and corner man shall be paid in advance, if required by a licensed professional surveyor appointed by the board of county commissioners or the surveyor's deputy, by the party on whose application the survey may be made, and the money so advanced shall be accounted for by the surveyor, and the amount expended to be taxed on the bill of costs. However, each surveyor may retain the return of any survey made by the surveyor until the surveyor is paid the fee established by law and may collect fees by action. The board of county commissioners of each county in this state, at its discretion, may procure copies, duly certified by the surveyor general to be correct, of the field notes and plats of the original surveys by the United States of the lands of its county, and the board shall bind the plats and field notes each substantially in book form and keep them in the county clerk's office for the benefit of the public. The certificate of the licensed professional surveyor appointed by the board of county commissioners or any of the surveyor's deputies as to the correctness or accuracy of any survey, plat or field notes made by the surveyor or any certified copy of them shall be admitted as legal evidence in any court of the state, but only when the surveyor is dead or when it is impossible to obtain the surveyor's evidence either by the surveyor's personal attendance or by means of a deposition taken according to law. This evidence may be explained or rebutted by other evidence. The licensed professional surveyors appointed by the boards of county commissioners of the different counties of this state may administer all oaths or affirmations necessary to be administered to road viewers and for all other purposes necessary to the discharge of their official duties. A copy of all surveys shall be filed with the county clerk by the surveyor.

History: Laws 1891, ch. 33, § 8; C.L. 1897, § 792; Code 1915, § 1294; C.S. 1929, § 33-4908; 1941 Comp., § 15-3908; Laws 1943, ch. 43, § 1; 1953 Comp., § 15-41-8; Laws 1969, ch. 219, § 2; 2011, ch. 56, § 8.

ANNOTATIONS

Cross references. — For authority of surveyor to administer oath or affirmation to witnesses brought to prove surveys for use in court, *see* 4-42-3 NMSA 1978.

For admissibility of survey books in evidence, *see* 4-42-12 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

The 2011 amendment, effective December 31, 2012, authorized counties to prepay chain carriers and corner men if required by a licensed professional surveyor appointed by the board of county commissioners; provided for the admission into evidence of certificates of correctness or accuracy of surveys if the surveyor is deceased or unavailable; and authorized licensed professional surveyors appointed by boards of county commissioners to administer oaths or affirmations by road viewers.

4-42-8. Survey of lands divided by county line.

Any person owning or claiming lands divided by a county line and wishing to have the lands surveyed may apply to a licensed professional surveyor appointed by the board of county commissioners of any county in which any part of the land is situate, and, on such application being made, the surveyor is authorized to make a survey, which shall be as valid as though the lands were situate entirely in one county.

History: Laws 1891, ch. 33, § 9; C.L. 1897, § 793; Code 1915, § 1295; C.S. 1929, § 33-4909; 1941 Comp., § 15-3909; 1953 Comp., § 15-41-9; 2011, ch. 56, § 9.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, authorized licensed professional surveyors appointed by a board of county commissioners to survey land divided by a county line.

4-42-9. Establishing county line; joint survey.

Where a boundary line between two counties is to be established, licensed professional surveyors appointed by the board of county commissioners, or their deputies, of the two counties affected by the boundaries shall together make the survey and establish the lines and erect monuments, and all corners set by the surveyors or their deputies shall be made in strict conformity with the manual of instructions of the United States.

History: Laws 1891, ch. 33, § 10; C.L. 1897, § 794; Code 1915, § 1296; C.S. 1929, § 33-4910; 1941 Comp., § 15-3910; 1953 Comp., § 15-41-10; 2011, ch. 56, § 10.

ANNOTATIONS

Cross references. — For determination of boundary disputes, *see* 4-35-1 NMSA 1978 et seq.

For county surveys, *see* 4-42-15 NMSA 1978.

The 2011 amendment, effective December 31, 2012, required that licensed professional surveyors survey county boundary lines.

4-42-10. Licensed professional surveyor to do all county work.

All county surveying and engineering on roads and bridges shall be performed by a licensed professional surveyor appointed by the board of county commissioners, and the surveyor shall by virtue of the surveyor's office be one of the viewers in the establishing of new roads or the location of bridges.

History: Laws 1891, ch. 33, § 11; C.L. 1897, § 795; Code 1915, § 1297; C.S. 1929, § 33-4911; 1941 Comp., § 15-3911; 1953 Comp., § 15-41-11; 2011, ch. 56, § 11.

ANNOTATIONS

Compiler's notes. — The words "engineering on roads and bridges" are deemed repealed by section 67-4-3 NMSA 1978. The words "and he shall by virtue of his office be one of the viewers in the establishing of new roads or the location of bridges" are deemed superseded by 67-5-9 to 67-5-16 NMSA 1978, which provide for the appointment of viewers to change or establish new roads and for a survey by the county surveyor after they decide that the road should be changed or a new road established.

Cross references. — For county surveys, *see* 4-42-15 NMSA 1978.

The 2011 amendment, effective December 31, 2012, required that all county work be performed by licensed professional surveyors.

Part of section requiring all engineering on roads and bridges to be performed by county surveyor was impliedly repealed by 67-4-3 NMSA 1978, authorizing board of county commissioners to employ county road superintendent. *State ex rel. Bard v. Board of Cnty. Comm'rs*, 1935-NMSC-014, 39 N.M. 119, 41 P.2d 1105.

4-42-11. Licensed professional surveyor; contracting.

Private individuals may contract for the work of county surveying.

History: Laws 1891, ch. 33, § 12; C.L. 1897, § 796; Code 1915, § 1298; C.S. 1929, § 33-4912; 1941 Comp., § 15-3912; 1953 Comp., § 15-41-12; Laws 1981, ch. 14, § 1; 2011, ch. 56, § 12.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, permitted private individuals to perform county surveying.

4-42-12. [Survey books; admissibility in evidence.]

All surveys made under and by virtue and in compliance with the provisions of this article [4-42-1 to 4-42-15 NMSA 1978] shall be deemed and taken to be in all counties of this state as prima facie correct, and the survey books in this article provided shall be received in evidence in all courts of this state only when the surveyor may be dead, or when it shall be impossible to obtain his evidence either by his personal attendance or by means of a deposition taken according to law.

History: Laws 1891, ch. 33, § 13; C.L. 1897, § 797; Code 1915, § 1299; C.S. 1929, § 33-4913; 1941 Comp., § 15-3913; 1953 Comp., § 15-41-13.

ANNOTATIONS

Cross references. — For admissibility in evidence of certified copies of surveys, *see* 4-42-7 NMSA 1978.

4-42-13. Licensed professional surveyor; numbering surveys; assessment for taxation.

All surveys made by the licensed professional surveyors appointed by the board of county commissioners of the several counties in accordance with Chapter 4, Article 42 NMSA 1978, which are not government subdivisions, shall be numbered with a consecutive series of numbers, commencing with thirty-seven, and it shall be the duty of the assessor in each county to enter for taxation in the assessor's book all lands liable for taxation, referring to them by the proper number as designated by the surveyor in the surveyor's records.

History: Laws 1891, ch. 33, § 15; C.L. 1897, § 799; Code 1915, § 1300; C.S. 1929, § 33-4914; 1941 Comp., § 15-3914; 1953 Comp., § 15-41-14; 2011, ch. 56, § 13.

ANNOTATIONS

Cross references. — For county assessor generally, *see* Chapter 4, Article 39 NMSA 1978.

The 2011 amendment, effective December 31, 2012, required that assessment surveys be performed by licensed professional surveyors.

4-42-14. Licensed professional surveyor; not to change established corners or survey private lands.

Nothing in Chapter 4, Article 42 NMSA 1978 shall be construed to empower any licensed professional surveyor appointed by the board of county commissioners to change the established lines or corners of any land owned or possessed by any person, and no private lands shall be surveyed except by the consent of the owner of the land.

History: Laws 1891, ch. 33, § 16; C.L. 1897, § 800; Code 1915, § 1301; C.S. 1929, § 33-4915; 1941 Comp., § 15-3915; 1953 Comp., § 15-41-15; 2011, ch. 56, § 14.

ANNOTATIONS

The 2011 amendment, effective December 31, 2012, prohibited a licensed professional surveyor appointed by a board of county commissioners from moving established corners or surveying private land without the consent of the owner.

A county surveyor has no right to ignore a government corner because he fails to find it where he thinks it should be, but may correct that location and reestablish the corner at its proper place. 1915 Op. Att'y Gen. No. 15-1673.

4-42-15. County surveys.

The board of county commissioners is authorized to have the lands of the county, or any portion thereof, surveyed by a licensed land surveyor under the direction and in accordance with the instructions of the board of county commissioners. The board of county commissioners is authorized to purchase from any licensed professional surveyor any survey and the related plats, maps and field notes with payment to be made from the county general fund.

History: Laws 1912, ch. 34, § 1; Code 1915, § 1172; C.S. 1929, § 33-4001; 1941 Comp., § 15-3916; 1953 Comp., § 15-41-16; Laws 1973, ch. 4, § 11; 1973, ch. 258, § 141; 1981, ch. 14, § 2; 2011, ch. 56, § 15.

ANNOTATIONS

Cross references. — For determination of boundary disputes, *see* 4-35-1 NMSA 1978 et seq.

The 2011 amendment, effective December 31, 2012, required that county surveys be performed by a licensed professional surveyor and required that surveys, maps and field notes purchased by a county be purchased from a licensed professional surveyor.

ARTICLE 43
County Treasurer

4-43-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 119, § 2 repealed 4-43-1 NMSA 1978, as enacted by Laws 1868-1869, ch. 36, § 1, providing for the election of a county clerk and treasurer,

effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 4-38-6 NMSA 1978.

4-43-2. Duties.

The county treasurer shall keep:

A. account of all money received and disbursed;

B. regular accounts of all checks and warrants drawn on the treasury and paid; and

C. the books, papers and money pertaining to his office ready for inspection by the board of county commissioners at all times.

History: Kearny Code, Treas. Dept., §§ 10, 11; Laws 1851-1852, p. 170; C.L. 1865, ch. 21, §§ 6, 7; 1865, ch. 102, §§ 17, 18; C.L. 1884, §§ 408A, 408B; C.L. 1897, § 746; Code 1915, § 1279; C.S. 1929, § 33-4503; 1941 Comp., § 15-4003; 1953 Comp., § 15-42-3; Laws 1967, ch. 238, § 5; 2001, ch. 147, § 1.

ANNOTATIONS

Cross references. — For financial affairs of local public bodies, *see* 6-6-1 NMSA 1978 et seq.

For provisions relating to management and control of public money generally, *see* 6-10-1 NMSA 1978 et seq.

For penalty for receiving consideration for placing deposit, misusing funds or failure to deposit, *see* 6-10-40 NMSA 1978.

For Warrant Cancellation Act, *see* 6-10-55 NMSA 1978 et seq.

For penalty for misapplication of forest reserve funds, *see* 6-11-4 NMSA 1978.

For suspension of treasurer's functions, *see* 7-35-7 NMSA 1978.

For property tax collection responsibilities, *see* 7-38-42 NMSA 1978.

For sale of personalty for delinquent taxes, *see* 7-38-57 to 7-38-59 NMSA 1978.

For duties with respect to bi-state fair in Curry county, *see* 16-6-27, 16-6-30 NMSA 1978.

For custody of bonds of Las Vegas land grant by treasurer of San Miguel county, *see* 49-6-12 NMSA 1978.

For duties and bond as ex-officio district treasurer of conservancy district, *see* 73-16-25, 73-16-26 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted "county" preceding "treasurer" in the introductory language of the section; inserted "checks and" preceding "warrants" in Subsection B; and inserted "board of" preceding "county commissioners" in Subsection C.

Special bailee. — A county treasurer is not a mere bailee or trustee, but is a special bailee, subject to special obligations, to fulfill the obligations of his bond, and the law of bailment is not the proper measure of his responsibility. *Maloy v. Board of Cnty. Comm'rs*, 1900-NMSC-043, 10 N.M. 638, 62 P. 1106.

County treasurer's prerogatives. — A board of county commissioners does not unlawfully infringe upon a county treasurer's prerogatives unless it undermines the treasurer's ability to perform the duties of the office by means that are not granted to the board by statute. Ordinances providing for merit systems or collective-bargaining agreements can pass that test. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Employees of county treasurer. — There is no statutory impediment in general to the adoption by the board of county commissioners of a merit system or approval of a collective-bargaining agreement that includes at least some employees of the county treasurer. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Investment decision-making. — The county treasurer determines how to deposit and invest county funds. That decision must then be approved by the board of county commissioners, sitting as the county board of finance. The board of finance has no power to modify the county treasurer's decision without the treasurer's concurrence. On the other hand, the county treasurer cannot impose a unilateral decision upon the board of finance. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

There is no statutory prohibition against delegation to the county treasurer by the board of county commissioners, sitting as the county board of finance, of specific investment decision-making. For example, the board could adopt a policy and permit the treasurer to make investment decisions that conform to the policy. Such delegation may be essential to enable the treasurer to respond to sudden changes in the financial markets. *Board of Cnty. Comm'rs v. Padilla*, 1990-NMCA-125, 111 N.M. 278, 804 P.2d 1097.

Liability for acts of deputy treasurer. — No statute requires that deputy treasurers be bonded, and while it is good business for bonding companies liable on a county treasurer's bond, and also good business for the county treasurer to require that deputy treasurers be bonded for their protection, the county should not pay for the premium on such deputy's bond, since the state and county are protected on the treasurer's bond for

any defalcation, even by a deputy under 6-10-38 NMSA 1978. 1940 Op. Att'y Gen. No. 40-3417.

Keeping money at hand. — This section would seem to indicate that the money must be kept at hand ready for inspection at any time. 1912 Op. Att'y Gen. No. 12-869.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of city, town, or county or their officials to compromise claim, 15 A.L.R.2d 1359.

20 C.J.S. Counties §§ 128 to 133.

4-43-3. Ex-officio collectors.

The treasurers of the several counties are ex-officio collectors for their respective counties and have all the powers and duties provided by law for county collectors.

History: Laws 1897, ch. 60, § 7; C.L. 1897, § 867(7); Code 1915, § 1280; C.S. 1929, § 33-4504; 1941 Comp., § 15-4004; 1953 Comp., § 15-42-4; Laws 1967, ch. 238, § 6.

ANNOTATIONS

Cross references. — For suspension of treasurer's functions, *see* 7-35-7 NMSA 1978.

For property tax collection responsibilities, *see* 7-38-42 NMSA 1978.

For sale of personalty for delinquent taxes, *see* 7-38-57 to 7-38-59 NMSA 1978.

4-43-4. [Settlement of accounts upon turning over office to successor; duty of county commissioners.]

When a county collector goes out of office he shall make a full and complete settlement with the board of county commissioners, and deliver up in the presence of the county clerk all books, papers, money and all other property appertaining to the office, to his successor, taking his receipt therefor. The board of county commissioners shall make a statement, so far as state revenue is concerned, to the state auditor, showing all charges for whatsoever purposes which have been created against the collector during his term of office, and all credits that have been made, and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what accounts the amount so paid over belongs. They shall also see that the books of the collector are correctly balanced before passing into the possession of the collector-elect.

History: Laws 1882, ch. 62, § 95; C.L. 1884, § 2900; C.L. 1897, § 4108; Code 1915, § 1283; C.S. 1929, § 33-4506; 1941 Comp., § 15-4005; 1953 Comp., § 15-42-5.

ANNOTATIONS

Cross references. — For delivery of law books, records and documents to successors, *see* 10-17-5 NMSA 1978.

The substance of the act required is the payment over by the outgoing to the incoming treasurer, and the board in the presence of the county clerk; the obligation so defined is a continuing one which survives until fully performed, and implies the authority of the incoming treasurer to demand what he alone has the right to receive. *State v. Davisson*, 1923-NMSC-045, 28 N.M. 653, 217 P. 240.

Settlement looks to security of county finances. — The manner in which settlement is directed to be made under this section looks only to the security of county finances. *State v. Davisson*, 1923-NMSC-045, 28 N.M. 653, 217 P. 240.

ARTICLE 44
Salaries and Provisions Applicable to More Than One Office

4-44-1. Classification for salary purposes.

A. For the purpose of fixing salaries of county officers, the several counties of the state, except "H" class counties, are classified as follows:

(1) those having a final, full assessed valuation of over seventy-five million dollars ($75,000,000) and a population of one hundred thousand persons or more as determined by the most current annual population data or estimate available from the United States census bureau, as class "A" counties; and

(2) those having a final, full assessed valuation of over seventy-five million dollars ($75,000,000) and a population of less than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau, as class "B" counties.

B. The assessed valuation for each year is the full valuation as finally fixed for that year.

History: 1953 Comp., § 15-43-1, enacted by Laws 1957, ch. 196, § 1; 2009, ch. 224, § 1; 2013, ch. 188, § 1; 2018, ch. 78, § 1.

ANNOTATIONS

Cross references. — For salaries, expenses, fees and powers and duties of officers of unincorporated counties of the H class, *see* 4-44-14 to 4-44-16 NMSA 1978.

The 2018 amendment, effective May 16, 2018, eliminated the class "C" county classification, and made stylistic changes; and deleted Paragraph A(3), which classified certain counties as class "C" counties.

The 2013 amendment, effective January 1, 2014, eliminated certain county classes for purposes of fixing salaries; in Paragraph (3) of Subsection A, after "assessed valuation", deleted "in excess of forty-five million dollars ($45,000,000)" and added "equal to or less than seventy-five million dollars ($75,000,000)"; and deleted former Paragraphs (4) through (8) of Subsection A, which created classes of counties based on assessed valuation from over fourteen million dollars to less than four million seven hundred fifty thousand dollars.

The 2009 amendment, effective June 19, 2009, in Subsections A(1), A(2) and A(3), after "as determined by the" deleted "last official" and added "most current annual population data or estimate available from the".

Effect of creation of new county. — Classification was not reduced by fact that a part of the county became a part of a new county. *Baca v. Board of Comm'rs*, 1924-NMSC-073, 30 N.M. 163, 231 P. 637.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 225 to 234.

20 C.J.S. Counties § 109.

4-44-2. Biennial determination of classification.

From and after January 1, 1962, the classification of counties shall be fixed and governed by the assessed valuation as finally fixed for the preceding year. Provided, one hundred twenty days after January 1, 1962 and one hundred twenty days from January 1 of each second year thereafter, the classification shall be determined by the secretary of finance and administration from the assessed valuation of each county as finally fixed for the preceding year, and the secretary of finance and administration upon making the determination shall notify the board of county commissioners of each county of the class within which each of the counties of this state falls according to the classification, and the classification as so fixed and determined by the secretary of finance and administration shall govern the salaries of the county officers for two years beginning July 1 of the year the classification is determined.

History: Laws 1915, ch. 12, § 19; 1923, ch. 49, § 1; C.S. 1929, § 33-3219; 1941 Comp., § 15-4102; Laws 1953, ch. 83, § 1; 1953, ch. 117, § 2; 1953 Comp., § 15-43-2; Laws 1961, ch. 184, § 1; 1977, ch. 247, § 143; 2009, ch. 224, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, at the end of the last sentence, after "two years beginning", deleted "January 1, 1963 and each two years thereafter" and added "July 1 of the year the classification is determined".

Constitutionality of 1923 amendment. — Laws of 1923, ch. 49, § 2, providing for classification of counties on basis of assessed valuation in 1922 and determination of county salaries for 1923 and 1924 on the basis of such classification, was void insofar as it increased or diminished an officer's compensation during his term of office; the remaining portions of the act were unaffected. *State ex rel. Gilbert v. Board of Comm'rs*, 1924-NMSC-001, 29 N.M. 209, 222 P. 654, 31 A.L.R. 1310 (1924).

The compensation of a county officer may not be diminished during his term of office; both this article and N.M. Const., art. IV, § 27 prohibit such a reduction in compensation. *State ex rel. Gilbert v. Board of Comm'rs*, 1924-NMSC-001, 29 N.M. 209, 222 P. 654.

The tax commission (now secretary of finance and administration) has not the power to reduce salaries of county officers by the reclassification of counties. 1923 Op. Att'y Gen. No. 23-3665.

Classification of counties is fixed by assessed valuation for prior year which does not include exempted property. 1937 Op. Att'y Gen. No. 37-1705.

Effect of reducing assessment. — When classification of county has been fixed by assessed valuation, a reduction of any assessment does not upset such classification. 1937 Op. Att'y Gen. No. 37-1525.

Erroneous valuation. — Where the valuation of property of a county, which determines its classification, was erroneous because of an omission in assessment which has been corrected by petition filed in district court of such county, it would seem that as a matter of right and justice the true valuation as shown by such court should be used to fix such classification, but the tax commission (now secretary of finance and administration) has no power or authority to revise the budget in order to increase salary fund to pay county officers. 1922 Op. Att'y Gen. No. 22-3603; 1937 Op. Att'y Gen. No. 37-1536.

Official determination of a change in classification by the state auditor (now secretary of finance and administration) is necessary before it can be made effective. 1948 Op. Att'y Gen. No. 48-5136; 1950 Op. Att'y Gen. No. 50-5285.

4-44-3. Establishment of H class counties.

There is hereby created and established a further and additional classification of counties in New Mexico, which shall be and are hereby declared to be and are described as H class counties. Any county which covers an area of not more than 200 square miles shall be a county of the H class.

History: 1953 Comp., § 15-43-3.1, enacted by Laws 1955, ch. 4, § 1; 1985, ch. 62, § 1.

ANNOTATIONS

Cross references. — For salaries, expenses, fees and powers and duties of officers of unincorporated counties of the H class, *see* 4-44-14 to 4-44-16 NMSA 1978.

For inclusion of H class counties in definition of municipality, *see* 3-1-2 NMSA 1978.

4-44-4. Class A counties; salaries.

The annual salaries of elected officers of a class A county shall not exceed, for:

A. county commissioners, thirty-nine thousand one hundred six dollars ($39,106) each;

B. treasurer, eighty-six thousand six hundred twenty-six dollars ($86,626);

C. assessor, eighty-six thousand six hundred twenty-six dollars ($86,626);

D. sheriff, ninety thousand three hundred thirty-eight dollars ($90,338);

E. county clerk, eighty-six thousand six hundred twenty-six dollars ($86,626); and

F. probate judge, thirty-eight thousand one hundred fourteen dollars ($38,114).

History: 1953 Comp., § 15-43-4, enacted by Laws 1957, ch. 196, § 2; 1959, ch. 262, § 1; 1961, ch. 247, § 1; 1965, ch. 236; § 1; 1969, ch. 219, § 3; 1970, ch. 83, § 1; 1973, ch. 380, § 1; 1974, ch. 70, § 1; 1976 (S.S.), ch. 14, § 1; 1978, ch. 191, § 1; 1980, ch. 135, § 1; 1982, ch. 39, § 1; 1986, ch. 67, § 1; 1990, ch. 82, § 1; 1994, ch. 38, § 1; 1998, ch. 11, § 1; 2002, ch. 79, § 1; 2006, ch. 87, § 1; 2011, ch. 56, § 16; 2013, ch. 188, § 2; 2018, ch. 78, § 2.

ANNOTATIONS

Cross references. — For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

The 2018 amendment, effective May 16, 2018, increased the salary caps applicable to elected county officials in class A counties, and made stylistic changes; in Subsection A, deleted "thirty-four thousand five dollars ($34,005)" and added "thirty-nine thousand one hundred six dollars ($39,106)"; in Subsection B, deleted "seventy-five thousand three hundred twenty-seven dollars ($75,327)" and added "eighty-six thousand six hundred twenty-six dollars ($86,626)"; in Subsection C, deleted "seventy-five thousand three hundred twenty-seven dollars ($75,327)" and added "eighty-six thousand six hundred twenty-six dollars ($86,626)"; in Subsection D, deleted "seventy-eight thousand five

hundred fifty-five dollars ($78,555)" and added "ninety thousand three hundred thirty-eight dollars ($90,338)"; in Subsection E, deleted "seventy-five thousand three hundred twenty-seven dollars ($75,327)" and added "eighty-six thousand six hundred twenty-six dollars ($86,626)"; and in Subsection F, deleted "thirty-three thousand one hundred forty-three dollars ($33,143)" and added "thirty-eight thousand one hundred fourteen dollars ($38,114)".

The 2013 amendment, effective January 1, 2014, increased the salary limits for elected officials; in Subsection A, after "commissioners", deleted "twenty-nine thousand five hundred sixty nine dollars ($29,569)" and added "thirty-four thousand five dollars ($34,005)"; in Subsection B, after "treasurer", deleted "sixty-five thousand five hundred one dollars ($65,501)" and added "seventy-five thousand three hundred twenty-seven dollars ($75,327)"; in Subsection C, after "assessor", deleted "sixty-five thousand five hundred one dollars ($65,501)" and added "seventy-five thousand three hundred twenty-seven dollars ($75,327)"; in Subsection D, after "sheriff", deleted "sixty-eight thousand three hundred eight dollars ($68,308)" and added "seventy-eight thousand five hundred fifty-five dollars ($78,555)"; in Subsection E, after "county clerk", deleted "sixty-five thousand five hundred one dollars ($65,501)" and added "seventy-five thousand three hundred twenty-seven dollars ($75,327)"; in Subsection F, after "probate judge", deleted "twenty-eight thousand eight hundred twenty dollars ($28,820)" and added "thirty-three thousand one hundred forty-three dollars ($33,143)".

The 2011 amendment, effective December 31, 2012, eliminated the salary for county surveyors.

The 2006 amendment, effective January 1, 2007, increased the salaries of elected officials.

The 2002 amendment, effective January 1, 2003, increased the maximum salaries of elected officers in Subsections A through F.

The 1998 amendment, effective January 1, 1999, substituted the present salaries of the officers listed in Subsections A to F for the former salaries, which were $19,442, $43,068, $43,068, $44,913, $43,068, and $18,950, respectively.

The 1994 amendment, effective May 18, 1994, substituted the present salaries of the officers listed in Subsections A to G for the former salaries, which were $18,170, $40,250, $40,250, $41,975, $40,250, $17,710 and $18,170, respectively.

1982 amendment unconstitutional. — Because the 1982 amendment of this section would allow the compensation of elected county officers to increase during the term for which they were elected, this section violates N.M. Const., art. IV, § 27, and is unconstitutional; that revives this section as it read prior to the 1982 amendment. 1983 Op. Att'y Gen. No. 83-01.

Salaries of county officers elected in November begin with beginning of the following January. 1916 Op. Att'y Gen. No. 16-1782.

A new appointee to the office of probate judge may receive the increased salary designated for that office by legislation enacted by the last legislature. 1960 Op. Att'y Gen. No. 60-60.

County commissioners are not authorized to pay a county assessor extra for work his predecessor should have done. 1921 Op. Att'y Gen. No. 21-2788.

4-44-4.1. Class B counties; high valuation; salaries.

The annual salaries of elected officers of a class B county with an assessed valuation of over three hundred million dollars ($300,000,000) shall not exceed, for:

A. county commissioners, thirty thousand one hundred ninety-six dollars ($30,196) each;

B. treasurer, seventy-five thousand seven hundred thirty-three dollars ($75,733);

C. assessor, seventy-five thousand seven hundred thirty-three dollars ($75,733);

D. sheriff, seventy-eight thousand nine hundred fifty-two dollars ($78,952);

E. county clerk, seventy-five thousand seven hundred thirty-three dollars ($75,733); and

F. probate judge, twenty-six thousand four hundred eighty-two dollars ($26,482).

History: 1978 Comp., § 4-44-4.1, enacted by Laws 1986, ch. 67, § 2; 1990, ch. 82, § 2; 1994, ch. 38, § 2; 1998, ch. 11, § 2; 2002, ch. 79, § 2; 2006, ch. 87, § 2; 2011, ch. 56, § 17; 2013, ch. 188, § 3; 2018, ch. 78, § 3.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, increased the salary caps applicable to elected county officials in certain class B counties, and made stylistic changes; in the catchline, deleted "over three hundred million dollars ($300,000,000)" and added "high"; in Subsection A, deleted "twenty-six thousand two hundred fifty-seven dollars ($26,257)" and added "thirty thousand one hundred ninety-six dollars ($30,196)"; in Subsection B, deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)"; in Subsection C, deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)"; in Subsection D, deleted "sixty-eight thousand six hundred fifty-four dollars ($68,654)" and added "seventy-eight thousand nine hundred fifty-two dollars ($78,952)"; in Subsection

E, deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)"; and in Subsection F, deleted "twenty-three thousand twenty-eight dollars ($23,028)" and added "twenty-six thousand four hundred eighty-two dollars ($26,482)".

The 2013 amendment, effective January 1, 2014, increased the salary limits for elected officials; in Subsection A, after "commissioners", deleted "twenty-two thousand eight hundred thirty-two dollars ($22,832)" and added "twenty-six thousand two hundred fifty-seven dollars ($26,257)"; in Subsection B, after "treasurer", deleted "fifty-seven thousand two hundred sixty-five dollars ($57,265)" and added "sixty-five thousand eight hundred fifty-five dollars ($65,855)"; in Subsection C, after "assessor", deleted "fifty-seven thousand two hundred sixty-five dollars ($57,265)" and added "sixty-five thousand eight hundred fifty-five dollars ($65,855)"; in Subsection D, after "sheriff", deleted "fifty-nine thousand six hundred ninety-nine dollars ($59,699)" and added "sixty-eight thousand six hundred fifty-four dollars ($68,654)"; in Subsection E, after "county clerk", deleted "fifty-seven thousand two hundred sixty-five dollars ($57,265)" and added "sixty-five thousand eight hundred fifty-five dollars ($65,855)"; in Subsection F, after "probate judge", deleted "twenty thousand twenty-four dollars ($20,024)" and added "twenty-three thousand twenty-eight dollars ($23,028)".

The 2011 amendment, effective December 31, 2012, eliminated the salary for county surveyors.

The 2006 amendment, effective January 1, 2007, increased the salaries of elected officials.

The 2002 amendment, effective January 1, 2003, increased the maximum salaries of elected officers in Subsections A through F.

The 1998 amendment, effective January 1, 1999, substituted the present salaries of the officers listed in Subsections A to F for the former salaries, which were $15,012, $37,653, $37,653, $39,253, $37,653, and $13,166, respectively.

The 1994 amendment, effective May 18, 1994, substituted the present salaries of the officers listed in Subsections A to F for the former salaries, which were $14,030, $35,190, $35,190, $36,685, $35,190, and $12,305, respectively.

4-44-5. Class B counties; intermediate valuation; salaries.

The annual salaries of elected officers of a class B county with an assessed valuation of over seventy-five million dollars ($75,000,000) but under three hundred million dollars ($300,000,000) shall not exceed, for:

A. county commissioners, twenty-one thousand five hundred thirty-four dollars ($21,534) each;

B. treasurer, sixty-four thousand eight hundred forty-four dollars ($64,844);

C. assessor, sixty-four thousand eight hundred forty-four dollars ($64,844);

D. sheriff, sixty-seven thousand eight hundred fourteen dollars ($67,814);

E. county clerk, sixty-four thousand eight hundred forty-four dollars ($64,844); and

F. probate judge, fifteen thousand ninety-eight dollars ($15,098).

History: 1953 Comp., § 15-43-4.1, enacted by Laws 1957, ch. 196, § 3; 1959, ch. 262, § 2; 1961, ch. 116, § 1; 1965, ch. 236, § 2; 1969, ch. 219, § 4; 1970, ch. 83, § 2; 1973, ch. 380, § 2; 1976 (S.S.), ch. 14, § 2; 1978, ch. 191, § 2; 1980, ch. 135, § 2; 1981, ch. 14, § 3; 1982, ch. 39, § 2; 1986, ch. 67, § 3; 1990, ch. 82, § 3; 1994, ch. 38, § 3; 1998, ch. 11, § 3; 2002, ch. 79, § 3; 2006, ch. 87, § 3; 2011, ch. 56, § 18; 2013, ch. 188, § 4; 2018, ch. 78, § 4.

ANNOTATIONS

Cross references. — For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

The 2018 amendment, effective May 16, 2018, increased the salary caps applicable to elected county officials in certain class B counties, and made stylistic changes; in the catchline, added "intermediate valuation"; in Subsection A, deleted "eighteen thousand seven hundred twenty-five dollars ($18,725)" and added "twenty-one thousand five hundred thirty-four dollars ($21,534)"; in Subsection B, deleted "fifty-six thousand three hundred eighty-six dollars ($56,386)" and added "sixty-four thousand eight hundred forty-four dollars ($64,844)"; in Subsection C, deleted "county" preceding "assessor", and deleted "fifty-six thousand three hundred eighty-six dollars ($56,386)" and added "sixty-four thousand eight hundred forty-four dollars ($64,844)"; in Subsection D, deleted "county" preceding "sheriff", and deleted "fifty-eight thousand nine hundred sixty-nine dollars ($58,969)" and added "sixty-seven thousand eight hundred fourteen dollars ($67,814)"; in Subsection E, deleted "fifty-six thousand three hundred eighty-six dollars ($56,386)" and added "sixty-four thousand eight hundred forty-four dollars ($64,844)"; and in Subsection F, deleted "thirteen thousand one hundred twenty-nine dollars ($13,129)" and added "fifteen thousand ninety-eight dollars ($15,098)".

The 2013 amendment, effective January 1, 2014, increased the salary limits for elected officials; in Subsection A, after "commissioners", deleted "sixteen thousand two hundred eighty-two dollars ($16,282)" and added "eighteen thousand seven hundred twenty-five dollars ($18,725)"; in Subsection B, after "treasurer", deleted "forty-nine thousand thirty-one dollars ($49,031)" and added "fifty-six thousand three hundred eighty-six dollars ($56,386)"; in Subsection C, after "assessor", deleted "forty-nine thousand thirty-one dollars ($49,031)" and added "fifty-six thousand three hundred eighty-six dollars ($56,386)"; in Subsection D, after "sheriff", deleted "fifty-one thousand two hundred

seventy-seven dollars ($51,277)" and added "fifty-eight thousand nine hundred sixty-nine dollars ($58,969)"; in Subsection E, after "county clerk", deleted "forty-nine thousand thirty-one dollars ($49,031)" and added "fifty-six thousand three hundred eighty-six dollars ($56,386)"; in Subsection F, after "probate judge", deleted "eleven thousand four hundred sixteen dollars ($11,416)" and added "thirteen thousand one hundred twenty-nine dollars ($13,129)".

The 2011 amendment, effective December 31, 2012, eliminated the salary for county surveyors.

The 2006 amendment, effective January 1, 2007, increased the salaries of elected officials.

The 2002 amendment, effective January 1, 2003, increased the maximum salaries of elected officers in Subsections A through F.

The 1998 amendment, effective January 1, 1999, substituted the present salaries of the officers listed in Subsections A to F for the former salaries, which were $10,705, $32,239, $32,239, $33,716, $32,239, and $7,506, respectively.

The 1994 amendment, effective May 18, 1994, substituted the present salaries of the officers listed in Subsections A to F for the former salaries, which were $10,005, $30,130, $30,130, $31,510, $30,130, and $7,015, respectively.

1982 amendment unconstitutional. — Because the 1982 amendment of this section would allow the compensation of elected county officers to increase during the term for which they were elected, this section, as amended by Laws 1982, ch. 39, § 2, violates N.M. Const., art. IV, § 27, and is unconstitutional; that revives this section as it read prior to the 1982 amendment. 1983 Op. Att'y Gen. No. 83-01.

Salary reductions permitted. — A county commission has the authority to reduce the salaries of elected county officers under this section despite the legislature's statement of intent in 4-44-12.2 NMSA 1978 that the salaries of county officials be raised. The statement of legislative intent should only be considered if the operative portion of the statute is vague or ambiguous on its own; this section is not ambiguous because its operative provisions do not expressly mandate salary increases or prohibit salary decreases. 1992 Op. Att'y Gen. No. 92-05.

4-44-6. Repealed.

History: 1953 Comp., § 15-43-4.2, enacted by Laws 1957, ch. 196, § 4; 1959, ch. 262, § 3; 1961, ch. 116, § 2; 1965, ch. 236, § 3; 1969, ch. 219, § 5; 1970, ch. 83, § 3; 1973, ch. 380, § 3; 1976 (S.S.), ch. 14, § 3; 1978, ch. 191, § 3; 1980, ch. 135, § 3; 1981, ch. 14, § 4; 1982, ch. 39, § 3; 1986, ch. 67, § 4; 1990, ch. 82, § 4; 1994, ch. 38, § 4; 1998, ch. 11, § 4; 2002, ch. 79, § 4; 2006, ch. 87, § 4; 2011, ch. 56, § 19; 2013, ch. 188, § 5; repealed by Laws 2018, ch. 78, § 7.

ANNOTATIONS

Repeals. — Laws 2018, ch. 78, § 7 repealed 4-44-6 NMSA 1978, as enacted by Laws 1957, ch. 196, § 4, relating to class C counties, salaries, effective May 16, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

4-44-7. Repealed.

History: 1953 Comp., § 15-43-4.3, enacted by Laws 1957, ch. 196, § 5; 1959, ch. 262, § 4; 1961, ch. 246, § 1; 1965, ch. 236, § 4; 1969, ch. 219, § 6; 1970, ch. 83, § 4; 1973, ch. 380, § 4; 1976 (S.S.), ch. 14, § 4; 1978, ch. 191, § 4; 1980, ch. 135, § 4; 1981, ch. 14, § 5; 1982, ch. 39, § 4; 1986, ch. 67, § 5; 1990, ch. 82, § 5; 1994, ch. 38, § 5; 1998, ch. 11, § 5; 2002, ch. 79, § 5; 2006, ch. 87, § 5; 2011, ch. 56, § 20; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-7 NMSA 1978, as enacted by Laws 1957, ch. 196, § 5, relating to annual salaries of elected county officers in first class counties with assessed valuation over twenty-seven million dollars, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-8. Repealed.

History: 1953 Comp., § 15-43-4.4, enacted by Laws 1957, ch. 196, § 6; 1959, ch. 262, § 5; 1961, ch. 249, § 1; 1965, ch. 236, § 5; 1969, ch. 219, § 7; 1970, ch. 83, § 5; 1973, ch. 380, § 5; 1976 (S.S.), ch. 14, § 5; 1978, ch. 191, § 5; 1980, ch. 135, § 5; 1981, ch. 14, § 6; 1982, ch. 39, § 5; 1986, ch. 67, § 6; 1990, ch. 82, § 6; 1994, ch. 38, § 6; 1998, ch. 11, § 6; 2002, ch. 79, § 6; 2006, ch. 87, § 6; 2011, ch. 56, § 21; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-8 NMSA 1978, as enacted by Laws 1957, ch. 196, § 6, relating to annual salaries of elected county officers in first class counties with assessed valuation under twenty-seven million dollars, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-9 to 4-44-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 82, § 8 repealed 4-44-9 to 4-44-12 NMSA 1978, as amended by Laws 1986, ch. 67, § 7 and Laws 1982, ch. 39, §§ 7 to 9 relating to salaries in second, third, fourth, and fifth class counties, effective May 16, 1990.

4-44-12.1. Repealed.

History: Laws 1982, ch. 39, § 10; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-12.1 NMSA 1978, as enacted by Laws 1982, ch. 39, § 10, relating to equity, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-12.2. Repealed.

History: Laws 1982, ch. 39, § 12; 1983, ch. 7, § 1; 1986, ch. 67, § 8; 1990, ch. 82, § 7; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-12.2 NMSA 1978, as enacted by Laws 1982, ch. 39, § 12, relating to legislative intent and purpose, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-12.3. Legislative intent; uniform salary changes.

A. The intent of the legislature when increasing the maximum salaries of elected county officials is to provide for equitable salary increases.

B. The majority of a board of county commissioners may provide for salary increases for elected county officials; however, a salary increase shall not take effect until the first day of the term of an elected county official who takes office after the date that salary increase is approved.

History: 1978 Comp., § 4-44-12.3, enacted by Laws 1991, ch. 91, § 1; 1999, ch. 228, § 1; 2013, ch. 188, § 6; 2018, ch. 78, § 5.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, clarified the legislative intent with regard to increasing the maximum salaries of elected county officials; in Subsection A, after "legislature when", deleted "enacting salary increases for" and added "increasing the maximum salaries of"; and in Subsection B, deleted "In accordance with Sections 4-44-3 through 4-44-6 NMSA 1978", after "county officials", deleted "provided", after

"however", deleted "that no" and added "a", and after "salary increase shall", added "not".

The 2013 amendment, effective July 1, 2013, authorized boards of county commissioner to increase salaries of elected officials in accordance with statutory limitations; and in Subsection B, after "Sections 4-44-3 through", deleted "4-44-8 NMSA 1978" and added "4-44-6 NMSA 1978".

The 1999 amendment, effective June 18, 1999, in Subsection B, substituted "the term of an elected county official" for "the term of the first elected county official", and deleted "at which time the salary increase shall take effect for all county elected officials" at the end of the subsection.

Salary increases during midterm. — Salary increases granted by county commissions under this section for elected officials who were in midterm on the date the increases took effect violated Article IV, § 27 of the New Mexico Constitution. *State ex rel. Haragan v. Harris*, 1998-NMSC-043, 126 N.M. 310, 968 P.2d 1173.

Salary increases during term of office invalid. — An interpretation of Subsection B permitting an increase of county commissioner salaries during the term of office violates the N.M. Const., art. IV, § 27 restriction on salary changes during a public officer's term. 1994 Op. Att'y Gen. No. 94-09.

4-44-13. Repealed.

History: 1953 Comp., § 15-43-4.10, enacted by Laws 1957, ch. 196, § 12; 1959, ch. 262, § 11; 1965, ch. 236, § 11; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-13 NMSA 1978, as enacted by Laws 1957, ch. 196, § 12, relating to compensation for county clerks acting as court clerks, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-14. H class counties; salaries.

A. The annual salaries of elected or appointed part-time officers of an H class county shall not exceed, for:

(1) county commissioners, fifteen thousand eight hundred forty-four dollars ($15,844) each;

(2) treasurer, seven thousand nine hundred twenty-two dollars ($7,922);

(3) assessor, seven thousand nine hundred twenty-two dollars ($7,922);

(4) sheriff, seven thousand nine hundred twenty-two dollars ($7,922);

(5) county clerk, seven thousand nine hundred twenty-two dollars ($7,922); and

(6) probate judge, four thousand six hundred thirty-six dollars ($4,636).

B. The annual salaries of elected or appointed full-time officers of an H class county shall not exceed, for:

(1) treasurer, seventy-five thousand seven hundred thirty-three dollars ($75,733);

(2) assessor, seventy-five thousand seven hundred thirty-three dollars ($75,733);

(3) sheriff, seventy-eight thousand nine hundred fifty-two dollars ($78,952); and

(4) county clerk, seventy-five thousand seven hundred thirty-three dollars ($75,733).

C. The governing body of an H class county shall designate whether each of the offices of treasurer, assessor, sheriff and county clerk is part time or full time; however, a change in that designation shall not take effect until the first day of the term of an elected county official who takes office after the change in designation is approved.

History: 1953 Comp., § 15-43-5.1, enacted by Laws 1955, ch. 4, § 2; 1959, ch. 47, § 1; 1969, ch. 219, § 12; 1974, ch. 24, § 1; 1998, ch. 11, § 7; 2002, ch. 79, § 7; 2006, ch. 87, § 7; 2013, ch. 188, § 7; 2016, ch. 36, § 1; 2018, ch. 78, § 6.

ANNOTATIONS

Cross references. — For disposition of fees collected by officers of H class counties, *see* 4-44-15 NMSA 1978.

For payment of expenses of sheriffs, deputy sheriffs and guards for serving process and certain other official business, *see* 4-44-18 NMSA 1978.

The 2018 amendment, effective May 16, 2018, increased the salary caps applicable to elected or appointed officers of an H class county; in the catchline, deleted "and expenses"; in Subsection A, in the introductory clause, deleted "Officers" and added "The annual salaries of", after "elected or appointed", deleted "in a county of the H class to an office that is designated as part-time shall receive no more than the following annual salaries" and added "part-time officers of an H class county shall not exceed, for", in Paragraph A(1), deleted "thirteen thousand seven hundred seventy-seven

dollars ($13,777)" and added "fifteen thousand eight hundred forty-four dollars ($15,844) each", in Paragraph A(2), deleted "six thousand eight hundred eighty-nine dollars ($6,889)" and added "seven thousand nine hundred twenty-two dollars ($7,922)", in Paragraph A(3), deleted "six thousand eight hundred eighty-nine dollars ($6,889)" and added "seven thousand nine hundred twenty-two dollars ($7,922)", in Paragraph A(4), deleted "six thousand eight hundred eighty-nine dollars ($6,889)" and added "seven thousand nine hundred twenty-two dollars ($7,922)", in Paragraph A(5), deleted "six thousand eight hundred eighty-nine dollars ($6,889)" and added "seven thousand nine hundred twenty-two dollars ($7,922)", and in Paragraph A(6), deleted "four thousand thirty-one dollars ($4,031)" and added "four thousand six hundred thirty-six dollars ($4,636)"; in Subsection B, in the introductory clause, deleted "Officers who are" and added "The annual salaries of", and after "elected or appointed", deleted "in a county of the H class to an office that is designated as full-time shall receive no more than the following annual salaries" and added "full-time officers of an H class county shall not exceed, for", in Paragraph B(1), deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)", in Paragraph B(2), deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)", in Paragraph B(3), deleted "sixty-eight thousand six hundred fifty-four dollars ($68,654)" and added "seventy-eight thousand nine hundred fifty-two dollars ($78,952)", and in Paragraph B(4), deleted "sixty-five thousand eight hundred fifty-five dollars ($65,855)" and added "seventy-five thousand seven hundred thirty-three dollars ($75,733)"; and in Subsection C, after "designate whether", deleted "the office" and added "each of the offices", after "sheriff", deleted "or" and added "and", after "full time", deleted "provided", after "however", deleted "that no" and added "a", after "designation shall", added "not", and after "takes office after the", added "change in".

The 2016 amendment, effective July 1, 2016, revised the salary structure for certain H class county officers, and required the governing body of an H class county to designate whether certain offices are part-time or full-time positions; in Subsection A, in the introductory sentence, after "H class", added "to an office that is designated as part-time"; and added new Subsections B and C and redesignated former Subsection B as Subsection D.

The 2013 amendment, effective January 1, 2014, increased the salary limits for elected officials; in Subsection A, in the introductory sentence, after "appointed in", deleted "an unincorporated" and added "a" and after "shall receive", added "no more than"; in Paragraph (1), after "commissioners", deleted "one dollar ($1.00)" and added "thirteen thousand seven hundred seventy-seven dollars ($13,777)"; in Paragraph (2), after "treasurer", deleted "one dollar ($1.00)" and added "six thousand eight hundred eighty-nine dollars ($6,889)"; in Paragraph (3), after "assessor", deleted "one dollar ($1.00)" and added "six thousand eight hundred eighty-nine dollars ($6,889)"; in Paragraph (4), after "sheriff", deleted "one dollar ($1.00)" and added "six thousand eight hundred eighty-nine dollars ($6,889)"; in Paragraph (5), after "county clerk", deleted "one dollar ($1.00)" and added "six thousand eight hundred eighty-nine dollars ($6,889)"; in Paragraph (6), after "probate judge", deleted "three thousand five hundred five dollars

($3,505)" and added "four thousand thirty-one dollars ($4,031)", and deleted former Paragraph (7), which provided for a salary for a county surveyor; deleted former Subsection B, which provided a per diem expense for officials, except the probate judge, for attending meetings; and added Subsection B.

The 2006 amendment, effective January 1, 2007, in Paragraph (6) of Subsection A, increased the salary of probate judges from $3,048 to $3,505.

The 2002 amendment, effective January 1, 2003, in Subsection A, substituted "an unincorporated county" for "the counties" in the introductory language, and increased the salary amount in Paragraph (6).

The 1998 amendment, effective January 1, 1999, in Subsection A(6), substituted "two thousand six hundred fifty dollars ($2,650)" for "two thousand three hundred four dollars ($2,304)" and in Subsection B, deleted "therein" following 'salaries" in the first sentence.

Elective "H" class county officials are entitled to receive $15.00 per diem expense for each day, or fraction thereof, spent in commission meetings or in the performance of their official duties for the county. 1959 Op. Att'y Gen. No. 59-91.

4-44-15. [Fees collected by officers of H class counties; disposition.]

Any and all fees now or hereafter allowed by statute or collected or received by any of the officers enumerated shall be covered into the general fund of such county and shall be disbursed for public purposes under the supervision and authority of the county commissioners of said county.

History: 1953 Comp., § 15-43-7.1, enacted by Laws 1955, ch. 4, § 4.

ANNOTATIONS

Cross references. — For salaries and expenses of officers of unincorporated counties of the H class, *see* 4-44-14 NMSA 1978.

4-44-16. [Powers and duties of officers of H class counties.]

All officers elected or appointed under the provisions of this act [4-44-3, 4-44-14 to 4-44-16 NMSA 1978] shall have the same duties, rights, authority and obligations now or hereafter provided by the laws of New Mexico.

History: 1953 Comp., § 15-43-8.1, enacted by Laws 1955, ch. 4, § 5.

ANNOTATIONS

Cross references. — For creation of unincorporated counties of the H class, *see* 4-44-3 NMSA 1978.

For salaries and expenses of officers of H class counties, *see* 4-44-14 NMSA 1978.

4-44-17. Repealed.

History: 1941 Comp., § 15-4103a, enacted by Laws 1953, ch. 59, § 1; 1953 Comp., § 15-43-10; repealed by Laws 2013, ch. 188, § 8.

ANNOTATIONS

Repeals. — Laws 2013, ch. 188, § 8 repealed 4-44-17 NMSA 1978, as enacted by Laws 1953, ch. 59, § 1, relating to insufficient funds for hire of full-time deputies in fifth class counties, effective January 1, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

4-44-18. Sheriffs, deputy sheriffs and guards; expenses incurred in serving process and certain other official business; per diem.

A. Sheriffs, their deputies and guards shall be paid per diem expenses at the rate authorized in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] by the counties on behalf of which expenses are incurred in:

(1) service of criminal process issued out of the supreme court or district court;

(2) service of criminal process issued out of a magistrate court when the issuance is approved in writing by the district attorney or his assistants;

(3) service of civil process issued by the district court; and

(4) attempting to discover or arrest a person charged with a felony if written authorization is obtained from the district judge.

B. Expenses authorized pursuant to this section shall be paid on the rendition of sworn accounts filed in the county clerk's office and approved by the board of county commissioners and the district judge.

C. Sheriffs, their deputies and guards shall be paid per diem and mileage expenses at the rate authorized in the Per Diem and Mileage Act for extraditing prisoners from without the state and for transporting persons committed by a court to a state institution or required to be returned by order of the court from a state institution to the county of commitment. Subject to appropriation by the legislature, the county shall be reimbursed by the state for the per diem, costs for mileage and other necessary travel expenses incurred pursuant to this subsection by submitting claims for reimbursement to the

department of finance and administration in accordance with the department's regulations. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement.

History: 1953 Comp., § 15-43-11.1, enacted by Laws 1961, ch. 253, § 4; 1973, ch. 364, § 1; 2003, ch. 219, § 1.

ANNOTATIONS

Cross references. — For reimbursement of peace officers and constables for mileage traveled by privately owned conveyances in serving judicial process, *see* 4-41-19 NMSA 1978.

For reimbursement of sheriffs, deputy sheriffs or other county peace officers utilizing public transportation in performance of official business, *see* 4-41-20 NMSA 1978.

For charges for service of more than one subpoena or summons, *see* 4-41-21 NMSA 1978.

For collection and disposition of fees, commissions, mileage and per diem, *see* 4-44-28, 4-44-29 NMSA 1978.

The 2003 amendment, effective July 1, 2003, in Subsection B substituted "pursuant to" for "under" following "authorized" near the beginning and inserted "board of" following "approved by the" near the end; in Subsection C, substituted "Subject to appropriation by the legislature, the" for "The" at the beginning of the second sentence, deleted "seventy-five percent of" following "the state for" near the beginning of the second sentence, inserted "and other necessary travel" preceding "expenses incurred" near the middle, and inserted "Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursements." at the end.

Order of the district court directing the sheriff to bring back a person from the penitentiary so that he can be a witness cannot be classified as the service of criminal or civil process for purposes of this section. 1969 Op. Att'y Gen. No. 69-34.

Transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department; jail administrators and independent contractors may also transport inmates at their facilities. 2000 Op. Att'y Gen. No. 00-02.

County commission may force a county sheriff to use a county car to transport a person charged with a crime or with escaping from confinement from another state back to New Mexico. 1958 Op. Att'y Gen. No. 58-244.

If the sheriff has expended his own money in payment for the guard's authorized expenses, those expenses would therefore be legal expenses of the sheriff for which he could properly be reimbursed. 1961 Op. Att'y Gen. No. 61-09.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sheriffs, Police, and Constables § 89.

80 C.J.S. Sheriffs and Constables §§ 495, 498 to 500.

4-44-19. [Prisoners; operating allowance; records and maintenance.]

A. Each county sheriff, jail administrator or independent contractor shall keep a written record showing the exact time of confinement and release of each prisoner incarcerated in the jail under his jurisdiction. As used in this act, "jail administrator" means the person hired by a county, municipality or a combination of these who supervises the entire operation of the jail and reports directly to the administrative head of the local governmental entity or local governing body.

B. The governing body of a jail shall, from appropriate funds, provide the necessary funding to maintain and operate the facility.

C. All fees remitted to the sheriff or jail administrator for federal or other prisoners in his custody shall be promptly deposited in their entirety by the sheriff or jail administrator with the appropriate depository entity. As used in this section, "depository entity" means the treasurer of the particular local governmental entity responsible for management of the jail.

History: 1953 Comp., § 15-43-14.1, enacted by Laws 1961, ch. 253, § 7; 1969, ch. 187, § 1; 1975, ch. 118, § 1; 1977, ch. 107, § 1; 1983, ch. 181, § 1; 1984, ch. 22, § 1.

ANNOTATIONS

Cross references. — For reimbursement of sheriff for feeding prisoners in transit, *see* 4-44-20 NMSA 1978.

For contracts for operation of jail by independent contractor not constituting creation of debt, *see* 6-6-12 NMSA 1978.

Compiler's notes. — The term "this act," referred to in the second sentence in Subsection A, means Laws 1983, Chapter 181, which appears as 4-44-19, 4-44-20, 33-3-1, 33-3-2, 33-3-4 to 33-3-9, 33-3-11 to 33-3-13, 33-3-18, 33-3-19 and 33-3-21 to 33-3-23 NMSA 1978.

The following opinions were rendered prior to the 1983 and 1984 amendments. This section no longer refers specifically to "feeding" or "care" of prisoners and contains no specific maximum amount for expenditures.

Itemized statement required. — Before sheriff is paid for feeding prisoners and guards, he must furnish itemized statement of actual costs so that account may be examined and its correctness tested. 1931 Op. Att'y Gen. No. 31-184.

Authority to contract with city for feeding of prisoners. — County commissioners can enter into a legal contract with a city, providing for the feeding of prisoners, and be reimbursed the actual cost of feeding city prisoners. 1959 Op. Att'y Gen. No. 59-56.

Care and feeding of federal prisoners. — The keeping of prisoners for the federal government should be fixed by agreement between the county commissioners and the government to fairly compensate the county for such services. 1938 Op. Att'y Gen. No. 38-2034.

Disposition of allowance paid for federal prisoners. — Although an allowance of $.75 per day was made by the United States for the care, guarding, housing and maintenance of federal prisoners, it was not for food alone, and should have been paid into the county treasury, and feeding of all prisoners should have been under this section. 1930 Op. Att'y Gen. No. 30-17.

Reimbursement process for maintenance of federal prisoners. — Money received by sheriff under contract with federal government for feeding and maintaining federal prisoners must be paid to county treasurer and the sheriff is entitled to collect reimbursement from the general county fund for the actual cost, not to exceed the maximum legal rate. 1947 Op. Att'y Gen. No. 47-5069.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

4-44-20. Prisoners; feeding in transit.

A. The county sheriffs shall be reimbursed for the actual expense incurred for the care and feeding of prisoners in transit. Reimbursement shall not be made pursuant to this section without proof of actual expenses incurred by a sheriff or his delegate. The reimbursement for any prisoner shall not exceed the rate set by the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

B. Subject to appropriation by the legislature, a county shall be reimbursed by the state for the actual expenses incurred for the care and feeding of prisoners in transit. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement.

History: 1953 Comp., § 15-43-14.2, enacted by Laws 1961, ch. 253, § 8; 1977, ch. 107, § 2; 1983, ch. 181, § 2; 2003, ch. 219, § 2.

ANNOTATIONS

Cross references. — For allowance for feeding prisoners generally, *see* 4-44-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added the subsection designation A and added Subsection B.

4-44-21. No compensation except as provided by law.

No county officer shall accept or receive to his own use, or for or on account of any deputy or deputies, clerk or clerks appointed by him or employed in his office, or for or on account of expenses incurred by him of [or] by any such deputy or deputies, clerk or clerks, or for or on account of his office, any salary, compensation, allowance, fees or emoluments in any form whatsoever, other than [as] authorized by law.

History: Laws 1915, ch. 12, § 6; C.S. 1929, § 33-3206; Laws 1939, ch. 58, § 1; 1941 Comp., § 15-4112; 1953 Comp., § 15-43-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prohibition from use by county officials of fees or emoluments other than annual salary provided by law, *see* N.M. Const., art. X, § 1.

For demanding or receiving illegal fees as grounds for removal of local public officer, *see* 10-4-2 NMSA 1978.

For demanding illegal fees by public officers or employees generally, *see* 30-23-1 NMSA 1978.

Sheriff's fee for transporting prisoners. — Sheriff was not entitled to more than the statutory $.06 per mile for transporting prisoners, notwithstanding earlier statutes provided for $.125 per mile. *State ex rel. Peck v. Velarde*, 1935-NMSC-033, 39 N.M. 179, 43 P.2d 377 (decision under prior law).

County commissioner serving also as tribal council member. — A Native American may serve as a tribal council member and as a county commissioner at the same time, as long as his duties as tribal council member do not physically interfere with his duties as county commissioner during the ordinary working hours of that position and the

functions of the two positions are not otherwise incompatible. 1990 Op. Att'y Gen. No. 90-14.

Employment of purchasing agents by county. — If purchasing agents could be employed by county commissioners prior to the 1939 amendment, they can be so employed now, and if the legislature had intended to prohibit the practice of employing purchasing agents or other employees, it would have used language clearly indicating that intention, and the change of wording from "as by this act allowed" to "authorized by law" is not sufficient for that purpose. 1939 Op. Att'y Gen. No. 39-3256.

Fee for issuing marriage license. — County clerk can only charge and accept the statutory fee for issuing a marriage license, regardless of the hour so issued, for the performance of such official act, and no sums in the form of an additional charge or gratuity can be accepted by such public official. 1953 Op. Att'y Gen. No. 53-5665.

Pay for teaching in summer school. — County superintendent may not receive pay for teaching in summer schools. 1921 Op. Att'y Gen. No. 21-2841.

Retention of fees by weighmaster and deputies. — Neither a weighmaster nor any of his deputies are authorized to retain any of the fees collected by them in the performance of their duties. 1920 Op. Att'y Gen. No. 20-2581.

Fees collected by sheriffs do not accrue to them personally but are deposited with the county treasurer. 1979 Op. Att'y Gen. No. 79-29.

Money received by sheriff under contract with federal government for feeding and maintaining federal prisoners had to be paid to county treasurer and the sheriff was entitled to collect reimbursement from the general county fund for the actual cost, not to exceed the maximum legal rate. 1947 Op. Att'y Gen. No. 47-5069 (rendered prior to 1983 and 1984 amendments to 4-41-19 NMSA 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 229.

4-44-22. Repealed.

History: 1953 Comp., § 15-43-15.1, enacted by Laws 1969, ch. 244, § 1; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-22 NMSA 1978, as enacted by Laws 1969, ch. 244, § 1, relating to disqualification for financial interest, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-23. Repealed.

History: 1953 Comp., § 15-43-15.2, enacted by Laws 1969, ch. 244, § 2; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-23 NMSA 1978, as enacted by Laws 1969, ch. 244, § 2, relating to confidential information, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-24. Repealed.

History: 1953 Comp., § 15-43-15.3, enacted by Laws 1969, ch. 244, § 3; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-24 NMSA 1978, as enacted by Laws 1969, ch. 244, § 3, relating to contracts with former officials or employees, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-25. Repealed.

History: 1953 Comp., § 15-43-15.4, enacted by Laws 1969, ch. 244, § 4; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-25 NMSA 1978, as enacted by Laws 1969, ch. 244, § 4, relating to disclosure of financial interest, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-26. Repealed.

History: 1953 Comp., § 15-43-15.5, enacted by Laws 1969, ch. 244, § 5; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-26 NMSA 1978, as enacted by Laws 1969, ch. 244, § 5, relating to disclosure for persons on retainer or contract,

effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-27. Repealed.

History: 1953 Comp., § 15-43-15.6, enacted by Laws 1969, ch. 244, § 6; repealed by Laws 2011, ch. 138, § 14.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 4-44-27 NMSA 1978, as enacted by Laws 1969, ch. 244, § 6, relating to enforcement procedures, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

4-44-28. [Collection of fees, commissions, mileage and per diem; accounts; payment to county treasurer.]

All county officers shall respectively charge and collect all fees, commissions, mileage and per diem heretofore and now, or which hereafter may be authorized by law to be charged and collected for official services rendered by them, and shall keep an accurate and itemized account thereof, and on or before the tenth day of each month pay the same over to the county treasurer of their respective counties, accompanying each remittance by a verified copy of the itemized account covered thereby, which verified copy shall be retained on file by said treasurer. All such county officers shall in like manner account for and pay over to the county treasurer of their respective counties, all such fees, commissions, mileage and per diem heretofore earned and hereafter collected for official services rendered by them from the respective dates when they qualified as such officers.

History: Laws 1915, ch. 12, § 8; C.S. 1929, § 33-3208; 1941 Comp., § 15-4113; 1953 Comp., § 15-43-16.

ANNOTATIONS

Cross references. — For disposition of fees collected by officers of H class counties, *see* 4-44-15 NMSA 1978.

For issuance of receipts for and maintenance of accounts as to moneys paid over by county officers, *see* 4-44-30 NMSA 1978.

For filing with county clerk of monthly statements of public moneys received and disbursed by county and precinct officers, *see* 10-17-4 NMSA 1978.

Section prohibits a county from collecting less than the prescribed fees. To hold otherwise would be to permit the county clerks, if they so desired, to charge nothing for service. The power to charge less than the prescribed fees, or not to charge at all,

would be giving a county clerk the power to impair a source of county income. 1955 Op. Att'y Gen. No. 55-6242.

Mileage fees collected by sheriffs and deputies. — By law a sheriff and his deputies are required to collect certain fees under 4-41-16 NMSA 1978 from private individuals for performing prescribed services, and in connection with the performance of such duties a mileage fee may be imposed. These mileage fees are required under this section to be deposited into the county treasury. 1963 Op. Att'y Gen. No. 63-111.

Fees collected by sheriffs do not accrue to them personally but are deposited with the county treasurer. 1979 Op. Att'y Gen. No. 79-29.

Retention of fees by deputy sheriff. — Where a deputy sheriff receives a salary and even though he is appointed constable, he may not retain fees for services performed within his jurisdiction. 1945 Op. Att'y Gen. No. 45-4781.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 134.

4-44-29. [Fees to be collected in advance.]

Every county officer shall collect every fee as prescribed by law for services performed by him in advance, if the amount of the same can be ascertained, and when any officer shall negligently or willfully fail to collect any such fee, double the amount shall be charged to him on account of his salary.

History: Laws 1893, ch. 71, § 25; C.L. 1897, § 866; Code 1915, § 1183; C.S. 1929, § 33-4106; Laws 1939, ch. 132, § 2; 1941 Comp., § 15-4114; 1953 Comp., § 15-43-17.

ANNOTATIONS

Cross references. — For right of sheriff to demand payment of fees in advance, *see* 4-41-15 NMSA 1978.

For provision requiring recording fees to be paid in advance, *see* 14-8-15 NMSA 1978.

4-44-30. [County treasurer; receipts; accounts of officers.]

The county treasurer shall issue proper receipts for all monies paid over to him under the requirements of this act, and shall keep an accurate account thereof in proper books of entry to be kept in his office. The official accounts of all county officers shall be subject to inspection and audit, and shall be inspected and audited, by the officer authorized by law to audit the accounts of such officer.

History: Laws 1915, ch. 12, § 11; C.S. 1929, § 33-3211; 1941 Comp., § 15-4116; 1953 Comp., § 15-43-19.

ANNOTATIONS

Compiler's notes. — The phrase "this act" refers to Laws 1915, ch. 12, which is compiled as this section and 4-44-2, 4-44-21, 4-44-28, 4-44-32, 4-44-33 NMSA 1978.

Cross references. — For filing by county and precinct officers and audit by board of county commissioners of monthly statements of public moneys received and disbursed, *see* 10-17-4 NMSA 1978.

4-44-31. County general fund created.

There is created in each county a county general fund to which the county treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with budgets approved as provided by law.

History: 1953 Comp., § 15-43-20, enacted by Laws 1973, ch. 4, § 12.

ANNOTATIONS

Cross references. — For finances of counties, municipalities and school districts, *see* 6-6-7 NMSA 1978 et seq.

Mileage fees collected by sheriffs and deputies. — By law a sheriff and his deputies are required to collect certain fees under 4-41-16 NMSA 1978 from private individuals for performing prescribed services, and in connection with the performance of such duties a mileage fee may be imposed. These mileage fees are required under 4-44-28 NMSA 1978 to be deposited into the county treasury, and pursuant to this section they are credited to the county salary fund (now county general fund). 1963 Op. Att'y Gen. No. 63-111.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 536.

4-44-32. [Embezzlement; negligence; perjury; penalties.]

Any county officer who shall willfully fail to account for or pay over as required by law any and all fees, commissions, mileage, per diem or moneys earned by him, which heretofore have, or hereafter may, come into his hands by virtue of his office, shall be deemed guilty of embezzlement, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars [($5,000)], or by imprisonment for not more than five years, or both, and in addition thereto shall be summarily removed from office by the court imposing sentence.

And any officer who shall willfully fail or neglect to discharge the duties of his office, upon conviction thereof, shall be punished by a fine of not more than one thousand

dollars [($1,000)], or by imprisonment for not more than six months, or both, and in addition thereto shall be summarily removed from office by the court imposing sentence.

Any such officer who shall willfully swear falsely as to any itemized account required by this act to be rendered under oath shall be deemed guilty of perjury, and upon conviction thereof shall be punished by imprisonment for not less than two nor more than five years, and shall be summarily removed from office by the court imposing sentence.

History: Laws 1915, ch. 12, § 17; C.S. 1929, § 33-3217; Laws 1939, ch. 107, § 1; 1941 Comp., § 15-4124; 1953 Comp., § 15-43-27.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The phrase "this act" refers to Laws 1915, ch. 12, which is compiled as this section and 4-44-2, 4-44-21, 4-44-28, 4-44-30, 4-44-33 NMSA 1978.

Cross references. — For failure, neglect or refusal to perform duties of office as cause for removal of local public officers, *see* 10-4-2 NMSA 1978.

For embezzlement generally, *see* 30-16-8 NMSA 1978.

For perjury generally, *see* 30-25-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Embezzlement §§ 46 et seq., 66.

4-44-33. Stationery, postage and office supplies.

The boards of county commissioners shall purchase and provide county officers with all necessary stationery, postage and office supplies, the actual cost thereof to be paid out of the county general fund.

History: Laws 1915, ch. 12, § 7; C.S. 1929, § 33-3207; Laws 1939, ch. 97, § 1; 1941 Comp., § 15-4125; 1953 Comp., § 15-43-28; Laws 1973, ch. 4, § 13.

ANNOTATIONS

Cross references. — Fpr furnishing of surveyor's books by board of county commissioners, *see* 4-42-4 NMSA 1978.

For county general fund, *see* 4-44-31 NMSA 1978.

4-44-34. Officers to keep office at county seat.

That all county officers of the various counties in New Mexico shall establish and maintain their offices and headquarters for the transaction of the business of their respective offices at the county seat of their respective counties and shall there keep all the books, papers and official records pertaining to their respective offices; provided, that such offices shall be provided for such officers at the expense of the respective counties.

History: Laws 1903, ch. 38, § 1; 1907, ch. 87, § 1; Code 1915, § 1129; C.S. 1929, § 33-3401; Laws 1939, ch. 59, § 1; 1941 Comp., § 15-4126; 1953 Comp., § 15-43-29.

ANNOTATIONS

Cross references. — For duty of county officers pertaining to removal of offices to new county seat, *see* 4-34-4 NMSA 1978.

For requirement that county surveyor keep office at county seat, *see* 4-42-4 NMSA 1978.

For requirement that clerk for probate court have office at county seat, *see* 34-7-4 NMSA 1978.

The 1907 amendment of this section did not have the effect of repealing 4-34-4 NMSA 1978 relating to duties of officers on removal to new county seat. *Territory ex rel. White v. Riggle*, 1911-NMSC-074, 16 N.M. 713, 120 P. 318.

When removal of offices and books to new county seat required. — In case of removal to a new county seat, officers are not required to remove offices and books before a courthouse and jail are completed. *Territory ex rel. White v. Riggle*, 1911-NMSC-074, 16 N.M. 713, 120 P. 318.

Courthouse must be built on property within the county seat. 1967 Op. Att'y Gen. No. 67-61.

Office hours. — A county commission may set the hours that offices of other elected county officials must stay open. 1990 Op. Att'y Gen. No. 90-05.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 128.

4-44-35. Deputy county officers; oaths; bonds.

Before assuming the duties of his office, each deputy county officer shall take and subscribe the oath of office prescribed by the constitution for county officers. The board of county commissioners may cause to be bonded the deputy or deputies of the various county officials who are not otherwise required to be bonded. These bonds shall be in

amounts fixed by the board of county commissioners in a sum equal to twenty percent of the public money handled during the preceding fiscal year and conditioned for the faithful performance of his duties, but in no event shall the amount be greater than the maximum prescribed by law for the appropriate elected officer. The bonds shall be executed by corporate surety companies authorized to do business in this state and the premiums shall be paid from the county general fund. Deputy county officers may be individually bonded or included within the coverage under any schedule or blanket corporate surety bond procured by the board of county commissioners.

History: 1941 Comp., § 15-4127, enacted by Laws 1945, ch. 68, § 1; 1953 Comp., § 15-43-30; Laws 1967, ch. 238, § 7.

ANNOTATIONS

Cross references. — For oath and bond of county officers and deputies generally, *see* 10-1-13 NMSA 1978.

For bonds of county officers, *see* 10-2-1 NMSA 1978 et seq.

The bond provided for under this section should be made to run to the state of New Mexico or the county official, and this section authorizes the payment of the premium for such bond from county funds. 1945 Op. Att'y Gen. No. 45-4743.

Payment of premium on bond. — The provisions of this section being mandatory in form, the board of county commissioners cannot refuse to approve payment of the premium on the bond from county funds. 1947 Op. Att'y Gen. No. 47-4975.

Liability for acts of deputy treasurer. — No statute requires that deputy treasurers be bonded, and while it is good business for bonding companies liable on a county treasurer's bond, and also good business for the county treasurer to require that deputy treasurers be bonded for their protection, the county should not pay for the premium on such deputy's bond, since the state and county are protected on the treasurer's bond for any defalcation, even by a deputy under Section 6-10-38 NMSA 1978. 1940 Op. Att'y Gen. No. 40-3417.

4-44-36. Repealed.

History: 1941 Comp., § 15-3535, enacted by Laws 1953, ch. 167, § 1; 1953 Comp., § 15-43-31; Laws 1957, ch. 189, § 10; 1963, ch. 164, § 1; 2011, ch. 56, § 22; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-36 NMSA 1978, as enacted by Laws 1953, ch. 167, § 1, relating to abolishment of certain county offices, effective April

3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-37. Repealed.

History: 1941 Comp., § 15-3536, enacted by Laws 1953, ch. 167, § 2; 1953 Comp., § 15-43-32; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-37 NMSA 1978, as enacted by Laws 1953, ch. 167, § 2, relating to petition for election on question of abolition, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-38. Repealed.

History: 1941 Comp., § 15-3537, enacted by Laws 1953, ch. 167, § 3; 1953 Comp., § 15-43-33; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-38 NMSA 1978, as enacted by Laws 1953, ch. 167, § 3, relating to notice of petition, challenging sufficiency of petition, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-39. Repealed.

History: 1941 Comp., § 15-3538, enacted by Laws 1953, ch. 167, § 4; 1953 Comp., § 15-43-34; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-39 NMSA 1978, as enacted by Laws 1953, ch. 167, § 4, relating to calling of election, notice, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-40. Repealed.

History: 1941 Comp., § 15-3539, enacted by Laws 1953, ch. 167, § 5; 1953 Comp., § 15-43-35; 2011, ch. 56, § 23; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-40 NMSA 1978, as enacted by Laws 1953, ch. 167, § 5, relating to election judges and clerks, form of ballot, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-41. Repealed.

History: 1941 Comp., § 15-3540, enacted by Laws 1953, ch. 167, § 6; 1953 Comp., § 15-43-36; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-41 NMSA 1978, as enacted by Laws 1953, ch. 167, § 6, relating to counting and canvassing of returns, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-42. Repealed.

History: 1941 Comp., § 15-3541, enacted by Laws 1953, ch. 167, § 7; 1953 Comp., § 15-43-37; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-42 NMSA 1978, as enacted by Laws 1953, ch. 167, § 7, relating to recount of votes, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-43. Repealed.

History: 1941 Comp., § 15-3542, enacted by Laws 1953, ch. 167, § 8; 1953 Comp., § 15-43-38; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-43 NMSA 1978, as enacted by Laws 1953, ch. 167, § 8, relating to results of canvass and any recount to be published, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-44. Repealed.

History: 1941 Comp., § 15-3545, enacted by Laws 1953, ch. 167, § 11; 1953 Comp., § 15-43-41; 2011, ch. 56, § 24; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-44 NMSA 1978, as enacted by Laws 1953, ch. 167, § 11, relating to petition for restoration of offices, election, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

4-44-45. Repealed.

History: 1941 Comp., § 15-3546, enacted by Laws 1953, ch. 167, § 12; 1953 Comp., § 15-43-42; Laws 1973, ch. 4, § 14; repealed by Laws 2019, ch. 212, § 284.

ANNOTATIONS

Repeals. — Laws 2019, ch. 212, § 284 repealed 4-44-45 NMSA 1978, as enacted by Laws 1953, ch. 167, § 12, relating to elections, costs, limitations, effective April 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

ARTICLE 45
Accounts and Claims Against Counties

4-45-1, 4-45-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1980, ch. 96, § 1, repealed 4-45-1 and 4-45-2 NMSA 1978, relating to verification of accounts and claims against counties by an affidavit and the penalty for a commissioner or clerk failing to perform his duty in conjunction therewith.

4-45-3. [Accounts to be itemized; board may disapprove.]

No account shall be approved by the board of county commissioners unless the same shall be made out in separate items, and the nature of each item stated, and where no fees are allowed by law, the time actually and necessarily devoted to the performance of any services, charged in such account so made out shall be verified by affidavit: provided, that nothing in this section shall prevent any board from disapproving any account in whole or in part when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

History: Laws 1876, ch. 1, § 20; C.L. 1884, § 351; C.L. 1897, § 669; Code 1915, § 1222; C.S. 1929, § 33-4236; 1941 Comp., § 15-4203; 1953 Comp., § 15-44-3.

ANNOTATIONS

Cross references. — For duty of board of county commissioners as to accounts generally, *see* 4-38-16 NMSA 1978.

For approval of unauthorized accounts, *see* 4-38-29 NMSA 1978.

For duties of county clerk as to accounts, *see* 4-40-4, 4-40-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 678, 679.

Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 A.L.R.3d 965.

20 C.J.S. Counties § 241.

4-45-4. County orders for payment from treasury; form and signature.

County orders shall be signed by the chairman of the board of county commissioners or his designee and attested by the county clerk and shall specify the nature of the claim of service for which they were issued, and the money shall be paid from the county treasury on such orders and not otherwise. Money may be paid from the county treasury by check or warrant. If money is paid by check, the check must be signed by the chairman of the board of county commissioners or his designee and the county treasurer.

History: Laws 1876, ch. 1, § 21; C.L. 1884, § 352; C.L. 1897, § 670; Code 1915, § 1223; C.S. 1929, § 33-4237; 1941 Comp., § 15-4204; 1953 Comp., § 15-44-4; Laws 2001, ch. 147, § 2.

ANNOTATIONS

Cross references. — For unauthorized issuance by county commissioners of order for payment of money, *see* 4-38-29 NMSA 1978.

For duties of county clerk as to orders for payment of money, *see* 4-40-4, 4-40-6 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted the section heading; inserted "of the board of county commissioners or his designee" and the last two sentences in the section text.

Statutory duties of county clerk are ministerial and are intended only to insure the regularity of county fiscal procedures. 1979 Op. Att'y Gen. No. 79-33.

County funds may be distributed only on the order of the county commissioners, and may not be granted to the county health department to be distributed by warrants of the county health officer (now district health officer). 1921 Op. Att'y Gen. No. 21-2936.

4-45-5. Accounts against county; appeal from disallowance.

When a claim of a person against a county is disapproved in whole or in part by the board of county commissioners, that person may appeal the decision of the board to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1876, ch. 1, § 22; C.L. 1884, § 353; C.L. 1897, § 671; Code 1915, § 1224; C.S. 1929, § 33-4238; 1941 Comp., § 15-4205; 1953 Comp., § 15-44-5; Laws 1998, ch. 55, § 16; 1999, ch. 265, § 16.

ANNOTATIONS

Cross references. — For payment of appealed claims, *see* 6-6-16 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

Appeal from disallowance of claim by board. — The board of county commissioners is the body which approves or disapproves the reports of the treasurers in their several counties, and an appeal lies to the district court, and may be taken by any person whose claim is disallowed in whole or in part by that board. *Territory v. Newhall*, 1909-NMSC-016, 15 N.M. 141, 103 P. 982.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 768.

20 C.J.S. Counties §§ 244 to 248.

4-45-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 4-45-6 NMSA 1978, as enacted by Laws 1876, ch. 1, § 23, relating to duties of the clerk of the board and giving notice to the district attorney, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

4-45-7. [Examination of canceled orders.]

The board of county commissioners at their annual January session of each year, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record opposite to the entry of each order issued the date [upon] which the same was canceled. They shall also make a list of such orders so canceled, specifying the number, date, amount and the person to whom the same is payable, and enter the same on the journal of the board.

History: Laws 1876, ch. 1, § 25; C.L. 1884, § 356; C.L. 1897, § 674; Code 1915, § 1226; C.S. 1929, § 33-4240; 1941 Comp., § 15-4207; 1953 Comp., § 15-44-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For duties of board of county commissioners as to accounts generally, *see* 4-38-16 NMSA 1978.

ARTICLE 46
Suits by and Against Counties

4-46-1. [Name for purpose of suit.]

In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be the board of county commissioners of the county of . . . . . ., but this provision shall not prohibit county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: Laws 1876, ch. 1, § 4; C.L. 1884, § 335; C.L. 1897, § 654; Code 1915, § 1152; C.S. 1929, § 33-3701; 1941 Comp., § 15-4301; 1953 Comp., § 15-45-1.

ANNOTATIONS

Cross references. — For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

Lawsuit alleging claims against county detention center must name board of county commissioners as a defendant. — Where plaintiff filed a lawsuit asserting claims against the Bernalillo county metropolitan detention center (BCMDC) for violations of the New Mexico Tort Claims Act (NMTCA) after plaintiff was remanded to BCMDC to participate in a methadone program to decrease his level of dependence so that he would not incur life endangering withdrawal symptoms, but nonetheless suffered life threatening withdrawal symptoms for approximately two months, BCMDC was not a

suable entity under the NMTCA, because 4-46-1 NMSA 1978 provides a limitation on the NMTCA, requiring that the proper defendant in all suits against a county is the county's board of county commissioners. *Gallegos v. Bernalillo County Board of County Commissioners*, 272 F.Supp.3d 1256 (D.N.M. 2017).

County sheriff lacks the capacity to be sued, even under federal statutes. — Where former New Mexico county sheriff's office employee brought a court action against the Taos county sheriff's office alleging discrimination and retaliation in violation of the New Mexico Human Rights Act, the federal Americans with Disabilities Act, as well as a state law claim for retaliatory termination against public policy, and where defendant moved to dismiss plaintiff's complaint on the basis that the Taos county sheriff's office is not a suable entity, the federal district court granted defendant's motion because a straightforward application of this section suggests that plaintiff must name the board of county commissioners of Taos county, rather than the Taos county sheriff's office, as the defendant in this case. Moreover, despite the authority of elected officials such as the Taos county sheriff, the board of county commissioners, through the county manager, was authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff's office. *Lamendola v. Taos County Sheriff's Office*, 338 F.Supp.3d 1244 (D. N.M. 2018).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 786, 791.

Abrogation of state's immunity from liability of suit as affecting immunity of county, 161 A.L.R. 367.

Power of county or its officials to compromise claim, 15 A.L.R.2d 1359.

Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary function, 16 A.L.R.2d 1079.

Liability for damages in tort of state or governmental unit in operating hospital, 25 A.L.R.2d 203, 18 A.L.R.4th 858.

Insurance: liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 A.L.R.2d 1437.

Right of one governmental subdivision to sue another such subdivision for damages, 11 A.L.R.5th 630.

20 C.J.S. Counties § 254.

4-46-2. [Service of process; duties of county clerk.]

In all legal proceedings against the county, process shall be served on the county clerk, and whenever such suit or proceeding shall be commenced it shall be the duty of the clerk forthwith to notify the district attorney of the judicial district in which the county so sued is situate, and to lay before the board of county commissioners at their next meeting all the information he may have in regard to such suit or proceeding.

History: Laws 1876, ch. 1, § 5; C.L. 1884, § 336; C.L. 1897, § 655; Code 1915, § 1153; C.S. 1929, § 33-3702; 1941 Comp., § 15-4302; 1953 Comp., § 15-45-2.

ANNOTATIONS

Cross references. — For venue of actions against counties, *see* 38-3-2, 41-4-18 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 792.

Waiver of, or estoppel to assert, failure to give notice of claim of injury as condition of liability of county for injury from defects in street, road or other public place, 153 A.L.R. 329, 65 A.L.R.2d 1278.

Deposit in mail of notice of claim required as condition of action against or liability of county as giving of notice within required period, 175 A.L.R. 299.

Persons upon whom notice of injury or claims against county may or must be served, 23 A.L.R.2d 969.

Complaint as satisfying requirement of notice of claim upon states, municipalities, and other political subdivisions, 45 A.L.R.5th 109.

Persons or entities upon whom notice of injury or claim against state or state agencies may or must be served, 45 A.L.R.5th 173.

Sufficiency of notice of claim against local governmental unit as regards identity, name, address, and residence of claimant, 53 A.L.R.5th 617.

Sufficiency of notice of claim against local political entity as regards time when accident occurred, 57 A.L.R.5th 689.

20 C.J.S. Counties § 263.

4-46-3. [Inhabitants competent as witnesses and jurors.]

On the trial of any suit in which a county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

History: Laws 1876, ch. 1, § 6; C.L. 1884, § 337; C.L. 1897, § 656; Code 1915, § 1154; C.S. 1929, § 33-3703; 1941 Comp., § 15-4303; 1953 Comp., § 15-45-3.

ANNOTATIONS

Cross references. — For witnesses generally, *see* Rule 11-601 NMRA et seq.

4-46-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 37, § 95, repealed 4-46-4 NMSA 1978, relating to judgments rendered against board of county commissioners or county officers and the payment thereof, effective July 1, 1981.

ARTICLE 47
Public Buildings and Works

4-47-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1984, ch. 65, § 175, as amended by Laws 1984 (1st S.S.), ch. 2, § 1, repealed 4-47-1 NMSA 1978, as enacted by Laws 1887, ch. 8, § 3, relating to advertising for public works to be paid for by county funds, effective November 1, 1984. For comparable provisions in effect after November 1, 1984, *see* 13-1-28 to 13-1-199 NMSA 1978.

Laws 1984 (1st S.S.), ch. 2, § 2, provided that the act take effect immediately. Approved March 28, 1984.

4-47-2. Sale of county buildings or lands to municipalities and state agencies.

Boards of county commissioners within the state of New Mexico are hereby authorized to sell, transfer and convey to any city, town or village located within such county, or to any agency or department or commission of the state of New Mexico, operating facilities within such county, such public buildings and lands on which such buildings are located, or such other lands, lots and additions belonging to the said county, whenever the same are no longer deemed necessary for county purposes, without appraisal, at private sale, for such sum as the said county commissioners may in their judgment determine.

History: 1941 Comp., § 15-4405, enacted by Laws 1947, ch. 179, § 1; 1953 Comp., § 15-46-2; Laws 1961, ch. 85, § 1.

ANNOTATIONS

Cross references. — For joint city-county building, *see* 5-5-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 506.

20 C.J.S. Counties § 149.

4-47-3. [Sale; public auction.]

That the boards of county commissioners within the state of New Mexico are hereby authorized after having made application therefor to the district court of their respective judicial districts, to sell at public auction all those public buildings, lots or additions belonging to the same, whenever such public buildings, lots or additions have been substituted by other public buildings, lots or additions.

History: Laws 1909, ch. 59, § 1; Code 1915, § 1348; C.S. 1929, § 33-5701; 1941 Comp., § 15-4402; 1953 Comp., § 15-46-3.

ANNOTATIONS

Mineral lease. — Since the New Mexico supreme court has decided that an oil and gas lease conveys "real property," a mineral lease should be executed under the provisions of this section and 4-47-4 NMSA 1978, which provide means of sale of property by a county at public auction, under the supervision of a district court. Following these provisions would provide protection to the county commissioners. 1955 Op. Att'y Gen. No. 55-6194.

4-47-4. [Sale; appraisers; notice; payment.]

The judge of the district court shall appoint three appraisers to appraise such property proposed to be sold as specified in the preceding section and such appraisers shall make and return under oath an appraisement of the actual cash value of such property, and upon return of such appraisement to the district court, the board of commissioners shall proceed to advertise such property for public sale, giving at least three weeks' notice of the hour, time and place of such sale, which notice shall be inserted in some daily or weekly newspaper published in the city or town where such property is located, if one be published therein; if not, in some paper of general circulation therein, and shall cause such property to be offered for sale at the time stated in such notice; and such property shall not be sold for less than two-thirds of the appraised value, and it shall be the duty of such board to require the payment in cash of at least one-half of the purchase price of said property, and they shall require the

purchaser in lieu of the remainder of the purchase price, to execute proper security for the amount of the same.

History: Laws 1909, ch. 59, § 2; Code 1915, § 1349; C.S. 1929, § 33-5702; 1941 Comp., § 15-4403; 1953 Comp., § 15-46-4.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

Mineral lease. — Since the New Mexico supreme court has decided that an oil and gas lease conveys "real property," a mineral lease should be executed under the provisions of 4-47-3 NMSA 1978 and this section, which provide means of sale of property by a county at public auction, under the supervision of a district court. Following these provisions would provide protection to the county commissioners. 1955 Op. Att'y Gen. No. 55-6194.

ARTICLE 48
Hospitals (Repealed, Recompiled.)

4-48-1. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, § 5, recompiled 4-48-1 NMSA 1978, relating to the powers of counties to construct, purchase and operate hospitals, as 4-48B-5 NMSA 1978.

4-48-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 83, § 28, repealed 4-48-2 NMSA 1978, relating to the power of counties to issue bonds for hospitals, effective April 1, 1981.

4-48-3 to 4-48-6. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, §§ 6 to 9, recompiled 4-48-3 through 4-48-6 NMSA 1978, relating to elections on the question of constructing or purchasing hospitals, the power of counties to lease hospitals, the care of sick and indigent persons and the joint construction and operation of hospitals by counties, as 4-48B-6 through 4-48B-9 NMSA 1978, respectively, effective April 1, 1981.

4-48-7, 4-48-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 83, § 28, repealed 4-48-7 and 4-48-8 NMSA 1978, relating to the designation of boards of county commissioners as governing bodies of hospitals and the authority of counties to make regulations relating to hospitals, effective April 1, 1981.

4-48-9, 4-48-9.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1982, ch. 11, § 4, repealed 4-48-9 and 4-48-9.1 NMSA 1978, relating to boards of trustees for county hospitals and the terms of such trustees, respectively, effective March 1, 1982. For present provisions, *see* 4-48B-10 NMSA 1978.

4-48-10. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, § 11, recompiled 4-48-10 NMSA 1978, relating to federal aid for the construction, maintenance and operation of county hospitals, as 4-48B-11 NMSA 1978, effective April 1, 1981.

4-48-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 83, § 28, repealed 4-48-11 NMSA 1978, relating to the authorization of tax levies to operate hospitals, effective April 1, 1981.

4-48-11.1, 4-48-11.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, §§ 2, 13, recompiled 4-48-11.1 and 4-48-11.2 NMSA 1978, relating to the operation and maintenance of a hospital facility pursuant to a lease and the purpose of the act to encourage the construction and operation of joint medical facilities, as 4-48B-13 and 4-48B-2 NMSA 1978, respectively, effective April 1, 1981.

4-48-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 83, § 28, repealed 4-48-12 NMSA 1978, relating to levies made under provisions of the Indigent Hospital Claims Act, effective April 1, 1981.

4-48-13, 4-48-14. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, §§ 14, 15, recompiled 4-48-13 and 4-48-14 NMSA 1978, relating to the payment of charges for the care of persons committed by the district court and to elections on the questions of levying taxes above the constitutional limitation of 20 mills, as 4-48B-14 and 4-48B-15 NMSA 1978, respectively, effective April 1, 1981. Laws 1981, ch. 37, § 57 amended 4-48-14 NMSA 1978. The section was set out as recompiled. *See* 12-1-8 NMSA 1978.

4-48-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 83, § 28, repealed 4-48-15 NMSA 1978, relating to the purpose of the act to revive levies for hospitals, effective April 1, 1981.

4-48-16. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 83, § 17, recompiled 4-48-16 NMSA 1978, relating to authority to establish retirement plans and programs for employees of county hospitals, as 4-48B-17 NMSA 1978, effective April 1, 1981.

ARTICLE 48A
Special Hospital Districts

4-48A-1. Short title.

Chapter 4, Article 48A NMSA 1978 may be cited as the "Special Hospital District Act".

History: 1978 Comp., § 4-48A-1, enacted by Laws 1978, ch. 29, § 1; 1992, ch. 41, § 1.

ANNOTATIONS

The 1992 amendment, effective May 20, 1992, substituted "Chapter 4, Article 48A NMSA 1978" for "This act".

Constitutionality. — The Special Hospital District Act is not invalid because it contains no mechanism by which a property owner whose property is not directly benefited by inclusion within the special hospital district can request an independent tribunal to remove the land from the proposed district. The absence of any special benefit to a particular piece of property is not a sufficient ground for excluding the property from a district whose purpose is to promote the general welfare. If evidence establishing absence of a special benefit does not require exclusion, no forum to hear such evidence is required. *State ex rel. Angel Fire Home & Land Owners Ass'n, Inc. v. South Cent. Colfax Cnty. Special Hosp. Dist*., 1990-NMCA-072, 110 N.M. 496, 797 P.2d 285, cert. denied, 110 N.M. 330, 795 P.2d 1022.

There appears to be no constitutional prohibition against including property within a special hospital district even though the property and its inhabitants will not benefit from inclusion. Thus, the Special Hospital District Act is not unconstitutional on its face solely because the tax-benefit ratio for certain property owners may differ from that of others within a special hospital district. *State ex rel. Angel Fire Home & Land Owners Ass'n, Inc. v. South Cent. Colfax Cnty. Special Hosp. Dist*., 1990-NMCA-072, 110 N.M. 496, 797 P.2d 285, cert. denied, 110 N.M. 330, 795 P.2d 1022.

Proposed residential care unit would not be "hospital facility". — Proposed residential care unit, which probably would not have a professional staff or provide medical services but would offer room, board and other nonmedical assistance to those who qualify, would not be a "hospital facility" qualified to receive district funds under the Special Hospital District Act. 1989 Op. Att'y Gen. No. 89-31.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums § 53.

Opposition to construction of new hospital or expansion of existing hospital's facilities as violation of Sherman Act (15 USCS § 1 et seq.), 88 A.L.R. Fed. 478.

4-48A-2. Definitions.

As used in the Special Hospital District Act:

A. "board of trustees" means the governing board of the special hospital district;

B. "qualified elector" means a natural person resident in a proposed or existing special hospital district who is registered to vote in state general elections;

C. "special hospital district" means a district wherein a public hospital is located or is proposed to be created and which:

(1) is composed of contiguous and compact territory lying wholly within a single county; or

(2) is composed of contiguous and compact territory which includes all or a portion of two or more counties or any combination thereof; and

(3) contains within its boundaries one or more incorporated municipalities; or whose boundaries coincide and are concurrent with the territorial areas of one or more political subdivisions within such county or counties;

D. "hospital facility" includes a medical facility or an outpatient clinic or both; and

E. "subdistrict" means, in the case of a special hospital district composed of all or a portion of two or more counties, the portion of the special hospital district which is located in one county.

History: 1978 Comp., § 4-48A-2, enacted by Laws 1978, ch. 29, § 2; 1979, ch. 134, § 1; 1981, ch. 84, § 1; 1987, ch. 273, § 1.

ANNOTATIONS

Constitutionality. — The provisions of Subsection C(3) are not irrational for a legislature to impose. Although these provisions bear no relation to the specific purpose of a special hospital district - the creation and maintenance of hospitals - they do have a rational relationship to the establishment of a new local governmental body. *State ex rel. Angel Fire Home & Land Owners Ass'n, Inc. v. South Cent. Colfax Cnty. Special Hosp. Dist*., 1990-NMCA-072, 110 N.M. 496, 797 P.2d 285, cert. denied, 110 N.M. 330, 795 P.2d 1022.

4-48A-3. Creation of special hospital district; power of counties to agree to create special hospital districts.

A. There may be created special hospital districts within any county of this state for the purpose of constructing, acquiring, operating and maintaining one or more public hospital facilities for the benefit of the inhabitants of the district.

B. All counties shall have the power to enter into agreements with one or more other counties to create special hospital districts composed of all or a portion of each county which is a party to the agreement, but no district so created shall include within its territory any territory already included in another special hospital district. In any case, no county shall include the same territory in more than one special hospital district. Such agreement shall provide for generation of funds necessary for establishment and operation of a public hospital facility and for a plan of dissolution. Plans for the dissolution of the special hospital district must provide for the payment of all district debts and liabilities and for the distributing of all remaining assets to the county or counties in which the special hospital district lies.

C. A county may enter into an agreement with the board of trustees of an existing special hospital district to permit all or a portion of the county to become a subdistrict of

the special hospital district, after certification of a petition and election as required in Sections 4-48A-4 and 4-48A-5 NMSA 1978. A member of the board of trustees shall be elected from the new subdistrict in the manner provided by law and shall be added to the board of trustees until the next regularly scheduled election, at which time a board member shall be elected as provided in Section 4-48A-6 NMSA 1978.

History: 1978 Comp., § 4-48A-3, enacted by Laws 1978, ch. 29, § 3; 1981, ch. 84, § 2; 1983, ch. 84, § 1.

4-48A-3.1. Artesia special hospital district.

The Artesia special hospital district is hereby created by act of the legislature. The district shall consist of all land lying within the Artesia public school district 16 lying within Eddy county. All previous acts and proceedings of the Artesia special hospital district created pursuant to Sections 4-48A-4 and 4-48A-5 NMSA 1978 heretofore had or taken, or purportedly had or taken, are hereby validated, ratified, approved and confirmed.

History: Laws 1989, ch. 7, § 1.

4-48A-3.2. Nor-Lea special hospital district.

The Nor-Lea special hospital district is hereby created by act of the legislature. The district shall consist of all land lying within the Lovington and Tatum school districts lying within Lea county. All previous acts and proceedings of the Nor-Lea special hospital district created pursuant to Sections 4-48A-4 and 4-48A-5 NMSA 1978 heretofore had or taken, or purportedly had or taken, are hereby validated, ratified, approved and confirmed.

History: Laws 1989, ch. 7, § 2.

4-48A-3.3. Jal special hospital district.

The Jal special hospital district is hereby created by act of the legislature. The district shall consist of all land lying within the Jal school district lying within Lea county. All previous acts and proceedings of the Jal special hospital district created pursuant to Sections 4-48A-4 and 4-48A-5 NMSA 1978 heretofore had or taken, or purportedly had or taken, are hereby validated, ratified, approved and confirmed.

History: Laws 1989, ch. 7, § 3.

4-48A-4. Formation of special hospital district; petition.

A. If creation of a special hospital district is proposed, there shall be a petition circulated in the county for the creation of a special hospital district in the county or in

each subdistrict of a special hospital district composed of all or portions of two or more counties. Petitions for the creation of a special hospital district shall designate the name of the proposed district and the territorial area within and outside the county to be included within the district and whether the initial board of trustees shall be elected at large or from single-member districts. If the petition calls for election of the board from single-member districts, it shall describe the districts, which shall be contiguous, compact, as equal in population as practicable and otherwise in compliance with applicable law. Each petition shall be signed only by qualified electors of the proposed special hospital district. The name and post office address of each signer shall be indicated on the petition.

B. In the case of a special hospital district lying wholly within a county, the petition shall contain signatures in a number equal to or in excess of ten percent of the votes cast for governor in the territory of the proposed special hospital district in the last preceding general election at which a governor of the state was elected. In the case of a special hospital district composed of all or a portion of two or more counties, the petition for each subdistrict shall contain signatures in a number equal to or greater than ten percent of the votes cast for governor in the territory of the subdistrict in the last preceding general election at which a governor of the state was elected. For the purpose of determining the vote cast for governor in the territory of the proposed special hospital district or subdistrict, any portion of a precinct within the proposed district or subdistrict shall be construed as if the entire precinct were wholly within the territory of the proposed special hospital district.

C. The petition calling for the creation of the special hospital district shall be filed with the county clerk of the county in which the district or subdistrict is proposed. The county clerk shall verify that the petition complies with all the requirements of the Special Hospital District Act. Upon such verification, the county clerk shall certify that fact, along with the petition, to the board of county commissioners. In the case of a special hospital district composed of all or portions of two or more counties, the board of county commissioners shall notify the boards of county commissioners of the other county or counties which are party to the agreement that a petition for the subdistrict within that county complying with all the requirements of the Special Hospital District Act has been certified and filed.

History: 1978 Comp., § 4-48A-4, enacted by Laws 1978, ch. 29, § 4; 1981, ch. 84, § 3; 1990, ch. 12, § 1.

4-48A-5. Formation of special hospital district; election.

A. Upon receipt of the county clerk's certification and the petition and, in the case of a special hospital district composed of all or portions of two or more counties, the notification provided for in Section 4-48A-4 NMSA 1978, the board of county commissioners shall issue a proclamation calling for an election to be held not less than sixty nor more than one hundred twenty days from the date of receipt of the county clerk's certification and the petition. The election shall be for the purpose of determining

whether such hospital district shall be created and for the selection of members of the board of trustees.

B. Persons desiring to be a candidate in an election for a position on the board of trustees shall file a declaration of candidacy for one of the positions on the board of trustees with the county clerk not later than 5:00 p.m. on the thirtieth day after the issuance of the proclamation by the board of county commissioners. The declaration of candidacy shall be an affidavit as to the qualifications required by law of the declarant for such office. The declaration of candidacy shall be on a form prescribed and furnished by the county clerk.

C. Only qualified electors who reside in the territory of the proposed special hospital district shall vote in such election, and in the case of a special hospital district composed of all or portions of more than one county, only qualified electors who reside in the subdistricts shall vote in such election. In the case of a proposed district wholly within a county and divided into single-member districts, only qualified electors who reside in the territory of the single-member district shall vote on the candidates for trustee from that single-member district.

D. The proclamation of the election shall be published by the county clerk once each week for four consecutive weeks in a newspaper of general circulation in the territory of the proposed special hospital district or subdistrict, the last of such notice being published not more than one week from the date of the election.

E. The election shall be conducted, counted and canvassed in substantially the same manner as general elections are conducted, counted and canvassed in that county.

F. In the event a majority of the qualified electors of the proposed special hospital district voting in the election votes in favor of creating the special hospital district, or in the event a majority of the qualified electors who reside in each subdistrict of a special hospital district composed of all or a portion of two or more counties voting in the election votes in favor of creating a special hospital district, and upon certification of that fact by the county canvassing board or boards, the board of county commissioners of each county shall by resolution declare the district to be created and that each of those candidates for a position on the board of trustees who received the vote of a majority of the qualified electors voting on such positions shall be certified as elected.

G. In the event a majority of the qualified electors of a county voting on the question rejects the creation of the special hospital district, such question shall not again be submitted in the county for a period of two years. In the case of a special hospital district composed of all or a portion of two or more counties, if a majority of the qualified electors of any subdistrict voting on the question rejects the creation of the special hospital district, such question shall not again be submitted in the subdistrict or any part thereof for a period of two years.

H. The expenses of calling and conducting the election shall be borne by each county in which an election is held; provided, if the election results in the creation of a special hospital district, such special hospital district shall reimburse each county for all expenditures made in the course of calling and conducting the election.

History: 1978 Comp., § 4-48A-5, enacted by Laws 1978, ch. 29, § 5; 1981, ch. 84, § 4; 1990, ch. 12, § 2.

ANNOTATIONS

Constitutionality. — The Special Hospital District Act does not unconstitutionally delegate legislative authority. *State ex rel. Angel Fire Home & Land Owners Ass'n, Inc. v. South Cent. Colfax Cnty. Special Hosp. Dist*., 1990-NMCA-072, 110 N.M. 496, 797 P.2d 285, cert. denied, 110 N.M. 330, 795 P.2d 1022.

4-48A-5.1. Voting in certain special hospital districts after formation.

The board of trustees of a special hospital district included wholly within a county may determine, from time to time, whether trustees shall be elected at large or from single-member districts and, if the latter, shall determine, based upon the 1990 or a subsequent federal decennial census, the boundaries of such single-member districts, which shall be contiguous, compact, as equal in population as is practicable and otherwise in compliance with applicable law. The board shall redetermine the boundaries once following every federal decennial census, beginning with the 1990 census, in accordance with the same criteria. The board may change from at large elections to single-member districts or from single-member districts to at large elections and shall determine the procedure for transition from at large to single-member districts or vice versa.

History: 1978 Comp., § 4-48A-5.1, enacted by Laws 1990, ch. 12, § 3.

4-48A-6. Board of trustees; terms; vacancies; removal.

A. Subject to the requirements of Section 4-48A-3 NMSA 1978, the board of trustees of a special hospital district shall consist of the greater of five members or a number of members equal to the number of counties which agree to form a special hospital district. In the case of a special hospital district:

(1) included wholly within a county, the members shall be elected at large or from single-member districts as provided in the Special Hospital District Act; or

(2) that includes all or a portion of two or more counties, one member of the board shall be elected from each subdistrict by the qualified electors who reside in that subdistrict and the remainder shall be elected at large by the qualified electors who reside in the special hospital district.

B. Members shall be elected as follows:

(1) for the purposes of the first election of a board of trustees, the board of county commissioners shall designate in its proclamation five positions to be filled so that:

(a) two members shall be elected for an initial term of two years; and

(b) three members shall be elected for an initial term of four years.

Thereafter, all members shall be elected for four-year terms; and

(2) for the purposes of staggering the terms of any nonstaggered terms of a board of trustees elected under the provisions of the Special Hospital District Act, the board of county commissioners may call an election to provide for five positions to be filled so that:

(a) two members shall be elected for an initial term of two years; and

(b) three members shall be elected for an initial term of four years.

Thereafter, all members shall be elected for four-year terms.

C. Vacancies on the board of trustees created by a member elected from a subdistrict or a single-member district shall be filled by the board of county commissioners of the county in which the subdistrict or single-member district is located, and vacancies created by a member elected at large shall be filled by the remaining members of the board of trustees for the remainder of the unexpired term of the member creating the vacancy.

D. Members of the board of trustees shall be suspended or removed from office only as provided in Sections 10-4-1 through 10-4-29 NMSA 1978 or as provided in Section 4-48A-7 NMSA 1978.

History: 1978 Comp., § 4-48A-6, enacted by Laws 1978, ch. 29, § 6; 1979, ch. 134, § 2; 1981, ch. 84, § 5; 1989, ch. 155, § 1; 1990, ch. 12, § 4; 1993, ch. 23, § 1; 2019, ch. 212, § 189.

ANNOTATIONS

Temporary provisions. — Laws 2019, ch. 212, § 277 provided that polling places for the 2019 regular local election shall be the same polling places that were used in the 2018 general election, unless the board of county commissioners amends the 2017 polling place resolution no later than July 1, 2019.

The 2019 amendment, effective April 3, 2019, revised the length of terms for certain members of the board of trustees; in Subsection B, Subparagraph B(1)(b), deleted "two" and added "three", deleted former Subparagraph B(1)(c), and in the undesignated sentence after former Subparagraph B(1)(c), after "elected for", deleted "five-year" and added "four-year", in Subparagraph B(2)(b), deleted "two" and added "three", deleted former Subparagraph B(2)(c), and in the undesignated sentence after former Subparagraph B(2)(c), after "elected for", deleted "five-year" and added "four-year"; and in Subsection D, after "Section", deleted "4-8A-7" and added "4-48A-7".

The 1993 amendment, effective March 15, 1993, substituted "call an election to provide for five positions to be filled so" for "designate in its proclamation an election to be held no later than January 1, 1990 and" in the introductory language of Paragraph (2) of Subsection B.

4-48A-7. Board of trustees; qualifications; automatic removal.

Each member of the board of trustees shall be a qualified elector, and each member of the board of trustees elected from a subdistrict or a single-member district shall be a resident of the subdistrict or the single-member district of the special hospital district. The office of any member of the board of trustees who does not continue to reside in the special hospital district, and in the case of a member who is elected from a subdistrict or a single-member district, who does not continue to reside in the subdistrict or the single-member district, is automatically declared vacant.

History: 1978 Comp., § 4-48A-7, enacted by Laws 1978, ch. 29, § 7; 1981, ch. 84, § 6; 1990, ch. 12, § 5.

4-48A-8. Board of trustees; organization; bond.

A. The board of trustees shall elect from its membership a chairman and secretary-treasurer.

B. Each member of the board of trustees shall receive no compensation for the performance of his duties, but shall be paid per diem and mileage for attendance at meetings of the board as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. Each member of the board of trustees shall furnish a corporate surety bond in the penal sum of ten thousand dollars ($10,000) for the faithful performance of his duties and the accounting for all funds which shall come into his possession. Such bond shall run to the benefit of the special hospital district.

D. All authorizations for the payment or expenditure of money in the possession of the special hospital district shall be signed by the chairman and the secretary-treasurer.

History: 1978 Comp., § 4-48A-8, enacted by Laws 1978, ch. 29, § 8.

4-48A-9. Board of trustees; powers.

The board of trustees may:

A. acquire, construct, operate or maintain one or more hospital facilities in the special hospital district for the purposes for which the special hospital district was created;

B. receive and expend all funds accruing to the special hospital district pursuant to any provision of the Special Hospital District Act through the sale of bonds or the levy of taxes, paid from any source on account of patients accommodated at the hospital, from any gift or bequest or from any federal, state or private grant;

C. enter into contracts, including contracts with the federal government and the departments and agencies thereof or the state government and the departments, institutions and agencies thereof, for the treatment of or the hospitalization of patients under the jurisdiction of such entities;

D. adopt and use a seal to authenticate its official transactions;

E. sue and be sued;

F. adopt rules and regulations for the governing of the special hospital district;

G. employ and fix the compensation of an executive director of the special hospital district and such other staff and clerical personnel it deems necessary;

H. employ a hospital administrator for hospital facilities under its control and approve or disapprove the recommendations of such administrator pertaining to compensation and employment benefits for hospital employees;

I. fix the mileage reimbursement rate for travel on official business in a privately owned vehicle by employees of hospital facilities under its control, provided that the rate shall not exceed the internal revenue service standard mileage rate for use of a vehicle for business;

J. exercise all powers necessary and requisite for the accomplishment of the purposes for which the special hospital district is created;

K. issue bonds in the manner provided by law for the issuance of special hospital district revenue bonds for the construction, purchase, renovation, remodeling, equipping or re-equipping of hospital facilities under its control and purchasing the necessary land therefor;

L. charge for hospital services rendered;

M. lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon such terms and conditions as the board of trustees may determine, provided that the lease may be terminated by the board of trustees without cause upon one hundred eighty days' notice after the first three years of the lease;

N. enter into an agreement with another county or counties, another county or counties and another political subdivision or any other person, corporation or association that provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary for the operation of hospitals owned or operated by the parties; and to designate one of the parties as the central purchasing office, as defined in the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], for the others, to make purchases for the parties to the agreement as they shall deem necessary and to comply with the provisions of the Procurement Code;

O. expend public money to recruit health care personnel to serve the sick of the special hospital district; and

P. enter into an agreement with a state or federal agency, county, municipality, other political subdivision or person for the formation of a legal entity to jointly own or operate a common health care service, subject to the provisions of or exemptions from the Procurement Code.

History: 1978 Comp., § 4-48A-9, enacted by Laws 1978, ch. 29, § 9; 1981, ch. 84, § 7; 2001, ch. 291, § 5; 2003, ch. 21, § 1; 2005, ch. 92, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, allowed the board of trustees of a special hospital district to enter into an agreement to own or operate a common health care service.

The 2003 amendment, effective July 1, 2003, inserted present Subsection I and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective June 15, 2001, added the proviso in Subsection L and substituted "Procurement Code" for "Public Purchases Act" twice in Subsection M.

4-48A-10. Board of trustees; duties.

The board of trustees shall:

A. be the governing authority of the special hospital district;

B. comply with the provisions of law for local governments pertaining to the preparation and approval of budgets by the local government division of the department of finance and administration;

C. comply with the provisions of law pertaining to the audit of local governments by the state auditor; and

D. adopt rules and regulations for the management and operation of hospital facilities of the special hospital district.

History: 1978 Comp., § 4-48A-10, enacted by Laws 1978, ch. 29, § 10.

4-48A-11. Board of trustees; acquisition of existing hospital facilities; agreements.

A. The board of trustees may acquire by purchase, lease-purchase or lease for the use of the special hospital district, any existing hospital facility (including buildings, property, furniture and equipment).

B. The governing body of a political subdivision situated within the territorial boundaries of a special hospital district and owning a hospital facility already constructed and situated within such territorial boundaries of a special hospital district may, with the approval of the state board of finance, enter into agreement with the board of trustees of the special hospital district for the sale, operation or maintenance of such hospital facility by the special hospital district.

History: 1978 Comp., § 4-48A-11, enacted by Laws 1978, ch. 29, § 11.

4-48A-12. Board of trustees; issue of bonds.

A. Upon approval of a majority of the qualified electors voting upon the question, the board of trustees may issue general obligation bonds of the special hospital district for the purposes of:

(1) constructing, acquiring or purchasing a hospital facility for the special hospital district;

(2) equipping, furnishing, remodeling or renovating a hospital facility owned or operated by the special hospital district;

(3) purchasing or acquiring real property deemed necessary to the construction, operation or maintenance of a hospital facility owned or operated by the special hospital district; or

(4) refunding outstanding general obligation bonded indebtedness.

B. No general obligation bonds of the special hospital district shall be issued which creates a total bonded indebtedness of the special hospital district in excess of three percent of the assessed valuation of the taxable property within the special hospital district as shown by the most recent general assessment. The debt limitation specified in this section shall be in excess of other existing debt limitations provided by law.

C. The board of trustees shall comply with the requirements and procedures set forth in Section 6-15-1 NMSA 1978 with respect to the proposed issuance of general obligation bonds. The local government division of the department of finance and administration shall apply the procedures set forth in Section 6-15-2 NMSA 1978 to the proposed issuance of general obligation bonds by the special hospital district.

History: 1978 Comp., § 4-48A-12, enacted by Laws 1978, ch. 29, § 12.

4-48A-13. Bonds; form; interest; maturities.

A. General obligation bonds issued by a special hospital district shall mature not more than twenty years from their date and be numbered from one upwards consecutively. Interest on all such bonds shall be payable either annually or semiannually, as provided by resolution of the board of trustees; provided, that the first installment of interest coming due may be for any period of time which shall not exceed one year from the date of the bonds.

B. The resolution authorizing the bonds may provide for the creation of a sinking fund to secure payment of principal and interest on the bonds and may provide for mandatory annual payments to be made to the sinking fund from the taxes levied and collected pursuant to Section 14 [4-48A-14 NMSA 1978] of the Special Hospital District Act.

C. The board of trustees shall designate the maximum coupon rate of interest the general obligation bonds shall bear, which shall not be in excess of the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] as hereafter amended, and shall designate the maximum net effective interest rate which shall not exceed the maximum permitted by the Public Securities Act as hereafter amended.

D. The procedure which shall be followed by the board of trustees for the sale of general obligation bonds shall be the same as that set forth in Section 6-15-5 NMSA 1978 for other political subdivisions.

History: 1978 Comp., § 4-48A-13, enacted by Laws 1978, ch. 29, § 13.

4-48A-14. Imposition of tax for payment of bonds.

A. The officials now or hereafter charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make

an annual levy sufficient to meet the annual or semiannual payments of principal and interest on the maturing general obligation bonds or the refunding bonds or the mandatory sinking fund payments, if such fund is created by the board of trustees.

B. The provisions of Subsection A of this section shall not be construed as to prevent the special hospital district from applying any other funds that it may have or investment income actually received from sinking fund investments and available for that purpose to the payment of the interest on or the principal of, or any prior redemption premium in connection with, such bonds as the same become due; and upon such payments, the levy or levies provided in this section may thereupon to that extent be diminished.

History: 1978 Comp., § 4-48A-14, enacted by Laws 1978, ch. 29, § 14.

4-48A-15. Refunding bonds.

A. The board of trustees may issue bonds in such form as the board of trustees may determine for the purpose of refunding any of the general obligation bonded indebtedness of the special hospital district which has or may hereafter become due and payable, or which has or may hereafter become payable at the option of the special hospital district or by consent of the bondholder, or by any lawful means.

B. The procedures set forth in Sections 6-15-12 through 6-15-22 NMSA 1978 shall govern the board of trustees with respect to the issuance, sale and payment of principal and interest on refunding bonds of the special hospital district.

History: 1978 Comp., § 4-48A-15, enacted by Laws 1978, ch. 29, § 15; 1983, ch. 265, § 16.

4-48A-16. Special tax imposed for special hospital district.

A. In each special hospital district, the board of trustees may adopt a resolution calling for an election for the purpose of authorizing the imposition of an ad valorem tax on all taxable property within the special hospital district. The election shall be held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The revenue from such tax shall be used to pay for current operations and maintenance of hospitals, including hospital facilities owned and operated by the special hospital district or hospitals operated and maintained by the special hospital district pursuant to an agreement with a political subdivision as provided in Subsection B of Section 4-48A-11 NMSA 1978, and to pay the operational costs of the special hospital district.

B. In the case of a special hospital district located wholly within one county, if authorized by a majority of the qualified electors of the special hospital district voting on the question, the board of county commissioners of the county in which the special hospital district is located shall levy such tax at the same time and in the same manner as levies for ad valorem taxes for school districts are made and in the amount certified

by the board of trustees as necessary to meet its approved annual budget, but in no event shall the tax levied exceed the rate limitation approved by the voters or the rate limitations provided in Subsection D of this section.

C. In the case of a special hospital district that is composed of all or a portion of two or more counties, if a majority of the qualified electors in the special hospital district of each county voting on the question authorizes a tax levy, the boards of county commissioners of the counties that agreed to form the special hospital district shall levy such tax in the manner provided in Subsection B of this section.

D. The tax authorized in this section shall not exceed four dollars twenty-five cents ($4.25), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon any tax imposed under this section, on each one thousand dollars ($1,000) of net taxable value as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of all taxable property of the county within the hospital district for a period of time greater than four years. An election upon the question of continuing the levy may be called by the board of trustees pursuant to the Local Election Act.

History: 1978 Comp., § 4-48A-16, enacted by Laws 1978, ch. 29, § 16; 1981, ch. 84, § 8; 1986, ch. 32, § 3; 1987, ch. 273, § 2; 2018, ch. 79, § 70.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, provided that elections called for the purpose of authorizing the imposition of an ad valorem tax on all taxable property within a special hospital district shall be held pursuant to the Local Election Act and that elections on the question of continuing a tax levy may be called pursuant to the provisions of the Local Election Act, and made technical changes; in Subsection A, added "The election shall be held pursuant to the Local Election Act", and after "shall be used", added "to pay"; in Subsection C, after "qualified electors", added "in the special hospital district", after "each", deleted "subdistrict" and added "county"; and in Subsection D, after "called by the board of trustees", deleted "immediately prior to the expiration of the period of assessment previously approved by the qualified electors" and added "pursuant to the Local Election Act".

4-48A-17. Election procedures.

All elections of the special hospital district, unless otherwise provided in the Special Hospital District Act, shall be called, conducted and canvassed pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1978 Comp., § 4-48A-17, enacted by Laws 1978, ch. 29, § 17; 1981, ch. 84, § 9; 2018, ch. 79, § 71.

ANNOTATIONS

Cross references. — For manner of conducting school district elections, *see* 1-22-1 NMSA 1978 et seq.

The 2018 amendment, effective July 1, 2018, removed certain election procedures for elections held pursuant to the Special Hospital District Act and provided that all elections of the special hospital district, unless otherwise provided in the Special Hospital District Act shall be called, conducted, and canvassed pursuant o the Local Election Act; deleted Subsection A, which provided for notice of an election held pursuant to the Special Hospital District Act; deleted subsection designation "B." and Subsection C, which related to the costs of elections conducted by the special hospital district, and in former Subsection B, after "conducted and canvassed", deleted "in substantially the same manner as school district elections are called, conducted and canvassed. The board of trustees shall be the canvassing board for such elections" and added "pursuant to the Local Election Act".

4-48A-18. Dissolution of the special hospital district.

A special hospital district shall be dissolved in the following manner:

A. there shall be submitted a petition for dissolution to the board of county commissioners signed by at least ten percent of the qualified electors residing within the district or, in the case of a special hospital district composed of all or portions of two or more counties, at least ten percent of the qualified electors residing in any subdistrict of the special hospital district. Upon receipt of a proper petition, the board of county commissioners shall call a special election for the purpose of referring to the qualified electors residing in the district or subdistrict the question of dissolution;

B. if the board of county commissioners finds that a majority of the qualified electors voting on the issue at the special election have authorized the dissolution, the board of trustees shall proceed with the approved plan. Upon completion of the plan, the board of trustees shall submit a full report to the board of county commissioners of each county in which the special hospital district is located; and

C. upon receipt of the final report of the board of trustees, the board or boards of county commissioners shall examine the report to determine whether or not any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If, upon determination by the board or boards of county commissioners, no obligations are yet outstanding and the provisions of the plan have been fulfilled, they shall formally declare the special hospital district dissolved.

History: 1978 Comp., § 4-48A-18, enacted by Laws 1978, ch. 29, § 18; 1981, ch. 84, § 10.

4-48A-19. Reserved.

4-48A-20. Hospital revenue bonds; authority to issue; pledge of revenues.

A. A special hospital district may issue revenue bonds pursuant to the Special Hospital District Act for the purposes of:

(1) constructing, acquiring or purchasing a hospital facility for the special hospital district;

(2) equipping, furnishing, remodeling or renovating a hospital facility owned or operated by the special hospital district; or

(3) purchasing or acquiring real property deemed necessary to the construction, operation or maintenance of a hospital facility owned or operated by the special hospital district.

B. The special hospital district may pledge irrevocably all or a portion of the revenues derived from the ownership and operation of a hospital facility and revenues derived from the leasing of or other contractual arrangement for the operation of a hospital facility for the payment of principal of and interest on such revenue bonds.

C. For the purpose of the Special Hospital District Act, "equipping" or "re-equipping" means the purchase or lease of property of a character subject to the allowance for depreciation under the Internal Revenue Code of 1954 § 167 and regulations promulgated thereunder, as amended.

History: 1978 Comp., § 4-48A-20, enacted by Laws 1981, ch. 84, § 11.

ANNOTATIONS

Cross references. — For the provision concerning depreciation in the Internal Revenue Code, *see* 26 U.S.C.S. § 167.

4-48A-21. 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; provided, however, that bond proceeds may be used for reserves and to pay the costs of issuance.

History: 1978 Comp., § 4-48A-21, enacted by Laws 1981, ch. 84, § 12.

4-48A-22. Revenue bonds; terms.

Special hospital district revenue bonds:

A. shall bear interest payable annually or semiannually and may or may not be evidenced by coupons; provided, the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the option of the special hospital district at such time or times, and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by resolution;

C. may mature at any time or times not exceeding thirty 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 any other form as may be provided in the resolution authorizing the bonds;

E. shall be sold for cash at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at public or private sale.

History: 1978 Comp., § 4-48A-22, enacted by Laws 1981, ch. 84, § 13; 1983, ch. 265, § 17.

4-48A-23. Resolution authorizing revenue bonds.

At a regular or special meeting called for the purpose of issuing revenue bonds as authorized pursuant to the Special Hospital District Act, the board of trustees may adopt a resolution that:

A. declares the necessity for issuing revenue bonds;

B. authorizes the issuance of revenue bonds by an affirmative vote of a majority of all the members of the board of trustees of the special hospital district; or

C. designates the source of the pledge [pledged] revenues.

History: 1978 Comp., § 4-48A-23, enacted by Laws 1981, ch. 84, § 14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-48A-24. Revenue bonds not general obligations of special hospital district.

Revenue bonds issued by a special hospital district under the authority of the Special Hospital District Act shall not be construed or held to be general obligations of such special hospital district or the counties in which the special hospital district is located and shall be collectible only out of all or a portion of the revenues derived from the ownership and operation of a hospital facility and the revenues derived from the leasing of or other contractual arrangement for the operation of a hospital facility which revenue is so pledged, and each of the bonds of any issue or revenue bonds so issued shall recite on its face that it is payable and collectible solely from the pledged revenues hereinbefore mentioned and that the holders hereof may not look to any general or other fund for the payment of principal or interest of such obligations.

History: 1978 Comp., § 4-48A-24, enacted by Laws 1981, ch. 84, § 15.

4-48A-25. Revenue bonds; security.

A. The principal of and interest on any revenue bonds issued under the authority of the Special Hospital District Act shall be secured by a pledge of the revenues out of which such bonds shall be made payable, and may be secured by a mortgage covering all or any part of the hospital facility from which the revenues so pledged may be derived.

B. The resolution and proceedings under which such revenue 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 designation and collection of revenues from a hospital facility covered by such proceedings or mortgage, the maintenance and insurance of such hospital facility, the creation and maintenance of special funds derived from the revenues relating to such hospital facility and the rights and remedies available in the event of default to the bondholders or to the trustee under a mortgage, all as the board of trustees of the special hospital district shall deem advisable and as shall not be in conflict with the provisions of the Special Hospital District Act.

History: 1978 Comp., § 4-48A-25, enacted by Laws 1981, ch. 84, § 16.

4-48A-26. Revenue bonds; exemption from taxation.

The revenue bonds issued under authority of the Special Hospital District Act and the income from said bonds, all mortgages or other security instruments executed as security for such bonds, shall be exempt from all taxation by the state or any subdivision thereof.

History: 1978 Comp., § 4-48A-26, enacted by Laws 1981, ch. 84, § 17.

4-48A-27. Election not required.

The Special Hospital District Act shall not be construed to require an election by the voters of a special hospital district prior to the issuance of revenue bonds hereunder by the special hospital district.

History: 1978 Comp., § 4-48A-27, enacted by Laws 1981, ch. 84, § 18.

4-48A-28. No notice or publication required.

No notice, consent or approval by any governmental body, commission, board or public officer shall be required as a prerequisite to the sale or issuance of any revenue bonds or the making of a mortgage under the authority of the Special Hospital District Act, except as provided herein.

History: 1978 Comp., § 4-48A-28, enacted by Laws 1981, ch. 84, § 19.

4-48A-29. Agreements with the New Mexico hospital equipment loan council; authority; security; restrictions and limitations and other details.

A. A special hospital district may enter into a lease, loan or other financing agreement, with a term not exceeding thirty years from the date of execution, with the New Mexico hospital equipment loan council created under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978] to acquire funds for the construction, purchase, renovation, remodeling, equipping, reequipping or refinancing of hospital facilities under its control, for the purchase of the land necessary therefor and for refunding revenue bonds previously issued for any of the foregoing purposes or for any combination thereof.

B. The special hospital district entering into agreement with the New Mexico hospital equipment loan council may pledge irrevocably all or a portion of the revenues derived from the operation of a hospital facility and revenues derived from the leasing of or other contractual arrangement for the operation of a hospital facility for the payment of rentals, principal and interest and any other amount or obligation required under the lease, loan or other financing agreement with the New Mexico hospital equipment loan council.

C. At a regular or special meeting called for the purpose of approving the execution and delivery of a lease, loan or other financing agreement with the New Mexico hospital equipment loan council as authorized in this section, the board of trustees may adopt a resolution declaring the necessity for entering into the lease, loan or other financing agreement with the New Mexico hospital equipment loan council; authorizing the entering into of the lease, loan or other financing agreement with the New Mexico hospital equipment loan council; and designating the source of the pledged revenues for the payment or repayment of rentals, principal and interest and any other amounts and obligations required under the lease, loan or other financing agreement with the New Mexico hospital equipment loan council.

D. The rentals, principal and interest and any other amounts and obligations owed under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council shall be payable solely out of all or a portion of the revenues derived from the ownership and operation of a hospital facility and revenues derived from the leasing of or other contractual arrangement for the operation of a hospital facility for which the lease, loan or other financing agreement with the New Mexico hospital equipment loan council is entered into. The amount and obligations under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council entered into under the authority of the Special Hospital District Act shall never constitute an indebtedness of the special hospital district or the county or counties in which the special hospital district is located within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the special hospital district or the county or counties in which the special hospital district is located or charge against its general credit or taxing power.

E. The rentals, principal and interest and any other amounts and obligations owed under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council shall be secured by the pledge of the revenues out of which such rentals, principal and interest and any other amounts and obligations shall be payable and may be secured by a mortgage covering all or any part of a hospital facility from which the revenues so pledged may be derived.

F. The resolution or proceedings under which the lease, loan or other financing agreement are authorized to be entered into or any mortgage relating thereto may contain any agreement and provisions customarily contained in instruments securing leases, loans or other financing arrangements including, without limiting the generality of the foregoing, provisions respecting the designation and collection of the revenues from a hospital facility covered by such proceedings or mortgage, the maintenance and insurance of such hospital facility, the creation and maintenance of special funds derived from the revenues relating to such hospital facility and the rights and remedies available in event of default to the New Mexico hospital equipment loan council under a mortgage, all as the board of trustees shall deem advisable and as shall not conflict with the provisions of the Special Hospital District Act.

G. No notice, consent or approval by any governmental body, commission or public officer shall be required as a prerequisite to the entering into of a lease, loan or other financing agreement with the New Mexico hospital equipment loan council or the making of a mortgage under the authority of the Special Hospital District Act, except as provided in this section.

History: 1978 Comp., § 4-48A-29, enacted by Laws 1987, ch. 49, § 10; 1992, ch. 41, § 2.

ANNOTATIONS

The 1992 amendment, effective May 20, 1992, substituted all of the present language of Subsection A following "equipping" for "or reequipping of hospital facilities under its control, and may purchase the land necessary therefor or for any combination of the foregoing purposes", substituted "in this section" for "herein" in Subsections C and G, and substituted "resolution or proceedings" for "resolution, ordinance and proceedings" in Subsection F.

4-48A-30. Refunding revenue bonds.

The board of trustees of a special hospital district may issue refunding bonds for the purpose of refunding any of the revenue bonds of the special hospital district. The board of trustees shall adopt a resolution stating the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board of trustees and the amount of refunding bonds that the board of trustees concludes as necessary and advisable to issue. The resolution shall establish the form of the bonds; the rate or rates of interest of the bonds, provided the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than thirty years from the date of the refunding bonds; and the place or places of payment of both principal and interest either within or outside of the state. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, bear the signature or the facsimile signature of the chairman of the board, bear the seal of the district and be attested by the secretary of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold at a public or private sale as directed by the board of trustees. The proceeds of the sale shall be applied only to the purpose for which the refunding bonds were issued, including but not limited to establishment and funding of an escrow with a bank or trust company from which the refunded bonds may be paid and the payment of any expenses incidental thereto.

History: 1978 Comp., § 4-48A-30, enacted by Laws 1992, ch. 41, § 3.

ARTICLE 48B
Hospital Funding

4-48B-1. Short title.

Chapter 4, Article 48B NMSA 1978 may be cited as the "Hospital Funding Act".

History: 1978 Comp., § 4-48B-1, enacted by Laws 1981, ch. 83, § 1; 1982, ch. 11, § 1.

ANNOTATIONS

Cross references. — For the Statewide Health Care Act, *see* 27-10-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Opposition to construction of new hospital or expansion of existing hospital's facilities as violation of Sherman Act (15 USCS § 1 et seq.), 88 A.L.R. Fed. 478.

4-48B-2. Purpose of act.

The purpose of the Hospital Funding Act is:

A. to encourage and enable counties and other political subdivisions to provide appropriate and adequate hospital facilities for the sick of the counties;

B. to provide flexibility in financing construction, operation and maintenance of necessary hospital facilities; and

C. to minimize the cost of constructing new hospital facilities and maintaining adequate hospital facilities in all geographic areas of the state.

History: Laws 1980, ch. 46, § 1; 1978 Comp., § 4-48-11.2, recompiled as § 4-48B-2 by Laws 1981, ch. 83, § 2.

ANNOTATIONS

Cross references. — For the use of federal funds for rural hospitals, *see* 27-1-3.1 NMSA 1978.

4-48B-3. Definitions.

As used in the Hospital Funding Act:

A. "another political subdivision" means a political subdivision of New Mexico, including a municipality and a special hospital district organized under the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978], but not including a county;

B. "class A county" means a county having a population of more than two hundred thousand persons according to the last federal decennial census;

C. "contracting hospital" means a hospital located in New Mexico that enters into a health care facilities contract with a county or counties or another political subdivision;

D. "county" means any county of the state;

E. "county commissioners" means the board of county commissioners of a county;

F. "county hospital" means a hospital owned by a county;

G. "health care facilities contract" means an agreement between a hospital and a county or counties, or between a hospital and a county or counties and another political subdivision, that provides for the payment by the county or counties of all or a portion of the proceeds of a mill levy to the hospital in exchange for the agreement by the hospital to use the funds only for nonsectarian purposes and to make available the following for the sick of the county or counties:

(1) hospital facilities that admit and treat patients without regard to race, sex, religion or national origin;

(2) hospital facilities that include x-ray, laboratory services and a pharmacy or drug room;

(3) adequate emergency equipment, personnel and procedures, including:

(a) a standby emergency power system;

(b) at least one person capable and authorized to initiate immediate lifesaving measures;

(c) facilities for emergency laboratory work, including, as a minimum, urinalysis, complete blood count, blood type and cross match; and

(d) diagnostic radiographic facilities;

(4) facilities, procedures and policies for prevention, control and reporting of communicable diseases, including one or more rooms for isolation of patients having or suspected of having communicable diseases;

(5) adequate records, including, as a minimum, a daily census and a register of all births, deliveries, deaths, admissions, emergency room admissions, discharges, operations, outpatients, inpatients and narcotics; and

(6) physical facilities, personnel, equipment and procedures that comply with the regulations promulgated by the public health division of the department of health;

H. "hospital governing board" means the board that governs a county hospital or the board of directors or trustees of a contracting hospital;

I. "mill levy" means the rate of the tax, at a rate specified in the Hospital Funding Act, in terms of dollars per thousand dollars of net taxable value of property subject to taxation within the county;

J. "municipality" means any city, town or village incorporated under a general act, special act or special charter; and

K. "equipping" or "re-equipping" means purchase or lease of property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of, as amended or renumbered, and regulations promulgated in accordance with that section.

History: 1978 Comp., § 4-48B-3, enacted by Laws 1981, ch. 83, § 3; 1991, ch. 212, § 12; 2003, ch. 285, § 1.

ANNOTATIONS

Cross references. — For the provision in the Internal Revenue Code concerning depreciation, *see* 26 U.S.C.S. § 167.

The 2003 amendment, effective April 8, 2003, deleted "except a class A county" in Subsection D; added "a" in Subsection G(3)(b); substituted "department of health" for "health and environment department" at the end of Subsection G(6); in Subsection K, inserted "Section 167 of" following "for depreciation under", and substituted "1986, as amended or renumbered, and regulations promulgated in accordance with that section" for "1954 Section 167, and regulations promulgated thereunder" at the end.

The 1991 amendment, effective July 1, 1991, added present Subsections B and D; redesignated former Subsection B as Subsection C and Subsections C to I as Subsections E to K; substituted "public health division" for "health services division" in Paragraph (6) of Subsection G; and made minor stylistic change throughout the section.

4-48B-4. Annual report.

Each contracting hospital shall prepare an annual accounting and report to the county or counties, or county or counties and another political subdivision with which the contracting hospital contracts, accounting for the expenditure of mill levy funds for the past year, an annual plan explaining the planned use of such funds for the succeeding year and other reports as the county or counties, or county or counties and another political subdivision, from time to time shall reasonably require.

History: 1978 Comp., § 4-48B-4, enacted by Laws 1981, ch. 83, § 4; 2001, ch. 291, § 6.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added "accounting and" near the beginning of the section and substituted "accounting for" for "explaining" near the middle of the section.

4-48B-5. Power of counties.

All counties shall have the following powers:

A. to purchase, own, maintain and operate hospitals;

B. to purchase the land necessary to construct hospitals;

C. to control and regulate county hospitals;

D. to construct county hospitals;

E. to issue general obligation bonds and revenue bonds in the manner provided in the Hospital Funding Act for the construction, purchase, renovation, remodeling, equipping or re-equipping of a county hospital or a jointly owned county-municipal hospital and purchasing the land necessary therefor or for any combination of the foregoing purposes;

F. to charge for hospital services rendered and to reduce any charge made for care of a patient in whole or part when the charges are determined to be disputed in good faith or uncollectible;

G. to lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon terms and conditions as the county commissioners may determine;

H. to contract with the state, another county or counties, the federal government or its agencies, another political subdivision or a public or private corporation, organization or association for the care of the sick of the county;

I. to receive all funds appropriated from whatever source or paid by or on behalf of any patient of the hospital;

J. notwithstanding any other provision of law, to enter into leases, management or operating contracts, health care facilities contracts and other agreements authorized by the Hospital Funding Act for periods in excess of one year; provided that:

(1) the contract, lease or agreement may be terminated by the county without cause upon one hundred eighty days' notice after the first three years of the contract; and

(2) Paragraph (1) of this subsection shall not apply during the portion of a lease term in which a lessee is obligated under the lease to make debt service payments on revenue bonds that finance all or part of the hospital or equipment for the hospital;

K. to authorize the hospital governing board of a county hospital to exercise all powers that the county is granted by the Hospital Funding Act except the powers to issue bonds, call a mill levy election and levy the annual assessments for the mill levy authorized by the Hospital Funding Act;

L. to enter into a health care facilities contract with one or more hospitals that agree to provide facilities to the sick of the county;

M. to call a mill levy election as authorized by the Hospital Funding Act and to collect and distribute the proceeds of the mill levy pursuant to that act;

N. to distribute the proceeds of the mill levy authorized by the Hospital Funding Act to one or more county hospitals and one or more contracting hospitals or any combination thereof that provide facilities for the sick of the county, whether located within or without the county wherein the mill levy is collected;

O. to accept grants for constructing, equipping, operating and maintaining a county hospital;

P. to enter into an agreement with a municipality for constructing, equipping, operating and maintaining a jointly owned county-municipal hospital;

Q. to enter into an agreement with another county or counties, another county or counties and another political subdivision, an agency of the federal government or any other person, corporation, organization or association that provides that the parties to the agreement shall join together or form a legal entity for the purpose of making some or all purchases necessary for the operation of public hospitals or public and private hospitals subject to provisions of or exemptions from the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];

R. to enter into an agreement with another county or counties, another political subdivision, an agency of the federal government or any other person, corporation, organization or association that provides that parties to the agreement shall join together or form a legal entity for the purpose of creating a network of health care providers or jointly operating a common health care service, subject to provisions of or exemptions from the Procurement Code;

S. to expend public money to recruit health care personnel to serve the sick of the county; and

T. to perform any other act or adopt any regulation necessary or expedient to carry out the provisions of the Hospital Funding Act.

History: 1941 Comp., § 15-5001, enacted by Laws 1947, ch. 148, § 1; 1953 Comp., § 15-48-1; 1978 Comp., § 4-48-1, recompiled as § 4-48B-5 by Laws 1981, ch. 83, § 5; 1993, ch. 355, § 1; 1998, ch. 69, § 2; 2001, ch. 291, § 7.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For constitutional restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

For joint county-municipal hospitals, *see* 3-44-1 NMSA 1978 et seq.

For provision by counties of ambulance service, *see* 5-1-1 NMSA 1978.

For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

The 2001 amendment, effective June 15, 2001, added Subsection J(2).

The 1998 amendment, effective May 20, 1998, rewrote Subsection Q, added Subsection R, and redesignated the following subsections accordingly.

The 1993 amendment, effective June 18, 1993, added the language beginning "and to reduce" in Subsection F.

Power to operate hospital. — Board of county commissioners is empowered to operate hospital at public expense or to avail itself of lease method. *Akopiantz v. Board of County Comm'rs*, 1958-NMSC-122, 65 N.M. 125, 333 P.2d 611.

Constitutionality of use of bond proceeds. — Use of bond moneys for purchase of hospital site and for equipping the building was granted by implication under N.M. Const., art. IX, § 10. *Board of Cnty. Comm'rs v. McCulloh*, 1948-NMSC-028, 52 N.M. 210, 195 P.2d 1005.

Statutory requirements. — The Hospital Funding Act does not prohibit placing mill levy proceeds, subject to a county election, in escrow for future use in the performance of a health care facilities contract or require that a physical facility be in existence at the time a health care facilities contract is executed. *Cordova v. Valencia Cnty. Bd. of Comm'rs*, 2010-NMCA-039, 148 N.M. 460, 237 P.3d 762, cert. denied, 2010-NMCERT-004, 148 N.M. 572, 240 P.3d 659.

Contract valid. — Where the county entered into a health care facilities contract with a nonprofit corporation that did not have an existing and operating hospital facility within the county; and the contract provided for capital expenditures and construction costs of a hospital to be paid for by revenue bond financing with an independent party; the escrow of mill levy proceeds for hospital operations for the period of the contract; the transfer to the nonprofit corporation of mill levy proceeds upon completion of the construction of the hospital to be used for the operation and maintenance of the hospital, but not for capital expenditures or construction costs; the termination of the contract without cause after the first three years of the contract upon 180 days notice,

unless the nonprofit corporation was obligated to make debt service payments on revenue bonds; and the termination of the contract if the mill levy proceeds were used for any purpose other than the operation and maintenance of the hospital, the county did not exceed its authority under the Hospital Funding Act. *Cordova v. Valencia Cnty. Bd. of Comm'rs*, 2010-NMCA-039, 148 N.M. 460, 237 P.3d 762, cert. denied, 2010-NMCERT-004, 148 N.M. 572, 240 P.3d 659.

"Purchase". — Word "purchase" does not include or intend to allow a lease of property. A purchase of property involves a transfer of ownership and a passing of title. 1953 Op. Att'y Gen. No. 53-5784.

Contract for outpatient clinic. — County was authorized to enter into a contract with a private, for-profit group to provide a daytime, outpatient clinic in the county, but the county could not sign the proposed contract until it chose a clinic pursuant to the Procurement Code (13-1-28 NMSA 1978 et seq.). 1987 Op. Att'y Gen. No. 87-74.

Procedure for issuance and sale of bonds under former 4-48-1 to 4-48-9 NMSA 1978. 1947 Op. Att'y Gen. No. 47-5067.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums §§ 4, 51; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 502. 64 Am. Jur. 2d Public Securities and Obligations §§ 1 to 8.

Immunity from liability for damages in tort of state or govenmental unit or agency in operating hospital, 25 A.L.R.2d 203.

Liability for wrongful autopsy, 18 A.L.R.4th 858.

20 C.J.S. Counties §§ 39, 150, 181.

41 C.J.S. Hospitals § 6.

4-48B-6. Election on bond question; petition; notice; limitation on holding; election without petition.

Whenever a petition signed by not fewer than two hundred qualified electors of any county in this state shall be presented to the county commissioners of the particular county asking that a vote be taken on the question or proposition of constructing, purchasing, renovating, remodeling, equipping or re-equipping a county hospital or a county-municipal hospital and acquiring the land necessary therefor, setting forth in general terms the object of the petition and the amount of bonds asked to be voted for, it shall be the duty of the county commissioners of that county to which the petition may be presented, within ten days after the presentation, to call an election to be held within sixty days thereafter in that county, and to give notice of such election by publication once a week for at least three consecutive weeks in any newspaper published or of general circulation in the county, which notices shall set forth the time and place of

holding the election, the hospital proposed to be purchased, constructed, renovated, remodeled, equipped or re-equipped and the land necessary to be acquired, and which bonds are to be voted for. After the defeat of any proposition once voted for, a second special election upon any question or proposition under the provisions of the Hospital Funding Act shall not be held for a term of two years, unless a petition requesting another election, containing the names of qualified electors of the county equal to ten percent of the vote cast for governor in the last preceding election and otherwise conforming to the requirements of this section, shall be presented to the county commissioners; provided, however, that in no event shall more than two elections upon any proposition or question under the Hospital Funding Act be held in any two-year period. A bond election as provided in this section also may be called by the county commissioners without any petition, after the county commissioners have adopted a resolution calling for such an election, which resolution shall set forth the object of the election and the amount of bonds to be issued.

History: 1941 Comp., § 15-5004, enacted by Laws 1947, ch. 148, § 4; 1953 Comp., § 15-48-4; 1978 Comp., § 4-48-3, recompiled as § 4-48B-6 by Laws 1981, ch. 83, § 6.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For constitutional restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

Voters entitled to vote on question of hospital construction. — There is no basis for construction where the legislative language and intent make it plain that the voters are entitled to express their opinion upon "the question or proposition" and that the election called shall entitle them to vote upon whether "a hospital" is to be constructed or purchased. *Carper v. Board of Cnty. Comm'rs*, 1953-NMSC-022, 57 N.M. 137, 255 P.2d 673 (.

The language of this section leaves no doubt that the legislature regarded the construction of each hospital, with or without an isolation ward, as a separate and independent proposition. *Carper v. Board of Cnty. Comm'rs*, 1953-NMSC-022, 57 N.M. 137, 255 P.2d 673.

Petition by electors requesting that board of county commissioners submit to electors a proposal to build two hospitals with isolation wards within the same county, 35 miles apart, illegally joined two separate propositions as one question and was properly disapproved by the board of county commissioners. *Kiddy v. Board of Cnty. Comm'rs*, 1953-NMSC-023, 57 N.M. 145, 255 P.2d 678; *Carper v. Board of Cnty. Comm'rs*, 1953-NMSC-022, 57 N.M. 137, 255 P.2d 673.

Notice of election and ballot should present same proposition as presented by the petition. 1955 Op. Att'y Gen. No. 55-6101.

Variance between notice of election and actual use of bond proceeds. — Under the laws of the state of New Mexico, which require a specific procedure for notice of an election and holding of an election on a bond issue, any variance between the notice and the actual use of the funds would be fatal. 1953 Op. Att'y Gen. No. 53-5656.

The county commissioners, after having duly been presented with a petition for the erection of a county hospital and after having duly acted on the matter and published in accordance with law a notice of election upon this issue, may not then, prior to the election, consider splitting the proceeds of such bonded sums and erecting one hospital to be used by osteopaths and one hospital to be used by medical doctors. 1953 Op. Att'y Gen. No. 53-5656.

4-48B-7. Power to lease hospitals.

A. All counties shall have the power to authorize the leasing or operating of county hospitals to persons, firms, organizations, corporations or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico upon such terms and conditions as the county commissioners may determine. If the lease is to a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, the payment for the lease shall not exceed one dollar ($1.00) per year. The lease may be for any length of time deemed appropriate by the parties involved, provided that the lease shall contain a cancellation clause.

B. In the event of a lease to or an agreement to operate with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, the county may delegate its authority to operate and maintain the hospital to that institution.

C. In the event of a lease to or an agreement to operate with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, the public character of the hospital shall continue, and county funds for the hospital shall be paid by the county to that institution for the operation and maintenance of the hospital. Any county hospital, or outpatient clinics thereof, leased to or operated under an agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico shall continue, during the state educational institution's operation and maintenance of the hospital, to be a local public body for purposes of the Unemployment Compensation Law [Chapter 51 NMSA 1978].

History: 1941 Comp., § 15-5005, enacted by Laws 1947, ch. 148, § 5; 1953 Comp., § 15-48-5; Laws 1978, ch. 168, § 1; 1978 Comp., § 4-48-4, recompiled as § 4-48B-7 by Laws 1981, ch. 83, § 7.

ANNOTATIONS

Agreements with private parties. — Counties may enter into an agreement for operation of the hospital with private firms, persons or organizations, provided that the agreement makes adequate provision for the care of poor and sick persons and

provides for the right to set up charges for hospital services. 1950 Op. Att'y Gen. No. 50-5280.

4-48B-8. Sick and indigent persons; agreements for care with state and county agencies.

Counties, by their county commissioners, are authorized to make agreements with state or county agencies or other agencies for the care of sick and indigent persons. Such care shall be provided to all non-citizens, regardless of immigration status, if they meet all other qualifying criteria for such care.

History: 1941 Comp., § 15-5006, enacted by Laws 1947, ch. 148, § 6; 1953 Comp., § 15-48-6; 1978 Comp., § 4-48-5, recompiled as § 4-48B-8 by Laws 1981, ch. 83, § 8; 2021, ch. 127, § 2.

ANNOTATIONS

Cross references. — For indigent hospital and county health care, *see* Chapter 27, Article 5 NMSA 1978.

The 2021 amendment, effective June 18, 2018, provided that the care of sick and indigent persons provided by counties, under agreements with state or county agencies, shall be provided to all non-citizens regardless of immigration status; and after "sick and indigent persons", added "Such care shall be provided to all non-citizens, regardless of immigration status, if the meet all other qualifying criteria for such care."

4-48B-9. Joint construction and operation of hospitals by counties; municipal participation; indebtedness authorized.

A. If two or more counties shall, through their respective county commissioners, deem it advisable to construct, purchase, renovate, remodel, equip, re-equip, maintain or operate a hospital and to acquire the land necessary therefor for the benefit jointly of such counties, the counties jointly shall have the powers and authorities in the Hospital Funding Act granted to any individual county and may issue general obligation bonds in the manner provided in Chapter 4, Article 49 NMSA 1978, and revenue bonds issued pursuant to the Hospital Funding Act shall be bonds of the respective counties issued according to the proportions of their populations as shown in the last census, and such hospital may be located at any point in any of the counties as may be determined by agreement of the county commissioners of the respective counties.

B. One or more counties may enter into an agreement with a municipality located in a county entering into an agreement for the construction, purchase, renovation, remodeling, equipping, re-equipping, maintenance or operation of a jointly owned county-municipal hospital and the acquisition of land necessary therefor or any combination of the foregoing purposes, and such hospital may be located at any point in

any of the counties or within the participating municipality as may be determined by agreement of the county commissioners of the respective counties and the governing body of the participating municipality.

C. The county or counties entering into an agreement with a municipality are authorized to issue, separately, general obligation bonds in the manner provided in Chapter 4, Article 49 NMSA 1978 for the purpose of constructing, purchasing, renovating, remodeling, equipping or re-equipping a jointly owned county-municipal hospital and for the acquisition of land necessary therefor, or any combination of the foregoing purposes. The municipality entering into an agreement with one or more counties is authorized to issue, separately, for such purposes, in the manner provided by law, general obligation bonds or revenue bonds as provided under Section 3-44-2 NMSA 1978.

D. Any general obligation bonds or revenue bonds issued pursuant to the Hospital Funding Act shall be bonds of the respective counties and the participating municipality issued according to the proportions of their populations as shown in the last census; provided, however, that the population of the county in which the participating municipality is located shall be reduced for the purpose of determining the amount of bonds to be issued by the county and municipality by the population of the participating municipality or a percentage thereof as determined by agreement of the county commissioners of the county and the governing body of the municipality.

History: 1941 Comp., § 15-5007, enacted by Laws 1947, ch. 148, § 7; 1953 Comp., § 15-48-7; 1978 Comp., § 4-48-6, recompiled as § 4-48B-9 by Laws 1981, ch. 83, § 9.

ANNOTATIONS

Cross references. — For bonds for courthouses, jails, bridges, hospitals and libraries, *see* 4-49-1 NMSA 1978 et seq.

For joint county-municipal hospitals, *see* 3-44-1 NMSA 1978 et seq.

4-48B-10. Hospital governing boards for county hospitals; members; appointment; terms; powers; bonds.

A. The county commissioners of a county or counties maintaining or operating a county hospital are authorized to appoint a hospital governing board to be composed of either five, seven or nine members. The hospital governing board so appointed shall have the authority to exercise all powers that the county is granted by the Hospital Funding Act for the operation of such hospitals except the powers to issue bonds, call a mill levy election, levy the annual assessments for the mill levy authorized by the Hospital Funding Act and to dispose of real property of the hospital acquired with the proceeds of any bond issue.

B. Members of the hospital governing board shall be appointed by the board of county commissioners for staggered terms of three years or less. Appointments shall be made in such a manner that the terms of not more than one-third of the members, or as near thereto as possible, expire on June 30 of each year. Vacancies shall be filled for the unexpired term by appointment by the board of county commissioners.

C. The hospital governing board shall select from its membership a president and a secretary. After their appointment, none of the members of the hospital governing board shall be removed except for cause specified in a written charge and after full public hearing on the charge.

D. The hospital governing board shall account annually for the receipt and expenditures of funds received for the operation of the hospital.

E. The county commissioners, by an agreement for the maintenance and operation of a county hospital with another county or counties, another political subdivision, person, association or corporation, may permit the selection of a hospital governing board by the other party to the agreement subject to approval by the county commissioners.

F. All actions taken or purportedly taken or proceedings had or purportedly had by or on behalf of county commissioners with respect to the appointment of or delegation of authority to a hospital governing board, notwithstanding any lack of power, authority or otherwise and notwithstanding any defects and irregularities in the actions or proceedings, are hereby validated, ratified, approved and confirmed. This section shall operate to supply such legislative authority as may be necessary to validate any actions or proceedings by any group acting as a hospital governing board which would have been valid had the provisions of this section been in effect at the time the action or proceedings were taken. This section shall not operate to validate, ratify, approve, confirm or legalize any action or proceeding which has previously been determined in any legal proceeding to be illegal, void or ineffective.

History: 1978 Comp., § 4-48B-10, enacted by Laws 1981, ch. 83, § 10; 1982, ch. 11, § 2.

ANNOTATIONS

Compiler's notes. — The following case and attorney general opinions were decided under former Article 48 of this chapter.

Persons authorized to conduct business of board. — Since predecessor section provided for a five member board and made no provision for ex-officio members, the legislature intended that the five member board were the only persons who could conduct business of the board. 1969 Op. Att'y Gen. No. 69-76.

Governing body. — Under former law, the governing body in regard to maintenance and operation of a county hospital, was the board of trustees. 1957 Op. Att'y Gen. No. 57-255.

Positions of member of county hospital board and nurse employee of hospital were incompatible. 1956 Op. Att'y Gen. No. 56-6456.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Hospital's liability for injury resulting from failure to have sufficient number of nurses on duty, 2 A.L.R.5th 286.

4-48B-11. Federal aid.

The county commissioners and the hospital governing board shall have full power and authority to accept federal funds for the erection or enlargement of county hospitals and the maintenance and operation thereof, and to contract as a condition to the acceptance of such funds for the perpetual care in such hospitals of Indian patients at a per diem cost to be set out in the contracts between the appropriate agency of the federal government and the hospital governing boards or county commissioners.

History: 1941 Comp., § 15-5011, enacted by Laws 1949, ch. 95, § 2; 1953 Comp., § 15-48-11; 1978 Comp., § 4-48-10, recompiled as § 4-48B-11 by Laws 1981, ch. 83, § 11.

4-48B-12. Tax levies authorized.

A. The county commissioners are authorized to impose a mill levy and collect annual assessments against the net taxable value of the property in a county to pay the cost of operating and maintaining county hospitals or to pay to contracting hospitals in accordance with a health care facilities contract and in class A counties to pay for the county's transfer to the county-supported medicaid fund pursuant to Section 27-10-4 NMSA 1978 as follows:

(1) in class A counties as defined in Section 4-44-1 NMSA 1978, the mill levy shall not exceed a rate of six dollars fifty cents ($6.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a mill levy imposed pursuant to this paragraph, on each one thousand dollars ($1,000) of net taxable value of property allocated to the county; however, if the county uses any portion, not to exceed one dollar fifty cents ($1.50), of the rate authorized by this paragraph to meet the requirement of Section 27-10-4 NMSA 1978, the provisions of Section 7-37-7.1 NMSA 1978 do not apply to the portion of the rate necessary to produce the revenues required, provided that the portion of the rate does not exceed one dollar fifty cents ($1.50); and

(2) in other counties, the mill levy shall not exceed four dollars twenty-five cents ($4.25), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a mill levy imposed pursuant to this

paragraph, on each one thousand dollars ($1,000) of net taxable value of property allocated to the county.

B. The mill levies provided in Paragraphs (1) and (2) of Subsection A of this section shall be made at the direction of the county commissioners, but only to the extent that the county commissioners deem it necessary to operate and maintain county hospitals, to pay the amounts required in the performance of any health care facilities contracts made pursuant to the Hospital Funding Act and to provide for a class A county's transfer to the county-supported medicaid fund pursuant to Section 27-10-4 NMSA 1978.

C. In the event that the mill levy provided for in Paragraph (1) of Subsection A of this section is not authorized by the electorate or the resulting mill levy proceeds are not remitted to the entity operating the hospital within a reasonable time period, any lease for operation of the hospital between a county and a state educational institution named in Article 12, Section 11 of the constitution of New Mexico may, at the option of the state educational institution, be terminated immediately. Except as provided in Subsection D of this section, in the event that the mill levy provided for in Paragraph (1) of Subsection A of this section is authorized, an amount not less than the amount that would be produced by a mill levy at the rate of four dollars ($4.00), or any lower amount that would be required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this rate, on each one thousand dollars ($1,000) of net taxable value of property allocated to the county shall be provided from the proceeds of the mill levy to the state educational institution operating the hospital for hospital purposes unless the institution determines that the amount is not necessary.

D. A class A county imposing the mill levy provided for in Paragraph (1) of Subsection A of this section may enter into a mutual agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico operating the hospital permitting the transfer to the county-supported medicaid fund by the county pursuant to Section 27-10-4 NMSA 1978 of not to exceed the amount that would be produced by a mill levy at a rate of one dollar fifty cents ($1.50) applied to the net taxable value of property allocated to the county for the prior property tax year and also not to exceed the amount that would be produced by imposition of the county health care gross receipts tax.

E. The distribution of the mill levy authorized at the rates specified in Subsection A of this section shall be made to county and contracting hospitals as authorized in the Hospital Funding Act.

History: 1978 Comp., § 4-48B-12, enacted by Laws 1981, ch. 83, § 12; 1986, ch. 3, § 1; 1991, ch. 212, § 13; 2003, ch. 285, § 2.

ANNOTATIONS

Cross references. — For classification of counties, *see* 4-44-1 NMSA 1978.

For joint county-municipal hospitals, *see* 3-44-1 NMSA 1978 et seq.

The 2003 amendment, effective April 8, 2003, substituted "27-10-4 NMSA 1978" for "4 of the Statewide Health Care Act" throughout the section; in Subsection C, substituted "or" for "and" following "by the electorate", substituted "may, at the option of the state educational institution" for "shall" following "of New Mexico".

The 1991 amendment, effective July 1, 1991, in Subsection A, made a minor stylistic change and inserted "and in class A counties to pay for the county's transfer to the county-supported medicaid fund pursuant to Section 4 of the Statewide Health Care Act" in the introductory paragraph and added the language beginning "however, if the county uses" at the end of Paragraph (1); in Subsection B, added "and to provide for a class A county's transfer to the county-supported medicaid fund pursuant to Section 4 of the Statewide Health Care Act" and made a related stylistic change; added "Except as provided in Subsection D, of this section" at the beginning of the second sentence in Subsection C; added present Subsection D; and redesignated former Subsection D as Subsection E.

Levy of tax for operation and maintenance of hospital leased to private corporation. — A tax could not be levied to maintain and operate a hospital that had been leased to a private corporation. 1958 Op. Att'y Gen. No. 58-225.

Levy of tax for operation and maintenance of hospital leased to private corporation. — The evident purpose of former section and 4-48-14 NMSA 1978 (recompiled as 4-48B-15) was to provide a means by which a county operating a hospital itself could pay for such operation. To construe those sections as allowing the county commissioners to use the funds authorized in former section for the purpose of supporting and maintaining a hospital owned by the county but leased to a private organization would have been in direct violation of N.M. Const., art. IV, § 31 and art. IX, § 14 and thus have made the sections unconstitutional. 1956 Op. Att'y Gen. No. 56-6426.

Mill levy funds used for indigent medical care. — Colfax County could not use mill levy funds to provide indigent medical care for its non-miner residents admitted to Miners' Hospital, a state owned and operated facility, where such funds were not proceeds in the county indigent hospital claims fund but instead were proceeds from another county fund. The county could, however, use any proceeds in the indigent hospital claims fund to provide medical care for indigent patients at the Miners' Hospital if they otherwise qualify. 1988 Op. Att'y Gen. No. 88-41.

Funds from levy for one hospital not to be used for another. — Funds generated by a mill levy approved specifically for the operation of one hospital may not be used to construct another hospital. 1981 Op. Att'y Gen. No. 81-30.

4-48B-13. County hospital; power to lease; expenditure of proceeds from tax levy.

Any county hospital operated and maintained pursuant to a lease as authorized by the Hospital Funding Act which has mill levies levied and collected for its maintenance and operation pursuant to that act may expend those funds for the operation and maintenance of the hospital and the use of the funds is declared to be an incidental benefit to the lessee which is far outweighed by the greater benefits to the public as a whole. The operation and maintenance of a county hospital under lease to the extent of and the use of the funds levied pursuant to that act is deemed to be funding to the hospital as a public institution, and the hospital facility and lessee thereof are subject to the laws of this state regarding the expenditures of public money and the auditing requirements of same and to the provisions of any rules or regulations as are required.

History: 1978 Comp., § 4-48-11.1, enacted by Laws 1980, ch. 46, § 3; recompiled as § 4-48B-13 by Laws 1981, ch. 83, § 13.

4-48B-14. Payment of charges; persons committed by district court.

A. Charges for care, treatment and services for any person sent by order of a district court to any county hospital or municipally owned hospital serving as a county hospital which is located outside the county of commitment shall be paid:

(1) by the patient, if he is able to pay; or

(2) by the county from which the patient was committed.

B. When a county is required by this section to pay such charges to another county, it shall levy and collect assessments as provided in the Hospital Funding Act.

History: 1953 Comp., § 15-48-12.2, enacted by Laws 1966, ch. 6, § 5; 1978 Comp., § 4-48-13, amended and recompiled as § 4-48B-14 by Laws 1981, ch. 83, § 14.

4-48B-15. Election on special levy.

A. In the event the county commissioners of a county, other than a class A county, desire to provide the mill levy authorized in Paragraph (2) of Subsection A of Section 4-48B-12 NMSA 1978, the county commissioners shall submit to the qualified electors of the county the question of levying those taxes not to exceed four dollars twenty-five cents ($4.25) on each one thousand dollars ($1,000) of net taxable value of property allocated to the county for a period of time not less than four years nor more than eight years.

B. In the event the county commissioners of a class A county desire to provide the mill levy authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978, the county commissioners shall submit to the qualified electors of the county the question of levying those taxes not to exceed six dollars fifty cents ($6.50) on each one thousand dollars ($1,000) of net taxable value of property allocated to the county for a period of time of not less than four years nor more than eight years.

C. The question may be submitted to the electors and voted upon as a separate question at any general election or at any special election called for that purpose by the county commissioners. The election upon the question of a mill levy shall be called, held, conducted and canvassed in substantially the same manner as now or hereafter may be provided by law for general elections.

D. In the event the mill levy submitted under Subsection A or B of this section is voted upon favorably by the electors of the county, the mill levy shall become effective and be made for the ensuing fiscal year and those future years, not less than three nor more than seven, as stated in the question voted upon; provided that the question of continuing the mill levy shall thereafter be submitted to the electors at the general election immediately prior to the expiration of the period of assessment previously approved. The county commissioners shall decrease the rate of any mill levy imposed under the Hospital Funding Act if required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978. Subject to the provisions of Subsection D of Section 4-48B-12 NMSA 1978, the county commissioners may direct that the mill levy be decreased or not be made for any year if, in their judgment, sufficient funds for operation and maintenance of the hospital and transfer to the county-supported medicaid fund, if applicable, are available or will be obtained from other sources and if, relative to a county hospital operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a decision to decrease the mill levy is agreed to by the state educational institution.

E. In the event that the mill levy approved by the electors is less than the maximum mill levy authorized for the county by Subsection A of Section 4-48B-12 NMSA 1978 and the county commissioners desire to increase the amount of the approved mill levy, the county commissioners shall submit, in accordance with Subsection C of this section, to the qualified electors of the county the questions of levying those additional taxes for a period of time consistent with the expiration of the mill levy previously approved; provided that the additional taxes, when added to the mill levy previously approved, may not exceed the mill levy maximum for the county provided in Subsection A of Section 4-48B-12 NMSA 1978. In the event that the mill levy increase is voted upon favorably by the electors of the county, the increase shall become effective for the years stated in the question voted upon. Nothing in this subsection shall be construed as requiring an election to restore the mill levy to an amount no higher than the mill levy approved by the electors after a reduction in the mill levy made pursuant to Subsection D of this section.

History: 1941 Comp., § 15-5013, enacted by Laws 1953, ch. 174, § 2; 1953 Comp., § 15-48-13; Laws 1955, ch. 224, § 2; 1959, ch. 307, § 2; 1966, ch. 6, § 3; 1967, ch. 129, § 1; 1969, ch. 87, § 2; 1978, ch. 168, § 3; 1981, ch. 37, § 57; 1978 Comp., § 4-48-14, recompiled as § 4-48B-15 by Laws 1981, ch. 83, § 15; 1986, ch. 3, § 2; 1991, ch. 212, § 14.

ANNOTATIONS

Cross references. — For classification of counties, *see* 4-44-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the third sentence in Subsection D, added "Subject to the provisions of Subsection D of Section 4-48B-12 NMSA 1978" at the beginning and inserted "and transfer to the county-supported medicaid fund, if applicable" near the middle.

Holding special election on date for election on constitutional amendments. — If the county commissioners call, hold, conduct and canvass the special election in the manner provided by this section, the particular day for holding the said special election could be any day designated by the county commissioners. The fact that it was held on the same day as the election on the constitutional amendments would not be important so long as it was a special election designated for the purpose of voting on the issue of the special tax levy. 1955 Op. Att'y Gen. No. 55-6236.

Qualifications of electors. — There is no limitation in this particular provision of the statute which would require the electors to have paid property taxes or by veterans who are property owners. 1956 Op. Att'y Gen. No. 56-6492 (rendered under prior law).

Special levy cannot be placed on the tax rolls prior to a vote by the people, since the authority for placing such a tax on the roll is an election. Until this election is had there can be no levy. 1955 Op. Att'y Gen. No. 55-6220.

Levy for operation and maintenance of hospital leased to private corporation. — A tax could not be levied to maintain and operate a hospital that had been leased to a private corporation. 1958 Op. Att'y Gen. No. 58-225.

Funds from levy for one hospital not to be used for another. — Funds generated by a mill levy approved specifically for the operation of one hospital may not be used to construct another hospital. 1981 Op. Att'y Gen. No. 81-30.

4-48B-16. Validation of earlier elections.

All elections authorizing a mill levy assessment for hospital use which were held prior to the effective date of the Hospital Funding Act are declared valid for the use and purposes of that act, and such mill levy may be imposed and collected during the period of the authorization or any continuation thereof, and the funds may be expended in accordance with the provisions of that act. Any institution specifically named in any election is hereby deemed qualified as a county hospital or contracting hospital, as the case may be, and any authorization of the expenditure of public funds by a county hospital in any previous election is declared by the legislature to be authorization of expenditure of mill levy funds for a county hospital or contracting hospital under the provisions of the Hospital Funding Act.

History: 1978 Comp., § 4-48B-16, enacted by Laws 1981, ch. 83, § 16.

ANNOTATIONS

Funds to be expended for hospital named in mill levy election. — Counties which held a hospital mill levy election prior to the Hospital Funding Act are expressly authorized to expend public funds for the operation of a hospital specifically named in the election. 1981 Op. Att'y Gen. No. 81-30.

4-48B-17. Governing boards of county hospitals authorized to establish retirement plans and programs for employees of county hospitals.

The hospital governing board of a county hospital and regents of a state educational institution operating a county hospital under a contract approved by the state board of finance may establish retirement plans and programs for employees of a county hospital under their control. In establishing a retirement plan or program for county hospital employees, the governing board of the hospital may contract with private insurance companies. Any retirement benefits payable or paid to a county hospital employee resulting from a retirement plan or program authorized under this section are employee benefits and part of consideration for services rendered and are not donations to the employee.

History: 1953 Comp., § 15-48-15, enacted by Laws 1973, ch. 343, § 1; 1978 Comp., § 4-48-16, recompiled as § 4-48B-17 by Laws 1981, ch. 83, § 17; 1982, ch. 11, § 3.

ANNOTATIONS

Cross references. — For powers of hospital governing boards generally, *see* 4-48B-10 NMSA 1978.

For retirement of public employees generally, *see* 10-11-1 NMSA 1978 et seq.

4-48B-18. Hospital revenue bonds; authority to issue; pledge of revenues.

A. The counties agreeing jointly under Section 8 [9] [4-48B-9 NMSA 1978] of the Hospital Funding Act and the county or counties entering into an agreement with a municipality under Section 9 of the Hospital Funding Act may issue, separately, revenue bonds pursuant to that act for the purpose of constructing, purchasing, renovating, remodeling, equipping or re-equipping a county hospital and a jointly owned county-municipal hospital and the acquisition of land necessary therefor or any combination of the foregoing purposes.

B. The county or counties issuing revenue bonds pursuant to the Hospital Funding Act may pledge irrevocably all or a portion of the revenues derived from the operation of the county hospital or jointly owned county-municipal hospital and revenues derived

from the leasing of or other contractual arrangement for the operation of a county hospital or jointly owned county-municipal hospital for the payment of principal and interest on the revenue bonds.

History: 1978 Comp., § 4-48B-18, enacted by Laws 1981, ch. 83, § 18.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The reference to Section 8 of the Hospital Funding Act in Subsection A is seemingly incorrect. Section 9 of that act relates to joint agreements between counties for the construction and maintenance of hospitals. *See* 4-48B-9 NMSA 1978.

4-48B-19. 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.

History: 1978 Comp., § 4-48B-19, enacted by Laws 1981, ch. 83, § 19.

ANNOTATIONS

Constitutionality of use of bond proceeds. — Use of bond moneys for purchase of hospital site and for equipping the building was granted by implication under N.M. Const., art. IX, § 10. *Board of Cnty. Comm'rs v. McCulloh*, 1948-NMSC-028, 52 N.M. 210, 195 P.2d 1005 (decided under former 4-48-2 NMSA 1978).

4-48B-20. Revenue bonds; terms.

Hospital revenue bonds:

A. shall bear interest payable annually or semiannually and may or may not be evidenced by coupons; provided the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the option of the county at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by resolution;

C. may mature at any time not exceeding thirty 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 any other form as may be provided in the resolution authorizing the bonds;

E. shall be sold for cash at above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at a public or private sale.

History: 1978 Comp., § 4-48B-20, enacted by Laws 1981, ch. 83, § 20; 1983, ch. 265, § 18.

4-48B-21. Ordinance authorizing revenue bonds.

At a regular or special meeting called for the purpose of issuing revenue bonds as authorized pursuant to the Hospital Funding Act, the county commissioners may adopt an ordinance that:

A. declares the necessity for issuing revenue bonds;

B. authorizes the issuance of revenue bonds by an affirmative vote of a majority of the county commissioners of the county; and

C. designates the source of the pledge [pledged] revenues.

History: 1978 Comp., § 4-48B-21, enacted by Laws 1981, ch. 83, § 21.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-48B-22. Hospital revenue bonds not general county obligations.

Revenue bonds issued by a county under the authority of the Hospital Funding 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 all or a portion of the net revenues derived from the operation of the county hospital or jointly owned county-municipal hospital and revenues derived from the leasing of or other contractual arrangement for the operation of a county hospital or jointly owned county-municipal hospital for which the bonds are issued. Revenue bonds and interest coupons issued under authority of that act shall never constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and this fact shall be plainly stated on the face of each bond.

History: 1978 Comp., § 4-48B-22, enacted by Laws 1981, ch. 83, § 22.

4-48B-23. Revenue bonds; security; restrictions and limitations.

A. The principal of and interest on any revenue bonds issued under the authority of the Hospital Funding Act shall be secured by a pledge of the revenues out of which such bonds shall be payable and may be secured by a mortgage covering all or any part of the county hospital or jointly owned county-municipal hospital from which the revenues so pledged may be derived.

B. The ordinance and proceedings under which revenue 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 designation and collection of revenues from the county hospital or jointly owned county-municipal hospital covered by such proceedings or mortgage, the maintenance and insurance of these hospitals, the creation and maintenance of special funds derived from the revenues relating to such hospital, and the rights and remedies available in the event of default to the bondholders or to the trustee under a mortgage, all as the county commissioners shall deem advisable and as shall not be in conflict with the provisions of the Hospital Funding Act; provided, however, that in making any such agreements or provisions a county shall not have the power to obligate itself except with respect to the purposes for which the revenue bonds are issued and application of the revenues pledged from the operation of a county hospital or jointly owned county-municipal hospital and shall not have the power to incur a pecuniary liability or charge upon its general credit or against its taxing powers. The proceedings authorizing any revenue bonds and any mortgage securing those bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on the bonds or in the performance of any agreement. No breach of any agreement shall impose any pecuniary liability upon a county or any charge upon its general credit or against its taxing powers.

History: 1978 Comp., § 4-48B-23, enacted by Laws 1981, ch. 83, § 23.

4-48B-24. Revenue bonds; exemption from taxation.

The revenue bonds issued under authority of the Hospital Funding Act and the income from the bonds, all mortgages or other security instruments executed as security for the bonds, all agreement [agreements] made pursuant to the provisions of that act and the revenues derived therefrom by a county shall be exempt from all taxation by the state or any political subdivision thereof.

History: 1978 Comp., § 4-48B-24, enacted by Laws 1981, ch. 83, § 24.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-48B-25. Election not required.

The Hospital Funding Act shall not be construed as requiring an election by the voters of a county prior to the issuance of revenue bonds under that act by a county.

History: 1978 Comp., § 4-48B-25, enacted by Laws 1981, ch. 83, § 25.

4-48B-26. No notice or publication required.

No notice, consent or approval by any governmental body, commission or public officer shall be required as a prerequisite to the sale or issuance of any revenue bonds or the making of a mortgage under the authority of the Hospital Funding Act, except as provided in that act.

History: 1978 Comp., § 4-48B-26, enacted by Laws 1981, ch. 83, § 26.

4-48B-27. Hospitals declared necessary public buildings.

The legislature declares that hospitals are necessary public buildings with respect to which counties may borrow money for construction, purchase, renovation, remodeling, equipping or re-equipping and acquisition of necessary land.

History: 1978 Comp., § 4-48B-27, enacted by Laws 1981, ch. 83, § 27.

ANNOTATIONS

Cross references. — For power of county commissioners with respect to county buildings, *see* 4-38-16 NMSA 1978.

For other necessary public buildings, *see* 4-49-6 NMSA 1978.

4-48B-28. Agreements with the New Mexico hospital equipment loan council; authority; security; restrictions and limitations and other details.

A. A county or counties agreeing jointly under Section 4-48B-9 NMSA 1978 and a county or counties entering into an agreement with a municipality under Section 4-48B-9 NMSA 1978 may enter into a lease, loan or other financing agreement, with a term not exceeding thirty years from the date of execution, with the New Mexico hospital equipment loan council created under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978] to acquire funds for the construction, purchase, renovation, remodeling, equipping, reequipping or refinancing of a county hospital or a jointly owned county-municipal hospital, for purchasing the land necessary therefor and for refunding revenue bonds previously issued for any of the foregoing purposes or for any combination thereof.

B. The county or counties entering into an agreement with the New Mexico hospital equipment loan council may pledge irrevocably all or a portion of the revenues derived from the operation of the county hospital or jointly owned county-municipal hospital and revenues derived from the leasing of or other contractual arrangement for the operation of the county hospital or jointly owned county-municipal hospital for the payment of rentals, principal and interest and any other amount or obligation required under the lease, loan or other financing agreement with the New Mexico hospital equipment loan council.

C. At a regular or special meeting called for the purpose of approving the execution and delivery of a lease, loan or other financing agreement with the New Mexico hospital equipment loan council as authorized in this section, the hospital governing board may adopt a resolution or other proceedings declaring the necessity for entering into the lease, loan or other financing agreement with the New Mexico hospital equipment loan council; authorizing the entering into of the lease, loan or other financing agreement with the New Mexico hospital equipment loan council; and designating the source of the pledged revenues for the payment or repayment of rentals, principal and interest and any other amounts and obligations required under the lease, loan or other financing agreement with the New Mexico hospital equipment loan council.

D. The rentals, principal and interest and any other amounts and obligations owed under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council shall be payable solely out of all or a portion of the revenues derived from the ownership and operation of a county hospital or jointly owned county-municipal hospital and revenues derived from the leasing of or other contractual arrangement for the operation of a county hospital or jointly owned county-municipal hospital for which the lease, loan or other financing agreement with the New Mexico hospital equipment loan council is entered into. The amount and obligations under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council entered into under the authority of the Hospital Funding Act shall never constitute an indebtedness of a county or municipality 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 charge against its general credit or taxing power.

E. The rentals, principal and interest and any other amounts and obligations owed under a lease, loan or other financing agreement with the New Mexico hospital equipment loan council shall be secured by the pledge of the revenues out of which such rentals, principal and interest and any other amounts and obligations shall be payable and may be secured by a mortgage covering all or any part of the county hospital or jointly owned county-municipal hospital from which the revenues so pledged may be derived.

F. The resolution or proceedings under which the lease, loan or other financing agreement are authorized to be entered into or any mortgage relating thereto may contain any agreement and provisions customarily contained in instruments securing leases, loans or other financing arrangements including, without limiting the generality

of the foregoing, provisions respecting the designation and collection of the revenues from the county hospital or jointly owned county-municipal hospital covered by such proceedings or mortgage, the maintenance and insurance of those hospitals, the creation and maintenance of special funds derived from the revenues relating to such hospital and the rights and remedies available in event of default to the New Mexico hospital equipment loan council under a mortgage, all as the hospital governing board may deem advisable. The resolution or proceedings authorizing any lease, loan or other financing agreement and any mortgage securing those obligations may provide the procedure and remedies in the event of default and the payment of the rentals, principal and interest or other amounts and obligations thereunder or in the performance of any agreement. No breach of any agreement shall impose any pecuniary liability upon a county or charge against its general credit or taxing power.

G. No notice, consent or approval by any governmental body, commission or public officer shall be required as a prerequisite to the entering into of a lease, loan or other financing agreement with the New Mexico hospital equipment loan council or the making of a mortgage under the authority of the Hospital Funding Act, except as provided in this section.

History: 1978 Comp., § 4-48B-26.1, enacted by Laws 1987, ch. 49, § 9; 1992, ch. 41, § 4.

ANNOTATIONS

Compiler's notes. — This section was enacted as § 4-48B-26.1 by Laws 1987, ch. 49, § 9, but was recompiled as § 4-48B-28 NMSA 1978.

The 1992 amendment, effective May 20, 1992, made minor stylistic changes in the section catchline and throughout the section; inserted "or refinancing" and "and for refunding revenue bonds previously issued" near the end of Subsection A; substituted "a resolution or other proceedings" for "an ordinance or resolution" near the middle of Subsection C; and, in Subsection F, substituted "resolution or proceedings" for "resolution, ordinance and proceedings" near the beginning of the first sentence and substituted "hospital governing board" for "county commissioners" near the end of that sentence, and inserted "resolution or" near the beginning of the second sentence.

4-48B-29. Refunding revenue bonds.

The county commissioners may issue refunding bonds for the purpose of refunding any of the revenue bonds issued under the Hospital Funding Act. The board shall adopt an ordinance or resolution stating the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the county commissioners and the amount of refunding bonds that the county commissioners conclude as necessary and advisable to issue. The ordinance or resolution shall establish the form of the bonds; the rate or rates of interest of the bonds, provided the net effective interest rate of the bonds shall not exceed the maximum net effective

interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than thirty years from the date of the refunding bonds; and the place or places of payment of both principal and interest either within or outside of the state. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, bear the signature or the facsimile signature of the chairman of the board of county commissioners, bear the seal of the county and be attested by the clerk of the county. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold at a public or private sale as directed by the county commissioners. The proceeds of the sale shall be applied only to the purpose for which the refunding bonds were issued, including but not limited to establishment and funding of an escrow with a bank or trust company from which the refunded bonds may be paid and the payment of any expenses incidental thereto.

History: 1978 Comp., § 4-48B-29, enacted by Laws 1992, ch. 41, § 5.

ARTICLE 49
Bonds for Courthouses, Jails, Bridges, Hospitals and Libraries

4-49-1. Bonds for remodeling and making additions.

Bonds may be issued under the provisions of Sections 4-49-1 through 4-49-21 NMSA 1978 for the purpose of remodeling and making additions to necessary public buildings and for water, sewer or sanitary landfill systems and airports under the same conditions as provided for issuance of bonds for constructing them. Provided, however, that no money derived from general obligation bonds issued and sold under the provisions of Sections 4-49-1 through 4-49-21 NMSA 1978 shall be used for maintaining existing buildings, and, if used for that purpose, the bonds shall be invalid.

History: 1953 Comp., § 15-49-2.1, enacted by Laws 1963, ch. 246, § 1; 1983, ch. 184, § 1.

ANNOTATIONS

Cross references. — For provisions relating to form, interest, maturities, payment, sale and other matters relating to general obligation bonds issued by counties, *see* 6-15-3 NMSA 1978 et seq.

Extent of bond issues limited. — A county may borrow money through the issuance of general obligation bonds only to the extent authorized by law or necessarily implied therefrom. 1980 Op. Att'y Gen. No. 80-02.

Proper expenditures from bond proceeds. — In addition to actual construction-related costs, the proceeds of general obligation bond issues of a county may be expended only for the purchase of the construction site and for equipment which becomes an integral part of the building being constructed (i.e., fixtures) or which is of a permanent or nondepletable nature and reasonably necessary to the use of the building for its intended purpose (e.g., beds, mattresses and other permanent furnishings). 1980 Op. Att'y Gen. No. 80-02.

4-49-2. [Location of county hospitals; approval of the department of health.]

The county hospital or hospitals constructed pursuant to the provisions of this act [4-49-2, 4-49-3, 4-49-8 NMSA 1978] shall be situated in the county in such manner as to make hospital service reasonably accessible to all persons in the county, as determined by the county commissioners in each county, subject to the approval of the director of the state department of public health [secretary of health].

History: 1941 Comp., § 15-4618, enacted by Laws 1947, ch. 20, § 4; 1953 Comp., § 15-49-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978 and enacted a new 9-7-4 NMSA 1978, relating to the department of health. Laws 1991, ch. 25, § 17 amended 9-7-5 NMSA 1978 to provide that the administrative head of the department of health is the secretary of health.

Compiler's notes. — The powers, duties and property of the former state departments of public health and public welfare and the state department of public health and welfare were transferred to the "health and social services department" by Laws 1968, ch. 37, § 3.

Cross references. — For power of counties to construct, purchase, own, maintain and operate hospitals generally, *see* 4-48B-5 NMSA 1978.

4-49-3. [Two or more counties joining in construction of county hospital; bonds.]

If two or more counties shall, through their respective boards of county commissioners, deem it advisable to construct one hospital or isolation ward for the benefit jointly of such counties, the said counties jointly shall have the powers and authorities in this act [4-49-2, 4-49-3, 4-49-8 NMSA 1978] granted to any individual county, and any bonds so issued shall be bonds of the respective counties issued according to the proportions of their populations as shown in the last census, and such

hospital and [or] isolation ward may be located at any point in any of the counties as may be determined by agreement of the boards of county commissioners.

History: 1941 Comp., § 15-4619, enacted by Laws 1947, ch. 20, § 5; 1953 Comp., § 15-49-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For joint county-municipal hospitals, *see* 3-44-1 NMSA 1978 et seq.

4-49-4. Bonds for courthouses, jails and bridges.

The bonds authorized in Chapter 4, Article 49 NMSA 1978 to be issued shall be in such form and shall be payable at such place or places as the board of county commissioners may direct, with interest payable semiannually at the same place or places where the principal is made payable. The bonds, except for bonds issued in book entry or similar form without the delivery of physical securities, shall bear the seal of the county issuing them and shall be signed by the chairman of the board of county commissioners and attested by the county clerk.

History: Laws 1891, ch. 83, § 2; C.L. 1897, § 350; Code 1915, § 1157; C.S. 1929, § 33-3902; 1941 Comp., § 15-4602; 1953 Comp., § 15-49-5; 1983, ch. 265, § 19.

ANNOTATIONS

Cross references. — For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

4-49-5. [Election necessary.]

That before any bonds shall be issued under this article, the same shall be ordered by a vote of the qualified electors of such county, in the same manner hereinafter provided.

History: Laws 1891, ch. 83, § 3; C.L. 1897, § 351; Code 1915, § 1158; C.S. 1929, § 33-3903; 1941 Comp., § 15-4603; 1953 Comp., § 15-49-6.

ANNOTATIONS

Cross references. — For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

4-49-6. Legislative declaration; necessary public buildings and public projects.

The legislature declares that courthouses, jails, bridges, hospitals, public libraries, facilities for the holding of county fairs, cultural facilities, juvenile detention homes, athletic facilities, parking structures, administrative facilities, facilities for housing equipment, repairing equipment and servicing equipment and sewerage facilities are necessary public buildings, and the purchase of books or other library resources, construction or repair of public roads, construction and acquisition of water, sewer or sanitary landfill systems and airports are necessary public projects.

History: 1953 Comp., § 15-49-6.1, enacted by Laws 1973, ch. 400, § 1; 1975, ch. 84, § 1; 1976, ch. 42, § 1; 1979, ch. 137, § 1; 1983, ch. 184, § 2; 1985, ch. 50, § 1; 1991, ch. 89, § 1.

ANNOTATIONS

Cross references. — For hospital funding, *see* 4-48B-1 NMSA 1978 et seq.

For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

For bonds for juvenile detention homes, *see* 33-6-1, 33-6-2 NMSA 1978.

The 1991 amendment, effective June 14, 1991, inserted "the purchase of books or other library resources" near the end of the section and made a minor stylistic change.

Proper expenditures from bond proceeds. — In addition to actual construction-related costs, the proceeds of general obligation bond issues of a county may be expended only for the purchase of the construction site and for equipment which becomes an integral part of the building being constructed (i.e., fixtures) or which is of a permanent or nondepletable nature and reasonably necessary to the use of the building for its intended purpose (e.g., beds, mattresses and other permanent furnishings). 1980 Op. Att'y Gen. No. 80-02.

4-49-7. General obligation bonds; authority to issue.

The boards of county commissioners may issue the general obligation bonds of the county in any sum necessary, not greater than four percent, inclusive of all other bonded indebtedness, of the assessed value of the taxable property of the county, for the purpose of building courthouses, jails, bridges, hospitals, public libraries, facilities for the holding of county fairs, cultural facilities, purchasing books or other library resources, building juvenile detention homes, athletic facilities, parking structures, administrative facilities, facilities for housing equipment, repairing equipment and

servicing equipment and sewerage facilities, constructing or repairing public roads and for construction and acquisition of water, sewer or sanitary landfill systems and airports.

History: 1953 Comp., § 15-49-6.2, enacted by Laws 1973, ch. 400, § 2; 1975, ch. 84, § 2; 1976, ch. 42, § 2; 1979, ch. 137, § 2; 1983, ch. 184, § 3; 1985, ch. 50, § 2; 1991, ch. 89, § 2.

ANNOTATIONS

Cross references. — For hospital funding, *see* 4-48B-1 NMSA 1978 et seq.

For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

For bonds for juvenile detention homes, *see* 33-6-1, 33-6-2 NMSA 1978.

The 1991 amendment, effective June 14, 1991, inserted "purchasing books or other library resources, building" near the middle of the section.

Proper expenditures from bond proceeds. — In addition to actual construction-related costs, the proceeds of general obligation bond issues of a county may be expended only for the purchase of the construction site and for equipment which becomes an integral part of the building being constructed (i.e., fixtures) or which is of a permanent or nondepletable nature and reasonably necessary to the use of the building for its intended purpose (e.g., beds, mattresses and other permanent furnishings). 1980 Op. Att'y Gen. No. 80-02.

4-49-8. Election on bond question; petition; notice; election without petition.

A. Whenever a petition signed by not less than two hundred qualified electors of any county in this state is presented to the board of county commissioners asking that a vote be taken on the question or proposition of building, remodeling or making additions to necessary public buildings or necessary public projects, setting forth in general terms the object of the petition and the amount of bonds asked to be voted for, the board of county commissioners of the county to which the petition is presented shall, within ten days after the presentation, call an election to be held within sixty days thereafter in the county. Except as provided in Chapter 4, Article 49 NMSA 1978, such elections shall be held and conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. After the defeat of any proposition once voted for, a second special election upon any question or proposition under the provisions of Chapter 4, Article 49 NMSA 1978 shall not be held for a term of two years unless a petition requesting another election, containing the names of qualified electors of the county equal to ten percent of the votes cast for governor in the last preceding election and otherwise conforming to the requirements of this section, is presented to the board of county commissioners;

provided, however, that in no event shall more than two elections upon any proposition or question under Chapter 4, Article 49 NMSA 1978 be held in any term of two years. A bond election as provided in this section may also be called by the board of county commissioners, without any petition, after the board has adopted a resolution calling such an election, which resolution shall set forth the object of the election and the amount of bonds to be issued.

History: Laws 1891, ch. 83, § 4; C.L. 1897, § 352; Code 1915, § 1159; C.S. 1929, § 33-3904; Laws 1937, ch. 52, § 1; 1941 Comp., § 15-4604; Laws 1947, ch. 20, § 3; 1951, ch. 83, § 3; 1953 Comp., § 15-49-7; Laws 1959, ch. 234, § 1; 1985, ch. 50, § 3; 2018, ch. 79, § 72.

ANNOTATIONS

Cross references. — For requirement of holding of elections generally, *see* 4-49-5 NMSA 1978.

For conduct of general elections, *see* 1-1-1 NMSA 1978 et seq.

For publication of notice, *see* 14-11-1 NMSA 1978 et seq.

The 2018 amendment, effective July 1, 2018, provided that bond elections on the question or proposition of building, remodeling or making additions to necessary public buildings or necessary public projects shall be held and conducted pursuant to the provisions of the Local Election Act, and made technical and conforming changes; added subsection designation "A."; in Subsection A, after "to be voted for", deleted "it shall be the duty of", after "to which the petition", deleted "may be" and added "is", after "presented", added "shall", after "in the county.", deleted "The board shall give notice of the election by publication once a week for at least three consecutive weeks in any newspapers published in the county, which notices shall set forth the time and place of holding the election, the necessary public building or necessary public project proposed and which bonds are to be voted for.", and after "held and conducted", deleted "in the same manner as general elections, including recount and contest, and the board of county commissioners shall certify and declare on the records of the county the returns of the election" and added "pursuant to the provisions of the Local Election Act."; and added subsection designation "B.".

Requirements as to voting on multiple propositions. — Petition filed under this section, asking that a vote be taken upon two bond issues, designated separately, did not authorize submission by ballot as a joint proposition, and an election at which the ballot submitted a single proposition, for or against, "courthouse and jail bonds," was null and void. *Dickinson v. Board of Comm'rs*, 1929-NMSC-077, 34 N.M. 337, 281 P. 33, explained in *White v. Bd. of Educ*., 1938-NMSC-009, 42 N.M. 94, 75 P.2d 712.

Bond election after defeat at special election. — Board of county commissioners may, by resolution, and without petition, call for a bond election within two years after

the same proposition has been defeated in a special election if the resolution calls for the bond election to be held at a general election. 1962 Op. Att'y Gen. No. 62-122.

Required publication of notice. — Publication of the notice of election for three consecutive weeks is required, though the election may be held the day following the last publication when notice of publication so declares. 1941 Op. Att'y Gen. No. 41-3755.

Postponement of election. — The board of county commissioners would not be justified in postponing an election on a bond issue for a juvenile detention home until the next primary election on the grounds of shortage of funds to conduct such an election at the present time. 1961 Op. Att'y Gen. No. 61-114.

4-49-9. [Second petition; procedure.]

In the event that a second petition is filed, the procedure for the calling of such election, for giving notice thereof and for all other procedure requirements, shall be the same as if no other petition had been filed.

History: Laws 1937, ch. 52, § 2; 1941 Comp., § 15-4605; 1953 Comp., § 15-49-8.

4-49-10. [Conduct of election.]

All such elections as herein provided for shall be held at the usual place of voting in such county, and shall be conducted by the officers or persons provided by law for the holding of ordinary or general elections in any such county, such election to be in all respects governed by, and the result declared according to, the rules and regulations provided by law for holding ordinary or general elections.

History: Laws 1891, ch. 83, § 5; C.L. 1897, § 353; Code 1915, § 1160; C.S. 1929, § 33-3905; 1941 Comp., § 15-4606; 1953 Comp., § 15-49-9.

ANNOTATIONS

Cross references. — For conduct of general elections, *see* 1-1-1 NMSA 1978 et seq.

Holding of bond election and regular election at same time. — The submission of the proposition of the issuance of county bonds for a courthouse may be at the same time as the regular election if 4-49-8 NMSA 1978 is complied with in the matter of published notice. 1919 Op. Att'y Gen. No. 19-2347.

4-49-11. [Ballots.]

The vote at all such elections shall be by ballot, on tickets or ballots having written or printed words, "For courthouse bonds," or "Against," [or] any other work of improvement for which bonds are to be voted, as the case may be.

History: Laws 1891, ch. 83, § 6; C.L. 1897, § 354; Code 1915, § 1161; C.S. 1929, § 33-3906; 1941 Comp., § 15-4607; 1953 Comp., § 15-49-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Necessity for statement in election notice or ballot as to location of proposed building. — No language in the statutes specifically requires that the exact proposed location of a proposed jail be stated either in the election notice or in the ballot form, even if such a place be designated in the petition. 1951 Op. Att'y Gen. No. 51-5402.

Numbers on ballots. — It is not necessary that ballots used in courthouse bond election have a concealed number. 1938 Op. Att'y Gen. No. 38-2013.

4-49-12. [Qualifications of voters.]

All qualified electors under the laws of this state who are property taxpayers shall be entitled to vote at all elections provided by this article.

History: Laws 1891, ch. 83, § 7; C.L. 1897, § 355; Code 1915, § 1162; C.S. 1929, § 33-3907; 1941 Comp., § 15-4608; 1953 Comp., § 15-49-11.

ANNOTATIONS

Cross references. — For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

Compiler's notes. — The restriction by this section of the right to vote in bond elections to property owners appears to be unconstitutional under the rationale of the decision in Bd. of Educ. v. Maloney, 82 N.M. 167, 477 P.2d 605 (1970). *See also* N.M. Const., art. IX, § 10.

Persons entitled to vote at elections. — Petitions may be signed by any qualified electors of the county though only property owners may vote on the proposition in view of N.M. Const., art. IX, § 10. 1941 Op. Att'y Gen. No. 41-3755

Members of a firm or a corporation whose individual names do not appear on the tax rolls, or where it is not shown that certain individual members have paid property taxes, are not entitled to vote in bond election for a courthouse and jail. 1938 Op. Att'y Gen. No. 38-2041.

Ex-soldiers who have completely used up their exemption are not entitled to vote for a bond election for a courthouse and jail, unless they have actually paid property taxes

during the preceding year. 1938 Op. Att'y Gen. No. 38-2013; 1938 Op. Att'y Gen. No. 38-2041.

In a bond election for a courthouse and jail, the petition must be signed by not less than 200 qualified electors of the county who may not be taxpayers, but the voters at such election must have paid a property tax the preceding year. 1938 Op. Att'y Gen. No. 38-2013; 1938 Op. Att'y Gen. No. 38-2041.

Persons who pay no tax are not entitled to vote at a county bond election by reason of their having purchased an automobile license plate because, while it may be in lieu of a property tax, it is not a property tax, and the proceeds, so far as the county is concerned, go to the road fund and not to payment of the county bonded indebtedness. 1939 Op. Att'y Gen. No. 39-3240 (rendered prior to amendment of N.M. Const. art. IX, § 10).

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

4-49-13. [Stream on county boundary; bridge bonds.]

When any two counties are separated by a stream of water, and it is desired to bridge such stream, such counties may join in the construction of the same, and the county commissioners of the aforesaid counties shall determine the proportionate share of bonds to be issued by each, and each county shall bear its proportionate share and expense of cost of constructing and maintaining said bridge, and if the same be a toll bridge, shall receive a proportionate share of tolls collected therefrom: provided, that each county shall vote separately on the issue of the bonds.

History: Laws 1891, ch. 83, § 8; C.L. 1897, § 356; Code 1915, § 1163; C.S. 1929, § 33-3908; 1941 Comp., § 15-4609; 1953 Comp., § 15-49-12.

4-49-14. [Vote for issuance; notice of bids; proposals; place of construction.]

If the majority of the legal votes cast at any such election herein provided for shall be in favor of the proposition voted for the issuing of bonds, then the county commissioners of such county, if the proposition be for the building of a courthouse or jail or bridge for which bonds were voted, shall without delay give notice in some newspaper of general circulation published in such county, not exceeding thirty days, that sealed proposals will be received until a certain hour in a certain day named in such notice, not to exceed thirty days thereafter, for the building of such courthouse, or jail, or bridge, as the case may be, which notice shall set forth the location of the proposed courthouse or jail or bridge with such particularity of details that an inspection of the premises may be had without difficulty.

Proposals for the building of any such courthouse or jail or bridge, if notices have not been given by the county commissioners of such county that such proposals shall be for the building of such courthouse or jail or bridge, in accordance with the plans and specifications on file in the possession of said county commissioners, such proposals shall be accompanied with complete plans and specifications of the same, the price to be charged therefor in the bonds of the county at par value, or for cash, together with a bond of undertaking, with good and sufficient security double the amount of the proposed cost thereof, conditioned for the faithful execution of the work proposed and the carrying into effect of any contract made in reference thereto. The board of county commissioners are [is] hereby authorized to build courthouses, jails and bridges, in the place designated by the petitioners, if the majority of the voters so decide, and in no other place.

History: Laws 1891, ch. 83, § 9; C.L. 1897, § 357; Code 1915, § 1164; C.S. 1929, § 33-3909; 1941 Comp., § 15-4610; 1953 Comp., § 15-49-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For public works generally, *see* 13-4-1 NMSA 1978 et seq.

For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-49-15. [Contracts authorized.]

The said county commissioners of any county are hereby fully authorized and empowered to enter into any and all contracts necessary to carry into effect the provisions of this article.

History: Laws 1891, ch. 83, § 10; C.L. 1897, § 358; Code 1915, § 1165; C.S. 1929, § 33-3910; 1941 Comp., § 15-4611; 1953 Comp., § 15-49-14.

4-49-16. [Registration of bonds.]

The county commissioners of any county issuing such bonds shall make a registration thereof in a book to be kept for that purpose, showing the date, amount, number [and] maturity of such bonds, and if issued for the building of a courthouse or a jail or a bridge, what bridge or other work of internal improvement.

History: Laws 1891, ch. 83, § 11; C.L. 1897, § 359; Code 1915, § 1166; C.S. 1929, § 33-3911; 1941 Comp., § 15-4612; 1953 Comp., § 15-49-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-49-17. [Tax levy for payment of bonds.]

It shall be the duty of the board of county commissioners to ascertain from the assessment books of the county the amount of assessed taxable property in each county having issued bonds, and what percentage thereof is required to be levied to pay said amount, and when so ascertained, shall levy such percentage upon the taxable property of such county (to pay the interest and create a sinking fund for the final redemption of such bonds: provided, that there shall be no levy made for the payment of the principal of such bonds until ten years after their issue) as may be responsible for such bonds, and shall place the same upon the tax books and lists of the county in a separate column or columns designating the purpose for which said tax is levied upon any particular county, and said tax shall be accordingly collected by the treasurer of such county in the same manner that other taxes are collected.

History: Laws 1891, ch. 83, § 12; C.L. 1897, § 360; Code 1915, § 1167; C.S. 1929, § 33-3912; 1941 Comp., § 15-4613; 1953 Comp., § 15-49-16.

ANNOTATIONS

Cross references. — For restrictions on county indebtedness, *see* N.M. Const., art. IX, § 10.

4-49-18. [Taxes to be paid in cash; use for specified purpose.]

All taxes for interest on and for the redemption of such bonds shall be paid only in cash, and shall be kept by the county treasurer as a special fund, to be used for the payment of interest on and for the redemption of such bonds only.

History: Laws 1891, ch. 83, § 13; C.L. 1897, § 361; Code 1915, § 1168; C.S. 1929, § 33-3913; 1941 Comp., § 15-4614; 1953 Comp., § 15-49-17.

4-49-19. [Redemption; notice; cancellation.]

It shall be the duty of the county treasurer to keep the interest and sinking fund account of the county separate and distinct, and when there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and interest of any such bonds issued under this article by any such county, to immediately call in and pay as many of such bonds, with accrued interest thereon, as such funds in hand will liquidate, as hereinbefore provided. Such bonds shall be paid in the order of their number, and when it is desired to redeem any of such bonds the county treasurer shall cause to be published for thirty days in some newspaper at or nearest the county seat, a notice stating that certain county bonds by numbers and amounts will be paid on presentation, and that at the expiration of thirty days such bonds will cease to bear

interest, and when any bonds or coupons issued under this article are redeemed, it shall be the duty of such treasurer to certify his action to the board of county commissioners, who shall cancel the bonds by punching holes through all the signatures of the bonds and coupons, so that they can be plainly identified, and cause record to be made of the same.

History: Laws 1891, ch. 83, § 14; C.L. 1897, § 362; Code 1915, § 1169; C.S. 1929, § 33-3914; 1941 Comp., § 15-4615; 1953 Comp., § 15-49-18.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-49-20. [Use of funds for specific purpose; misapplication; penalty.]

No bonds issued under this article, nor the proceeds thereof, shall be used for any other purpose than that for which they were issued. Any officer who shall apply the same to any other purpose shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than double the amount of the bonds so misapplied, and imprisoned not less than one year: provided, that the proceeds of such bonds may be applied for the redemption of the same.

History: Laws 1891, ch. 83, § 15; C.L. 1897, § 363; Code 1915, § 1170; C.S. 1929, § 33-3915; 1941 Comp., § 15-4616; 1953 Comp., § 15-49-19.

ANNOTATIONS

Cross references. — For purposes for which bonds issued, *see* 4-49-1 NMSA 1978.

Interest from investments deemed part of proceeds. — General obligation bonds were issued by the county for the specific purpose of constructing and equipping a county detention facility. This is the purpose for which the voters approved the bonds. The interest from the investment of the proceeds may not be used for the construction of a juvenile detention home. *State ex rel. Bd. of Cnty. Comm'rs v. Montoya*, 1978-NMSC-013, 91 N.M. 421, 575 P.2d 605.

4-49-21. [Failure to levy tax; mandamus.]

If for any cause the board of county commissioners or county clerk, or other authority of any county who is by law charged with the levying of taxes or placing the same upon the tax books, shall fail or neglect to make such levy or place the same in the tax books at the time herein provided, the holder or holders of any such bonds or coupons shall have the right by mandamus to compel the levy and collection of such taxes or the placing of the same on the said tax book. The writ of mandamus herein

provided for may be granted either in term time or vacation, and the necessary jurisdiction for that purpose is hereby conferred.

History: Laws 1891, ch. 83, § 16; C.L. 1897, § 364; Code 1915, § 1171; C.S. 1929, § 33-3916; 1941 Comp., § 15-4617; 1953 Comp., § 15-49-20.

ANNOTATIONS

Cross references. — For mandamus generally, *see* 44-2-1 NMSA 1978.

ARTICLE 50
Flood Control

4-50-1. County flood commissioner; appointment; salary.

Subject to the approval of the board of county commissioners, there is created the office of county flood commissioner in each county through which runs any river or stream which is subject to flood conditions destructive to property or dangerous to human life. County flood commissioners shall be appointed by the governor to serve for a term of two years, or until their successors are appointed and qualify, and they shall each receive a salary of one dollar ($1.00) a year payable from the county flood fund.

History: Laws 1921, ch. 163, § 1; C.S. 1929, § 33-5001; 1941 Comp., § 15-4701; 1953 Comp., § 15-50-1; Laws 1967, ch. 238, § 8.

ANNOTATIONS

Cross references. — For powers relating to flood and mud-slide hazard areas, *see* 3-18-7 NMSA 1978.

For flood control in municipalities, *see* 3-41-1 NMSA 1978 et seq.

For disaster relief emergency funds, *see* 6-7-1 to 6-7-3 NMSA 1978.

For oath and bond of county officers, *see* 10-1-13 NMSA 1978.

For the Arroyo Flood Control Act, *see* 72-16-1 NMSA 1978 et seq.

For the Las Cruces Arroyo Flood Control Act, *see* 72-17-1 NMSA 1978 et seq.

For the Flood Control District Act, *see* 72-18-1 NMSA 1978 et seq.

For the Southern Sandoval County Arroyo Flood Control Act, *see* 72-19-1 NMSA 1978 et seq.

Appointment of commissioner. — Appointment of a county flood commissioner is not subject to the approval of the county commissioners. The sole authority of the county commissioners in this regard is to approve the establishment of the office of county flood commissioner. Once such commissioners have exercised their discretion in approving the establishment of such an office, the sole power of appointment of a person to such office is then vested with the governor. 1960 Op. Att'y Gen. No. 60-134.

Cooperation with cities and federal government proper. — A county and a city can enter into an agreement to cooperate in sponsoring a flood control project, and counties and cities can cooperate with the federal government and seek aid under the Watershed Protection and Flood Prevention Act (16 U.S.C. § 1001 et seq.). 1963 Op. Att'y Gen. No. 63-82 (opinion rendered under former law).

Law reviews. — For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of municipality or other governmental subdivision in connection with flood-protection measures. 5 A.L.R.2d 57.

52A C.J.S. Levees and Flood Control § 21.

4-50-2. Tax levy; county flood fund; authority to borrow.

A board of county commissioners, upon certification of the need and estimated cost by the county flood commissioner, may contract to borrow funds through state or federal agencies or through the New Mexico finance authority for flood control purposes and may levy an annual tax at a rate not to exceed one dollar fifty cents ($1.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax imposed under this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life. Such taxes shall be levied and collected for the purpose of creating a fund which shall be used to construct and maintain dikes, dams, embankments, ditches or such other structures or excavations necessary to prevent flood waters from damaging property or human life within such counties or to repay, according to their terms, any state or federal loans obtained for flood control purposes. Such tax shall be assessed, levied and collected as other taxes are collected and when so collected shall be known as the "county flood fund", and such fund shall be maintained in such a manner as to keep separate records of all flood control taxes collected from each stream or river drainage area. The taxes collected shall only be used and disbursed for flood control projects in the drainage area for which they were assessed in accordance with the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 and shall not be transferred to any other fund or purpose.

History: Laws 1921, ch. 163, § 2; C.S. 1929, § 33-5002; 1941 Comp., § 15-4702; 1953 Comp., § 15-50-2; Laws 1969, ch. 72, § 1; 1986, ch. 32, § 4; 1997, ch. 79, § 1.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, inserted "or through the New Mexico finance authority" in the first sentence.

Property subject to taxation. — Steam production equipment, consisting of turbines, boilers, pumps and fans, was real estate for taxation purposes where the utility company installed and maintained such equipment on special foundations, could not foresee moving it because of its huge size and weight and such equipment was the very heart of the company's business. *In re Southwestern Pub. Serv. Co*., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

Electric transmission and distribution substation equipment, consisting of transformers, switches and circuit breakers, was not real estate for taxation purposes since it was readily portable and had very little, if any, annexation or adaptation. *In re Southwestern Pub. Serv. Co*., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

Electric transmission lines, poles, line transformers, meters and such equipment frequently located on easements and public rights-of-way were not real estate for taxation purposes since they were changed or relocated frequently and were located on unowned land. *In re Southwestern Pub. Serv. Co*., 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

Use of fund. — Money from the county flood fund may be used to prevent future damage from floods. 1922 Op. Att'y Gen. No. 22-3270.

County construction within city limits. — Sandoval County could use county flood funds to construct flood control structures located within the county and within the drainage area as set forth in this section, when necessary to prevent flood waters from rivers or streams from damaging life and property, even if the structures lay within the Rio Rancho city limits. 1988 Op. Att'y Gen. No. 88-30.

Prohibited use of funds. — County funds raised by special tax for specific purposes are not subject to transfer to pay salaries of county officers. 1933 Op. Att'y Gen. No. 33-631.

4-50-3. Inspection of rivers; construction of works; personnel; contracts for financing.

County flood commissioners may inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life

and property in their counties against loss and damage. County flood commissioners may employ engineering and other personnel, directly supervise or contract for the construction and maintenance of flood control works and do all other acts necessary to carry into effect the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978. If the money in the county flood fund is insufficient to finance flood control projects and provide for maintenance, the board of county commissioners, upon the recommendation of the county flood commissioner, may contract with any federal or state agency for grants or loans for the purpose of construction and maintenance of dikes, dams, embankments, ditches and other structures and excavations. Any contract for borrowing funds from state or federal agencies may provide that annual installments of principal and interest on the debt shall be paid out of the appropriate account within the county flood fund. The provisions of Sections 6-6-11 through 6-6-18 NMSA 1978 shall not apply to contracts entered into with state or federal agencies for flood control projects under the provisions of this section.

History: Laws 1921, ch. 163, § 3; C.S. 1929, § 33-5003; 1941 Comp., § 15-4703; 1953 Comp., § 15-50-3; Laws 1969, ch. 72, § 2.

ANNOTATIONS

Cross references. — For limitation upon and payment of indebtedness and expenses, *see* 4-50-6 NMSA 1978.

For county debt limit, *see* N.M. Const., art. IX, § 13.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

Powers of commissioners as to employment of personnel. — The county flood commissioner may do all acts necessary to carry into effect the terms of 4-50-1 to 4-50-9 NMSA 1978 and if employment of an attorney or an engineer or others for varied purposes to initiate or to carry through a program of flood control is reasonably necessary, such employment is authorized. 1952 Op. Att'y Gen. No. 52-5535.

Power of commissioners to incur long-term indebtedness. — There is no prohibition against county flood commissioners incurring a long-term indebtedness for flood control purposes if such contract is entered into in good faith and pursuant to the county flood commissioners' statutory powers. 1968 Op. Att'y Gen. No. 68-78.

So long as the county flood commissioners do not bind the county in a long-term lease under this section, to a debt for which the installment due during any one year cannot be paid in that year, the debt is binding and does not violate 4-50-6 NMSA 1978. 1968 Op. Att'y Gen. No. 68-78.

4-50-4. [Entry upon lands; damages; interference; misdemeanor; objections.]

Such county flood commissioners, their agents and employes [employees] shall have free and unobstructed ingress and egress to any and all lands and premises where such ingress and egress are necessary to the performance of the duties by this act [4-50-1 to 4-50-9 NMSA 1978] imposed, and shall not be liable for damages because of any such entry, except for wanton and malicious injury, and any person or persons obstructing such ingress or egress shall, upon conviction thereof, be found guilty of a misdemeanor. Provided, however, that no such dikes, embankments, dams and ditches, or other structures or excavations shall be constructed, built or maintained where written objection to such construction, building and maintaining are filed by the state engineer with any commissioner in charge thereof, and except in the manner as, after such objection, shall be approved by said state engineer.

History: Laws 1921, ch. 163, § 4; C.S. 1929, § 33-5004; 1941 Comp., § 15-4704; 1953 Comp., § 15-50-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For state engineer generally, *see* 72-2-1 NMSA 1978 et seq.

4-50-5. Condemnation of property.

The county flood commissioners shall have the power to condemn property for the purpose of carrying Sections 4-50-1 through 4-50-17 NMSA 1978 into effect, upon petition to the district courts, and in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: Laws 1921, ch. 163, § 5; C.S. 1929, § 33-5005; 1941 Comp., § 15-4705; 1953 Comp., § 15-50-5; 1981, ch. 125, § 44.

ANNOTATIONS

Cross references. — For eminent domain and condemnation generally, *see* N.M. Const., art. II, § 20, and 42A-1-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27 Am. Jur. 2d Eminent Domain § 81.

4-50-6. Limit on indebtedness; payment of expenses.

A. No expense or indebtedness shall be incurred by any county flood commissioner in excess of the amount of any annual levy, excepting where there may be remaining on hand funds arising from previous similar levies; provided, however, that where a board

of county commissioners, upon the recommendation of the county flood commissioner, contracts to borrow funds from a state or federal agency or from the New Mexico finance authority for flood control projects and pledges the proceeds of the annual levies for their repayment, the amount which may be borrowed shall be limited by the terms of repayment so that no annual installment of principal and interest shall exceed eighty percent of the amount produced by the annual levy in the year preceding the signing of the loan agreement.

B. All expenses and indebtedness incurred by any county flood commissioner under the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 shall be subject to the approval of the board of county commissioners. Upon the approval of the board, the expenses and indebtedness incurred shall be paid upon warrant drawn by the board of county commissioners, upon the filing by the county flood commissioner of vouchers for the expenditures and indebtedness with the board of county commissioners. The warrants shall be paid by the county treasurer out of the appropriate separate account within the county flood fund. The county clerk shall file and keep a record of all vouchers filed with the board of county commissioners by the county flood commissioner.

History: Laws 1921, ch. 163, § 6; C.S. 1929, § 33-5006; 1941 Comp., § 15-4706; 1953 Comp., § 15-50-6; Laws 1961, ch. 72, § 1; 1969, ch. 72, § 3; 1997, ch. 79, § 2.

ANNOTATIONS

Cross references. — For power of commissioners to contract for financing, *see* 4-50-3 NMSA 1978.

For county debt limit, *see* N.M. Const., art. IX, § 13.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

For powers of flood commissioners to incur long-term indebtedness, *see* notes under 4-50-3 NMSA 1978.

The 1997 amendment, effective June 20, 1997, in Subsection A, inserted "or from the New Mexico finance authority" near the middle and, in Subsection B, substituted "4-50-1 through 4-50-9 NMSA 1978" for "15-50-1 through 15-50-9 NMSA 1953" in the first sentence and deleted "or warrants" following "upon warrant" in the second sentence.

Disbursement of flood moneys. — The county flood commissioner and not the board of county commissioners is under this section empowered to disburse county flood moneys. 1942 Op. Att'y Gen. No. 42-3986 (rendered under prior law).

4-50-7. [Report to county commissioners.]

Between the 15th day of December of each year and the succeeding first day of January each county flood commissioner shall make full and detailed report to the county commissioners of their respective counties, giving a detailed description of all work constructed, built or maintained by them during the current year, together with a full and true account of all expenditures made by such county flood commissioner. A copy of the report by this act [4-50-1 to 4-50-9 NMSA 1978] required shall be filed in the office of the state engineer.

History: Laws 1921, ch. 163, § 7; C.S. 1929, § 33-5007; 1941 Comp., § 15-4707; 1953 Comp., § 15-50-7.

ANNOTATIONS

Cross references. — For filing with county clerk of monthly statements of public moneys received and disbursed by county and precinct officers, *see* 10-17-4 NMSA 1978.

4-50-8. [Work in adjoining counties.]

The county flood commissioners are hereby authorized and empowered to jointly expend money with the county flood commissioners of adjoining counties, or to locate dikes, dams, embankments, ditches and other structures and excavations without their counties when such location is deemed necessary for the purpose of protecting property and lives in their counties.

History: Laws 1921, ch. 163, § 8; C.S. 1929, § 33-5008; 1941 Comp., § 15-4708; 1953 Comp., § 15-50-8.

4-50-9. [Expenditure of funds raised under prior law.]

All county flood funds now on hand shall be held and disbursed subject to the provisions of this act [4-50-1 to 4-50-9 NMSA 1978]. All moneys in the county flood fund of the respective counties affected by this act, levied under the provisions of Section 1308 of the Compiled Laws of 1915, of the state of New Mexico, shall be held, applied and expended in accordance with the terms and provisions of this act.

History: Laws 1921, ch. 163, § 9; C.S. 1929, § 33-5009; 1941 Comp., § 15-4709; 1953 Comp., § 15-50-9.

ANNOTATIONS

Compiler's notes. — Code 1915, § 1308, referred to in this section, is deemed to have been superseded by 4-50-2 NMSA 1978.

Cross references. — For county flood fund, *see* 4-50-2 NMSA 1978.

4-50-10. [Emergency flood districts; establishment.]

Each county of the state through which runs any river, stream or arroyo subject to flood conditions destructive to property or dangerous to human life shall be by the board of county commissioners, within thirty days after the passage and approval of this act [4-50-10 to 4-50-17 NMSA 1978], divided into emergency flood districts, and said board shall set out the limits and boundaries of each said district, and cause the same to be properly numbered so that the same may be known and identified.

History: Laws 1921, ch. 169, § 1; C.S. 1929, § 151-301; 1941 Comp., § 15-4710; 1953 Comp., § 15-50-10.

ANNOTATIONS

Power of county commissioners to redefine district boundaries. — The 30-day specification in this section should not be regarded as a limitation on the authority of county commissioners to redefine emergency flood district boundaries. 1973 Op. Att'y Gen. No. 73-36.

4-50-11. [Emergency flood superintendent; appointment; qualifications.]

It shall be the duty of the board of county commissioners to appoint an emergency flood superintendent for each of said districts. Each emergency flood superintendent shall be a citizen of the United States, and of the state of New Mexico, and shall have resided in the district for which he is appointed not less than two years. The term "superintendent" wherever used in this act [4-50-10 to 4-50-17 NMSA 1978] shall be construed to mean "emergency flood superintendent."

History: Laws 1921, ch. 169, § 2; C.S. 1929, § 151-302; 1941 Comp., § 15-4711; 1953 Comp., § 15-50-11.

4-50-12. [Term, oath and bond of superintendent.]

The term of office of such superintendent shall be for a period of two years, and until his successor is appointed and qualified, and the board of county commissioners shall have power to remove such officer for any cause they shall deem sufficient. Within thirty days from the date of appointment each superintendent shall qualify by taking and filing with the county clerk an oath to faithfully perform his duties as such superintendent, and shall furnish a bond to the county to faithfully perform his duties and to account for all moneys collected by him, which bond shall be in the sum of two thousand dollars [($2,000)], with at least two good and sufficient sureties, to be approved by the board of county commissioners, and filed with the county clerk.

History: Laws 1921, ch. 169, § 3; C.S. 1929, § 151-303; 1941 Comp., § 15-4712; 1953 Comp., § 15-50-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For bonds of public officers generally, *see* 10-2-1 NMSA 1978 et seq.

4-50-13. Emergency flood workers.

The superintendent, in all cases where property or life is threatened by flood waters, may, with the consent of the county commissioners, summon all or any part of the able-bodied male persons under the age of sixty years residing within his district and within five miles on each side of the flood river or stream, and require the persons summoned to work in the control and diversion of the flood waters not to exceed five days during any current year, as their services may be needed. All persons having teams may be required to appear and work with their teams for the required number of days as above provided. The services may be rendered in person, or by substitution, or the person summoned may pay in cash the sum of two dollars ($2.00) per day for each day's services required of him, and the sum of three dollars ($3.00) per day for each day's service required of any team belonging to him and summoned hereunder; however, no person or team summoned shall be required to work for more than one day until all of the persons and teams residing in the district have been required to either work or pay.

History: Laws 1921, ch. 169, § 4; C.S. 1929, § 151-304; 1941 Comp., § 15-4713; 1953 Comp., § 15-50-13; Laws 1969, ch. 219, § 15.

4-50-14. [Service of notice, summons or calls for work; filing list.]

Said superintendent shall have the right to serve notice, summons or calls for work upon persons summoned and called hereunder. Such notice shall state time and place where such work is required, and the number of days' work required, and the teams required, and he shall make a correct list of the names of all persons and teams summoned and file the same with the county clerk.

History: Laws 1921, ch. 169, § 5; C.S. 1929, § 151-305; 1941 Comp., § 15-4714; 1953 Comp., § 15-50-14.

4-50-15. [Failure to work or pay; penalty; use of fine money.]

Any person summoned and called to do work hereunder as above provided, who shall fail to appear and do said work or to furnish a substitute who shall appear and do said work, or pay to the superintendent the sum or sums herein provided in lieu of said

work, shall be guilty of a misdemeanor and upon conviction therefor before any justice of the peace [magistrate] shall be fined in a sum not more than fifty dollars [($50.00)], or imprisoned in the county jail not more than thirty days, or suffer both such fine and imprisonment. All fines collected hereunder shall be deposited in the emergency district flood fund.

History: Laws 1921, ch. 169, § 6; C.S. 1929, § 151-306; 1941 Comp., § 15-4715; 1953 Comp., § 15-50-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The office of justice of the peace has been abolished and all jurisdiction, powers and duties conferred by law upon justices of the peace have been transferred to magistrate courts. *See* N.M. Const., art. VI, § 31 and 35-1-38 NMSA 1978.

Cross references. — For emergency district flood fund, *see* 4-50-16 NMSA 1978.

4-50-16. [Emergency district flood fund; superintendent failing to pay amounts collected; penalty; recovery.]

All moneys collected under the provisions of this act [4-50-10 to 4-50-17 NMSA 1978] shall be deposited with the county treasurer to the credit of a fund to be known as the "emergency district flood fund," and shall be used and applied solely for the purposes of this act within the districts where such moneys are collected. Each superintendent to whom any money shall be paid in lieu of work shall forthwith deposit the same with the county treasurer and take a receipt therefor, and shall file with the county clerk a correct list of the names of the persons paying such moneys. Any superintendent who shall fail, neglect or refuse to account as required by law for moneys collected by him, or shall fail, neglect or refuse to deposit moneys collected by him as hereinbefore provided, shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding two hundred dollars [($200)], or imprisoned in the county jail not exceeding ninety days, or suffer both fine and imprisonment. Any moneys which any superintendent shall fail, neglect or refuse to account for may also be recovered in a civil action upon the bond filed by such superintendent.

History: Laws 1921, ch. 169, § 7; C.S. 1929, § 151-307; 1941 Comp., § 15-4716; 1953 Comp., § 15-50-16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For payment of certain fines into fund, *see* 4-50-15 NMSA 1978.

For use of certified copy in action on bond of officer, *see* 10-2-10 NMSA 1978.

For failure, neglect or refusal to discharge duties of office and failure to account for moneys as causes for removal of local public officers, *see* 10-4-2 NMSA 1978.

4-50-17. [Powers and duties of superintendent.]

The said superintendent is hereby authorized and empowered in times of flood emergency to order headgates of ditches to be closed, ditches to be cut, flood waters to be drained through ditches or other channels already cut, or through ditches or channels to be cut for that purpose; dikes, dams, embankments and other structures to be erected, necessary labor to be employed, and necessary materials to be purchased, and generally to do all things according to the necessity and emergency existing. The superintendent and his agents, laborers and employes [employees] shall have the right of entry upon all premises necessary to control and suppress flood emergencies, and shall not be liable for any damage thereto except for any wanton or malicious injury. No expenditures hereunder shall be made by any superintendent in excess of the moneys in the emergency district flood funds at the time such expenditure is made. All moneys paid out of the emergency district flood fund shall be paid by warrants drawn by the board of county commissioners on vouchers filed and approved by the superintendent. Any person who shall willfully hinder, delay or obstruct any superintendent, his agents, laborers or employes [employees] from performing any of the duties imposed by this act [4-50-10 to 4-50-17 NMSA 1978] shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed fifty dollars [($50.00)], or imprisoned in the county jail not to exceed thirty days, or suffer both such fine and imprisonment.

History: Laws 1921, ch. 169, § 8; C.S. 1929, § 151-308; 1941 Comp., § 15-4717; 1953 Comp., § 15-50-17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For accounts and claims against counties, *see* 4-45-3 NMSA 1978 et seq.

For authority to call emergency flood workers, *see* 4-50-14, 4-50-15 NMSA 1978.

For payment of certain moneys collected to county treasurer, *see* 4-50-16 NMSA 1978.

ARTICLE 51
County Budget

4-51-1. Surplus revenues; application.

At the close of any calendar year, should the actual revenues exceed the estimated budget estimates of expenses as finally approved and certified, the excess money shall be applied on the budget estimate for the next succeeding year, except as provided in Section 6-6-19 NMSA 1978.

History: Laws 1921, ch. 188, § 6; C.S. 1929, § 33-5906; 1941 Comp., § 15-4806; 1953 Comp., § 15-51-6; 1989, ch. 276, § 1.

ANNOTATIONS

Cross references. — For powers and duties of local governmental bodies and local government division of state department of finance and administration with respect to financial affairs of local public bodies, *see* 6-6-1 NMSA 1978 et seq.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

Funds accumulated for remote contingencies or investment. — Counties may not accumulate funds as an unreserved general fund balance, for a remote contingency, or for the sole purpose of investment. They must apply excess funds in such categories to the following year's budget estimate. Counties, however, may designate or reserve excess funds for reasonably foreseeable contingencies or capital projects. 1988 Op. Att'y Gen. No. 88-56.

4-51-2. [Violation of act; penalty; liability to county.]

Any official or employee violating the provisions of this act [4-51-1 to 4-51-3 NMSA 1978] shall, upon conviction thereof in a court of competent jurisdiction, be deemed guilty of a misdemeanor and punished by a fine not less than one hundred dollars [($100)] nor more than five hundred dollars [($500)], or by imprisonment, in the discretion of the court. Any county commissioner, or any other official whose duty it is to allow claims and issue warrants therefor, who issues warrants or evidences of indebtedness contrary to the provisions of this act shall be liable to the county for such violations, and recovery may be had against the bondsmen of such official. Any county treasurer or other official whose duty it is to pay warrants and evidences of indebtedness, who shall pay such warrants and evidences of indebtedness contrary to the provisions of this act, shall likewise be liable to the county for such violations, and recovery may be had against his bondsmen.

History: Laws 1921, ch. 188, § 7; C.S. 1929, § 33-5907; 1941 Comp., § 15-4807; 1953 Comp., § 15-51-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For liability of county commissioners for moneys, warrants or indebtedness ordered paid out without authority of law, *see* 4-38-28 NMSA 1978.

For liability of county commissioners for unauthorized approval of accounts, *see* 4-38-29 NMSA 1978.

For financial affairs of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

4-51-3. [Repeal and saving clause.]

All acts and parts of acts in conflict with this act [4-51-1 to 4-51-3 NMSA 1978] are hereby repealed; provided that nothing herein contained shall be construed as repealing Sections 6-6-11, 6-6-13 to 6-6-18 NMSA 1978 or other existing statutory limitations upon the debt-contracting or tax-levying powers of boards of county commissioners or other boards and officials having such powers.

History: Laws 1921, ch. 188, § 8; C.S. 1929, § 33-5908; 1941 Comp., § 15-4808; 1953 Comp., § 15-51-8.

ANNOTATIONS

Cross references. — For powers and duties of local governmental bodies and local government division of state department of finance and administration with respect to financial affairs of local public bodies, *see* 6-6-1 NMSA 1978 et seq.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

ARTICLE 52
Refuse Disposal Districts

4-52-1. Short title.

This act [4-52-1 to 4-52-10, 4-52-11 to 4-52-15 NMSA 1978] may be cited as the "Refuse Disposal Act".

History: 1953 Comp., § 15-52-1, enacted by Laws 1959, ch. 194, § 1.

ANNOTATIONS

Cross references. — For the Special District Procedures Act, *see* 4-53-1 NMSA 1978 et seq.

For authority of county to collect and dispose of garbage and rubbish, *see* 4-56-1 NMSA 1978 et seq.

For collection and disposal of refuse by municipalities, *see* 3-48-1 NMSA 1978 et seq.

4-52-2. Definitions.

As used in the Refuse Disposal Act:

A. "garbage" includes all waste food, swill, carrion, slops and all waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products and the carcasses of animals;

B. "rubbish" includes all waste paper, paper cartons, tree branches, yard trimmings, discarded furniture, tin cans, dirt, ashes, bottles and all other unwholesome material of every kind not included as garbage; and

C. "refuse" includes garbage and rubbish.

History: 1953 Comp., § 15-52-2, enacted by Laws 1959, ch. 194, § 2.

4-52-3. Purpose of act.

The purpose of the Refuse Disposal Act is to safeguard and improve the public health through the proper disposition of refuse.

History: 1953 Comp., § 15-52-3, enacted by Laws 1959, ch. 194, § 3.

4-52-4. Application of act.

A refuse disposal district may be organized and managed as herein provided, and is authorized to exercise the powers expressly granted or necessarily implied by the Refuse Disposal Act.

History: 1953 Comp., § 15-52-4, enacted by Laws 1959, ch. 194, § 4.

4-52-5. Area.

A district must be entirely within one county and may consist of noncontiguous parcels of property, but shall not include any incorporated area.

History: 1953 Comp., § 15-52-5, enacted by Laws 1959, ch. 194, § 5.

4-52-6. Petitions.

When fifty or more resident electors of a proposed district, or, if less than one hundred resident electors are involved, a majority of the resident electors of the proposed district, desire to form a district, they shall file a petition with the board of county commissioners. The petition shall define the boundaries of the proposed district and give reasons for requesting creation of the district, the proposed name for the district and other information pertinent to the proposal.

History: 1953 Comp., § 15-52-6, enacted by Laws 1959, ch. 194, § 6.

4-52-7. Hearing; notice.

A. Within thirty days after the petition has been filed with the board of county commissioners, it shall cause due notice to be given by publication for three consecutive weeks immediately prior to action in a newspaper of general circulation in the county, or, if no newspaper of general circulation exists, shall post in not less than eight public places within the proposed area a notice of hearing upon the practicability and feasibility of creating the district. All interested parties have the right to attend the hearing and be heard. If it appears at the hearing that other lands should be included or that lands included in the petition should be excluded, the board of county commissioners may permit such inclusion or exclusion.

B. If it appears upon hearing that it is desirable to include within the proposed district, territory outside of the area, within which due notice of hearing has been given, the hearing shall be adjourned and due notice of a further hearing given throughout the entire area considered for inclusion in the district, and a further hearing shall be held. After final hearing, if the board of county commissioners determine upon the facts presented at the hearing and upon other available information that there is need, in the interest of public health, safety and welfare for such a district to function in the territory considered, it shall make and record the determination and define by metes and bounds, or by legal subdivisions, the boundaries of the district.

C. If the board determines after the hearing that it is not feasible for the district to function in the territory considered, it shall make and record the determination and deny the petition.

History: 1953 Comp., § 15-52-7, enacted by Laws 1959, ch. 194, § 7.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-52-8. Referendum.

After the board of county commissioners has made and recorded a determination that there is need, in the interest of public health, safety and welfare, for creation of the

proposed district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon districts in Section 11 [4-52-11 NMSA 1978] of the Refuse Disposal Act is administratively practicable and feasible. To assist it in this determination, the board shall, within a reasonable time after entry of the finding of need for organization of the district and determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of creation of the district. Due notice of the referendum shall be given as provided in Section 7 [4-52-7 NMSA 1978] of the Refuse Disposal Act. The notice shall state the date of holding the referendum, the hours of opening and closing the polls, and shall designate one or more places within the proposed district as polling places. The board shall appoint a polling superintendent and other necessary polling officers, giving equal representation to the proponents and opponents of the question involved.

History: 1953 Comp., § 15-52-8, enacted by Laws 1959, ch. 194, § 8.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-52-9. Ballots.

The question to be voted on shall be submitted by ballots upon which appear the following:

"For creation of ..... Refuse Control District [ ]

Against creation of ..... Refuse Control District [ ]"

A square shall follow each proposition. The ballot shall also contain a direction to insert an "X" mark in the square following one or the other of the propositions, as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board of county commissioners and the board's ordinance powers for the proposed district under Section 11 [4-52-11 NMSA 1978]. All electors residing within the boundaries of the territory, as determined by the board, shall be eligible to vote in the referendum.

History: 1953 Comp., § 15-52-9, enacted by Laws 1959, ch. 194, § 9.

4-52-10. Votes; results.

The votes shall be counted by the election officers at the close of the polls and report of the results along with the ballots delivered to the polling superintendent, who shall certify the results to the board of county commissioners. If a majority of votes cast favor creation of the district, the board shall certify the results to the county clerk. Upon proper recording of this action, each district shall be duly created.

History: 1953 Comp., § 15-52-10, enacted by Laws 1959, ch. 194, § 10.

4-52-10.1. Creation; alternate procedure.

In a class A county, the board of county commissioners may create a refuse disposal district by ordinance. The district shall consist only of contiguous parcels of property. The board shall create the district only after considering the feasibility of the district and the likelihood that services could be provided without the creation of the district. Upon passage of the ordinance, the district is duly created.

History: 1978 Comp., § 4-52-10.1, enacted by Laws 1983, ch. 188, § 1.

4-52-11. Powers.

The board of county commissioners has power to:

A. establish and fill a position of manager to manage and supervise the manner of storage, collection and disposal of refuse, and fix the compensation attached to the position, or may authorize and direct an administrative official of the county to assume the functions of the manager;

B. provide for employment of personnel to operate and manage facilities for the storage, collection and disposal of refuse within the district;

C. execute contracts on behalf of the district with any firm, corporation or individual to provide for collection and disposal of refuse within the district;

D. execute contracts on behalf of the district with any incorporated village, town, city or other district for the joint operation of any refuse collection system and any sanitary landfill or other disposal method acceptable to the environmental improvement division of the health and environment department [department of environment] for the disposal of refuse;

E. determine that collection and disposal of refuse is in the interest of public health, safety and welfare, and regulate collection and disposal within the district;

F. by district ordinance, adopt on behalf of the district such schedules, rules and regulations and service charge rates imposed upon users as may be necessary for the orderly collection of refuse from the district and for maintenance and operation of sanitary landfills or other satisfactory disposal methods. The board shall, prior to adoption of rules and regulations, obtain approval from the environmental improvement division;

G. acquire by purchase, gift, grant, bequest, devise or through condemnation proceedings, in the manner provided in the Eminent Domain Code [42A-1-1 to 42A-1-33

NMSA 1978], such property, rights-of-way or equipment as is necessary for exercise of any authorized function of the district;

H. plan, construct, improve, operate and maintain such structures as may be necessary for performance of any function authorized by the Refuse Disposal Act; and

I. receive all grants or assistance from and cooperate with county, municipal, state and federal agencies in carrying out the purpose of the Refuse Disposal Act.

History: 1953 Comp., § 15-52-11, enacted by Laws 1959, ch. 194, § 11; 1981, ch. 125, § 45.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 4 established the department of environment and provided that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment.

Cross references. — For eminent domain and condemnation generally, *see* N.M. Const., art. II, § 20 and 42A-1-1 NMSA 1978 et seq.

4-52-12. Addition of land.

A. Resident electors of an area without a district may petition the board of county commissioners to add the area to the district. The petition shall define the boundaries of the land desired to be annexed and give other information pertinent to such proposal. The petition shall be signed by twenty-five or more resident electors of the territory described, if fifty or more resident electors are involved, or by a majority if less than fifty resident electors are involved.

B. Within thirty days after the petition is filed, the board shall cause due notice to be given, as provided in Section 7 [4-52-7 NMSA 1978], of hearing on the petition. All interested parties have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion thereof shall be included in the district. If all the resident electors of the territory involved are not petitioners, a referendum shall be held within the territory as provided in Sections 7 through 10 [4-52-7 to 4-52-10 NMSA 1978] of the Refuse Disposal Act, before making a final determination. If it is determined that the land should be added, this fact shall be certified by the board of county commissioners to the county clerk.

History: 1953 Comp., § 15-52-12, enacted by Laws 1959, ch. 194, § 12.

ANNOTATIONS

Cross references. — For area includable within district, *see* 4-52-5 NMSA 1978.

For procedure for creation of district, *see* 4-52-6 to 4-52-10 NMSA 1978.

4-52-13. Detaching land.

Resident electors of lands which have not been, are not and cannot be benefited by their inclusion in the district, may petition the board of county commissioners to have the lands detached. The petition shall describe the lands and state the reasons why they should be detached. A hearing shall be held within thirty days after the petition is received. Due notice of hearing, as provided in Section 7 [4-52-7 NMSA 1978], shall be given at least ten days before the hearing. If it is determined by the board that such lands shall be detached, the determination shall be certified to the county clerk.

History: 1953 Comp., § 15-52-13, enacted by Laws 1959, ch. 194, § 13.

ANNOTATIONS

Cross references. — For area includable within district, *see* 4-52-5 NMSA 1978.

For procedure for creation of district, *see* 4-52-6 to 4-52-10 NMSA 1978.

4-52-14. Discontinuance of districts.

A. Any time after five years from the organization of a district, fifty or more resident electors of a district, or, if less than one hundred resident electors are involved, a majority of the resident electors of the district, may file a petition with the board of county commissioners, praying that the existence of the district be discontinued. The petition shall state reasons for discontinuance and that all obligations of the district have been met.

B. After giving notice, as defined in Section 7 [4-52-7 NMSA 1978], the board may conduct such hearings on the petition as may be necessary to assist it in making a determination.

C. Within sixty days after petition is filed, a referendum shall be held under supervision of the board. No informalities in the conduct of the referendum shall invalidate it or its results if notice of the referendum has been given substantially as provided in Subsection B of this section.

D. If a majority of votes cast in the referendum favor discontinuance of the district and it is found that all obligations have been met, the board shall make a determination that the district shall be discontinued. A copy of the determination shall be certified to the county clerk for recording.

E. Any funds remaining after discontinuance shall revert to the county general fund.

History: 1953 Comp., § 15-52-14, enacted by Laws 1959, ch. 194, § 14.

ANNOTATIONS

Cross references. — For procedure for creation of district, *see* 4-52-6 to 4-52-10 NMSA 1978.

4-52-15. Penalty [for violation of ordinance].

Violation of any ordinance adopted by the county commissioners on behalf of the district under Section 11 [4-52-11 NMSA 1978] of the Refuse Disposal Act shall be deemed a misdemeanor.

History: 1953 Comp., § 15-52-15, enacted by Laws 1959, ch. 194, § 15.

ANNOTATIONS

Bracketed material. — The bracketed material in the catchline was inserted by the compiler and is not part of the law.

ARTICLE 53
Special District Procedures

4-53-1. Short title.

Chapter 4, Article 53 NMSA 1978 may be cited as the "Special District Procedures Act".

History: 1953 Comp., § 15-53-1, enacted by Laws 1965, ch. 291, § 1; 1978 Comp., § 4-53-1, 2025, ch. 83, § 14.

ANNOTATIONS

Cross references. — For refuse disposal districts, *see* 4-52-1 NMSA 1978 et seq.

For community service districts, *see* 4-54-1 NMSA 1978 et seq.

For playgrounds and recreational facilities, *see* 5-4-1 NMSA 1978 et seq.

For water and sanitation districts, *see* 73-21-1 NMSA 1978 et seq.

The 2025 amendment, effective July 1, 2025, changed "This act" to "Chapter 4, Article 53 NMSA 1978".

4-53-2. Definitions.

As used in the Special District Procedures Act:

A. "special district" means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of the state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, reclamation, soil and water conservation or flood control;

B. "county officer" means an elected county official or a member of the board of county commissioners;

C. "city officer" means a mayor or a member of the governing authority of municipality; and

D. "commission" means a county special district commission.

History: 1953 Comp., § 15-53-2, enacted by Laws 1965, ch. 291, § 2.

4-53-3. County special district commission.

A. There shall be created in each county of the state a "county special district commission" consisting of five members selected as follows:

(1) two members appointed by the board of county commissioners, each of whom shall represent the county and shall be a county officer;

(2) two members appointed by the mayors or chief executives of all municipalities within the county at a joint meeting, each of whom shall represent the municipalities and shall be a city officer; and

(3) one member appointed by the other four members of the commission, who shall be chairman of the commission and shall represent the general public in the county. If within five days following their appointment, the four other members of the commission fail to appoint the fifth member of the commission, the district court of the county in which the commission is located shall appoint the fifth member of the commission within ten days following the date of the appointment of the four other members of the commission.

B. The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

C. Vacancies on the commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant. Commission members shall serve without compensation but shall be

reimbursed the actual amounts for their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office, which amounts shall not exceed the amounts permitted for such purposes in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. Prior to establishment of a commission in a county, any proposals for the creation of a special district, or petition for the merger, consolidation or dissolution of an existing special district shall be submitted to the county clerk as otherwise provided in the Special District Procedures Act. Upon receipt of the proposal or petition the clerk shall immediately notify the board of county commissioners of the county and each of the governing authorities of all municipalities in the county of such receipt. The counties and municipalities shall then proceed to establish a commission.

History: 1953 Comp., § 15-53-3, enacted by Laws 1965, ch. 291, § 3.

4-53-4. Powers and duties of commission.

The commission may:

A. review and approve, or disapprove with or without amendment, wholly, partially or conditionally, proposals to create special districts within the county;

B. review and approve, or disapprove petitions for the dissolution, consolidation or merger of special districts within the county; and

C. adopt standards and procedures consistent with the provisions of the Special District Procedures Act for the evaluation of proposals for the creation, dissolution, consolidation and merger of special districts.

History: 1953 Comp., § 15-53-4, enacted by Laws 1965, ch. 291, § 4.

4-53-5. Proposals for creation of special districts.

A. Any proposal for the creation of a special district shall be submitted to the commission prior to any election or court hearing provided in the law authorizing the creation of the special district by those parties authorized by law to initiate proceedings for the creation of a special district.

B. Upon receiving notice of a proposal to create a special district, the commission shall direct the county clerk to give notice of the proposal to create a special district to:

(1) each municipality within twenty miles of the territory of the proposed district;

(2) each special district with boundaries adjacent to the proposed boundaries of the proposed district and which is performing the same type of service that the proposed district would perform; and

(3) the board of county commissioners.

C. At the same time the commission shall cause to be published in a newspaper of general circulation in the county an announcement of its receipt of the proposal, and notice of intention to hold a public hearing on a proposal to create the proposed district, which hearing shall be held not less than twenty nor more than forty days from receipt of the notification of the proposal to create the special district.

History: 1953 Comp., § 15-53-5, enacted by Laws 1965, ch. 291, § 5.

ANNOTATIONS

Cross references. — For factors to be considered in creation of district, *see* 4-53-8 NMSA 1978.

For multi-county special districts, *see* 4-53-9 NMSA 1978.

For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-53-6. Merger, consolidation or dissolution of special district.

A. Any municipality, county or special district may by resolution adopted by its governing body, petition the commission requesting the merger, dissolution or consolidation of any special district within the county. Merger or consolidation petitions shall include information as will permit the commission to evaluate the degree to which the proposed action will permit more effective and efficient performance of the service provided by the special district.

B. The resident property owners of any special district may petition the commission requesting the merger, dissolution or consolidation of any special district in which they reside. The petition shall be signed by at least twenty percent of the property owners actually residing within the territory of the special district.

C. Upon receipt of a petition for the merger, dissolution or consolidation of a special district, the commission shall direct the county clerk to notify the governing authorities of each political subdivision specified in Subsection B of Section 5 [4-53-5 NMSA 1978], and the governing body of the special district which is the subject of the petition. At the same time the commission shall cause to be published an announcement of such petition and the hearing to be held thereon in the manner provided in Subsection C of Section 5.

History: 1953 Comp., § 15-53-6, enacted by Laws 1965, ch. 291, § 6.

ANNOTATIONS

Cross references. — For factors to be considered in merger, consolidation or dissolution of district, *see* 4-53-8 NMSA 1978.

For multi-county special districts, *see* 4-53-9 NMSA 1978.

For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

4-53-7. Hearings.

At public hearings held pursuant to the Special District Procedures Act, the commission shall hear any interested party having made a written request to be heard, and shall receive any reports on the proposal before it. The commission may make and enforce any rules and regulations as necessary for the orderly and fair hearing on the issues before it.

History: 1953 Comp., § 15-53-7, enacted by Laws 1965, ch. 291, § 7.

4-53-8. Factors to be considered.

A. Factors to be considered in the review of a proposal for creation, consolidation, merger or dissolution of a special district shall include but not be limited to:

(1) population; population density; land area; land use; per capita assessed valuation; topography, natural boundaries and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas during the next ten years;

(2) need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for such services and controls; probable effect of the proposed formation and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas; and the probable effect of the proposed action on the total tax and indebtedness burden upon the taxpayers of the area;

(3) the effect of the proposed action, and of alternative actions, on adjacent areas, on mutual social and economic interests and on the local government structure of the county.

B. Any municipality, county or special district receiving notification of hearing to be held by the commission may:

(1) in the case of a petition for creation of a new special district indicate to the commission its willingness and ability to provide the service to be undertaken by the proposed district. The notification shall include references to appropriate statutory

authority empowering the municipality, county or special district to assume responsibility for providing the service within the territory of the proposed district and shall include appropriate evidence of its financial ability to provide the services. It may also include reasons why it, rather than the proposed district, should provide the service.

(2) in the case of petition for the dissolution, consolidation or merger of a special district, submit to the commission its recommendations concerning such proposals. If the petition for dissolution, consolidation or merger is based upon a municipality, county or special district assuming the function undertaken by the subject special district, the notification shall include references to appropriate statutory authority empowering the municipality, county or special district to assume responsibility for providing the services with [within] the territory of the subject district and shall include appropriate evidence of its financial ability to provide the services. It may also include reasons why it, rather than the subject district, should provide the services.

History: 1953 Comp., § 15-53-8, enacted by Laws 1965, ch. 291, § 8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-53-9. Multi-county special districts.

In the event that the territory of any special district lies in two or more counties, proposals to create, or petitions to merge, consolidate or dissolve special districts shall be forwarded to commissions in each of the counties affected. The commissions shall within ten days agree upon a date and place for a joint public hearing and shall proceed jointly as otherwise directed by the Special District Procedures Act, except that all time spans shall be measured from the date of the agreement.

History: 1953 Comp., § 15-53-9, enacted by Laws 1965, ch. 291, § 9.

4-53-10. Decisions of commission.

A. Upon conclusion of the hearing, the commission may take the matter under consideration and shall, within thirty days following conclusion of the hearing, present its decision. The commission may also adjourn a hearing from time to time, but not to exceed a total of thirty days.

B. If the commission approves the formation of the proposed special district, proceedings for its formation may be continued as otherwise provided by law. If the commission approves the proposed formation with modifications or conditions, further proceedings for the special district's formation may be continued only in compliance with such modifications or conditions. If the commission disapproves the formation of the proposed special district no further action shall be taken to create the special district

and notice of intention to create such a district may not be presented to the commission for at least two years after the date of disapproval.

C. The commission may order the merger, dissolution or consolidation of a special district where the factors specified in Section 8 [4-53-8 NMSA 1978] indicate the action is appropriate and [it] finds:

(1) that a petitioning municipality, county or existing special district adjacent to the subject district can provide the service to the residents of the subject district more effectively and more economically; or

(2) where it finds that there is no longer a need for the service provided by a subject district.

D. Decisions approving proposals for the merger, consolidation or dissolution of a special district shall provide for the equitable disposition of the assets of the subject district, for the adequate protection of the legal rights of the employees of the special district and for adequate protection of the legal rights of creditors; provided that no provision of the Special District Procedures Act shall be construed as to relieve any bonded indebtedness of a merged, consolidated or dissolved special district which is subject to any tax levied upon property in the district.

History: 1953 Comp., § 15-53-10, enacted by Laws 1965, ch. 291, § 10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

4-53-11. Administration.

The usual and necessary operating expenses incurred by the commission shall be prorated among the municipalities in the county by an agreement between the county and such municipalities.

History: 1953 Comp., § 15-53-11, enacted by Laws 1965, ch. 291, § 11.

4-53-12. Exemption.

The state fairgrounds district and the provisions of the State Fairgrounds District Act [6-35-1 to 6-35-12 NMSA 1978] are exempt from the provisions of the Special District Procedures Act.

History: Laws 2025, ch. 83, § 15.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 83, § 18 made Laws 2025, ch. 83, § 15 effective July 1, 2025.

ARTICLE 54
Community Service Districts

4-54-1. Short title.

Chapter 4, Article 54 NMSA 1978 may be cited as the "Community Service District Act".

History: 1953 Comp., § 15-54-1, enacted by Laws 1965, ch. 283, § 1; 1978 Comp., § 4-54-1, 2025, ch. 83, § 16.

ANNOTATIONS

Cross references. — For refuse disposal districts, *see* 4-52-1 NMSA 1978 et seq.

For the Special District Procedures Act, *see* 4-53-1 NMSA 1978 et seq.

For playgrounds and recreational facilities, *see* 5-4-1 NMSA 1978 et seq.

For water and sanitation districts, *see* 73-21-1 NMSA 1978 et seq.

The 2025 amendment, effective July 1, 2025, changed "This act" to "Chapter 4, Article 54 NMSA 1978".

4-54-2. Definitions.

As used in the Community Service District Act:

A. "community service district" means any single or multipurpose special district organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of this state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but not including the function [functions] or services of drainage, irrigation, reclamation, soil and water conservation or flood control;

B. "governing authority" means any board, commission or other governing body responsible for the conduct of the affairs of the community service district; and

C. "negotiable securities" means any security issued by a community service district representing indebtedness of the district and including but not limited to bonds.

History: 1953 Comp., § 15-54-2, enacted by Laws 1965, ch. 283, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-54-3. Procedure for issuing negotiable securities.

A. Any community service district issuing negotiable securities for the construction or acquisition of any facilities necessary to carry on the purpose of the district shall issue the negotiable securities in the manner provided in this section.

B. Prior to the issuing of any negotiable securities, the governing authority of the district shall hold a public hearing on the question of issuing the negotiable securities. Notice of the public hearing shall be published once each week for three successive weeks in a newspaper of general circulation within the community service district and the last publication shall not be less than three nor more than ten days before the date of the public hearing. The notice shall state the purpose of the hearing and the date, time and place where it will be conducted by the governing authority.

C. At the date, time and place specified in the notice, the governing authority shall hold the hearing, at which time it shall determine if the negotiable securities shall be issued. If the governing authority determines that the negotiable securities should be issued, it may issue and sell the negotiable securities in conformity with the provisions of the law authorizing the community service district; provided that:

(1) the negotiable securities of the community service district:

(a) shall bear an interest rate of not more than six percent a year;

(b) are sold at par value; and

(c) are sold at public sale after notice of the proposed sale is published in a newspaper of general circulation within the community service district; and

(2) the total value of the outstanding negotiable securities of the community service district do [does] not exceed in the aggregate, at any one time, more than five percent of the assessed valuation of the community service district.

History: 1953 Comp., § 15-54-3, enacted by Laws 1965, ch. 283, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 1 et seq.

20 C.J.S. Counties §§ 208 to 226.

4-54-4. Tax limitation.

The aggregate total of all taxes levied by a community service district for all purposes shall not exceed a rate of ten dollars ($10.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon taxes levied pursuant to the Community Service District Act, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of taxable property within this community service district.

History: 1953 Comp., § 15-54-4, enacted by Laws 1965, ch. 283, § 4; 1986, ch. 32, § 5.

ANNOTATIONS

Issuance of bonds. — The limiting provisions of this section apply to the issuance of bonds. *El Dorado Utilities, Inc. v. Eldorado Area Water & Sanitation Dist*., 2005-NMCA-036, 137 N.M. 217, 109 P.3d 305.

Legislative intent to incorporate section. — A careful reading of 73-21-19 NMSA 1978 makes it clear that the legislature intended to incorporate the limiting provisions of this section into the Water and Sanitation District Act. *El Dorado Utilities, Inc. v. Eldorado Area Water & Sanitation Dist*., 2005-NMCA-036, 137 N.M. 217, 109 P.3d 305.

Because a water and sanitation district can only levy taxes to pay indebtedness within the limits of this section, a district cannot issue bonds pursuant to a bond resolution that authorizes the levy of taxes beyond what this section allows. *El Dorado Utilities, Inc. v. Eldorado Area Water & Sanitation Dist*., 2005-NMCA-036, 137 N.M. 217, 109 P.3d 305.

4-54-5. Liberal construction.

The Community Service District Act shall be liberally construed to protect the interests and rights of the owners of the taxable property within the community service district.

History: 1953 Comp., § 15-54-5, enacted by Laws 1965, ch. 283, § 5.

4-54-6. Exemption.

The state fairgrounds district and the provisions of the State Fairgrounds District Act [6-35-1 to 6-35-12 NMSA 1978] are exempt from the provisions of the Community Service District Act.

History: Laws 2025, ch. 83, § 17.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 83, § 18 made Laws 2025, ch. 83, § 17 effective July 1, 2025.

ARTICLE 55
Special Assessment Districts for Improvements in Class A Counties (Repealed.)

4-55-1 to 4-55-34. Repealed.

ANNOTATIONS

Repeals. — Laws 1980, ch. 91, § 40, repealed 4-55-1 to 4-55-34 NMSA 1978, relating to special assessment districts for improvements in class A counties, effective March 3, 1980.

ARTICLE 55A
County Improvement Districts

4-55A-1. Short title.

Chapter 4, Article 55A NMSA 1978 may be cited as the "County Improvement District Act".

History: Laws 1980, ch. 91, § 1; 1998, ch. 47, § 1.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, substituted "Chapter 4, Article 55A NMSA 1978" for "This act".

4-55A-2. Improvement district; definitions.

As used in the County Improvement District Act:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the real location of the

assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "board" means the board of county commissioners;

C. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in the County Improvement District Act;

D. "county" means any county except an H class county;

E. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the county or employed in connection with an improvement by the county or by a property owner subject to the improvement district property tax imposed by Section 4-55A-12.1 NMSA 1978;

F. "improvement" means any one or any combination of projects in one or more locations authorized in the County Improvement District Act;

G. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon which an improvement district property tax will be imposed to pay for the cost of the improvement; and

H. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more developmental inadequacies under current local government standards and requirements, such as, but not limited to:

(1) inadequate street right of way or street access control;

(2) a lack of drainage easements of right of way;

(3) a lack of adequate park, recreation or open space area;

(4) a lack of an overall grading and drainage plan; or

(5) a lack of adequate subdivision grading both on and off the public right of way.

History: Laws 1980, ch. 91, § 2; 1987, ch. 47, § 3; 1991, ch. 17, § 3; 1991, ch. 199, § 31; 1998, ch. 47, § 2; 2001, ch. 312, § 9.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, deleted "by the county" preceding "in connection with an improvement" and added the remaining language following the latter phase to Subsection E; in Subsection H, deleted "of the following" preceding "developmental inadequacies" and added "such as, but not limited to".

The 1998 amendment, effective July 1, 1998, in Subsection G, inserted "or upon which an improvement district property tax will be imposed to pay" and made minor stylistic changes.

1991 amendments. — Laws 1991, ch. 17, § 3, effective June 14, 1991, adding a new Subsection G which defined "premature subdivision" and making related minor stylistic changes, was approved on March 17, 1991. However, Laws 1991, ch. 199, § 31, effective April 4, 1991, adding Subsections A and H, redesignating former Subsections A to F as Subsections B to G, inserting "or one or more locations" in Subsection G, and making minor stylistic changes in Subsections D and F, was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 199, § 31. See 12-1-8 NMSA 1978.

4-55A-3. Improvement district; authorization; limitation.

A. Whenever the board determines that the creation of an improvement district is necessary for the public safety, health or welfare, the board may create an improvement district for any one or any combination of projects authorized in the County Improvement District Act by the:

(1) provisional order method; or

(2) petition method.

B. The board may adopt any ordinance or resolution necessary or proper to accomplish the purposes of the County Improvement District Act.

C. The improvement district shall include for the purpose of assessment or imposition of an improvement district property tax all the property that the board determines is benefited by the improvement authorized by the County Improvement District Act, including property used for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof in the absence of a consent of congress, but shall not include any property within the exterior boundaries of a municipality except as provided in Section 4-55A-5 NMSA 1978 and for purposes of the imposition of an improvement district, property tax shall not include real property exempt from property taxation.

History: Laws 1980, ch. 91, § 3; 1991, ch. 199, § 32; 1998, ch. 47, § 3.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection A, substituted "the County Improvement District Act" for "Chapter 4, Article 55A NMSA 1978"; in Subsection C, inserted "or imposition of an improvement district property tax", substituted "that" for "which", substituted "the County Improvement District Act" for "Sections 4-55A-1 through 4-55A-39 NMSA 1978"; substituted "used" for "utilized" and inserted "and for purposes of the imposition of an improvement district, property tax shall not include real property exempt from property taxation".

The 1991 amendment, effective April 4, 1991, substituted "Chapter 4, Article 55A NMSA 1978" for "Section 4 of the County Improvement District Act" in Subsection A and, in Subsection C, inserted "authorized by Sections 4-55A-1 through 4-55A-39 NMSA 1978" near the beginning, substituted "Section 4-55A-5 NMSA 1978" for "Section 5 of the County Improvement District Act" at the end, and made a minor stylistic change.

4-55A-4. Improvement district; purpose.

An improvement district may be created as authorized in the County Improvement District Act in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including land served by any project and any right of way, easement or privilege appurtenant or related thereto:

A. a street, road, bridge, walkway, overpass, underpass, parkway, alley, curb, gutter or sidewalk project, including median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more streets, roads, bridges, walkways, pathways, curbs, gutters or sidewalks or any combination of the foregoing;

B. any utility project for providing gas, water, electricity or telephone service;

C. any storm sewer project, sanitary sewer project or water project, including investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals and property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

D. a flood control or storm drainage project, including the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways, outlets, syphons and drop structures, channel construction, diversions, rectification and protection with

appurtenant structures such as concrete lining, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or to provide drainage and lessen their danger and damages;

E. railroad spurs, railroad tracks, railyards, rail switches and any necessary real property; or

F. on-site or off-site improvements required as a condition to obtaining required approvals of a development to be served by a project, including the payment of any fees or charges levied as a means of paying for all or part of such on-site or off-site improvements.

History: Laws 1980, ch. 91, § 4; 1987, ch. 47, § 4; 1991, ch. 199, § 33; 2000, ch. 63, § 1; 2001, ch. 312, § 10.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, inserted "land served by any project and" to the preliminary language and added Subsection F.

The 2000 amendment, effective July 1, 2000, deleted "without limitation" following "including" from the preliminary language of the section, deleted "without limitation" preceding "median and driver strips" in Subsection A, substituted "investigating" for "without limitation investigation" in Subsection C, deleted "without limitation" preceding "the investigation" in Subsection D, and added Subsection E.

The 1991 amendment, effective April 4, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

4-55A-4.1. Improvement district; additional purpose.

An improvement district may also be created as authorized in Chapter 4, Article 55A NMSA 1978 in order to construct, repair or maintain improvements in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development or to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation or open-space areas;

D. overall grading and drainage plan; and

E. adequate subdivision grading both on or off the public right-of-way.

History: Laws 1991, ch. 17, § 4; Laws 1991, ch. 199, § 34.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 17, § 4 and Laws 1991, ch. 199, § 34 enacted similar versions of this section. The section was set out as enacted by Laws 1991, ch. 199, § 34. *See* 12-1-8 NMSA 1978. The introductory paragraph in the Laws 1991, ch. 17, § 4 version read "An improvement district may also be created as authorized in Section 4-55A-3 NMSA 1978 in order to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a county". The only other difference was that in the Laws 1991, ch. 17, § 4 version "or" instead of "and" appeared at the end of Subsection D.

4-55A-5. Improvement district; powers of a county.

Every county shall have the power to construct improvements authorized by the County Improvement District Act on any location within the boundaries of the county, a municipality or another county. Improvements shall be constructed pursuant to the powers granted in the County Improvement District Act only if the governing body of the municipality or the board of county commissioners of such other county in which such improvements are to be made has, by resolution submitted to the board of county commissioners of the county, determined:

A. that the construction of such improvements is in the best interests of the municipality or such other county;

B. that the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the municipality or such other county is determined in the same manner as the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the county; and

C. that the owners of real property representing at least fifty-one percent of the total assessed valuation of the property benefited, which lies within the municipality or such other county, have not objected in writing to such improvements within thirty days after having received written notice of the adoption of the provisional order described in Subsection E of Section 4-55A-11 [4-55A-7] NMSA 1978 by the board of county commissioners. The board of county commissioners may enter into a joint powers agreement with the governing body of the municipality or the board of county commissioners of such other county to provide for joint administration of any such improvement district.

History: Laws 1980, ch. 91, § 5; 1991, ch. 199, § 35.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler to correct an apparently erroneous internal reference and is not part of the law.

The 1991 amendment, effective April 4, 1991, rewrote this section which read "Every county shall have the power to construct improvements authorized by the County Improvement District Act on or through any street or right-of-way one side of which lies within the boundaries of a municipality. The board may enter into a joint powers agreement with the governing body of the municipality to provide for joint administration of any such improvement district".

4-55A-6. Improvement district; limitations on powers of county with respect to street or right of way under jurisdiction of state transportation commission.

The county shall not construct improvements on or through any street or right of way under the jurisdiction of the state transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements.

History: Laws 1980, ch. 91, § 6; 2003, ch. 142, § 2.

ANNOTATIONS

Cross references. — For jurisdiction of state transportation commission, *see* 67-3-14 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and the section.

4-55A-7. Improvement district; provisional order method; procedure; preliminary lien; notice of pendency of district; effect.

A. Whenever the board determines that the creation of an improvement district is necessary by the provisional order method, the board shall by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed improvement district.

B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district; and

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the improvement district on an equitable basis, which shall be set forth in the resolution; provided, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole. As used in this subparagraph, "equitable basis" includes an assessment based on a front-foot, improved or unimproved property, zone or area basis or an assessed valuation basis where each tract or parcel bears the same percentage of total costs as the percentage that the tract's or parcel's assessed value bears to the total assessed value of the property included in the improvement district; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or waterline, the type of material and approximate diameter of any trunk lines, mains, laterals or house connections; or

(c) for each other type of project or other major component of the foregoing types of projects, a general description.

C. The engineer shall include in the total cost estimate for the improvement district all expenses, including but not limited to advertising, appraising, tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing, engineering and printing expenses, which the engineer deems necessary to pay the complete cost of the improvement.

D. The engineer shall submit to the county clerk the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimate of costs for the improvement.

E. After the board examines the assessment plat, preliminary plans and estimates of cost for the improvement district, the board may adopt a provisional order which:

(1) orders the improvement to be constructed;

(2) instructs the county clerk or engineer to give notice of a hearing on the provisional order; and

(3) orders, if deemed necessary by the board and with the consent of the owners of the tracts or parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 4-55A-18 and 4-55A-19 NMSA 1978. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the board, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the special assessment district and shall be constructive notice to the owner, purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to such special assessment proceedings.

G. This notice need not be acknowledged to entitle it to be recorded.

H. Nothing in this section shall be construed to affect the priority of special assessment liens.

History: Laws 1980, ch. 91, § 7; 1991, ch. 199, § 36; 2001, ch. 342, § 1.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, in Subsection B(2)(b) substituted "an" for "a front-foot, zone, area or other" preceding "equitable basis" and "provided" for "and" following "set forth in the resolution" and added the last sentence; deleted "or

diameters" preceding "any trunk lines" in Subsection B(3)(b); and substituted "in this section" for "herein" in Subsection H.

The 1991 amendment, effective April 4, 1991, added "preliminary lien; notice of pendency of district; effect" in the catchline; at the end of Subsection B(2)(b), added the language beginning "and if the benefit" and rewrote Subsection (B)(3), which read "require the engineer to prepare preliminary plans showing for each type of curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material"; inserted "tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing" in Subsection C; added Subsection D(3); added Subsections F to H; and made related and minor stylistic changes throughout the section.

4-55A-8. Improvement district; notice of assessment; protests.

A. The notice of the provisional order creating an improvement district shall:

(1) contain the time and place when the board shall hold a hearing on the provisional order creating the improvement district;

(2) describe the improvement to be constructed and the general location thereof; and

(3) state that any interested person may ascertain in the office of the county clerk:

(a) a description of the property to be assessed; and

(b) the maximum amount of benefit estimated to be conferred on each tract or parcel of land.

B. Not more than thirty days nor less than ten days before the day of the hearing, the county clerk, his deputy or the engineer shall mail the notice of the hearing on the provisional order to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the county clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the county clerk, his deputy or the engineer, and shall be filed in the office of the county clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in the County Improvement District Act.

C. Notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the county clerk.

History: Laws 1980, ch. 91, § 8.

ANNOTATIONS

Cross references. — For payment of notice of order, *see* 14-11-7 NMSA 1978.

4-55A-9. Improvement district; provisional order; protest; action in district court.

A. At the hearing of the board on the provisional order creating an improvement district, any interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

(1) propriety and advisability of constructing the improvement;

(2) estimated cost of the improvement;

(3) manner of paying for the improvement; or

(4) estimated maximum benefit to each individual tract or parcel of land.

B. The board may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the board, by adoption of a resolution, has:

(1) concluded the hearing;

(2) determined:

(a) the advisability of constructing the improvement; and

(b) the type and character of the improvement; and

(3) created the improvement district; any person who during the hearing filed a written protest with the board protesting the construction of the improvement may commence an action in district court to correct or set aside the determination of the board. After the lapse of thirty days after adoption of the resolution by the board, any action attacking the validity of the proceedings and the amount of benefit to be derived from the improvement is perpetually barred. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, such owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements.

History: Laws 1980, ch. 91, § 9; 1991, ch. 199, § 37.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "estimated maximum benefit to each" for "amount to be assessed against the" at the beginning of Subsection A(4) and, in Subsection C, inserted "by adoption of a resolution" in the introductory phrase, substituted "adoption of the resolution by" for "the determination of" in the first full sentence in Paragraph (3) and added the final sentence in Paragraph (3).

4-55A-10. Improvement district; petition method; requirements; distribution of costs; notice of hearing.

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property described in Subsection C of Section 4-55A-3 NMSA 1978, but exclusive of any land owned by the United States or the state of New Mexico, petition the board in writing to create an improvement district and construct the improvement described in the petition, the board may:

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 4-55A-14 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body of a municipality, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The board may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land;

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land; or

(4) impose an improvement district property tax pursuant to the County Improvement District Act.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land or paid for by the imposition of an improvement district property tax, the board shall

hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing.

History: Laws 1980, ch. 91, § 10; 1991, ch. 199, § 38; 1998, ch. 47, § 4.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection A, substituted "described in Subsection C of Section 4-55A-3 NMSA 1978, but" for "to be benefited"; added Subsection B(4); in Subsection C, inserted "or paid for by the imposition of an improvement district property tax"; and made minor stylistic changes.

The 1991 amendment, effective April 4, 1991, in the introductory paragraph in Subsection A, substituted "total assessed valuation of the property to be benefited" for "front feet of any tracts or parcels of land", deleted "which abuts on a street or road" following "New Mexico" and made a minor stylistic change; in Subsection A(3), substituted "Section 4-55A-14 NMSA 1978" for "Section 14 of the County Improvement District Act" in the first sentence and substituted "for any one improvement district" for "on any one street" in the second sentence; substituted "benefiting tracts or parcels" for "abutting tract or parcel" in Subsections B(2) and B(3); and substituted "tracts or parcels" for "tract or parcel" in Subsection C.

4-55A-11. Improvement district; notice of preliminary hearing.

A. The notice of the preliminary hearing required in Section 4-55A-10 NMSA 1978 shall contain:

(1) the time and place when the board will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement district;

(4) the route of the improvement by streets or roads or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;

(7) the estimated amount of the assessment against or property tax imposed upon each tract or parcel of land; and

(8) the amount of the cost to be assumed by the county, if any.

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the county once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing.

History: Laws 1980, ch. 91, § 11; 1991, ch. 199, § 39; 1998, ch. 47, § 5.

ANNOTATIONS

Cross references. — For payment of notice of hearing, *see* 14-11-7 NMSA 1978.

The 1998 amendment, effective July 1, 1998, in Subsection A(6), inserted "or against which an improvement district property tax is to be imposed" and in Subsection A(7), inserted "or property tax imposed upon".

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "Section 4-55A-10 NMSA 1978" for "Section 10 of the County Improvement District Act" in the introductory phrase, added "or location of the improvements" at the end of Paragraph (4), and substituted "location" for "places of commencement and end" in Paragraph (5).

4-55A-12. Improvement district; preliminary hearing; protest; action of the board; action in district court.

A. At the preliminary hearing of the board on the question of creating an improvement district as authorized in Section 4-55A-10 NMSA 1978, any owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

(1) the proposed assessment or tax;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The board shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The board may allow a fair price, based on its current value, as a setoff against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the board may:

(1) correct any mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment to be made against or an improvement district property tax to be imposed upon any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing from time to time.

D. Within thirty days after the hearing, any owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax, whether he appeared at the hearing or not, may commence an action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district to set aside or correct the assessment or any proceedings relating to the improvement district. Thereafter, any owner or his heirs, assigns, successors or personal representatives are perpetually barred from any action or any defense of error or invalidity in the proceedings or assessments. Where no owner of a tract or parcel to be assessed has presented a protest during the hearing and all owners of the property to be assessed, upon conclusion of the hearing, submit written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the petition, such owners shall be deemed to have waived their right to bring any action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district or to set aside or correct the assessment or any proceedings relating to the improvement district.

History: Laws 1980, ch. 91, § 12; 1991, ch. 199, § 40; 1998, ch. 47, § 6; 2001, ch. 312, § 11.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, inserted "or an improvement district property tax to be imposed upon" in Subsection C(2); and inserted "or upon which it is proposed to impose an improvement district property tax" in near the beginning of Subsection D.

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "or upon which it is proposed to impose an improvement district property tax"; in Subsection A(1), inserted "or tax"; in Subsection B, substituted "current" for "present"; in Subsections B(2) and (B)(4) and Subsection D, inserted "to be"; and made minor stylistic changes.

The 1991 amendment, effective April 4, 1991, inserted "action of the board" in the catchline; substituted "Section 4-55A-10 NMSA 1978" for "Section 10 of the County Improvement District Act" in the introductory paragraph in Subsection A; substituted "a

benefiting" for "an abutting" in Paragraph (3) in Subsection C; and inserted "perpetually" in the second sentence and added the third sentence in Subsection D.

4-55A-12.1. Imposition of improvement district property tax; limitations.

A. If in connection with the creation of the improvement district the board determines that it is in the best interest of the county to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the board shall enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the board deems necessary or appropriate. The board shall call an election within the improvement district for the purpose of authorizing the board to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall also include procedures for the conduct of the election based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the board shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by counties are made.

D. Bonds issued by the board for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The bonds may be sold at public or private sale and may be in denominations that the board determines.

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment and redemption, shall be as determined by the board. The bonds shall be executed in the name of and on behalf of the improvement district by the chairman of the board. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the board shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

G. The bonds authorized in this section are general obligation bonds of the district, and the full faith and credit of the district are pledged to the payment of the bonds. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the County Improvement District Act.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978]. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the board:

(1) proof of ownership;

(2) proof of loss or destruction;

(3) a surety bond in twice the face amount of the bond and coupons; and

(4) payment of the cost of preparing and issuing the new bond and coupons.

I. The board may in any proceedings authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The board may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the district. Whenever the board deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board and the amount of refunding bonds that the board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the chairman of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the board, and the proceeds of the sale shall be applied only

to the purpose for which the bonds were issued and the payment of any incidental expenses.

K. The principal amount of improvement district general obligation bonds that may be issued by the board for any improvement district shall not exceed twenty-five percent of the final estimated value of properties in the improvement district after completion of the projects to be financed with the improvement district general obligation bonds and after development of the properties in the improvement district in accordance with their planned use, as determined by the board with the assistance of the engineer and other qualified professionals.

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the board may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as the property owner subject to the improvement district property tax or the board determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978.

History: 1978 Comp., § 4-55A-12.1, enacted by Laws 1998, ch. 47, § 7; 2001, ch. 312, § 12.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, inserted "improvement district property" preceding "tax rate to be imposed" and inserted the language following the latter phrase through "commencement of the tax" in the first sentence of Subsection A; inserted "improvement" following "an election within the" in the second sentence of Subsection A; deleted the former penultimate sentence in Subsection A concerning a limitation on the tax rate; in Subsection B, deleted "not to exceed the limitation in Subsection A of this section and"; in Subsection E, inserted "a final maturity of thirty years" and "by the chairman of the board"; in Subsection F, deleted "subject to the limitation of Subsection A of this section" from the end of the subsection; in Subsection J, deleted "and shall be attested to by the secretary of the board" from the end of the penultimate sentence; and added Subsections K and L.

4-55A-13. Improvement district; levy and collection of assessments prior to commencing improvement; special fund; misuse; penalty.

A. Whenever the board:

(1) elects to order the construction of a street or road as authorized in the County Improvement District Act;

(2) uses county owned or leased equipment to construct the street or road; and

(3) determines what portion of the estimated cost of the construction shall be paid by tract or parcel of land benefited or to be benefited by the construction,

the assessment may be levied and the installments collected prior to the commencement of work and as work progresses according to the terms of payment fixed by the board.

B. The construction shall commence within sixty days after the payment of the first installment of the assessment and be diligently prosecuted so that the construction is completed within one year from the date of commencement. At the end of the one-year period, any tract or parcel of land that has not received the benefits provided by this section shall be released of any lien assessed against the tract or parcel of land by reason of this section and all assessment money collected from each owner of a tract or parcel of land so assessed and not benefited shall be returned.

C. All assessment money collected under this section shall be held by the county treasurer in a special account as a separate fund and used only for constructing the improvement, including the purchasing or leasing of necessary equipment. The use of the special fund for any purpose other than that required under this section by any public official, treasurer or member of the board is prohibited and is a felony punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the penitentiary for not more than two years or by both fine and imprisonment in the discretion of the court.

History: Laws 1980, ch. 91, § 13.

4-55A-14. Improvement district; advertising for bids; county may do work; contribution by governmental agency.

A. If a continuous area proposed to be improved on any one street or road exceeds five hundred feet in length, the board, before using county equipment and employees to construct the improvement, shall advertise for bids for the construction of the improvement and award the contract for the construction of the improvement to the lowest responsible bidder; provided, however, a county may construct the improvement using the same specifications upon which bids were requested if:

(1) the county can guarantee to construct the improvement for an amount less than the lowest bid amount and not assess the benefiting tracts or parcels of land an amount in excess of the lowest responsible bid if a bid is received; or

(2) the county receives no bids for the construction of the improvement.

B. A county using county owned or leased equipment and county employees in constructing an improvement may cooperate with another governmental agency which contributes money, labor or a portion of the cost of materials towards completion of the improvement.

History: Laws 1980, ch. 91, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standing of disappointed bidder on public contract to seek damages under 42 USCS § 1983 for public authorities' alleged violation of bidding procedures, 86 A.L.R. Fed. 904.

4-55A-15. Notice of bid; acceptance of bid.

A. After the board creates an improvement district, the board may proceed as authorized in Section 13 or 14 [4-55A-13 or 4-55A-14 NMSA 1978] of the County Improvement District Act or call for sealed bids on the proposed improvement. The notice of the call for bids shall be made in accordance with the provisions of Section 13-1-11 NMSA 1978.

B. After advertising for bids, the county may make minor alterations or changes in the plans and specifications to correct errors or omissions in the original plans and specifications.

C. The board shall award the contract to the lowest responsible bidder unless the board:

(1) elects to construct the improvement as authorized in Section 13 or 14 [4-55A-13 or 4-55A-14 NMSA 1978] of the County Improvement District Act;

(2) rejects all bids submitted for the construction of the improvement. Such bids shall be rejected in the following manner:

(a) if less than three bids are received, the purchase may be made without bids at the best documented obtainable price; or

(b) if three or more bids are received, the county may reject any or all bids but shall readvertise and accept new bids; and

(c) if no new bids are received or if all new bids are rejected, the rejection shall be accompanied by a written statement of the board declaring the reasons for the rejection and the county may then purchase the required items on the open market at the best documented price.

History: Laws 1980, ch. 91, § 15.

ANNOTATIONS

Compiler's notes. — Section 13-1-11 NMSA 1978, referred to in the second sentence in Subsection A, was repealed in 1984. For present comparable provisions, *see* 13-1-105 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.

4-55A-16. Improvement district; assessment of railroad property.

The board may assess the property of any railroad or street railroad which occupies or abuts any street the whole cost of the improvement between or under the rails or tracks and two feet on each side of the rail or track of the railroad or street railroad. The assessment shall be levied as other assessments are levied and shall constitute a lien coequal with the lien of other taxes and prior and superior to all other liens, claims and titles, and may be enforced by sale of the railroad or street railroad property or by suit against the owner of the railroad or street railroad.

History: Laws 1980, ch. 91, § 16.

4-55A-17. Improvement district; assessment roll; notice of assessment hearing.

A. After the contract has been awarded and the board determines the total cost of the improvement to the county, the board shall determine what portion of the total cost of the improvement shall be assessed against the benefited tract or parcel of land. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed.

B. With the engineer, the board shall prepare and cause to be filed in the office of the county clerk an assessment roll containing, among other things:

(1) the name of the last known owner of the tract or parcel of land to be assessed, or if his name is unknown, state "unknown";

(2) a description of the tract or parcel of land to be assessed; and

(3) the amount of the assessment against each tract or parcel of land.

C. After the filing of the assessment roll, the board shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. Not more than thirty days nor less than ten days before the day of the hearing, the county clerk, his deputy or the engineer shall mail the notice of the hearing on the

assessment roll to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the county clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the county clerk, his deputy or the engineer and shall be filed in the office of the county clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in the County Improvement District Act. The notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the county clerk.

History: Laws 1980, ch. 91, § 17.

4-55A-18. Improvement district; filing of objections; assessment hearing; action of the board; appeal to district court.

A. Not later than three days before the date of the hearing on the assessment roll, any owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the county clerk. Unless presented as required in this subsection, any objection to the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land; is waived.

B. At the hearing, the board shall hear all objections which have been filed as provided in this section and may recess the hearing from time to time and, by resolution, revise, correct, confirm or set aside any assessment and order another assessment be made de novo.

C. The board by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 4-55A-7 NMSA 1978. The decision, resolution and ordinance of the board shall be:

(1) a final determination of the regularity, validity and correctness of:

(a) the proceedings;

(b) the assessment roll;

(c) each assessment contained on the assessment roll; and

(d) the amount of the assessment levied against each tract or parcel of land; and

(2) conclusive upon the owners of the tract or parcel of land assessed.

D. Within fifteen days after the publication of the title and general summary of the ordinance or posting of the ordinance, any owner who has filed an objection as provided in this section may commence an action in district court to correct or set aside the determination of the board. After the lapse of fifteen days after the publication or posting, all actions which include the defense of confiscation or attack the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land; are perpetually barred.

History: Laws 1980, ch. 91, § 18; 1991, ch. 199, § 41.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, inserted "action of the board" in the catchline; added the second sentence in Subsection C; inserted "of the title and general summary of the ordinance" in the first sentence in Subsection D; and made minor stylistic changes throughout the section.

4-55A-19. Improvement district; assessments; terms of payment; liens.

A. The board may, by ordinance:

(1) establish the time and terms of paying the assessment or installments on the assessment, including but not limited to any provision for differing optional time periods over which installments of assessments for the same district may be paid and, at the discretion of the board, differing interest rates on the assessments that are payable over different time periods; provided that in the situation where the board provides for optional time periods for payment of assessment installments, the ordinance shall set a limit on the time during which the affected property owner must

select one of the specified options in writing and shall provide that failure to select one of the options within the time limit conclusively establishes the selection of a specific option designated in the ordinance;

(2) set any rate or rates of interest upon deferred payments of the assessment or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 4-55A-20 NMSA 1978, which shall commence from the date of publication or posting of the ordinance levying the assessment; provided that the same interest rate shall be set for assessments which are payable over the same time period; and provided further that no rate or rates of interest in excess of twelve percent a year upon such deferred payments of the assessment shall become effective unless the state board of finance or any successor thereof at any time approves such higher rate or rates in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accomodate [accommodate] subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the priority or original amount of the assessment. Such an adjustment of assessment may allow the owner of the original tract of land to pay off any pro rata share of the assessment lien in advance of the schedule of payments. The procedures and standards may also provide for the method of assessment on the newly created parcels to vary from the method of assessment used on the original tract; and

(5) provide for the payment of any assessments levied pursuant to Chapter 4, Article 55A NMSA 1978 from other funds received by any owner of a tract or parcel in an improvement district in a location also intended by the board for the stimulation of manufacturing, industrial, commercial or business development pursuant to Section 4-55A-4.1 NMSA 1978.

B. After the publication or posting of the ordinance levying an assessment as provided in Section 4-55A-18 NMSA 1978, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general ad valorem taxes and the lien of other improvement districts and is superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created unless the assessment lien is adjusted pursuant to this section.

C. Within sixty days after the publication or posting of the ordinance ratifying an assessment roll and levying the assessments, the county clerk shall prepare, sign, attest and record in his office a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel of land so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment, subject to the provisions of Section 4-55A-26 NMSA 1978. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted for any benefited tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

History: Laws 1980, ch. 91, § 19; 1981, ch. 44, § 4; 1991, ch. 199, § 42.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The 1991 amendment, effective April 4, 1991, deleted "foreclosure" following "liens" in the catchline; inserted "or posting" following "publication" in three places; in Subsection A, inserted "or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 4-55A-20 NMSA 1978", substituted "levying" for "ratifying" near the beginning of Paragraph (2), and added Paragraphs (4) and (5); in Subsection B, substituted "levying an assessment" for "ratifying an assessment levied" in the first sentence and added "unless the assessment lien is adjusted pursuant to this section" at the end of the subsection; inserted "and levying the assessments" in Subsection C; deleted former Subsection E relating to foreclosure; redesignated former Subsection F as Subsection E; and made related and minor stylistic changes throughout the section.

4-55A-20. Improvement district; authority to issue bonds or assignable certificates.

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 4-55A-7 NMSA 1978, the board may proceed pursuant to the provisions of Section 4-55A-12.1 NMSA 1978 or may issue in the name of the county bonds in such form as the board may determine or assignable certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 4-55A-18 NMSA 1978 or placing the preliminary

lien as provided in Section 4-55A-7 NMSA 1978 to pay for the improvement have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 4-55A-7 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 4-55A-18 NMSA 1978; or

(3) be payable from the money collected from the assessments authorized in Section 4-55A-18 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 4-55A-19 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 4-55A-19 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 4-55A-4 NMSA 1978 may be supplemented from gasoline tax and special fuel excise tax distributed to the county pursuant to Section 7-1-6.39 NMSA 1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the county's proportion of the cost of the improvement;

(2) in payment of the proportionate cost, if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the county, if the county constructed the improvement with county-owned or -leased equipment and county employees.

E. Bonds or assignable certificates may be sold at a public or private sale at a discount.

History: Laws 1980, ch. 91, § 20; 1983, ch. 265, § 20; 1991, ch. 199, § 43; 1998, ch. 47, § 8.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "proceed pursuant to the provisions of Section 4-55A-12.1 NMSA 1978 or may" and in Subsection C(4), substituted "excise" for "use" and substituted "pursuant to Section 7-1-6.39 NMSA 1978" for "under Section 7-13-9 NMSA 1978".

The 1991 amendment, effective April 4, 1991, in Subsection A, inserted "including those items set out in Subsection C of Section 4-55A-7 NMSA 1978" near the beginning "and maturing not more than twenty years from the date of issuance" at the end of the first sentence, inserted "as provided in Section 4-55A-18 NMSA 1978 or placing the preliminary lien as provided in Section 4-55A-7 NMSA 1978" in Paragraph (1) and inserted "or placing the preliminary lien" in Paragraph (2); and, in Subsection C, added present Paragraph (2), redesignated former Paragraphs (2) and (3) as Paragraphs (3) and (4), substituted "project described in Subsection A of Section 4-55A-4 NMSA 1978" for "street, alley, curb, gutter or sidewalk project" in Paragraph (4), and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 1 to 8.

20 C.J.S. Counties §§ 208 to 226.

4-55A-21. Improvement district; rights of negotiable bondholders or assignable certificate holders.

A. If the board fails or refuses to foreclose and sell a tract or parcel of land for the delinquent assessment or installment of the assessment as required in Section 4-55A-22 NMSA 1978, any holder of a bond or assignable certificate secured by the

assessment may foreclose the assessment lien on such delinquent property in the manner provided by law for the foreclosure of mortgages on real estate.

B. Any person holding two or more assignable certificates issued as authorized in Section 4-55A-20 NMSA 1978 may sue in the same action on all tracts or parcels of land described in the certificate to enforce the lien against the tract or parcel of land described in the certificate unless the assessment lien has been adjusted pursuant to Section 4-55A-19 NMSA 1978.

C. Whenever a governing body of a municipality, board of county commissioners or local board of education is delinquent in the payment of an assessment, the holder of any assignable certificate issued against the tract or parcel of land of the municipality, county or school district has the rights and remedies for the collection of the assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

History: Laws 1980, ch. 91, § 21; 1991, ch. 199, § 44.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "Section 4-55A-22 NMSA 1978" for "Section 22 of the County Improvement District Act" and inserted "or assignable certificate" in Subsection A and, in Subsection B, substituted "Section 4-55A-20 NMSA 1978" for "Section 20 of the County Improvement District Act" near the beginning and added "unless the assessment lien has been adjusted pursuant to Section 4-55A-19 NMSA 1978" at the end.

4-55A-22. Improvement district; additional duties imposed on county.

A. Whenever an improvement district has been created and bonds or assignable certificates have been issued to finance the improvement, a county shall:

(1) act as agent for the collection of the assessments;

(2) collect the assessments when due;

(3) act as trustee for the benefit of the holders of the bonds or assignable certificates;

(4) annually prepare a statement that shall:

(a) be available for inspection in the office of the county treasurer;

(b) reflect the financial condition of the improvement district; and

(c) list all the delinquencies existing at that time; and

(5) institute proceedings to foreclose the assessment lien against any tract or parcel of land that is delinquent in the payment of the assessment or installment of an assessment for a period of more than one year.

B. If more than one improvement district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds or assignable certificates outstanding against that improvement district.

History: Laws 1980, ch. 91, § 22; 1991, ch. 199, § 45.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "negotiable coupon" preceding "bonds" in two places in Subsection A and once in Subsection B and, in Subsection A, substituted "when due" for "annually or semiannually" at the end of Paragraph (2), redesignated former Subparagraph (d) of Paragraph (4) as Paragraph (5) and made related and minor stylistic changes.

4-55A-23. Improvement district; acceptance of deed in lieu of foreclosure.

In lieu of the foreclosure of a lien against any tract or parcel of land which is delinquent in the payment of an assessment or installment of an assessment for a period of more than one year, a county may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the county.

History: Laws 1980, ch. 91, § 23.

4-55A-24. Improvement district; foreclosure; trustee may purchase at foreclosure of liens; contents of bid.

Any delinquent assessment has the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. In any action seeking the foreclosure of a lien against any tract or parcel of land assessed by a county for the construction of any project after either or both assignable certificates or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a delinquent assessment, the county as trustee of the fund from which the assignable certificates or bonds are to be paid, may:

A. purchase the tract or parcel of land sold at the foreclosure sale; and

B. bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorneys' fees and costs found by the court to be due and payable under the ordinance creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

History: Laws 1980, ch. 91, § 24; 1991, ch. 199, § 46.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, inserted "foreclosure", deleted "street improvement" preceding "liens" and deleted "where bonds were exchanged for certificates" following "liens" in the catchline; added the present first sentence; substituted "or bonds have been issued, if there is no other purchaser for the tract or parcel of land having delinquent assessment, the county as trustee of the fund from which the assignable certificates or bonds are to be paid, may" for "and negotiable coupon bonds have been issued, the trustee of the fund from which the bonds are to be paid, may" at the end of the introductory paragraph; and, in Subsection B, inserted "penalties, attorneys' fees and costs" and made a related stylistic change.

4-55A-25. Improvement district; title subject to redemption vests in trustee.

Upon the acceptance or purchase of the tract or parcel of land as provided in Sections 4-55A-23 and 4-55A-24 NMSA 1978, title to the tract or parcel of land, subject to the right of redemption provided by Subsection A of Section 4-55A-26 NMSA 1978, vests in the trustee of the fund from which the assignable certificates or bonds are payable.

History: Laws 1980, ch. 91, § 25; 1991, ch. 199, § 47.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "Sections 4-55A-23 and 4-55A-24 NMSA 1978" for "Sections 23 and 24 of the County Improvement District Act", "provided by Subsection A of Section 4-55A-26 NMSA 1978" for "as now provided by law", and "assignable certificates or bonds" for "negotiable coupon bonds", and made a minor stylistic change.

4-55A-26. Improvement district; private or public sale of property; redemption period; application for authorization; appraisement; disposition of proceeds.

A. No real property shall be sold by the trustee to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and

avoid the sale. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns, by repaying to the purchaser or his assign the amount paid with interest from the date of purchase at the rate of twelve percent per year.

B. After expiration of the fifteen-day period, the trustee may sell the property at a public or private sale subject to the right of redemption, and, if not paid from the proceeds of the sale, subject to the indebtedness claimed under the lien, ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes.

C. The proceeds of the sale of the foreclosed tract or parcel of land at either a private sale or a public sale shall be applied as follows:

(1) first, to the payment of costs in giving notice of the sale and of conducting the sale;

(2) second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;

(3) third, on a pro rata basis, to the indebtedness claimed under the lien and to ad valorem taxes and other special assessments having a lien on the property that are coequal with the ad valorem taxes; and

(4) fourth, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such person providing satisfactory proof to the court of such interest and upon approval of the court. Receipts for the satisfaction of the indebtedness claimed under the lien shall be paid into the proper improvement district fund for payment of the interest and the bonds or assignable certificates. In case of the sale of any tract or parcel of land subject to more than one delinquent assessment, such remaining proceeds shall be distributed into the proper improvement district funds for such payment pro rata based upon the total unpaid amount due each such district.

History: Laws 1980, ch. 91, § 26; 1991, ch. 199, § 48.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "after expiration of" following "property" in the catchline; added present Subsection A; redesignated former Subsection A as Subsection B and rewrote the provision which read "After expiration of the period of redemption of the tract or parcel of land foreclosed, the trustee may apply to the district court which ordered the property sold for an order authorizing the trustee to sell the property at private sale"; deleted former Subsections B and C relating to appraisement of property by three disinterested persons and sale to highest and best

bidder if trustee unable to sell at appraised value; and redesignated former Subsection D as Subsection C and rewrote the provisions thereof.

4-55A-27. Improvement district; assessment funds; expenditures; misuse; penalties.

A. All money received by the county from any special assessment or assessment within an improvement district shall be held in a special fund and used to:

(1) pay the cost of the improvement for which the assessment was made;

(2) reimburse the county for any work performed by the county in constructing the improvement and for administrative costs associated with the improvement district; or

(3) pay the interest and principal due on any outstanding bonds or assignable certificates.

B. Any person who uses money in an improvement district fund other than as provided in this section is guilty of a felony and shall be punished by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state penitentiary for not more than two years or by both such fine and imprisonment in the discretion of the court.

History: Laws 1980, ch. 91, § 27; 1991, ch. 199, § 49.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, in Subsection A, added "and for administrative costs associated with the improvement district" at the end of Paragraph (2), deleted "negotiable coupon" preceding "bonds" in Paragraph (3), and made a related stylistic change.

4-55A-28. Transfer of improvement district funds.

The board may transfer to the general fund of the county any money obtained from the levy of an assessment for an improvement district if:

A. bonds or assignable certificates were issued to finance the improvement;

B. the proceeds of the bonds or assignable certificates were spent for the improvement;

C. the assessments were levied and collected for the payment of the bonds or assignable certificates; and

D. either the bondholders or assignable certificate holders are barred by the statute of limitations or a court judgment or decree from collecting the indebtedness; or

E. the bonded indebtedness or assignable certificates have been paid.

History: Laws 1980, ch. 91, § 28; 1991, ch. 199, § 50.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "proceeds of" for "funds obtained by" in Subsection B and made minor stylistic changes.

4-55A-29. Improvement district; reassessment after voiding of assessments; procedure.

A. It is the purpose of Sections 4-55A-29 through 4-55A-33 NMSA 1978 to:

(1) charge the cost of any improvement payable by the tract or parcel of land benefited by the improvement by making a reassessment for the cost of the improvement; and

(2) permit the making of a reassessment when an original assessment is declared void or the enforcement of the original assessment is refused by a court.

B. Whenever any assessment for improvements is declared void or unenforceable, either directly or indirectly, by a decision of any court for any cause whatever, the board shall reassess the tracts or parcels of land that are benefited or will be benefited by the improvement to the extent of the proportionate share of the cost of the improvement of each tract or parcel of land together with accrued interest.

C. The reassessment roll shall be prepared, a hearing held on the reassessment roll and a final determination of the reassessment made by the board, all in the manner provided in Sections 4-55A-18 through 4-55A-20 NMSA 1978 for the original assessment.

History: Laws 1980, ch. 91, § 29; 1991, ch. 199, § 51.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "Sections 4-55A-29 through 4-55A-33 NMSA 1978" for "Sections 29 through 33 of the County Improvement District Act" in Subsection A; deleted the former second sentence in Subsection B which read "If the cost of the improvement exceeds the actual value of the improvement, the reassessment shall be based upon the actual value of the improvement at the time of its completion"; substituted "Sections 4-55A-18 through 4-55A-20 NMSA 1978" for

"Sections 18 through 20 of the County Improvement District Act" in Subsection C; and made minor stylistic changes in Subsections B and C.

4-55A-30. Improvement district; reassessment; defects waived; credit for previous payment.

A. The fact that:

(1) the contract has been let;

(2) an improvement has been wholly or partially constructed;

(3) an omission, failure or neglect of the board or county officer to comply with the requirements of Sections 1 through 20 [4-55A-1 to 4-55A-20 NMSA 1978] of the County Improvement District Act; or

(4) any other matter whatsoever connected with the improvement or initial assessment is invalid, shall not invalidate or in any way affect the making of a reassessment as authorized in Section 29 [4-55A-29 NMSA 1978] of the County Improvement District Act and charging the benefited tract or parcel of land the cost of the improvement.

B. When the reassessment is complete, any money paid on the former attempted assessment against a tract or parcel of land shall be credited to the tract or parcel of land in partial or whole payment of the reassessment.

History: Laws 1980, ch. 91, § 30.

4-55A-31. Improvement district; appeal to district court.

After an owner has filed a written objection with the county clerk to any reassessment as provided in Section 4-55A-18 NMSA 1978 and the board has determined the reassessment, any owner of a tract or parcel of land that is reassessed may file a notice of appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1980, ch. 91, § 31; 1998, ch. 55, § 17; 1999, ch. 265, § 17.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

4-55A-32. Improvement district; payment of reassessment; continuing proceedings to collect assessment.

A. The board shall enforce payment of the reassessment of the tract or parcel of land benefiting from an improvement in the manner provided in Chapter 4, Article 55A NMSA 1978 for the enforcement of the original assessment.

B. If for any reason a reassessment is held to be invalid or uncollectible, the board shall continue to reassess the tract or parcel of land as provided in Sections 4-55A-29 through 4-55A-38 NMSA 1978 until the benefited tract or parcel of land has paid the cost of any improvement chargeable to the benefited tract or parcel of land.

History: Laws 1980, ch. 91, § 32; 1991, ch. 199, § 52.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "Chapter 4, Article 55A NMSA 1978" for "Section 19 of the County Improvement District Act" in Subsection A and substituted "Sections 4-55A-29 through 4-55A-38 NMSA 1978" for "Sections 29 through 38 of the County Improvement District Act" in Subsection B.

4-55A-33. Improvement district; appeal of reassessment; procedure exclusive.

A. The rights and remedies granted in Section 18 [4-55A-18 NMSA 1978] of the County Improvement District Act to any owner who objects, contests or appeals the amount, correctness, regularity or validity of the reassessment;

(1) are declared to exclude any other right, remedy, suit or action either at law or in equity which might otherwise be available; and

(2) do afford the owner a sufficient day in court for the redressing of all rights and grievances that he may have in connection with the reassessment.

B. Any person who fails to file an objection to a reassessment in the manner provided in Section 18 of the County Improvement District Act or fails to appeal to the district court in the manner provided in Section 31 [4-55A-31 NMSA 1978] of that act, is forever absolutely barred from objecting to or contesting the amount, correctness, regularity or validity of the reassessment.

History: Laws 1980, ch. 91, § 33.

ANNOTATIONS

Compiler's notes. — As amended by Laws 1998, ch. 55, § 17, effective September 1, 1998, 4-55A-31 NMSA 1978 no longer provides procedures for appeal of reassessments. *See* 39-3-1.1 NMSA 1978 for current procedures.

4-55A-34. Improvement district; application of reassessment fund to outstanding indebtedness.

A. Whenever a county has:

(1) issued bonds or assignable certificates to obtain money to pay for an improvement that has been constructed; and

(2) reassessed the tract or parcel of land benefiting from the improvement as provided in Sections 4-55A-26 through 4-55A-31 NMSA 1978; the county shall apply all money received from the payment of the reassessment to the payment of the bonds or assignable certificates.

B. Bonds or assignable certificates that have been issued to obtain money to pay for any improvement that has been constructed are:

(1) valid and binding obligations of the county; and

(2) payable from the payments received from any reassessment that shall be levied until all obligations of indebtedness of the improvement have been paid in full.

History: Laws 1980, ch. 91, § 34; 1991, ch. 199, § 53.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "negotiable coupon" preceding "bonds" in two places in Subsection A and once in Subsection B; substituted "Sections 4-55A-26 through 4-55A-31 NMSA 1978" for "Sections 26 through 31 of the County Improvement District Act" in Paragraph (2) of Subsection A; and made minor stylistic changes in Subsection B.

4-55A-35. Improvement district; refunding improvement bonds; authority.

A. As used in this section and in Sections 4-55A-36 through 4-55A-38 NMSA 1978 "bonds", when not modified by the word "refunding", includes assignable certificates.

B. The board may issue refunding improvement district bonds to refund all or any part of improvement district bonds. Refunding bonds may be issued:

(1) to change the payment schedule for the bonds;

(2) to fund principal and interest due on bonds that are in default or for which there is not and, in the opinion of the governing body, will not be sufficient money available to pay the principal and interest when due;

(3) to reduce interest costs on the bonds or on the assessments providing security for the bonds or to provide other savings;

(4) to modify or eliminate restrictive or burdensome contractural [contractual] limitations concerning the bonds;

(5) to provide enhanced or substitute security for the bonds; or

(6) to provide for any other reasonable and necessary purpose or any combination of the foregoing purposes.

History: Laws 1980, ch. 91, § 35; 1991, ch. 199, § 54.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The 1991 amendment, effective April 4, 1991, rewrote this section which read "Whenever there is not, and it is certain there will not be, sufficient money in an improvement district fund to pay the principal and interest due on the improvement district bonds, the board may issue refunding improvement district bonds. If there is not sufficient money in an improvement district fund to pay in full the improvement district bonds that have matured, the board shall issue refunding improvement district bonds to pay the interest and principal on the improvement district bonds".

4-55A-36. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to Sections 4-55A-35 through 4-55A-38 NMSA 1978 shall be authorized by ordinance. 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 ordinance authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provisions shall be made for paying the refunded bonds at the time or times provided in Subsection A of this section.

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 refunded bonds 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 refunded bonds; 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 municipality 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 such escrow shall not necessarily be limited to proceeds of refunding bonds but may include 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 refunded bonds as they become due at their respective maturities or due at any designated prior redemption date or dates in connections with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 4-55A-35 through 4-55A-38 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

History: 1978 Comp., § 4-55A-36, enacted by Laws 1991, ch. 199, § 55.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 199, § 55 repealed former 4-55A-36 NMSA 1978, as enacted by Laws 1980, ch. 91, § 36, relating to improvement district, default, petition of bondholders, exchange, effective April 4, 1991, and enacted a new section.

4-55A-37. Improvement district; ordinance for refunding bonds; conditions; sale or exchange.

A. The ordinance authorizing the issuance of refunding bonds for an improvement district shall describe the:

(1) details of the issue;

(2) form of the refunding bonds and interest coupons, if any;

(3) fund from which the principal and interest of the refunding bonds will be paid; and

(4) manner in which the bonds are to be issued.

B. The refunding bonds may:

(1) be issued in an amount less than, equal to or greater than the principal amount of improvement district bonds being refunded;

(2) not bear a rate of interest greater than the rate of interest borne by the assessments providing security for the refunding bonds if secured by assessments;

(3) become due and payable in regular numerical order;

(4) not be issued for a period of more than twenty years from the date of issuance; and

(5) be payable from substitute security or from the same funds that were applicable to the payment of the bonds being refunded.

C. The refunding bonds may be:

(1) sold at a public or private sale at a discount; or

(2) exchanged, dollar for dollar, for the improvement district bonds being refunded.

History: Laws 1980, ch. 91, § 37; 1983, ch. 265, § 21; 1991, ch. 199, § 56.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, in Subsection B, substituted "may" for "shall" in the introductory phrase, rewrote Paragraph (1) which read "not be issued in an amount greater than the principal and accrued interest due on the improvement district bonds being refunded", substituted "assessments providing security for the refunding

bonds if secured by assessments" for "bonds being refunded" at the end of Paragraph (2) and inserted "substitute security or from" in Paragraph (5) and, in Subsection C substituted "a public or private sale at a discount" for "not less than par" in Paragraph (1) and deleted a former sentence at the end of Paragraph (2) which read "If the refunding bonds are exchanged for the bonds being refunded, the lower numbered refunding bonds shall be exchanged for the lower numbered bonds being refunded so that the bondholder shall have relatively the same position in the refunding issue as he had in the outstanding bonds prior to the refunding".

4-55A-38. Improvement district; payment of assessment for refunding bond; maximum term; interest; prepayment; liens.

A. In connection with issuance of refunding bonds as provided in Sections 4-55A-35 through 4-55A-38 NMSA 1978, the board may by ordinance provide that any unpaid assessment and accrued interest on the assessment shall be paid in not more than twenty years with interest at a rate of interest not less than the rate borne by the refunding bonds and with the penalties as lawfully attached to the original assessment. The owner of a tract or parcel of land that is assessed may at any time pay the assessment in full with interest to the time of payment.

B. The assessment may be collected as provided in Section 4-55A-19 NMSA 1978, and the refunding bonds may be secured and enforced as the original lien was established as provided in that section.

History: Laws 1980, ch. 91, § 38; 1991, ch. 199, § 57.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "Sections 4-55A-35 through 4-55A-38 NMSA 1978" for "Sections 35 through 38 of the County Improvement District Act", "may by ordinance" for "shall by ordinance", "twenty years with interest at a rate of interest not less than the rate borne" for "twenty equal annual or forty semiannual installments with interest at the rate of interest borne" and made a minor stylistic change and, in Subsection B, substituted "may" for "shall" in two places and "Section 4-55A-19 NMSA 1978" for "Section 19 of the County Improvement District Act".

4-55A-39. Improvement district; construction of sections.

Nothing contained in Sections 4-55A-35 through 4-55A-38 NMSA 1978 shall be construed as:

A. increasing the burden or liability of any tract or parcel of land or the owner of any tract or parcel of land; or

B. except for issuance of the refunding bonds, creating any additional liability of the county.

History: Laws 1980, ch. 91, § 39; 1991, ch. 199, § 58.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, added "construction of sections" in the catchline; substituted "Sections 4-55A-35 through 4-55A-38 NMSA 1978" for "Sections 35 through 38 of the County Improvement District Act" in the introductory paragraph; redesignated former Paragraphs (1) and (2) of former Subsection A as Subsections A and B; added "except for the issuance of the refunding bonds" at the beginning of Subsection B; and deleted former Subsection B which read "The issuance of the refunding bonds shall not give any bondholder any greater right than he had prior to the refunding. The owners and holders of refunding bonds shall be subrogated to all the rights and remedies possessed by the owners and holders of the bonds refunded".

4-55A-40. Street and road improvement fund authorization.

In the case of creation of a county improvement district in accordance with the provisions of the County Improvement District Act, the board of county commissioners of any county may, by ordinance, establish a street and road improvement fund into which may be transferred all or any part of the distributions of such amounts of the tax revenues distributed to the county under the provisions of Section 7-1-6.9 NMSA 1978 as the board has, in any ordinance, determined necessary for use as a fund in the financing of improvement projects described in Subsection A of Section 4-55A-4 NMSA 1978.

History: 1978 Comp., § 4-55A-40, enacted by Laws 1991, ch. 199, § 59.

4-55A-41. Street and road improvement fund; use.

Bonds or assignable certificates authorized in Section 4-55A-20 NMSA 1978 for the construction of a street, road, walkway, bridge, overpass, underpass, pathway, alley, curb, gutter or sidewalk project may be purchased by the street and road improvement fund; provided that the bonds or assignable certificates shall be held in trust by the county treasurer and any receipts from the sale of the bonds or assignable certificates or from the payment of the assessment made to pay the interest and principal of the bonds or assignable certificates shall be held in trust by the county treasurer, and any receipts from the sale of the bonds or assignable certificates or from the payment of the assessment made to pay the interest and principal of the bonds or assignable certificates shall be credited to the street and road improvement fund.

History: 1978 Comp., § 4-55A-41, enacted by Laws 1991, ch. 199, § 60.

4-55A-42. Street and road improvement fund; repurchasing bonds or certificates; pledging income.

A. The board of county commissioners may, by ordinance approved by three-fourths of all the members of the board of county commissioners and irrepealable during the term of the contract and for a period not exceeding twenty-one years, contract:

(1) to repurchase bonds or assignable certificates authorized in Section 4-55A-20 NMSA 1978 for construction of a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project with the money in the street and road improvement fund; or

(2) to pledge the income of the street and road improvement fund to pay the interest and principal of bonds or assignable certificates when default in payment may occur by reason of nonpayment of any assessment levied for the payment of a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project authorized in the County Improvement District Act.

B. The county may anticipate the annual income to be received by the street and road improvement fund. The amount contracted or pledged to be expended each year as authorized in this section shall not exceed the amount that is accumulated in the street and road improvement fund.

C. The ordinance authorized in this section shall state that:

(1) all disbursements made pursuant to the contract shall be paid solely from the street and road improvement fund and from no other source;

(2) the obligations created by the contract are not general obligations of the county; and

(3) the contracting parties may not look to any other fund for the performance of the contractual obligation.

D. In the event of disbursement from the street and road improvement fund pursuant to the obligations created by the contract, the county shall be subrogated for the benefit of the street and road improvement fund to all the rights and remedies of the holders of the securities upon which payment is made.

History: 1978 Comp., § 4-55A-42, enacted by Laws 1991, ch. 199, § 61.

4-55A-43. Street and road improvement fund; diverting proceeds from tax.

After the adoption of the ordinance creating a contract as authorized in Section 4-55A-3 NMSA 1978 and so long as the contract is effective, it is unlawful:

A. to directly or indirectly divert any such amounts of tax revenue directed to be credited to the street and road improvement fund; and

B. without the written approval of the secretary of finance and administration, for the board or any county employee to expend any money from the street and road improvement fund for any purpose other than the performance of the contract.

History: 1978 Comp., § 4-55A-43, enacted by Laws 1991, ch. 199, § 62.

ARTICLE 55B
Historic Building Improvement Act

4-55B-1. Short title.

This act [4-55B-1 to 4-55B-5 NMSA 1978] may be cited as the "Historic Building Improvements Act".

History: Laws 1993, ch. 52, § 1.

4-55B-2. Definitions.

As used in the Historic Building Improvements Act:

A. "county" means an H class county;

B. "governing body" means the board of county commissioners of a county;

C. "historic building improvements" means any repair or maintenance to the exterior or any renovation or other improvement necessary to meet life safety codes of a publicly owned building entered in the state register of cultural properties or the national register of historic places; and

D. "taxable value of property" means the "net taxable value", as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property subject to taxation under the Property Tax Code.

History: Laws 1993, ch. 52, § 2.

4-55B-3. Authorization for a county to impose an historic building improvements tax; resolution; election required.

A. The governing body of a county may adopt a resolution authorizing the imposition of a property tax upon the taxable value of property in the county for the purpose of making historic building improvements. The total tax imposition that may be authorized under the Historical [Historic] Building Improvements Act shall not exceed a rate of one dollar ($1.00) on each one thousand dollars ($1,000) of taxable value of property in the county and shall be imposed for a period not to exceed four years.

B. The tax authorized pursuant to Subsection A of this section shall not be imposed unless the question of authorizing the imposition of the tax is submitted to the voters of the county.

C. The resolution adopted pursuant to Subsection A of this section shall specify:

(1) the rate of the proposed tax;

(2) the date an election will be held to submit the question of imposition of the tax to the voters of the county;

(3) the period of time the tax is authorized to be imposed; and

(4) the proposed use of the revenues from the proposed tax.

History: Laws 1993, ch. 52, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law.

4-55B-4. Conduct of election; ballot.

A. The question of authorizing the imposition of a tax under the Historic Building Improvements Act shall be submitted to voters of the county at any general election or special election called for that purpose following the adoption of a resolution pursuant to the Historic Building Improvements Act.

B. The proclamation calling the election shall be filed and published as required pursuant to the provisions of the Election Code [Chapter 1 NMSA 1978] and shall specify:

(1) the date on which the election will be held;

(2) the question that will be put to the voters;

(3) the precincts in the county, the location of each polling place and the hours the polling places will be open; and

(4) the date and time of the closing of the registration books by the county clerk as required by law.

C. The question on the ballot shall read:

"_____ For the imposition of an historic building improvements tax at a rate of _____ dollars on each one thousand dollars ($1,000) of taxable value of property in the county for a period of _____ years; or

_____ Against the imposition of an historic building improvements tax at a rate of _____ dollars on each one thousand dollars ($1,000) of taxable value of property in the county for a period of _____ years".

D. The election shall be conducted and canvassed pursuant to the provisions of the Election Code.

History: Laws 1993, ch. 52, § 4.

4-55B-5. Imposition of tax; certification by department of finance and administration; discontinuance of tax.

A. If a majority of the voters voting on the question votes for the historic building improvements tax pursuant to a resolution adopted under the Historic Building Improvements Act, the tax shall be imposed for the earliest property tax year for which the tax rate may be certified. The governing body of the county shall notify the department of finance and administration of the results of the election immediately upon completion of the canvass. The tax rate shall be certified by the department of finance and administration and imposed, administered and collected in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

B. If a majority of the voters voting on the question votes against the historic building improvements tax, the tax shall not be imposed. The county shall not adopt another resolution authorizing the imposition of a tax under the Historic Building Improvements Act for at least one year after the date of the resolution that the voters rejected.

C. The governing body of the county may adopt a resolution discontinuing the imposition of the tax authorized and imposed pursuant to the Historic Building Improvements Act. The discontinuance resolution shall be mailed to the department of finance and administration no later than June 15 of the year in which a tax rate pursuant to that act is not to be certified.

History: Laws 1993, ch. 52, § 5.

ARTICLE 55C
Solar Energy Improvement Special Assessment (Repealed.)

4-55C-1. Repealed.

History: Laws 2009, ch. 270, § 1; 2019, ch. 110, § 2; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-1 NMSA 1978, as enacted by Laws 2009, ch. 270, § 1, relating to short title, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-2. Repealed.

History: Laws 2009, ch. 270, § 2; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-2 NMSA 1978, as enacted by Laws 2009, ch. 270, § 2, relating to definitions, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-3. Repealed.

History: Laws 2009, ch. 270, § 3; 2019, ch. 110, § 3; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-3 NMSA 1978, as enacted by Laws 2009, ch. 270, § 3, relating to ordinance imposing solar energy improvement special assessment, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-4. Repealed.

History: Laws 2009, ch. 270, § 4; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-4 NMSA 1978, as enacted by Laws 2009, ch. 270, § 4, relating to implementation of solar energy improvement special assessment, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-5. Repealed.

History: Laws 2009, ch. 270, § 5; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-5 NMSA 1978, as enacted by Laws 2009, ch. 270, § 5, relating to solar energy improvement special assessment, amount, collection, lien created, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-6. Repealed.

History: Laws 2009, ch. 270, § 6; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-6 NMSA 1978, as enacted by Laws 2009, ch. 270, § 6, relating to solar energy improvement special assessment, disbursement of proceeds, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-7. Repealed.

History: Laws 2009, ch. 270, § 7; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-7 NMSA 1978, as enacted by Laws 2009, ch. 270, § 7, relating to solar energy improvement financing institutions, certification of qualified entities, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-8. Repealed.

History: Laws 2009, ch. 270, § 8; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-8 NMSA 1978, as enacted by Laws 2009, ch. 270, § 8, relating to additional criteria prohibited, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

4-55C-9. Repealed.

History: Laws 2019, ch. 110, § 4; repealed by Laws 2023, ch. 150, § 11.

ANNOTATIONS

Repeals. — Laws 2023, ch. 150, § 11 repealed 4-55C-9 NMSA 1978, as enacted by Laws 2019, ch. 110, § 4, relating to third-party administrator, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

ARTICLE 55D
Improvement Special Assessment

4-55D-1. Short title.

This act [4-55D-1 to 4-55D-10 NMSA 1978] may be cited as the "Improvement Special Assessment Act".

History: Laws 2023, ch. 150, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-2. Definitions.

As used in the Improvement Special Assessment Act:

A. "capital provider" means a private entity or its designee, successor or assigns that finances or refinances an eligible improvement pursuant to the Improvement Special Assessment Act;

B. "county" means a county, including an H class county;

C. "county ordinance" means an ordinance adopted by a county pursuant to the Improvement Special Assessment Act to establish a program within a designated region;

D. "department" means the economic development department;

E. "eligible improvement" means a permanently affixed energy efficiency improvement, renewable energy improvement, water conservation improvement or resiliency improvement installed on eligible property as part of the construction or renovation of the property;

F. "eligible property" means any privately owned commercial, industrial, agricultural or multifamily residential real property with five or more dwelling units, including real property owned by an entity formally recognized as tax exempt pursuant to Internal Revenue Code of 1986, as amended;

G. "energy efficiency improvement" means measures, equipment or devices that result in a decrease in consumption of or demand for electricity or natural gas;

H. "local government" means a municipality, county or other general function governmental unit established by state law;

I. "municipal" or "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

J. "program" means a special assessment program that utilizes and conforms to the program guidebook and uniform special assessment documents established by the department pursuant to the Improvement Special Assessment Act;

K. "program administrator" means a person designated by a county to administer a program; "program administrator" may be the department, the county or a third party; provided that the administration procedures used conform to the requirements of the Improvement Special Assessment Act;

L. "program guidebook" means a comprehensive document created by the department pursuant to the Improvement Special Assessment Act, including uniform assessment documents, appropriate guidelines, specifications, approval criteria and other standard forms consistent with the administration of a program that are not detailed in the Improvement Special Assessment Act;

M. "project application" means an application submitted to a program administrator to demonstrate that a proposed project qualifies for special assessment financing pursuant to a program;

N. "region" means a geographical area as designated by a county pursuant to the Improvement Special Assessment Act;

O. "renewable energy improvement" means an energy system that generates energy by use of low- or zero-emissions generation technology with substantial long-

term production, including solar, wind and geothermal resources, fuel cell equipment using an electrochemical process to generate electricity and heat or biomass resources;

P. "resiliency improvement" means improvements that increase the resilience of a property, including air quality, flood mitigation, storm water management, energy storage and microgrids, alternative vehicle charging infrastructure, fire or wind resistance or inundation adaptation;

Q. "special assessment" means a voluntary assessment imposed on a property pursuant to the Improvement Special Assessment Act for the total amount of special assessment financing together with interest, penalties, fees and charges related thereto;

R. "special assessment agreement" means a voluntary agreement of a property owner to allow a county to place an assessment on the owner's property to repay special assessment financing pursuant to the Improvement Special Assessment Act;

S. "special assessment assignable certificate" means a document assigning a special assessment lien from the county to a capital provider in an amount not to exceed the amount of the special assessment financing for the term of the special assessment lien;

T. "special assessment financing" means the total amount of financing provided by a capital provider pursuant to a special assessment financing agreement, including accrual of interest and penalties, charges, fees and costs of enforcement of a special assessment lien;

U. "special assessment financing agreement" means a contract pursuant to which a property owner agrees to repay a capital provider for special assessment financing and to the terms of the special assessment financing, including the treatment of prepayment and partial payment of a special assessment, servicing arrangements, the payment of any finance charges and fees and accrual of interest and penalties;

V. "special assessment lien" means a lien recorded in all counties in which the eligible property is located to secure the special assessment, which assessment remains on the property until paid in full;

W. "uniform assessment documents" means the forms of county ordinance, special assessment agreement, special assessment lien, special assessment assignable certificate and other model documents prepared by the department pursuant to the Improvement Special Assessment Act for use in the program; provided, however, the department shall not mandate a form of special financing agreement that shall be supplied by a capital provider; and

X. "water conservation improvement" means measures, equipment or devices that decrease the consumption of or demand for water, address safe drinking water or eliminate lead from water used for drinking or cooking.

History: Laws 2023, ch. 150, § 2.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-3. Ordinance establishing the program.

The board of county commissioners of a county may by county ordinance establish a program. The county ordinance may apply within the boundaries of a municipality in a county if the municipality adopts a resolution or ordinance approving the application of the county's ordinance within the municipality. The county ordinance shall be substantively in the form set forth in the program guidebook and shall:

A. include a statement that the financing of eligible improvements, repaid by special assessments on eligible property benefited by such improvements, is in the interest of public health, safety and welfare;

B. designate the region in which owners of eligible property may finance eligible improvements pursuant to the Improvement Special Assessment Act; a county may designate more than one region and if multiple regions are designated, the regions may be separate, overlapping or coterminous;

C. incorporate by reference the program guidebook, notwithstanding that a county adopting a program pursuant to the Improvement Special Assessment Act may narrow the definition of eligible improvements to be consistent with the county's climate goals;

D. authorize and direct a county official to enter into special assessment agreements with property owners and capital providers and issue special assessment assignable certificates on behalf of the county to impose special assessments and assign special assessment liens for assessments approved by the program administrator pursuant to this section;

E. authorize direct financing between an eligible property owner and a capital provider to finance eligible improvements;

F. designate a program administrator; and

G. require that the interest rate, delinquent interest, penalties, terms of prepayment and other terms of a special assessment shall be established by a capital provider in the related special assessment financing agreement for such assessment.

History: Laws 2023, ch. 150, § 3.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-4. Approval of special assessment.

A. Prior to entering into a special assessment agreement, a property owner shall submit a project application to the program administrator in a form consistent with the program guidebook. The application shall include:

(1) for an existing eligible property:

(a) where energy efficiency improvements, water conservation improvements or renewable energy improvements are proposed, certification by a licensed professional engineer or other professional listed in the program guidebook stating that the proposed eligible improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions or the addition of renewable sources of energy or water; or

(b) where resiliency improvements are proposed, certification by a licensed professional engineer or other professional listed in the program guidebook stating that the qualified improvements will result in improved resilience;

(2) for construction of a new eligible property, certification by a licensed professional engineer or other professional listed in the program guidebook stating that the proposed eligible improvements will enable the property to exceed the energy efficiency, water conservation, renewable energy, renewable water or resilience requirements of the applicable building code;

(3) certification that the property owner requesting the proposed eligible improvements is the owner of record of the property on which the special assessment will be imposed and that there are no delinquent taxes or assessments on the property;

(4) the name of the capital provider providing the special assessment financing and the proposed terms of the special assessment financing agreement, including:

(a) the special assessment financing amount;

(b) the interest rate;

(c) administrative fees paid to the county;

(d) a schedule of the installments of the special assessment;

(e) the number of years the special assessment shall be imposed on the property;

(f) delinquent interest or penalties; and

(g) the conditions by which the property owner may prepay and permanently satisfy the debt owed pursuant to the special assessment financing agreement and remove the special assessment lien from the property; and

(5) written consent from any holder of a lien, mortgage or security interest in the real property that the property may participate in the program and that the special assessment lien shall have priority superior to all liens, claims and titles except a lien for general ad valorem property taxes or an improvement district lien that is coequal to property taxes.

B. Prior to entering into a special assessment agreement, the county shall receive from the program administrator certification that the proposed eligible improvements, eligible property and property owner qualify for financing pursuant to the program.

History: Laws 2023, ch. 150, § 4.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-5. Imposition of special assessment; amount; collection; special assessment lien created.

A. Upon entering into a special assessment agreement, the county shall record a special assessment lien on the subject property in the real property records of the county in which the property is located.

B. The recording of the lien pursuant to Subsection A of this section shall include:

(1) the legal description of the property;

(2) the county assessor's parcel number of the property;

(3) the grantor's name, which shall be the same as the property owner on the special assessment agreement;

(4) the grantee's name, which shall be the county in which the property is located;

(5) the date on which the special assessment lien was created;

(6) the principal amount of the special assessment lien;

(7) the terms and length of the special assessment lien; and

(8) a copy of the special assessment agreement.

C. A special assessment lien shall be effective during the period in which the special assessment is imposed and shall have priority superior to all liens, claims and titles except a lien for general ad valorem property taxes or an improvement district lien that is coequal to property taxes.

D. A special assessment lien runs with the land, and that portion of the special assessment lien that has not yet become due is not accelerated or eliminated by foreclosure of the special assessment lien or any lien for taxes or assessments imposed by the state, a local government or taxing district against the property on which the special assessment lien is imposed.

E. Upon entering into a special assessment agreement, the county shall execute and record a special assessment assignable certificate from the county to the appropriate capital provider. The special assessment assignable certificate shall convey the special assessment lien including all of the characteristics described in Subsection B of this section. The holder of the special assessment assignable certificate shall be solely responsible for the billing and collection of the related special assessment and for the enforcement of the special assessment lien.

F. When the underlying special assessment financing has been satisfied, the special assessment shall be removed from the property and the county shall record a release of the special assessment lien.

History: Laws 2023, ch. 150, § 5.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-6. Delinquent special assessment payments; enforcement of special assessment liens.

A. Delinquent payments due on a special assessment incur interest and penalties as specified in the special assessment financing agreement.

B. Delinquent payments due on a special assessment shall be enforced in the event of a nonpayment of the special assessment or installment thereto.

C. Delinquent payments due on a special assessment have the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate.

D. The holder of a special assessment assignable certificate may institute proceedings to foreclose the special assessment lien against the property that is delinquent in the payment of the special assessment or installment of a special assessment for a period of more than one year.

E. The capital provider may sell or assign for consideration any and all special assessment liens received from the county. The capital provider or its assignee shall have and possess the same powers and rights at law or in equity to enforce the special assessment lien in the same manner as described in Subsections C and D of this section.

History: Laws 2023, ch. 150, § 6.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-7. Special assessment financing.

A. Special assessment financing shall be provided by capital providers and disbursed directly by capital providers to fund eligible improvements subject to a special assessment financing agreement.

B. A county is not liable in any way for the debt of the property owner, is not a third-party obligor and is not pledging or lending its credit to the property owner or the capital provider.

History: Laws 2023, ch. 150, § 7.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-8. Eligible costs; additional criteria prohibited.

A. Costs capitalized into the special assessment financing principal amount may include:

(1) the cost of materials and labor necessary for installation or modification of an eligible improvement;

(2) permit fees;

(3) inspection fees;

(4) capital provider's fees;

(5) program administrative fees;

(6) project development and engineering fees;

(7) third-party review fees, including verification review fees;

(8) capitalized interest;

(9) interest reserves;

(10) escrow for prepaid property taxes and insurance; and

(11) any other fees or costs that may be incurred by the property owner incident or ancillary to the installation, modification or improvement on a specific or pro rata basis.

B. A property may be eligible for financing if otherwise qualified improvements were completed and operational no more than thirty-six months prior to submission of the application to the local government.

C. A county or program administrator shall not require property owners or capital providers to access administrative services from the county or program administrator other than those provided for in the Improvement Special Assessment Act.

D. Program administrative fees shall reflect the reasonable costs of the county or program administrator to provide administrative services for the program but shall not exceed the lesser of one percent of the principal amount of the special assessment financing or twenty-five thousand dollars ($25,000).

History: Laws 2023, ch. 150, § 8.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-9. Program guidebook; program administrator.

A. The department shall develop and make available on its website within ninety days of the effective date of the Improvement Special Assessment Act the program guidebook governing the terms and conditions under which financing for special assessments may be made available through the program. The program guidebook shall include:

(1) forms for the uniform assessment documents;

(2) a statement that the term of the special assessment financing agreement shall not exceed thirty years;

(3) a statement explaining the application process and eligibility requirements for participation in the program, consistent with Section 4 [4-55D-4 NMSA 1978] of the Improvement Special Assessment Act;

(4) a statement explaining the consent requirement provided in Section 4 of the Improvement Special Assessment Act; and

(5) a statement explaining the engineer certification requirement set forth in Section 4 of the Improvement Special Assessment Act.

B. The department may elect to serve as a program administrator and may contract with a third party to assist with administration. In the event the department or its contracted third party provides administrative services for the program, counties establishing a program pursuant to the Improvement Special Assessment Act shall designate the department or its contracted third party as program administrator in addition to any other program administrator designated by the county.

C. The board of county commissioners may authorize a department or official of the county as program administrator pursuant to the county ordinance and may contract with a third party to assist with the administration of the program.

D. Any combination of counties may agree to jointly administer a program pursuant to a memorandum of understanding. Any combination of counties may also agree to jointly administer a program pursuant to an agreement under the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978], notwithstanding that the secretary of finance and administration shall not approve more than one joint powers agreement for the administration of a single program.

History: Laws 2023, ch. 150, § 9.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

4-55D-10. Immunity.

Nothing in the Improvement Special Assessment Act shall be interpreted to pledge, offer or encumber the full faith and credit of a county.

History: Laws 2023, ch. 150, § 10.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 150 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

ARTICLE 56
Refuse; Collection and Disposal

4-56-1. Definitions.

As used in this act [4-56-1 to 4-56-3 NMSA 1978]:

A. "garbage" includes all waste food, swill, carrion, slops and all waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products and the carcasses of animals;

B. "rubbish" includes all junked parts or bodies of automobiles, waste paper, paper cartons, tree branches, yard trimmings, discarded furniture, tin cans, dirt, ashes, bottles and all other unwholesome material of every kind not included as garbage; and

C. "refuse" includes garbage and rubbish.

History: 1953 Comp., § 15-57-1, enacted by Laws 1967, ch. 79, § 1.

ANNOTATIONS

Cross references. — For the Refuse Disposal Act, *see* 4-52-1 NMSA 1978 et seq.

For collection and disposal of refuse by municipalities, *see* 3-48-1 NMSA 1978 et seq.

Counties may provide for refuse collection and disposal under this article without regard for 4-52-1 NMSA 1978 et seq. 1971 Op. Att'y Gen. No. 71-24.

4-56-2. County may collect and dispose of all refuse.

A. A county may establish and maintain, manage and supervise a system of storage, collection and disposal of all refuse. The board of county commissioners may appropriate money for:

(1) the lease, purchase or condemnation of such lands or rights-of-way as are necessary for the storage, collection and disposal of refuse;

(2) the planning, construction, improvement, operation and maintenance of such structures and equipment as may be necessary for the storage, collection and disposal of refuse;

(3) the compensation of the necessary employees;

(4) the payment of the cost of contracting on behalf of the county for the collection and disposal of refuse by any firm, corporation or individual.

History: 1953 Comp., § 15-57-2, enacted by Laws 1967, ch. 79, § 2.

ANNOTATIONS

Compiler's notes. — This section, as enacted, contained no Subsection B.

Cross references. — For article, "The New Mexico Solid Waste Act: A Beginning For Control of Municipal Solid Waste in the Land of Enchantment," *see* 21 N.M.L. Rev. 167 (1990).

4-56-3. Authority of board of county commissions [commissioners] to administer.

A. The board of county commissioners in any county establishing a system of collection and disposal of refuse may acquire by purchase, gift, grant, bequest, devise or through condemnation proceedings, in the manner provided in Sections 42-1-1 through 42-2-21 NMSA 1978, such lands and rights-of-way as are necessary for the exercise of any authorized function of the county in the collection and disposal of refuse.

B. The board of county commissioners may execute contracts on behalf of the county with any municipality or other county for the joint operation of any refuse collection system and sanitary landfill or other disposal method.

C. The board of county commissioners may determine that the collection and disposal of refuse is in the interest of public health, safety and welfare, and regulate such collection and disposal within the county.

D. The board of county commissioners may receive all grants or assistance from and cooperate with county, municipal, state and federal agencies in carrying out the purpose and function of the collection and disposal of refuse.

E. If the board of county commissioners has acted under this section to establish one or more sanitary landfill sites and is regulating the disposal of refuse in the county, it may establish, assess and collect fees from persons using the refuse disposal sites.

F. If the board of county commissioners has acted under this section to establish a system of collection and disposal of refuse and is regulating the collection and disposal of refuse, it may establish, assess and collect fees from persons who use the disposal system in order to pay the necessary costs of the refuse collection and disposal system. Before taking final action on the establishment of a system of fees, the board of county commissioners shall give at least twenty days' notice of the meeting at which final action to establish a system of fees is to be taken and shall publish that notice once in a newspaper of general circulation in the county at least fifteen days prior to the meeting.

G. The board of county commissioners shall consult with and coordinate solid waste disposal activities with the local health department.

History: 1953 Comp., § 15-57-3, enacted by Laws 1967, ch. 79, § 3; 1971, ch. 124, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For eminent domain and condemnation generally, *see* N.M. Const., art. II, § 20 and 42A-1-1 NMSA 1978 et seq.

Compiler's notes. — Sections 42-1-1 through 42-1-39 NMSA 1978 were repealed by Laws 1981, ch. 125, § 62, and 42-1-40 NMSA 1978 was recompiled as 42A-1-31 NMSA 1978 by Laws 1981, ch. 125, § 60. For present provisions concerning condemnation proceedings generally, *see* 42A-1-1 NMSA 1978 et seq.

ARTICLE 57
Planning Commission

4-57-1. Creation of planning commission.

Any county may by ordinance establish a planning commission. A county planning commission shall consist of not less than five (5) members who shall be appointed by the county commission. Administrative officials of the county may be appointed as ex-officio nonvoting members of the planning commission.

History: 1953 Comp., § 15-58-1, enacted by Laws 1967, ch. 150, § 1.

ANNOTATIONS

Cross references. — For the Planning District Act, *see* 4-58-1 NMSA 1978 et seq.

For municipal planning, *see* 3-19-1 NMSA 1978 et seq.

For planning and platting of subdivisions, *see* 3-20-1 NMSA 1978 et seq.

For the Regional Planning Act, *see* 3-56-1 NMSA 1978 et seq.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning § 54.

20 C.J.S. Counties § 39; 101 C.J.S. Zoning § 9.

4-57-2. Powers and duties of commission.

A. A county planning commission shall have such powers as are necessary and proper to carry out and promote county planning. Such planning shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

B. A county planning commission may:

(1) make reports and recommendations for the planning and development of the county to any other individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency of the state or any other legal entity or their legal representatives, agents or assigns;

(2) recommend to the administrative and governing officials of the county, programs for public improvements and their financing.

History: 1953 Comp., § 15-58-2, enacted by Laws 1967, ch. 150, § 2.

4-57-3. Planning jurisdiction.

Each county shall have exclusive planning jurisdiction within its county boundary except as to any area exclusively within the planning and platting jurisdiction of a municipality and except as to those areas where a county and a municipality may have concurrent jurisdiction, as now or may hereinafter be provided by law.

History: 1953 Comp., § 15-58-3, enacted by Laws 1967, ch. 150, § 3.

ARTICLE 58
Planning Districts

4-58-1. Short title.

This act [4-58-1 to 4-58-6 NMSA 1978] may be cited as the "Planning District Act".

History: 1953 Comp., § 15-59-1, enacted by Laws 1973, ch. 298, § 1.

ANNOTATIONS

Cross references. — For county planning commissions, *see* 4-57-1 to 4-57-3 NMSA 1978.

For the Regional Planning Act, *see* 3-56-1 NMSA 1978 et seq.

For the Executive Planning Act, *see* 9-14-1 et seq.

For the Joint Powers Agreements Act, *see* 11-1-1 NMSA 1978 et seq.

4-58-2. Purpose.

The purpose of the Planning District Act is to establish state grants-in-aid for financial assistance to designated planning and development districts as created by executive order of the governor and which presently consist of:

A. district 1, consisting of San Juan, McKinley and Cibola counties;

B. district 2, consisting of Rio Arriba, Santa Fe, Taos, Los Alamos, Colfax, Mora and San Miguel counties;

C. district 3, consisting of Sandoval, Bernalillo, Valencia and Torrance counties;

D. district 4, consisting of Union, Harding, Quay, Curry, Roosevelt, Guadalupe and De Baca counties;

E. district 5, consisting of Catron, Hidalgo, Luna and Grant counties;

F. district 6, consisting of Lincoln, Otero, Chaves, Eddy and Lea counties; and

G. district 7, consisting of Socorro, Sierra and Dona Ana counties.

History: 1953 Comp., § 15-59-2, enacted by Laws 1973, ch. 298, § 2; 1989, ch. 35, § 1.

4-58-3. Limitation.

Nothing in the Planning District Act shall be construed to change or conflict with the status of economic development districts, regional and metropolitan planning commissions or councils of governments established heretofore under the Regional Planning Act [3-56-1 to 3-56-9 NMSA 1978] or the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

History: 1953 Comp., § 15-59-3, enacted by Laws 1973, ch. 298, § 3.

4-58-4. Recognized regional councils.

A. The governing board of any existing economic development district or council of government is the regional council of the initial planning and development district. No regional council of a planning and development district shall be recognized unless the membership of its governing board complies with the provisions of Subsection B of this section.

B. In order to qualify for the benefits of the provisions of the Planning District Act, the regional council of a planning and development district shall be officially designated by the governor; shall have a governing board of at least fifty percent elected officials of local or county governments and the remainder of the members shall represent economic development organizations and organizations broadly representative of diverse community interests.

C. The operations of regional councils of planning and development districts shall be solely within the discretion and control of the governing boards.

D. Qualification as a regional council and eligibility for grants-in-aid provisions of the Planning District Act shall terminate with respect to any regional council that uses state funds for any purpose not within the intent and purposes of the Planning District Act and shall not be restored until the regional council makes restitution for any misused funds and furnishes proof of compliance with respect to future operations.

History: 1953 Comp., § 15-59-4, enacted by Laws 1973, ch. 298, § 4.

4-58-5. State grants-in-aid authorized.

A. The secretary of the department of finance and administration may, from time to time, make grants-in-aid to officially recognized regional councils of planning and development districts from funds appropriated for that purpose. Payments shall be scheduled as nearly as possible to begin on July 1 of each fiscal year and on the first day of each calendar quarter thereafter.

B. Funds appropriated for grants-in-aid to recognized regional councils of planning and development districts shall be allocated, in equal shares, among the initial seven recognized planning and development districts. If any changes occur in the district boundaries of any of the initial seven districts, allocations of appropriated funds shall be made to the districts in accordance with equitable criteria established by the department of finance and administration and filed under the State Rules Act [Chapter 14, Article 4 NMSA 1978] prior to establishment of the changes.

History: 1953 Comp., § 15-59-5, enacted by Laws 1973, ch. 298, § 5; 1977, ch. 247, § 144; 1983, ch. 296, § 13.

ANNOTATIONS

Cross references. — For planning powers and duties of the secretary of the department of finance and administration, *see* 9-6-5.1 NMSA 1978.

4-58-6. Conditions of grants-in-aid.

A. Whenever funds are appropriated to be used for making grants-in-aid authorized in the Planning District Act, the secretary of the department of finance and administration shall notify the respective boards of directors of the regional councils of the amount allocated to the district and shall notify the regional council that applications for grants-in-aid may be made upon forms provided by the secretary. Upon receipt of the application, the secretary shall determine that:

(1) the regional council applying for a grant-in-aid is officially recognized for a designated district;

(2) the governing board of the regional council certifies that a budget has been adopted for the expenditure of state and local funds for purposes consistent with the Planning District Act;

(3) the regional council has obtained nonfederal matching funds or services, or both, from local governments or private sources at least equal to the amount of the state grant-in-aid. The president or treasurer of the board of directors of the regional council shall certify from time to time that the matching funds from local or private

sources are on deposit to the organization's own account before quarterly payment of a state grant-in-aid is made to the regional council; and

(4) at the end of each fiscal year, an audited report of expenditures of the regional council will be submitted to the secretary, that any state funds unexpended on June 30 each year will revert to the general fund and that, if the regional council has used any state funds for any purpose not within the purposes of the Planning District Act, the amount shall be reimbursed to the state.

B. The secretary shall review any application for a grant-in-aid, and if it is determined that the regional council is qualified to receive money under the Planning District Act, the grant-in-aid shall be paid to the regional council on a dollar-for-dollar matching basis of funds or services, or both, provided from local or private nonfederal sources, but the total of all grants-in-aid within a planning and development district shall not exceed the amount allocated to that district for the fiscal year. All or part of the state and local funds or services, or both, may be used to qualify for matching federal funds to be used for the purposes of the Planning District Act. If any planning and development district does not qualify for the total amount of grants-in-aid allocated to it during any fiscal year because of the lack of required matching funds or services, or both, from nonfederal local or private sources, the amount thereof for which the district does not qualify shall revert to the state general fund and shall not be apportioned for payment to any other district.

History: 1953 Comp., § 15-59-6, enacted by Laws 1973, ch. 298, § 6; 1977, ch. 247, § 145; 1983, ch. 296, § 14.

ANNOTATIONS

Cross references. — For planning powers and duties of the secretary of the department of finance and administration, *see* 9-6-5.1 NMSA 1978.

ARTICLE 59
County Industrial Revenue Bonds

4-59-1. Short title.

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

History: 1953 Comp., § 15-60-1, enacted by Laws 1975, ch. 286, § 1; 1997, ch. 216, § 3; 1997, ch. 226, § 3.

ANNOTATIONS

Cross references. — For Industrial Revenue Bond Act, *see* 3-32-1 NMSA 1978 et seq.

For article, "New Mexico Taxes: Taking Another Look", *see* 32 N.M.L. Rev. 351 (2002).

1997 amendments. — Identical amendments to this section were enacted by Laws 1997, ch. 216, § 3 and Laws 1997, ch. 226, § 3, both effective June 20, 1997, which substituted "Chapter 4, Article 59 NMSA 1978" for "This act". The section is set out as amended by Laws 1997, ch. 226, § 3. *See* 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R.4th 1183.

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, that 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;

(b) an electric generation or transmission 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 [Chapter 62, Articles 1 to 13 of NMSA 1978]; and

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

(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.

History: 1953 Comp., § 15-60-2, enacted by Laws 1975, ch. 286, § 2; 1979, ch. 389, § 1; 1983, ch. 282, § 2; 1992, ch. 11, § 1; 2001, ch. 284, § 1; 2002, ch. 25, § 4; 2002, ch. 37, § 4; 2003, ch. 221, § 2; 2015, ch. 120, § 1; 2020, ch. 14, § 4; 2024, ch. 67, § 3.

ANNOTATIONS

Cross references. — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 501(c)(3).

The 2024 amendment, effective July 1, 2024, amended the County Industrial Revenue Bond Act to include certain electric energy storage facilities as eligible projects; and in Subsection F, added Subparagraph F(4)(c).

The 2020 amendment, effective July 1, 2020, included electric transmission facilities within the definition of an eligible "project" as used in the County Industrial Revenue Bond Act; and in Subsection F, Subparagraph F(4)(b), after "electric generation", added "or transmission".

The 2015 amendment, effective July 1, 2015, included certain commercial enterprises involved in mining and energy products as suitable enterprises for a project as that term is used in the County Industrial Revenue Bond Act; added new Paragraphs (2) and (3) of Subsection F and redesignated the succeeding paragraphs accordingly; and in Subparagraph F(4)(b), after "Public Utility Act", deleted "and the Electric utility Industry Restructuring Act of 1999".

The 2003 amendment, effective June 20, 2003, substituted "a county" for "those counties" in Subsection B; substituted "'health care service'" for "'health care services'" in Subsection D; inserted "except as provided in Paragraph (1) of Subsection A of Section 4-59-4 NMSA 1978" following "a county but" in Subsection F; substituted "a facility" for "facilities" following "does not include" in Subsection F(2); and substituted "a" for "any" throughout Subsection F.

The 2002 amendment, effective May 15, 2002, added a new Subsection C and redesignated the remaining subsections accordingly; substituted Subsection F(2)(b) for former provisions, which detailed population and net taxable value requirements for electricity generation facilities in class B counties to be excepted from the exclusion in Subsection F(2); and added Subsection F(7).

This section was also amended by Laws 2002, ch. 25, § 4. The section was set out as amended by Laws 2002, ch. 37, § 4. *See* 12-1-8 NMSA 1978.

The 2001 amendment, effective June 15, 2001, added Subsection E(2)(b).

The 1992 amendment, effective May 20, 1992, deleted "water" following "gas" in Subsection E(2), added "except for water utilities" at the end of that subsection, and

deleted "designed to provide water to any vineyard or winery" at the end of Subsection E(6).

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.

History: 1953 Comp., § 15-60-3, enacted by Laws 1975, ch. 286, § 3; 2002, ch. 25, § 5; 2002, ch. 37, § 5.

ANNOTATIONS

Cross references. — For definition of "501(c)(3) corporations", *see* 4-59-2 NMSA 1978.

2002 amendments. — Identical amendments to this section were enacted by Laws 2002, ch. 25, § 5 and Laws 2002, ch. 37, § 5, effective May 15, 2002, inserting "and 501(c)(3) corporations" in the second sentence, and inserting "or any 501(c)(3) corporation" in the last sentence. This section was set out as amended by Laws 2002, ch. 37, § 5. *See* 12-1-8 NMSA 1978.

County to pay bonds from sale or lease of projects. — No provision of this article would indicate that a county may generate revenues to pay bonds from any source other than the sale or lease of "projects." 1981 Op. Att'y Gen. No. 81-19.

County not authorized to make loans to farmers and ranchers. — Although the promotion of agriculture and ranching may well be within the intended purpose of this section, it is not intended that a county be authorized to issue agricultural development revenue bonds to provide funds to make loans to farmers and ranchers, regardless of how such a bond program may be structured. 1981 Op. Att'y Gen. No. 81-19.

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, transmission facility or energy storage facility project unless the school districts within the county in which the project is located receive annual in-lieu tax payments; provided that the annual in-lieu tax payments required by this paragraph shall be:

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

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

(c) divided among the school districts located within the county, and if there is more than one school district in such county, the in-lieu payment shall be allocated as follows: 1) fifty percent allocated equally among all school districts in which the project is located; 2) forty percent allocated to the school districts within the county in proportion to the area of each school district within the county; and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code [Chapter 22 NMSA 1978, except Article 5A] reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds; and

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

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.

History: 1953 Comp., § 15-60-4, enacted by Laws 1975, ch. 286, § 4; 1979, ch. 389, § 2; 1997, ch. 216, § 5; 1997, ch. 226, § 5; 2001, ch. 284, § 2; 2003, ch. 221, § 3; 2020, ch. 14, § 5; 2021, ch. 91, § 3; 2023, ch. 180, § 2; 2024, ch. 67, § 4.

ANNOTATIONS

Cross references. — For requirements respecting leases, *see* 4-59-7 NMSA 1978.

For refunding bonds, *see* 4-59-8 NMSA 1978.

For use of proceeds of bonds, *see* 4-59-9 NMSA 1978.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

For the Border Development Act, *see* 58-27-1 NMSA 1978 et seq.

The 2024 amendment, effective July 1, 2024, provided an exception to certain powers conferred on counties by including energy storage facility projects in an existing provision listing projects that counties are prohibited from acquiring, unless the school districts within the county in which the project is located receive annual in-lieu tax payments; and in Subsection A, Paragraph A(2), after "electricity generation", added "facility", and after "transmission facility", added "or energy storage facility".

The 2023 amendment, effective April 5, 2023, modified the formula for distributions of payments-in-lieu of taxes to school districts; and in Subsection A, Subparagraph A(2)(b), after "dividing the average of", added "all of the mills imposed by the school districts in the county, including", after "capital improvement", added "building improvement, education technology", and after "imposed by the school districts in the county", deleted "and" and added "plus", in Subparagraph A(2)(c), deleted "shared" and added "divided", after "school districts located within the county", deleted "equally", and after the next occurrence of "and", added "if there is more than one school district in such county, the in-lieu payment shall be allocated as follows: 1) fifty percent allocated equally among all school districts in which the project is located; 2) forty percent allocated to the school districts within the county in proportion to the area of each school district within the county; and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds; and", and in Subparagraph A(2)(d), deleted "not be" and added "for each individual school district located within the county, no".

The 2021 amendment, effective June 18, 2021, changed the method for determining an annual in-lieu tax payment for an electric generation or transmission facility project, and provided for the sharing of in-lieu tax payments among certain school districts; in Subsection A, Paragraph A(2), after "unless the school", deleted "district in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes for the fully developed project had the project not been acquired" and added "districts within the county in which the project is located receive annual in-lieu tax payments; provided that the annual in-lieu tax payments required by this paragraph shall be", and added Subparagraphs A(2)(a) through A(2)(d).

The 2020 amendment, effective July 1, 2020, prohibited counties from acquiring electricity generation or transmission facility projects unless the school district in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes had the project not been acquired; and in Subsection A, Paragraph A(2), after "generation", added "or transmission", and deleted "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" and added "the school district in which the project is located will receive the same amount, or greater, of annual in-lieu tax payments as would have been received in property taxes for the fully developed project had the project not been acquired".

The 2003 amendment, effective June 20, 2003, substituted "however, that:" for "the" at the end of Subsection A; added Subsection A(1) and added designation Subsection A(2).

The 2001 amendment, effective June 15, 2001, added the language beginning "provided, the county shall not acquire" in Subsection A.

The 1997 amendment, effective June 20, 1997, deleted "provided, however, any project located within fifteen miles of a municipality shall be subject to prior approval of the governing body of the largest municipality within the same county and within the fifteen mile zone" from the end of Subsection A and substituted "as provided in the County Industrial Revenue Bond Act" for "as hereinafter provided" at the end of the first sentence in Subsection C.

4-59-4.1. Notice.

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.

History: Laws 1997, ch. 216, § 4; 1997, ch. 226, § 4; 2003, ch. 221, § 4; 2011, ch. 80, § 1; 2011, ch. 82, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, required counties to give all entities authorized to levy taxes in the county notice of the amount, purpose and time period of proposed industrial revenue bonds.

Laws 2011, ch. 80, § 1 and Laws 2011, ch. 82, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2011, ch. 82, § 1. *See* Section 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, in the section heading, deleted "Class A county" at the beginning, and substituted "and county assessor" for "over two hundred thousand" at the end; in Subsection A, deleted "class A" following "revenue bonds, a", substituted "the county assessor and the largest municipality" for "a municipality with a population in excess of two hundred thousand" following "give notice to", inserted "county assessor and the" following "the matter. The", deleted "by the municipality" near the end; in Subsection B, inserted "county assessor and the" near the beginning, substituted "their" for "its" following "able to forward", substituted "or the county assessor and they do" for "and the municipality does" following "from the municipality"; and added Subsection D.

4-59-4.2. Electric transmission projects; payments to the state.

A person proposing an electric transmission facility project pursuant to Paragraph (2) of Subsection A of Section 4-59-4 NMSA 1978 shall pay to the state annual payments equal to five percent of the total amount of in-lieu tax payments to be made in that calendar year by such person to counties, municipalities and other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 4-59-4 NMSA 1978, and five percent of the value of any other consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. A copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to local taxing entities. Each annual payment shall be made to the department of finance and administration for deposit to the general fund.

History: Laws 2020, ch. 14, § 6; 2021, ch. 91, § 4.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, clarified that certain payments to the state for an electric transmission project shall be made by the person proposing the electric transmission project; and deleted "The state shall receive" and added "A person proposing an electric transmission facility project pursuant to Paragraph (2) of Subsection A of Section 4-59-4 NMSA 1978 shall pay to the state", after "total amount of in-lieu tax payments", added "to be", after "made", added "in that calendar year by such person", and after "any other consideration", added "related to the project".

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 [Chapter 59A NMSA 1978, except Articles 30A and 42A]; 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.

History: 1953 Comp., § 15-60-5, enacted by Laws 1975, ch. 286, § 5; 1983, ch. 265, § 22; 2003, ch. 360, § 2.

ANNOTATIONS

Cross references. — For refunding bonds, *see* 4-59-8 NMSA 1978.

For limitations upon county indebtedness, *see* N.M. Const., art. IX, §§ 10 and 13.

For finances of counties, municipalities and school districts generally, *see* 6-6-7 NMSA 1978 et seq.

The 2003 amendment, effective January 1, 2004, added Subsection E.

Low interest loans to farmers and ranchers. — Although an intended purpose of this article may be accomplished by means of an agricultural development revenue bond program providing funds for low interest loans to farmers and ranchers, such a loan program is not one of the means prescribed by the legislature to accomplish that purpose. 1981 Op. Att'y Gen. No. 81-19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 1 et seq.

20 C.J.S. Counties §§ 218 to 226.

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.

History: 1953 Comp., § 15-60-6, enacted by Laws 1975, ch. 286, § 6.

ANNOTATIONS

Cross references. — For use of proceeds of bonds, *see* 4-59-9 NMSA 1978.

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.

History: 1953 Comp., § 15-60-7, enacted by Laws 1975, ch. 286, § 7.

ANNOTATIONS

Cross references. — For leasing of projects generally, *see* 4-59-4 NMSA 1978.

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 [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.

History: 1953 Comp., § 15-60-8, enacted by Laws 1975, ch. 286, § 8.

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.

History: 1953 Comp., § 15-60-9, enacted by Laws 1975, ch. 286, § 9.

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 [Chapter 62, Articles 1 to 6 and 8 to 13 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.

History: 1978 Comp., § 4-59-9.1, enacted by Laws 1992, ch. 11, § 2; 1993, ch. 282, § 13.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in both sentences.

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.

History: 1953 Comp., § 15-60-10, enacted by Laws 1975, ch. 286, § 10.

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.

History: 1953 Comp., § 15-60-11, enacted by Laws 1975, ch. 286, § 11.

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.

History: 1953 Comp., § 15-60-12, enacted by Laws 1975, ch. 286, § 12.

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.

History: 1953 Comp., § 15-60-13, enacted by Laws 1975, ch. 286, § 13.

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.

History: 1953 Comp., § 15-60-14, enacted by Laws 1975, ch. 286, § 14.

4-59-15. State 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 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.

History: 1953 Comp., § 15-60-15, enacted by Laws 1975, ch. 286, § 15; 2015, ch. 120, § 2.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, required the state board of finance to conduct a hearing following a complaint that a proposed project would directly and

substantially compete with an existing business or enterprise, and required the state board of finance to make a determination within ninety days of receiving the request for determination as to whether the proposed project will directly or substantially compete with the existing business or enterprise; in the catchline, added "State"; in the section, after "filed with the county governing body", deleted "at a" and added "within fifteen days of the", after "authorizing the issuance of bonds", deleted "hereunder" and added "pursuant to the County Industrial Revenue Bond Act is adopted", after "the bonds in connection with", deleted "such" and added "that", and after "within five miles of the proposed project.", added "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.".

4-59-16. Liberal interpretation.

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

History: 1953 Comp., § 15-60-16, enacted by Laws 1975, ch. 286, § 16.

ARTICLE 60
County Pollution Control Revenue Bonds

4-60-1. Short title.

Sections 1 through 17 [4-60-1 to 4-60-15 NMSA 1978] may be cited as the "County Pollution Control Revenue Bond Act".

History: 1978 Comp., § 4-60-1, enacted by Laws 1978, ch. 181, § 1.

ANNOTATIONS

Cross references. — For article, "The New Mexico Solid Waste Act: A Beginning for Control of Municipal Solid Waste in the Land of Enchantment", *see* 21 N.M.L. Rev. 167 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 1 et seq.

39 C.J.S. Health § 21.

4-60-2. Definitions.

Wherever used in the County Pollution Control Revenue Bond Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

A. "municipality" means any incorporated municipality in New Mexico;

B. "county" means any organized or incorporated county in New Mexico;

C. "project" means any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment or any combination thereof, or any interest in any one or more of the foregoing located outside a municipality in the county, or in the county and an adjoining county if part of the project is located in the county and the balance of the project is located in an adjoining county at a location contiguous thereto whether or not presently in existence or under construction, used by any individual, partnership, firm, company, corporation (including a public utility), association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, agent or assigns, substantially for the reduction, abatement or prevention of pollution, including, but not limited to, the removal of pollutants, contaminants or foreign substances from land, air or water or for treatment of any substance in a processed material which otherwise would cause pollution when such material is used;

D. "governing body" means the board of county commissioners;

E. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds, whether or not presently in existence or under construction, necessary to the project or projects or substantially related to the project or projects, operating capital and any other personal properties deemed necessary or substantially related to the project or projects, in connection with the said project or projects;

F. "mortgage" means a mortgage or a mortgage and deed of trust, or the pledge and hypothecation of any assets as collateral security; and

G. "pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation, contamination or noise pollution.

History: 1978 Comp., § 4-60-2, enacted by Laws 1978, ch. 181, § 2.

4-60-3. Legislative intent.

It is the intent of the legislature by the passage of the County Pollution Control Revenue Bond Act to authorize counties to acquire, own, lease or sell projects for the purpose of reducing, abating or preventing pollution, including, but not limited to, removing pollutants, contaminants or foreign substances from land, air or water, or

removing or treating any substance in a processed material which otherwise would cause pollution when such material is used, to protect and promote the health, welfare and safety of the citizens of this state and its habitat and wildlife, with the resultant higher level of employment and economic activity and stability. It is not intended hereby to authorize any county itself to operate any manufacturing, industrial or commercial enterprise. The provisions of the County Pollution Control Revenue Bond Act shall be liberally construed in conformity with this intent.

History: 1978 Comp., § 4-60-3, enacted by Laws 1978, ch. 181, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 1890, 1899, 1972 to 1981.

4-60-4. Additional powers conferred on counties.

In addition to any other powers which 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 which shall be located outside a municipality in the county or in the county and an adjoining county if part of the project is located in the county and the balance of the project is located in an adjoining county at a location contiguous thereto;

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

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, constructing, reconstructing, improving, maintaining, equipping or furnishing any project or projects and to secure the payment of such bonds, all as hereinafter provided. No county shall have the power to operate any project as a business or in any manner except as lessor thereof or seller thereof under an agreement of sale.

History: 1978 Comp., § 4-60-4, enacted by Laws 1978, ch. 181, § 4.

4-60-5. Bonds issued to finance projects.

Bonds issued by a county under authority of the County Pollution Control Revenue Bond Act shall not be the general obligation of such county within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the project or projects or from the sale or lease of the project or projects to finance which the bonds are issued. Bonds and interest coupons issued under authority of the County Pollution Control 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 nor 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 such bond. Such 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 or rates, payable at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the resolution and proceedings of the governing body whereunder the bonds shall be authorized to be issued. Any bonds issued under the authority of the County Pollution Control 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 governing body to be most advantageous, and the county may pay all expenses, attorneys', engineering and architects' fees, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof. All bonds issued under the authority of the County Pollution Control Revenue Bond Act and all interest coupons applicable thereto shall be construed to be negotiable.

History: 1978 Comp., § 4-60-5, enacted by Laws 1978, ch. 181, § 5.

4-60-6. Security for bonds.

The principal of and interest on any bonds issued under the authority of the County Pollution Control Revenue Bond Act shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project or projects from which the revenues so pledged may be derived and may be secured by a pledge of the lease or the agreement of sale of such project or projects. The resolution and proceedings under which such bonds are authorized to be issued or any such mortgage may contain other agreements and provisions including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project or projects covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project or projects, the maintenance and insurance of such project or projects, the creation and maintenance of special funds from the revenues from such project or projects 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 Pollution Control Revenue Bond Act; provided, that in making any such agreements or provisions, a county shall not have the power to obligate itself except with respect to the project or projects 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 resolution and proceedings authorizing any bonds hereunder 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.

History: 1978 Comp., § 4-60-6, enacted by Laws 1978, ch. 181, § 6.

4-60-7. Requirements respecting lease or agreement of sale.

Prior to the leasing, selling or other disposition of any project or projects, the governing body shall 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 part or all of the cost of such project or projects; and

B. the amount necessary to be paid each year into any reserve fund which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and maintenance of the project or projects; and in the case of an agreement of lease or sale unless the terms under which each such project is to be leased or sold provide that the lessee or the purchaser shall maintain the project or projects and carry all proper insurance with respect thereto, the estimated cost of maintaining the project or projects in good repair and keeping it or them properly insured. The determinations and findings of the governing body required to be made in the preceding sentence shall be made and set forth in a resolution constituting part of 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 or projects to a lessee or purchaser under an agreement conditioned upon completion of the project or projects 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 or projects;

(2) to build up and maintain any reserve deemed by the governing body to be advisable in connection therewith; and

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

History: 1978 Comp., § 4-60-7, enacted by Laws 1978, ch. 181, § 7.

4-60-8. 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

amounts as the governing body may deem necessary. The amount of such refunding bonds may be the same as, less than or more than the outstanding principal amount of the bonds being refunded, but shall not exceed an amount which, after including amounts legally available from other sources and income to be received from the investment of such refunding bond proceeds and amounts from other legally available sources, is sufficient to pay promptly as the same become due either at normal maturity dates or at prior redemption dates as the governing body may determine, the principal of the bonds so to be refunded, all unpaid accrued and unaccrued interest thereon to the normal maturity dates of such bonds or to selected prior redemption dates thereof any redemption premiums and any commissions and all estimated costs incidential [incidental] to the issuance of such bonds and to such refunding as may be determined by the governing body to be necessary or advisable. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided that the holders of any bonds so 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 Pollution Control Revenue Bond Act shall be payable solely from the revenues out of which other bonds issued under the County Pollution Control Revenue Bond Act may be payable or solely from those amounts derived from an escrow as herein provided, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also as herein provided, or from any combination of the foregoing sources, and shall be subject to the provisions contained in the County Pollution Control Revenue Bond Act and may be secured in accordance with the provisions of the County Pollution Control Revenue Bond Act.

Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in the County Pollution Control Revenue Bond Act or in any other statute, such escrowed proceeds may be invested in short-term securities, long-term securities or both. Except to the extent inconsistent with the express terms of the County Pollution Control Revenue Bond Act, the resolution and other proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the establishment of any escrow in connection with such refunding and the investment and reinvestment of any escrowed proceeds.

History: 1978 Comp., § 4-60-8, enacted by Laws 1978, ch. 181, § 8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-60-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of the County Pollution Control Revenue Bond Act shall be applied only for the purpose for which the bonds were issued; provided, that 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; and provided further, that 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 said proceeds shall be applied to the payment of the principal of or the redemption premium, if any, and interest on said bonds, and provided further, that any portion of the proceeds from the sale of said bonds, including refunding bonds, or any accrued interest and premium received in any such sale, may, in the event the money currently will not be needed or cannot be effectively used to the advantage of the county for the purposes herein provided, be invested, in accordance with the procedures and subject to any restrictions established by the resolution and other proceedings under which the bonds are issued, in any securities without limitation except as expressly provided to the contrary in Section 8 [4-60-8 NMSA 1978] of the County Pollution Control Revenue Bond Act, if such investment will not interfere with the use of such funds for the primary purposes as herein provided. The cost of acquiring any project or projects shall be deemed to include the following:

A. the actual cost of the construction of any part of a project or projects which shall be constructed, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project or projects that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site or sites, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on any bonds issued by the same county for the same or any other project or projects for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction.

History: 1978 Comp., § 4-60-9, enacted by Laws 1978, ch. 181, § 9.

4-60-10. 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 thereon of a project or any part thereof, 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 Pollution Control Revenue Bond Act; provided, that this provision 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.

History: 1978 Comp., § 4-60-10, enacted by Laws 1978, ch. 181, § 10.

4-60-11. Bonds made legal investments.

Bonds issued under the provisions of the County Pollution Control Revenue Bond Act shall be legal investments for savings banks and insurance companies organized under the laws of this state and shall be eligible for pledging as collateral for public deposits.

History: 1978 Comp., § 4-60-11, enacted by Laws 1978, ch. 181, § 11.

4-60-12. Exemption from taxation.

The bonds authorized by the County Pollution Control Revenue Bond Act and the income from said bonds, all mortgages or other security instrument [instruments] executed as security for said bonds, all lease agreements made pursuant to the provisions hereof and revenue derived from any lease or sale by the county thereof shall be exempt from all taxation by New Mexico or any subdivision thereof.

History: 1978 Comp., § 4-60-12, enacted by Laws 1978, ch. 181, § 12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

4-60-13. Proceedings for issuance and sale of bonds; no notice or publication required.

Issuance and sale of bonds pursuant to the County Pollution Control Revenue Bond Act shall be authorized by resolution adopted by the governing body of the county issuing said bonds, which resolution shall determine the maximum aggregate principal amount, maximum maturity and maximum interest rate of the bonds to be issued thereunder, and may provide for determinations to be made by resolution or resolutions adopted by said governing body with respect to the issuance of a lesser aggregate principal amount of bonds, the designation or substitution of a trustee for bondholders or depositary or escrow agent for bonds proceeds, the issuance of bonds in one or more

series and, with respect to any series of bonds, the principal amount, maturity or maturities, sinking fund provisions, redemption provisions, price or prices which may be at, above or below par, and interest rate or rates of the bonds of such series. The agreement of lease or sale securing the bonds of any series, and the execution and delivery thereof, may be authorized by resolution adopted by said governing body.

No notice, consent or approval by any governmental body 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 Pollution Control Revenue Bond Act, except as provided in that act.

History: 1978 Comp., § 4-60-13, enacted by Laws 1978, ch. 181, § 13.

4-60-14. Construction of act.

Neither the County Pollution Control Revenue Bond Act nor anything herein contained shall 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 Pollution Control 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 such county, and all other laws of the state relative to public contracts and properties shall have no application to projects or bonds issued under the provisions of the County Pollution Control Revenue Bond Act.

History: 1978 Comp., § 4-60-14, enacted by Laws 1978, ch. 181, § 14.

4-60-15. Limitation.

Nothing contained in the County Pollution Control Revenue Bond Act shall be construed as repealing or amending the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978].

History: 1978 Comp., § 4-60-15, enacted by Laws 1978, ch. 181, § 16.

ARTICLE 61
Small Counties Assistance

4-61-1. Short title.

Chapter 4, Article 61 NMSA 1978 may be cited as the "Small Counties Assistance Act".

History: Laws 1982, ch. 44, § 1; 2003, ch. 217, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "Chapter 4, Article 61 NMSA 1978" for "Sections 1 through 3 of this act" at the beginning of the section.

4-61-2. Definitions.

As used in the Small Counties Assistance Act:

A. "adjustment factor" means a fraction, the numerator of which is the net taxable value of the state for the property tax year prior to the year in which the amount of small counties assistance is being determined and the denominator of which is the net taxable value for property tax year 2002; the adjustment factor shall be calculated without reference to assessed value determined pursuant to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], assessed value determined pursuant to the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or taxable value determined pursuant to the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978];

B. "ceiling valuation" means:

(1) for the 2002 property tax year, one billion four hundred million dollars ($1,400,000,000); and

(2) for each subsequent property tax year, an amount equal to the product obtained by multiplying one billion four hundred million dollars ($1,400,000,000) by the adjustment factor for the year;

C. "demographer" means the bureau of business and economic research at the university of New Mexico;

D. "inflation factor" means a fraction whose numerator is the annual implicit price deflator index for state and local government purchases of goods and services, as published in the United States department of commerce monthly publication entitled "Survey of Current Business" or any successor publication prepared by an agency of the United States and adopted by the department of finance and administration, for the calendar year one year prior to the year in which the distribution is to be made and whose denominator is the annual index for calendar year 2004; provided that, if the inflation factor is calculated to have a value less than one, it shall be deemed to have a value of one;

E. "population" means the official population shown by the most recent federal decennial census or, if there is a change in boundaries after the date of the census, "population" for each affected unit shall be the most current estimated population for that unit provided in writing by the demographer; provided that after five years from the first day of the calendar year of the most recent federal decennial census, that census shall not be used, and "population" for the period from that date until the date when the

next following official final decennial census population data are available shall be the most current estimated population provided in writing by the demographer;

F. "qualifying county" means a county that has:

(1) for the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, imposed a property tax rate for general county purposes pursuant to Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at least eight dollars eighty-five cents ($8.85) per one thousand dollars ($1,000) of net taxable value;

(2) by July 1 of the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, received a written certification from the director of the property tax division of the taxation and revenue department that the county assessor of that county has implemented an acceptable program of maintaining current and correct property values for property taxation purposes as required by Section 7-36-16 NMSA 1978 or has submitted to the director an acceptable plan for the implementation of such a program;

(3) on July 1 of the year in which any distribution under the Small Counties Assistance Act is made to the county, a population of not more than forty-eight thousand;

(4) imposed county gross receipts tax increments authorized pursuant to Section 7-20E-9 NMSA 1978 totaling at least three-eighths percent and has those increments in effect on July 1 of the year in which a distribution is made, provided that this paragraph does not apply to a county if the county's valuation for property taxation purposes does not exceed the product of two hundred thirty million dollars ($230,000,000) multiplied by the adjustment factor for the year; and

(5) a total valuation for the property tax year preceding the year in which a distribution pursuant to the Small Counties Assistance Act for that county is to be made that is no greater than the ceiling valuation for that property tax year;

G. "tax rate factor" means a fraction, the numerator of which is the average rate imposed in Section 7-9-7 NMSA 1978 for the fiscal year one year prior to the fiscal year in which the distribution is to be made and the denominator of which is five percent; and

H. "total valuation" means the sum for a jurisdiction for a property tax year of the net taxable value determined pursuant to the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], the assessed value determined pursuant to the Oil and Gas Ad Valorem Production Tax Act, the assessed value determined pursuant to the Oil and Gas Production Equipment Ad Valorem Tax Act and the taxable value determined pursuant to the Copper Production Ad Valorem Tax Act.

History: Laws 1982, ch. 44, § 2; 1983, ch. 214, § 3; 1986, ch. 32, § 6; 1987, ch. 205, § 1; 1993, ch. 348, § 1; 2003, ch. 217, § 2; 2004, ch. 105, § 1; 2005, ch. 183, § 1; 2008, ch. 39, § 1; 2010 (2nd S.S.), ch. 7, § 1.

ANNOTATIONS

The 2010 (2nd S.S.) amendment, effective July 1, 2010, added Subsection G and relettered the succeeding subsection.

The 2008 amendment, effective July 1, 2008, in Subsection D, deleted the phrase "the year two years prior to the year in which the distribution is to be made" and inserted "calendar year 2004".

The 2005 amendment, effective June 17, 2005, added the definition of "inflation factor" in Subsection D; deleted "class B, class C or first class" from the definition of a "qualifying county" in Subsection F; and in Subsection F(4), provided that a qualifying county has imposed county gross receipts tax increments totaling at lease three-eights percent and that the paragraph does not apply to a county if the valuation for property taxation does not exceed the product of $230,000,000 multiplied by the adjustment factor for the year.

The 2004 amendment, effective May 19, 2004, added Subsection A, redesignated the succeeding subsections, and amended Subsection B to delete "a fraction of the numerator of which is the total valuation for the state for that property tax year . . ." and replace it with "the adjustment factor for the year", redesignated former Subsections B, C, D and E as Subsections C, D, E and F and amended Subsection E, Paragraph (4) by changing $200,000,000 to $230,000,000 and adding "multiplied by the adjustment factor for the year".

The 2003 amendment, effective June 20, 2003, inserted present Subsections A and B and redesignated the subsequent paragraphs accordingly; substituted "demographer" for "bureau of business and economic research at the university of New Mexico" near the middle and near the end of present Subsection C; inserted "class B, class C or first class" following "means a" near the beginning of Subsection D; substituted "forty-eight thousand;" for "forty-five thousand five hundred; and" at the end of Subsection D(3); and added present Subsections D(4), D(5) and E.

The 1993 amendment, effective July 1, 1993, in Subsection B(1), deleted "preceding the calendar year" following "tax year", substituted "pursuant to" for "at least equal to the property tax rate authorized under Subparagraph (a) of", and added the language beginning "of at least eight dollars"; and in Subsection B(3), substituted "forty-five thousand five hundred" for "forty-two thousand five hundred".

4-61-3. Small counties assistance fund; distribution.

A. The "small counties assistance fund" is created within the state treasury.

B. On or before September 1, 2003 and on or before September 1 of each subsequent year, the demographer shall certify in writing to the department of finance and administration the population of the state and of each county as of June 30 of the year.

C. On or before September 15, 2003 and on or before September 15 of each subsequent year, the secretary of finance and administration shall certify to the state treasurer with respect to each qualifying county:

(1) its population as certified by the demographer;

(2) its total valuation for the preceding property tax year; and

(3) the distribution amount calculated for it.

D. The distribution amount for each qualifying county shall be determined for 2003 and each subsequent year in accordance with the following table; provided that the bracket amounts in the first two columns of the table shall be adjusted annually after 2003 by the adjustment factor. The bracket amounts in the last column shall be adjusted annually after 2005 by the inflation factor and, in 2011 and subsequent years, shall be adjusted by the tax rate factor. The department of finance and administration may round the results of the adjustments made pursuant to this subsection to the nearest one thousand dollars ($1,000).

If the county's total valuation for the preceding property tax year is:

at least:	but less than:	and the county population is:	then the distribution amount is:
$ 0	$100,000,000	under 1,000	$515,000
$ 0	$100,000,000	at least 1,000 but under 4,000	$370,000
$ 0	$100,000,000	at least 4,000	$285,000
$100,000,000	$230,000,000	under 12,000	$200,000
$100,000,000	$230,000,000	at least 12,000	$145,000
$230,000,000	$1,400,000,000	under 48,000	$85,000.

E. If the balance in the small counties assistance fund as of the preceding August 31 exceeds the sum of the distributions to be made to qualifying counties pursuant to the provisions of Subsection D of this section, the department of finance and administration shall increase the distribution amount for each county receiving a distribution amount pursuant to the provisions of Subsection D of this section by:

(1) fifty thousand dollars ($50,000) if the county has imposed and has in effect on July 1 of the year in which the distribution is to be made a county gross receipts tax

at a rate of at least one-eighth percent; provided that the ordinance imposing the increment shall dedicate the revenue from the increment:

(a) for the purpose of operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional or a county correctional facility or the grounds of a judicial-correctional or county correctional facility, including acquiring and improving parking lots, landscaping or any combination of the foregoing;

(b) for the purpose of transporting or extraditing prisoners; or

(c) to payment of principal and interest on revenue bonds or refunding bonds issued pursuant to Section 4-62-1 NMSA 1978;

(2) twenty thousand dollars ($20,000) if the county has imposed and has in effect on July 1 of the year in which the distribution is to be made a county gross receipts tax increment of one-sixteenth percent; or

(3) seventy thousand dollars ($70,000) if the county has met the requirements of Paragraphs (1) and (2) of this subsection.

F. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions determined pursuant to Subsection D of this section plus the distribution increases authorized pursuant to Subsection E of this section, the distribution increases pursuant to Subsection E of this section shall be proportionately reduced.

G. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions to be made to qualifying counties, the department of finance and administration shall reduce each qualifying county's calculated distribution by a percentage computed by dividing the amount by which the fund is insufficient by the sum of all the calculated distributions and shall certify the reduced amounts as the qualifying counties' distributions.

H. Any interest accruing from the temporary investment of the small counties assistance fund shall be credited to the general fund.

I. On or before September 30, 2003 and on or before September 30 of each subsequent year, the state treasurer shall distribute to each county for whom a distribution has been certified for that year the amount certified for that county for that year. If the balance in the fund as of the preceding August 31 exceeds the sum of certified amounts distributed, the difference shall revert to the general fund.

J. If any date specified in Subsection B, C or I of this section falls on a Saturday, Sunday or legal holiday, any action required to be performed as provided in those

subsections is timely if performed on the next day that is not a Saturday, Sunday or legal holiday.

History: Laws 1982, ch. 44, § 3; 1983, ch. 214, § 4; 1984, ch. 24, § 1; 1987, ch. 205, § 2; 1988, ch. 104, § 1; 1993, ch. 348, § 2; 2003, ch. 217, § 3; 2004, ch. 105, § 2; 2005, ch. 183, § 2; 2010 (2nd S.S.), ch. 7, § 2; 2012, ch. 5, § 2; 2019, ch. 274, § 3.

ANNOTATIONS

Cross references. — For distributions from tax administration suspense fund to small counties assistance fund, *see* 7-1-6.5 NMSA 1978.

The 2019 amendment, effective July 1, 2019, provided for a larger distribution from the small counties assistance fund for certain counties; and in Subsection E, Paragraph E(1), after "at least one-eighth percent", added "provided that the ordinance imposing the increment shall dedicate the revenue from the increment" and added Subparagraphs E(1)(a) through E(1)(c).

The 2012 amendment, effective July 1, 2013, increased the distribution amount for counties when the sum of the distributions pursuant to Subsection D is less than the balance in the small counties assistance fund; and in Subsection E, in Paragraph (1), at the beginning of the sentence, deleted "thirty-five thousand dollars ($35,000)" and added "fifty thousand dollars ($50,000)"; in Paragraph (2), at the beginning of the sentence, deleted "fifteen thousand dollars ($15,000)" and added "twenty thousand dollars ($20,000)"; and in Paragraph (3), at the beginning of the sentence, deleted "fifty thousand dollars ($50,000)" and added "seventy thousand dollars ($70,000)".

The 2010 (2nd S.S.) amendment, effective July 1, 2010, in Subsection D, in the second sentence, after "inflation factor", added the remainder of the sentence.

The 2005 amendment, effective June 17, 2005, in Subsection D, provided that the bracket amount in the last column shall be adjusted annually by the inflation factor, that the department may round adjustments to the nearest one thousand dollars and increases the amount of the distributions; added Subsection E to provide for the increase in distributions from the fund of excess balances in the fund; added Subsection F to provide for a proportional reduction in distributions if the balance in the fund is less than the distributions determined under Subsection D plus the distribution increases authorized under Subsection E; and modified Subsection I to provide that if the balance in the fund exceeds the sum of certified amounts distributed, the difference shall revert to the general fund.

The 2004 amendment, effective May 19, 2004, amended Subsection D to delete "same fraction used to adjust the ceiling valuation pursuant to the provisions of Paragraph (2) of Subsection A of Section 4-61-2 NMSA 1978" and substitute in its place "adjustment factor" and to increase $210,000,000 to $230,000,000 in three places and to change $45,000 to $50,000 at the end of the subsection.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1993 amendment, effective July 1, 1993, rewrote Subsections C and D.

ARTICLE 62
Revenue Bonds

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

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.

B. Gross receipts tax revenue bonds may be issued for any county purpose. A county may pledge irrevocably any or all of the revenue received by the county pursuant to Section 7-1-6.13 NMSA 1978 for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds or for any area of county government services. If the revenue is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received 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. 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.

D. 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. 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.

E. 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 for the project and acquiring and improving parking lots. 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.

F. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating a fire district project, including, as applicable, purchasing, otherwise acquiring or improving the ground for the project. 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.

G. 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 [Chapter 29, Article 13 NMSA 1978] to the payment of the interest on and principal of the law enforcement protection revenue bonds.

H. 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.

I. Emergency medical services bonds may be issued for the purchase of equipment for emergency medical system improvement projects or emergency medical

services vehicles for which funding has been granted pursuant to the Emergency Medical Services Fund Act [Chapter 24, Article 10A NMSA 1978]. The county may pledge irrevocably any or all of the revenues received by the county from the emergency medical services fund distributions pursuant to the Emergency Medical Services Fund Act to the payment of the interest on and principal of the emergency medical services bonds.

J. 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.

K. 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 [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and the issuance of the bonds is approved by the commission.

L. Any law that imposes or authorizes the imposition of a tax authorized by the County Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 20E NMSA 1978] or that affects that tax 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 the tax unless the outstanding revenue bonds have been discharged in full or for which provision has been fully made.

History: 1978 Comp., § 4-62-1, enacted by Laws 1992, ch. 95, § 1; 1993, ch. 282, § 14; 1993, ch. 308, § 2; 1995, ch. 141, § 8; 1996, ch. 83, § 2; 1997, ch. 20, § 1; 1998, ch. 90, § 2; 1999, ch. 199, § 2; 2000, ch. 69, § 1; 2001, ch. 172, § 3; 2001, ch. 328, § 2; 2003, ch. 98, § 1; 2010, ch. 82, § 1; 2017, ch. 47, § 1; 2019, ch. 210, § 1; 2019, ch. 274, § 4; 2025, ch. 23, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1992, ch. 95, § 1 repealed former 4-62-1 NMSA 1978, as enacted by Laws 1983, ch. 158, § 1, relating to authorization for revenue bonds, and enacted a new section, effective May 20, 1992.

Repeals. — Laws 2025, ch. 23, § 6 repealed Laws 2019, ch. 210, § 1, effective July 1, 2025.

The 2025 amendment, effective July 1, 2025, allowed the issuance of emergency medical services bonds for the purchase of equipment for emergency medical system improvement projects or emergency medical services vehicles for which funding has been granted pursuant to the Emergency Medical Services Fund Act, and made technical amendments; added new Subsection I and redesignated the succeeding subsections accordingly; and in Subsection L, after "County Local Option Gross Receipts," added "and Compensating".

2019 Amendments. — Laws 2019, ch. 274, § 4, effective July 1, 2019, removed specific purposes for which gross receipts revenue bonds may be issued, and provided that gross receipts revenue bonds may be issued for any county purpose; in Subsection A, after "specified in this section.", deleted the remainder of the subsection, which provided for "pledged revenues"; in Subsection B, after "may be issued for", deleted "one or more of the following purposes:" and added "any county purpose", deleted Paragraphs B(1) through B(9) and paragraph designation "(10)", from former Paragraph B(10), deleted "acquiring, constructing, extending, bettering, repairing or otherwise improving public transit systems or regional transit systems of facilities", after "all of the revenue", deleted "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" and added "received by the county pursuant to Section 7-1-6.13 NMSA 1978", after "If the revenue", deleted "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", and after "require the revenues received", deleted "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"; deleted former Subsections C and D and redesignated former Subsections E through H as Subsections C through F, respectively; in Subsection C, deleted the last sentence of the subsection, which provided "These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as ‘gasoline tax revenue bonds’"; in Subsection D, deleted the last sentence of the subsection, which provided "These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as ‘utility revenue bonds’ or ‘joint utility revenue bonds’"; in Subsection E, after "authorizing the project revenue bonds.", deleted "As used in Chapter 4, Article 62 NMSA 1978:", deleted former Paragraphs E(1) and E(2); deleted former Subsections J through M and redesignated former Subsections N through Q as Subsections H through K, respectively; in Subsection H, after "authority to finance a public project.", deleted "as ‘public project’ is defined in Subsection E of Section 6-21-3 NMSA 1978."; in Subsection J, after "approved by the commission.", deleted "For purposes of Chapter 4, Article 62 NMSA 1978, a ‘utility’ includes 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"; in Subsection K, after "authorizes the imposition of a", deleted "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, the county hospital emergency gross receipts tax, the

countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax, or that affects any of those taxes" and added "tax authorized by the County Local Option Gross Receipts Taxes Act or that affects that tax"; and deleted former Subsections R and S.

Temporary provisions. — Laws 2019, ch. 274, § 15 provided:

A. The repeal of and changes to certain taxes made in this act shall not impair outstanding bonds that are secured by a pledge of those taxes.

B. If a municipality or county has issued a revenue bond that is secured by a pledge of a tax being amended or repealed by this act, the revenue received by the municipality or county is impressed with the obligation to repay the outstanding bond and is dedicated to that repayment until the bond is fully discharged or otherwise provided for in full.

C. If a municipality or county has dedicated any amount of revenue attributable to a tax being amended or repealed by this act, the municipality or county shall continue to dedicate the same amount of revenue attributable to the tax until the ordinance dedicating the revenue expires, the term of the dedication expires, the governing body acts to change the dedication or, in the case of bonded indebtedness, the debt is fully discharged or otherwise provided for in full.

The 2017 amendment, effective April 6, 2017, authorized the issuance of county area emergency communications and emergency medical and behavioral health services tax revenue bonds and countywide emergency communications and emergency medical and behavioral health services tax revenue bonds to purchase emergency communications equipment for certain emergency communications centers, defined "county area emergency communications and emergency medical and behavioral health services tax revenue", "county infrastructure gross receipts tax revenue", and "countywide emergency communications and emergency medical and behavioral health services tax revenue" for purposes of this section, and made technical changes; in Subsection A, after "in Subsections B through", deleted "M" and added "N"; in Subsection B, Paragraph B(1), after "ground", deleted "relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing" and added "of the building or buildings", in Paragraph B(2), after "facilities", deleted "or any combination of the foregoing", in Paragraph B(3), after "firefighting equipment", deleted "or any combination of the foregoing", in Paragraph B(4), after "wastewater or related facilities", deleted "including but not limited to" and added "which may include", and after "water rights", deleted "or any combination of the foregoing", in Paragraph B(5), after "roads or bridges", deleted "or any combination of the foregoing", and after "roads or bridges", deleted "or any combination of the foregoing; provided that any of the foregoing improvements" and added "which", in Paragraph B(6), after "airport facilities", deleted "or any combination of the foregoing, including without limitation", and added "which may include", in Paragraph B(7), after "purchasing", deleted "or", after

"otherwise acquiring", deleted "and" and added "or", in Paragraph B(8), after "recreational facilities", deleted "or any combination of the foregoing", in Paragraph B(9), after "repairing", deleted "or", after the second occurrence of "sanitary landfills", added "or", after "solid waste facilities", deleted "or any combination of the foregoing; or", and added "and" at the end of the paragraph, and in Paragraph B(10), after "public transit systems or", deleted "any"; in Subsection C, after "equipping or rehabilitating", deleted "any" and added "an", after "district project or", deleted "facilities" and added "facility", and after "ground for the project", deleted "or any combination of such purposes"; in Subsection F, after "electric facilities", deleted "or for any combination of the foregoing purposes"; in Subsection G, in the introductory paragraph, after "acquiring or improving the ground", deleted "therefor" and added "for the project", after "and", deleted "including but not limited to", and after "improving parking lots", deleted "or may be issued for any combination of the foregoing purposes"; in Subsection H, after "equipping and rehabilitating", deleted "any" and added "a", after "acquiring or improving the ground", deleted "therefor, or for any combination of the foregoing purposes" and added "for the project"; added a new Subsection M and redesignated the succeeding subsections accordingly; in Subsection P, after "'utility' includes", deleted "but is not limited to"; in Subsection Q, after "county hospital emergency gross receipts tax", added "the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax"; in Subsection R, deleted former Paragraph R(1), which defined "county infrastructure gross receipts tax revenue", and added a new Paragraph R(1), added new Paragraphs R(7) and R(8) and redesignated the succeeding paragraphs accordingly, and in Paragraph R(11), after "includes", deleted "but is not limited to"; and in Subsection S, after "Article 62 NMSA 1978,", deleted "the term".

The 2010 amendment, effective July 1, 2010, in Subsection B, in the first sentence of the second paragraph, after "revenue from the first one-eighth", changed "of one percent increment and, the third one-eighth of one percent increment of the county gross receipts tax" to "increment, the third one-eighth increment and the one-sixteenth increment of the county gross receipts tax"; in the second sentence, after "If the revenue from the first one-eighth", changed "of one percent increment or, the third one-eighth of one percent increment of the county gross receipts tax" to "increment, the third one-eighth increment or the one-sixteenth increment of the county gross receipts tax"; and in Subsection Q(6), after "revenue attributable to the first one-eighth", changed "of one percent and, the third one-eighth of one percent increments of the county gross receipts tax" to "increment, third one-eighth increment and the one-sixteenth increment of the county gross receipts tax" and after "distribution related to the first one-eighth", deleted "of one percent" and added "increment".

The 2003 amendment, effective July 1, 2003, substituted "M" for "L" near the end of Subsection A; substituted "receipts" for "receipt" following "capital outlay gross" in the paragraph following Subsection B(10); substituted "may" for "shall" following "revenue-producing project" in Subsection G; inserted "revenue" near the end of Subsection H;

added present Subsection M and redesignated former Subsections M to Q as present Subsections P to R; and added Subsection Q(8).

The 2001 amendment, effective April 5, 2001, inserted "any increment of" and "and county capital outlay gross receipts tax" three times each in near the end of Subsection B; added Subsection L; redesignated Subsections L to P as M to Q; inserted "the county education gross receipts tax, a county capital outlay gross receipts tax" to the list in current Subsection O; inserted Subsection P(2); inserted current Subsection P(3); and redesignated former Subsections P(2) to (6) as P(4) to (8).

This section was also amended by Laws 2001, ch. 172, § 3. The section was set out as amended by Laws 2001, ch. 328 § 2. *See* 12-1-8 NMSA 1978.

The 2000 amendment, effective March 6, 2000, inserted "or county health" preceding "facility" in the first and last sentences of Subsection J.

The 1999 amendment, effective April 6, 1999, rewrote the second undesignated paragraph following Subsection B(10); substituted "the Fire Protection Fund Law" for "Sections 59A-53-1 through 59A-53-17 NMSA 1978" and "prevents" for "shall prevent" in Subsection H; substituted "the Law Enforcement Protection Fund Act" for "Sections 29-13-1 through 29-13-9 NMSA 1978" in Subsection I; substituted "public regulation" for "New Mexico public utility regulation" in Subsection M; and made minor stylistic changes.

The 1998 amendment, effective May 20, 1998, in Subsection B(4), substituted "plants, water utilities or other water, wastewater or related facilities" for "plants, or water utilities"; added Subsection B(10); in the undesignated paragraph immediately following Subsection B(10), inserted "and the third one-eighth of one percent increment" and "and the county infrastructure gross receipts tax" in the first sentence, in the second sentence, deleted "county gross receipts tax" following "If the" and inserted "or the third one-eighth of one percent increment" and "or the county infrastructure gross receipts tax"; added the undesignated paragraph immediately preceding Subsection C; added Subsection K and redesignated the following subsections accordingly; in Subsection N, inserted "a county infrastructure gross receipts tax"; added Subsection O(1), redesignating the following paragraphs accordingly and in Subsection O(4) substituted "and the third one-eighth of one percent increments for "increment" and in Subsection O(6), inserted "county or regional" and "county or regional juvenile detention facilities"; and made minor stylistic changes throughout the section.

The 1997 amendment, effective July 1, 1997, substituted "Subsections B through J of this section" for "Subsections B through I of this section" at the end of Subsection A, deleted "but are not limited to" following "improvements may include" near the end of Subsection B(5), added Subsection J and redesignated former Subsections J to N as Subsections K to O, substituted "the gasoline tax or the county hospital emergency gross receipts tax" for "or the gasoline tax" in Subsection M, and made minor stylistic changes in Subsections B, G and H.

The 1996 amendment, effective March 6, 1996, inserted "or a class A county as described in Section 4-36-10 NMSA 1978" near the beginning of the first sentence in Subsection K.

The 1995 amendment, effective April 5, 1995, substituted "Subsections B through I" for "Subsection B through F" in the last sentence in Subsection A; inserted "for any of the purposes authorized in this section or specific purposes or for any area of county government services" in the first sentence of the second paragraph in Subsection B; added Subsections H, I and N and redesignated former Subsections H through K as Subsections J through M; inserted the language beginning "or, for bonds to be issued" at the end of the first sentence in Subsection J, substituted "public utility commission" for "public service commission" throughout Subsection K; and in Subsection M, deleted "Subsection E of" preceding "Section 7-1-6.13" in Paragraph (1), deleted "Subsection A of" preceding "Section 7-1-6.13" in Paragraph (2), and deleted "Subsection B of" preceding "Section 7-1-6.13" in Paragraph (3).

1993 amendments. — Laws 1993, ch. 282, § 14, effective June 18, 1993, substituting "or" for "and" preceding "rehabilitating" in the first sentence of Subsection G, and "New Mexico public utility commission" for "New Mexico public service commission" in the first and last sentences of Subsection I, was approved April 7, 1993. However, Laws 1993, ch. 308, § 2, effective April 8, 1993, substituting "or" for "and" at the end of Subsection B(8) and preceding "rehabilitating" in the first sentence of Subsection G, and inserting "or a class B county as defined in Section 4-36-8 NMSA 1978" in the first sentence of Subsection I, was approved April 8, 1993. The section was set out as amended by Laws 1993, ch. 308, § 2. *See* 12-1-8 NMSA 1978.

Obligations paid by special funds. — Revenues derived from the county's share of the gross receipts and gasoline taxes are within the special fund doctrine, since the legislature has expressly authorized the use of such funds for the issuance of revenue bonds. *Bolton v. Board of Cnty. Comm'rs*, 1994-NMCA-167, 119 N.M. 355, 890 P.2d 808, cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

4-62-1.1. Definitions.

As used in Chapter 4, Article 62 NMSA 1978:

A. "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;

B. "emergency medical services bonds" means the bonds authorized by Subsection I of Section 4-62-1 NMSA 1978;

C. "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;

D. "gasoline tax revenue bonds" means the bonds authorized by Subsection C of Section 4-62-1 NMSA 1978;

E. "gross receipts tax revenue" means the revenue attributable to the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any distribution made pursuant to Section 7-1-6.16 NMSA 1978;

F. "gross receipts tax revenue bonds" means the bonds authorized by Subsection B of Section 4-62-1 NMSA 1978;

G. "PILT revenue" means revenue received by a county from the federal government as payments in lieu of taxes;

H. "pledged revenue" means the revenue, net income or net revenue authorized to be pledged to the payment of particular revenue bonds as specifically provided in Section 4-62-1 NMSA 1978;

I. "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to Subsection E of Section 4-62-1 NMSA 1978;

J. "public project" means "public project" as defined in Subsection E of Section 6-21-3 NMSA 1978;

K. "utility" means a water, wastewater, sewer, gas or electric utility or joint utility servicing the public; and

L. "utility revenue bonds" or "joint utility revenue bonds" means the bonds authorized by Subsection D of Section 4-62-1 NMSA 1978.

History: 1978 Comp., § 4-62-1.1, enacted by Laws 2019, ch. 274, § 5; 2025, ch. 23, § 4.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, defined the term "emergency medical services bonds," as used in Chapter 4, Article 62 NMSA 1978, and made certain technical amendments; and added new Subsection B and redesignated the succeeding subsections accordingly..

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.

History: 1978 Comp., § 4-62-2, enacted by Laws 1992, ch. 95, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1992, ch. 95, § 2 repealed former 4-62-2 NMSA 1978, as enacted by Laws 1983, ch. 158, § 2, relating to procedure for issuing bonds, and enacted a new section, effective May 20, 1992.

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 [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at public or negotiated sale.

History: 1978 Comp., § 4-62-3, enacted by Laws 1992, ch. 95, § 3; 1995, ch. 141, § 9.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, deleted "in the ordinance" following "body" at the end of Subsection A, and substituted "determined by the governing body" for "provided by ordinance" following "be" at the end of Subsection B.

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.

History: Laws 2001, ch. 126, § 2.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 126 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

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.

History: 1978 Comp., § 4-62-4, enacted by Laws 1992, ch. 95, § 4; 1995, ch. 141, § 10.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, added the language beginning "resolution" in the section heading, substituted "fewer" for "less" in the first sentence in Subsection B, added Subsection C, redesignated former Subsection C as Subsection D, and inserted "or resolution" in the first sentence in Subsection D.

Avoiding inconsistent use provision. — The use for bond debt payment of revenue previously dedicated by ordinance for road fund purposes may have been inconsistent with that prior dedication, a later ordinance repealed that dedication and provided by amended dedication that the revenue was to be used to pay bond debt. By repeal, the county eliminated any potential or actual inconsistent use of the revenue that might violate the inconsistent-use prohibition of Subsection D of 4-62-4 NMSA 1978. *Lemire v. Board of Comm'rs of Cnty. of Chaves*, 2002-NMCA-026, 131 N.M. 672, 41 P.3d 940, cert. denied, 131 N.M. 737, 42 P.3d 842.

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 [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the treasurer of the county.

History: 1978 Comp., § 4-62-5, enacted by Laws 1992, ch. 95, § 5.

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.

History: 1978 Comp., § 4-62-6, enacted by Laws 1992, ch. 95, § 6.

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.

History: 1978 Comp., § 4-62-7, enacted by Laws 1992, ch. 95, § 7; 1998, ch. 10, § 1.

ANNOTATIONS

The 1998 amendment, effective February 19, 1998, in Subsection B, deleted "Nothing in" from the beginning of the second sentence and made a minor capitalization change.

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.

History: 1978 Comp., § 4-62-8, enacted by Laws 1992, ch. 95, § 8; 1995, ch. 141, § 11.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, inserted "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" at the end of the first sentence in Subsection A.

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 [6-14-1 to 6-14-3 NMSA 1978].

History: 1978 Comp., § 4-62-9, enacted by Laws 1992, ch. 95, § 9; 1995, ch. 141, § 12.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, deleted "in the ordinance" following "body" at the end of Subsection A, and substituted "determined by the governing body" for "provided by ordinance" in Subsection B.

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.

History: 1978 Comp., § 4-62-10, enacted by Laws 1992, ch. 95, § 10; 1995, ch. 141, § 13.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, designated the existing language as Subsection A and added Subsection B.